

Special Instructions for Agencies Affected by a Possible Lapse in Appropriations Starting on October 1, 2021

In the event an agency and its employees are affected by a lapse in appropriations commencing on Friday, October 1, 2021, the following special instructions apply. This supplements (and should be read with) general guidance—issued by the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) on administering an agency shutdown of operations due to a lapse in appropriations. It highlights certain matters of particular relevance to the specific scenario at hand. (Note: Lapse-affected employees include “furloughed employees” and “excepted employees.” “Excepted employees” may perform activities legally permitted as an exception to the general bar on performing work during a lapse in appropriations, but may not be paid for that work until after the lapse is over.)

Payroll Implications:

- In the event of a lapse commencing on Friday, October 1, the Federal civilian paychecks for the **September 12 -September 25 pay period** would not be delayed, as Federal payroll providers will have already completed processing for this pay period. Paychecks for this pay period should be issued at the normal time (generally, in the October 1 – October 7 time range).
- To minimize potential delays if a lapse lingers, agencies should coordinate with Chief Human Capital Offices and payroll providers to submit employee timekeeping data for the **September 26 – October 9 pay period** as part of orderly shutdown activities. Assuming the lapse is in effect during the time that timekeeping is being finalized for that pay period, the paychecks may not include pay for any work performed from October 1 through October 9. Agencies should document that work as well as any other later excepted work performed during the lapse following any special instructions from their time and attendance and payroll provider.
- Lapse-affected employees may not receive any pay for work (i.e., orderly shutdown activities or other excepted work) performed during the lapse until after the lapse has ended.
- Under 31 U.S.C. 1341(c), after the lapse in appropriations has ended, both excepted and furloughed employees will receive retroactive pay at the employee’s standard rate of pay.

Leave:

- All previously scheduled paid leave and other paid time off (including paid holiday time off) are cancelled for lapse-affected employees during a lapse in appropriations.
- Intermittent absences are permitted for excepted employees, subject to supervisory approval. An agency may allow an excepted employee to be absent from duty on days the employee was previously scheduled to take leave or be in holiday time off status. An agency may also use other work schedule flexibilities (e.g., telework or flexible starting/stopping times under a

flexible work schedule) to accommodate an employee's personal needs without requiring an absence from duty.

- If an excepted employee is excused from duty, the employee must either (1) be placed in furlough status (the default approach) or (2) placed in paid leave status under 31 U.S.C. 1341(c)(3). (See more information in the "Excepted Employees" section below.)

Holidays:

- During a lapse in appropriations, holiday paid time off is cancelled for lapse-affected employees.
- Employees furloughed on a holiday (e.g., the October 11 holiday) will not be paid for the holiday until after the lapse in appropriations has ended.
- Holidays remain in force for the purpose of determining entitlement to holiday premium pay for excepted work performed on a holiday. Thus, if the lapse is in effect on a holiday (e.g., the October 11 holiday), an excepted employee who is required to perform work on the holiday during the employee's regular hours may earn holiday premium pay; however, payment cannot be made until after the lapse is over. Excepted employees who are not otherwise scheduled to work on a holiday are not required to work. If an excepted employee does not work on a holiday, the employee must be placed in a furlough status for the holiday.

Orderly Shutdown:

- Agencies should provide clear instructions to employees who will be furloughed regarding when they are expected to report to work to perform any necessary orderly shutdown activities.
- With respect to the issuance of furlough notices, agencies should follow OPM's general guidance, including the sample furlough notices for excepted employees who are furloughed on a holiday or for other intermittent absences. Agencies should do their best to provide notices as soon as possible given individual circumstances.
- As a general rule, agencies may allow an employee whose work is not otherwise excepted to perform up to 4 hours of **orderly shutdown activities**, as necessary, which may include time required to receive a furlough notice (in person, electronically, or otherwise, as determined by an agency). Unless the agency directs otherwise, employees are expected to perform any necessary orderly shutdown activities (including receipt of a furlough notice) on the **first workday the employee was scheduled to work** after the lapse commences. Employees generally should **not** be allowed to perform orderly shutdown work (up to 4 hours) on a day off (e.g., weekend day for employees with a Monday-Friday schedule, an Alternative Work Schedule (AWS) day off, or a holiday). Also, an agency generally should not direct an employee to perform orderly shutdown work on a day on which the employee had been scheduled to be on leave.
- OMB's general guidance addresses orderly shutdown activities. OMB expects agencies to minimize orderly shutdown activities. Individual employees may perform some preparatory

orderly shutdown activities immediately prior to the lapse as a precaution in anticipation of a possible lapse. If an agency is aware that an employee will be absent on Friday, October 1 (due to scheduled leave or an AWS day off), the agency may direct the employee to perform precautionary orderly shutdown activities on the employee's preceding workday.

