



U.S. Department of Justice

Lapse in Appropriations Employee Reference Guide

October 10, 2025

**DEPARTMENT OF JUSTICE
LAPSE IN APPROPRIATIONS REFERENCE GUIDE**

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SCOPE

Note that this reference guide primarily assumes that the Department of Justice's funding has lapsed. There may also be situations where the Department's funding has not lapsed, but the funding of other agencies we work with or that provide funding to us has lapsed. These will present unique situations that are briefly mentioned below, but will require further discussion when they occur.

ACTIVITIES THAT CAN CONTINUE DURING LAPSE ("EXCEPTED" ACTIVITIES)

The Antideficiency Act restricts the Federal Government's ability to obligate funds in advance of appropriations or beyond appropriated levels. If the Department is faced with a lapse in appropriations, it will only continue the following categories of activities:

1. Those funded by a funding source that has not lapsed, such as permanent indefinite appropriations and carryover of no-year funds appropriated in a prior year, to the extent that a policy call is made to use such carryover;
2. Those that are expressly authorized by law to continue during an appropriations lapse;
3. Those for which authority to continue during an appropriations lapse arises by necessary implication;
4. Those that are critical to the President's constitutional duties and powers and cannot be delayed without impairing those duties and powers; and
5. Those reasonably related to "emergencies involving the safety of human life or the protection of property," *i.e.*, where there is a reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.

**** Only employees deemed by component leadership to fit into one of these five categories will be excepted from furlough. The default rule is that an unfunded employee should NOT work unless he or she falls under one of the exceptions above. When in doubt, or in borderline cases, the employee should NOT work.**

FREQUENTLY ASKED QUESTIONS

A. EMPLOYEES – EXCEPTED AND NON-EXCEPTED STATUS

1. What is the proper terminology?

- **"Excepted" employees** are those employees who are required to work.
- **"Non-excepted" employees** are furloughed. (A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.)
- **"Emergency" employees** are the subset of excepted employees who are required to work under the emergency exception.
- **"Exempt" employees** are employees who remain working because the funding

for their salaries has not lapsed.

2. Who are “excepted” employees?

- **Employees needed to engage in shutdown activities** for a brief time to ensure the orderly shutdown of those functions that will not continue during the lapse.
- **Employees whose salaries are funded by sources that have not lapsed** – for example, employees paid from permanent indefinite appropriations or from available carryover of multi-year or no-year appropriations. These employees are sometimes referred to as “exempt” employees.
- **Employees whose functions have express legal authority to continue during a lapse** - for example, if the activity is required to continue by a court order.
- **Employees whose functions may continue by necessary implication** – for example, the continuation of activities necessary to protect life or property (see “Emergency employees” exception, below) may necessarily imply the continuation of a limited amount of administrative support personnel, such as IT support, without which the excepted activities could not continue. In addition, where Congress has funded an activity via permanent, no-year, or multi-year appropriations but does not fund those functions that support or administer the primary activity, the supportive or administrative function may continue if continuing the unfunded activity is necessary to prevent harm to the funded program. In addition, to the extent payment-related support services are necessary to expend permanent, no-year, multi-year, or prior-year annual funds (where such prior-year annual funds were obligated **before** the lapse), employees may be excepted to undertake tasks consisting of “recording, adjusting, and liquidating [prior-year] obligations” where necessary to prevent harm to the funded program or activity. 31 U.S.C. §1553(a).
- **Employees whose function is critical to the discharge of the President’s constitutional duties and powers, supporting work that cannot be delayed without impairing those duties and powers** – the use of this exception is limited within the Justice Department. One example of employees excepted for this reason are employees in the Office of the Pardon Attorney because they support the President’s executive clemency power.
- **Emergency employees** - those whose work may not be suspended without threatening the safety of human life or the protection of property. First, there must be a reasonable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be a reasonable likelihood that the safety of human life or the protection of property would be compromised, to some significant degree, by delay in the performance of the function in question. Employees who support emergency functions may also be excepted to the extent that suspending their work would threaten the safety of human life or the protection of property (these employees would be excepted under the “Employees whose functions may continue by necessary implication” exception, as described above).