- If an employee was scheduled to be on leave on the workdays immediately after the lapse commences, the employee is not required to report to duty to perform orderly shutdown activities on a scheduled leave day, even though the leave has been cancelled. An agency may allow such an employee to perform any necessary orderly shutdown activities (including receipt of a furlough notice) on the first workday on which the employee had been scheduled to return to duty. Employees may not, however, perform any non-excepted agency work prior to conducting orderly shutdown. For example, if an employee was scheduled to take leave October 1 and return to work on Monday, October 4, an agency could require the employee to report to duty to perform any necessary orderly shutdown activities on October 4. (Note: The employee may have performed shutdown activities prior to going on leave, which would limit the need to perform orderly shutdown activities after commencement of the lapse. Additionally, agencies should make every effort to ensure that employees who will not be conducting orderly shutdown for several days following the commencement of the lapse are aware of their furlough status during that period.)
- If the employee described in the previous paragraph has a Flexible Work Schedule and a scheduled AWS day off on Friday, October 1, the employee could be allowed to move the AWS day off to Friday, October 8, so that the employee performs any required orderly shutdown activity on Friday, October 1.
- If an agency directs an employee to perform orderly shutdown activities on a holiday or the employee's AWS day off, any hours performing orderly shutdown activities would count as hours in applying applicable premium pay rules (e.g., for holiday premium pay or overtime pay). (Since retroactive pay will be provided for furlough hours, furlough hours will count as hours of work in applying overtime rules.)

Excepted Employees:

- A lapse-affected employee is allowed to perform work only to perform orderly shutdown activities or other work that has been identified as excepted under guidance issued by OMB. Agencies must apply OMB guidance to determine which employees may perform excepted work activities—i.e., are “excepted employees.”
- If an agency authorizes an excepted employee's absence from duty, the default approach is to place the employee in furlough status. For example, if an excepted employee is excused from duty on the October 11 holiday, the default approach would be to place the employee in furlough status on that day. After the lapse has ended, affected employees are entitled to retroactive pay at the employee's standard rate of pay for furlough periods—without charge to leave, as provided in 31 U.S.C. 1341(c)(2).
- Under 31 U.S.C. 1341(c)(3), an excepted employee has the option of seeking agency approval to use paid leave under 5 U.S.C. chapter 63 (or other applicable law) to cover an authorized absence during

a lapse in appropriations, but the payment for that leave still could not be made until after the lapse has ended. Generally, we do not expect excepted employees to request to use paid leave, since they are entitled to retroactive pay for furlough periods without charge to leave. If an excepted employee receives paid leave to cover a period of absence, the employee will not receive retroactive pay under 31 U.S.C. 1341(c)(2) for that period. (Note: An excepted employee cannot request to use paid leave for an authorized absence on a holiday. An excepted employee must be placed in a furlough status when absent on a holiday.)

- If an excepted employee is directed to perform excepted work during a lapse in appropriations but fails to report for duty, the agency may place the employee in absent-without-leave (AWOL) status for missed work hours, in accordance with agency policy and procedures—instead of placing the employee in furlough status. No retroactive pay will be provided for AWOL hours, since the standard rate of pay for AWOL hours is zero.
- The sample furlough notices for excepted employees in OPM’s shutdown furlough guidance may be modified to so that a single notice can be provided to cover any holidays or other approved absence on a regular workday during the lapse in appropriations. Unless the employee’s agency specifically directs otherwise, excepted employees should generally report for duty on the next day on which they are scheduled to work.
- Agencies should take into consideration an employee’s previously scheduled leave or scheduled holiday time off that takes place during the lapse in appropriations and allow the employee to be furloughed (or approve paid time off under 31 U.S.C. 1341(c)(3), if requested by the employee) during the period the employee had been scheduled to be excused from duty—unless the agency determines there is a need for the employee to report to work to perform excepted activities.
- If an agency directs an excepted employee to work on a holiday or the employee’s AWS day off, any hours performing work would count as hours in applying applicable premium pay rules (e.g., for holiday premium pay or overtime pay). Excepted employees will be paid for any earned overtime pay or holiday premium pay when Congress restores appropriations.