3. Are Presidential Appointees subject to furlough?

- No, Presidential Appointees (with or without Senate confirmation) are not subject to furlough,¹ but such appointees will not be paid on time if the appropriation that pays their salary has lapsed. Since these appointees are not subject to furlough, they are not limited to engaging in excepted activities. However, leadership may choose to limit such appointees' activities during a shutdown for policy reasons. In addition, employees who provide administrative or other support to Presidential Appointees may not support non-excepted activities during a lapse.
- Schedule C employees and non-career SES are subject to furlough and are only excepted if another exception applies.
- An individual acting in a position normally occupied by a Presidential appointee is not excepted from furlough on this basis. The Department will evaluate the status of any such employee by applying the usual criteria for determining whether an employee is excepted from furlough.

4. If an employee is on detail, who decides if the person is excepted or not?

- As a general rule, the office where the detailee is working (the gaining office) decides if the person is performing an excepted function on their behalf and, if so, informs the parent office that the detailee is excepted. The excepted detailee must be counted against the parent office's excepted personnel totals – not the gaining office.
- Note that there may be situations where the funding for the parent or the gaining office has not lapsed, and that may raise unique considerations that should be discussed with JMD.
- Further, external details (incoming or outgoing) necessarily involve discussions with the other agency to ensure that the detailed employee knows their status in the event of a lapse. This information should also be clearly noted in the memorandum of understanding between the gaining and parent agencies.
- Finally, onboarding or offboarding a detailee during a lapse will involve special considerations that should be discussed with JMD.

5. Will interns and uncompensated employees who are not performing excepted functions be furloughed?

- Paid interns who are not performing excepted functions will be furloughed. As a rule, uncompensated employees and interns should also not be permitted to work if they are not performing excepted functions. However, if an uncompensated employee or intern is supporting an excepted employee and supervision of the uncompensated employee or intern will not require the excepted employee to perform non-excepted work, the uncompensated employee or intern may be permitted to work.

¹ Former career Senior Executives Service (SES) appointees who receive a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR part 359, subpart H.

6. Will DOJ employees working overseas be excepted?

- The Department will defer to the Chief of Mission (COM) for all employees (DOJ and contract) who are posted at an embassy or installation and will ensure its employees comply fully with all applicable directives of the COM related to the continued or suspended business of the embassy or installation.
- Employees who work for a DOJ office in the United States but telework, even if their usual telework location is at an embassy or installation, need to determine from their employing component whether they are excepted.

7. Are all non-excepted employees required to work on the first day of a lapse to engage in orderly shutdown activities?

- Non-excepted employees will need to engage in orderly shutdown activities on the first day of the lapse, including putting an out-of-office message on their devices and receiving furlough letters. Component leadership has the discretion to decide whether non-excepted employees can situationally telework for these orderly shutdown activities or they need to come into the office. Employees should only be permitted to telework for orderly shutdown activities if those activities are expected to last less than four hours and can reasonably be accomplished outside of the office. Ref: DOJ Policy Statement 1200.01 (Telework). To the extent that non-excepted employees are asked to work on the first day (either at the office or at home), they will be considered excepted for the period that they are engaged in orderly shutdown activities.

8. May a supervisor change the status of an employee from non-excepted to excepted and *vice versa*, as needs change?

- Yes, supervisors may change the status of employees as needs change. Employees may not change their own status without supervisory approval. Components should keep track of such changes and the justifications for them, especially to the extent that such changes cause the component to deviate from the numbers of excepted personnel provided in the contingency plan. Components may be asked to provide this information during the lapse and may be required to use a specific form or format for tracking purposes. Prior Department-level approval is not required for such deviations. Component leadership should use their judgment when making such deviations, consistent with the guidance provided and the understanding that they may be required to report deviations internally and externally.

9. For those employees who are excepted, what are the expectations for hours worked, including alternative work schedules (AWS) and telework?

- Components and supervisors have discretion to instruct employees to adjust their work schedules as necessary to perform excepted functions during the lapse. For example, supervisors may need to change an employee's schedule from an AWS to 8 hours per day/5 days per week to ensure adequate coverage of excepted functions.

- For excepted employees, nothing changes during a lapse with respect to telework. Employees are generally expected to work in the office but may perform situational telework under certain circumstances in accordance with DOJ Policy Statement 1200.01 (Telework).

10. Will employees who are not excepted be given furlough notices?

- Any reasonable advance notice of a furlough is permissible, including oral or telephonic notice. A formal written notice of furlough is not required to be given prior to implementing the furlough if it is not feasible.
- To the extent that furlough notices are given, they should be given to all employees who will not be excepted on a full-time basis. Supervisors should inform employees of expectations regarding if and when they might be needed to perform excepted work.

11. May an excepted employee perform non-excepted work?

- To the extent that an employee is working because they are needed to perform activities that are excepted from furlough pursuant to the Antideficiency Act, as a rule the employee should only be performing excepted work.
- If the non-furlough (excepted) function of the employee can be performed in less than an entire day, the employee is required to resume furlough status after completing the function.
- However, there may be cases in which an employee is required to perform this excepted support function intermittently throughout the course of the day, and the intervals in between are too short to enable the employee to be furloughed and then recalled in time to perform the function. In such cases, the employee may perform de minimus non-excepted functions during these intervals. In such situations, components must minimize the number of employees who are performing excepted functions on an intermittent basis by consolidating the excepted functions, to the extent possible, for performance by a smaller number of employees (e.g., components should not except from furlough multiple employees in order to perform intermittent excepted work, when instead the component could have fewer employees perform the excepted work on more of a full-time basis).
- Excepted employees must manually track the hours they work during the lapse and accurately code time in GovTA.
- If an employee is working because appropriations remain available to support their activities, the employee does not generally need to be concerned about whether his or her activities are excepted or non-excepted. However, it is important that such employees are aware that their colleagues (including at other agencies) may not have funding and thus are at work to carry out excepted activities. Funded employees should remain cognizant of this and not ask such excepted employees to assist them in non-excepted activities.

12. May an employee volunteer to work for no salary during a lapse?

- No. Employees deemed non-excepted may not volunteer their services and continue working on Department business during a government shutdown.

13. Is union bargaining regarding a furlough required?

- Because a shutdown is a legal requirement and not a matter of agency discretion, agencies do not need to bargain with unions over what activities may continue or what employees are excepted during a shutdown.
- If a union requests bargaining, the bargaining does not need to be completed before the shutdown.
- The agency may be required to provide certain information to a union if requested, in accordance with 5 U.S.C. § 7114.

14. May union officials perform representational work on “official time” during an appropriations lapse?

- Employees who are excepted because they are paid from funding sources that remain available during the lapse and who are serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions.
- Other employees serving as union officials may work on official time during a shutdown if such activities fall within the Antideficiency Act’s exceptions. The exercise of a union’s statutory and/or contractual rights triggered by an excepted management action taken during a shutdown would constitute an excepted activity. Therefore, if an agency has determined that a management action taken during a shutdown is permissible because it is an excepted activity, and such action triggers union representational rights under a collective bargaining agreement or 5 U.S.C. chapter 71 (e.g., a formal discussion, a Weingarten interview, or the representation of an employee in connection with an adverse personnel action), official time should be granted to employees to perform representational duties related to that action.
- With this in mind, agency officials should consult with their General Counsel to evaluate whether contemplated management actions will trigger statutorily or contractually guaranteed representation rights, and should consider delaying, if possible, such excepted management actions that may trigger union representational rights until agency funding is restored.

15. Will union officials have access to their union offices if they are in furlough status?

- Generally, access to facilities during a furlough may be restricted based on funding, security or other issues, and a particular facility, or portions of a facility, may be fully or partially operational. Access to a union office during a period of furlough should not be prevented solely on the basis that a union official seeking access is not in a duty status. Access for representational purposes would be subject to each facility’s requirements at the time, including provisions in collective bargaining agreements.

B. EMPLOYEES – PAY

1. Will pay accrue to an excepted employee who performs work during a furlough?

- The Government is required to pay an excepted employee who performs work during the lapse according to the normal rules governing pay. However, the

timing of when an excepted employee is paid may be impacted, and he or she may not be paid until an appropriations act, or a continuing resolution is enacted.

2. Will employees furloughed due to a lapse in appropriations be paid for the time they are on furlough?

- Employees on furlough during a lapse in appropriations are typically paid after there is enactment of an appropriations act ending the lapse.

3. Will employees excepted from furlough because their compensation is directly financed by a resource that has not lapsed have to wait until an appropriation is enacted before they are paid?

- Employees excepted from furlough because they are paid directly from appropriations that have not lapsed will be paid for their work and do not have to wait until an appropriation is enacted, although they may be paid late if personnel needed to process payroll transactions are furloughed.

4. How do we handle excepted employees whose pay comes from an appropriation that has lapsed but that appropriation is reimbursed from a source that is not affected by the lapse?

- There are several funding sources not appropriated annually that pay for the salaries of DOJ employees (e.g., 3% Percent Fund, Asset Forfeiture Fund, Health Care Fraud, and some State Department funding). Such funding is typically provided for these salaries through a reimbursable agreement, which means that the component receiving the funds must first pay the salary of the employee from its own annually appropriated funds and then be reimbursed for the salary costs. During an appropriations lapse, to the extent possible, the Finance Staff will work with the respective components to pay these employees, but their pay may be delayed.

5. May an excepted employee take previously approved paid time off or be granted new requests for paid time off during a shutdown furlough?

- An excepted employee paid directly out of non-lapsed funds may take leave as usual. Such employees **should not** receive furlough notices and should not be furloughed if they need to be out of the office; their work and leave continue as normal while their funding remains available.
- During a lapse in appropriations, agencies must cancel all previously scheduled paid leave and other paid time off (including paid holiday time off) for lapse-affected employees.
- 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 during the lapse, the employee must either (1) be placed in furlough status, or (2) placed in paid leave status under 31

U.S.C. 1341(c)(3), if requested by the employee. Generally, we anticipate that excepted employees will use available workplace flexibilities described above or be furloughed when excused from duty. We do not anticipate that excepted employees will request to use paid leave, since they are entitled to retroactive pay for furlough periods without charge to leave.

- Note that if an excepted employee refuses to report for work after being ordered to do so, he or she may be considered absent without leave (AWOL) and may be subject to disciplinary actions that may follow from being AWOL.
- Additional information can be found here: [OPM Guidance for Shutdown Furloughs](#)

6. Is an employee entitled to receive retroactive pay, after the lapse has ended, for periods that the employee was previously scheduled to be in non-pay status, such as leave without pay (LWOP) or pay suspended status?

- No. At the end of the lapse, employees are entitled to retroactive pay at their “standard rate of pay.” Because the standard rate of pay for an employee in a non-pay status is zero, they are not entitled to pay for that period. As such, employees who are on previously scheduled leave without pay (LWOP) or are in pay suspended status during a period of the lapse, for example, will not receive payment for that period when the lapse ends.

7. If a lapse in appropriations begins in the middle of a pay period, will employees who are paid from lapsed appropriations be paid for the days/hours they worked prior to the lapse?

- Employees paid from a funding source that has lapsed, regardless of whether they are furloughed (non-excepted) or working (excepted) during the lapse period, will be paid for the time they worked up until the lapse begins. For the portion of the pay period during the lapse, all such employees, whether working or not, will be in “furlough” status on their T&As and thus will not receive payment for the lapsed period until the lapse ends. The normal “Order of Precedence” for withholding deductions will be followed with respect to a partial paycheck. Therefore, employees are encouraged to consider contacting institutions regarding the fact that their existing allotments may not be honored. If the full amount of the voluntary allotment cannot be honored from an employee’s pay, it will not be deducted. When the shutdown ends, in those cases where allotments could not be deducted, it will be the employee’s responsibility to ensure that the allotment is caught up.

8. Will DOJ issue letters to creditors on behalf of DOJ employees who are furloughed?

- No. While the Department is sympathetic to the financial concerns raised by employees because of the lapse in appropriations, the Department is not in a position to issue letters to creditors on behalf of DOJ employees who are furloughed.

9. Are furloughed employees eligible for unemployment compensation?

- Furloughed employees may become eligible for unemployment compensation.

DOJ employees can find information on unemployment compensation at www.justice.gov/employees/index.html.

- State unemployment compensation requirements differ. Some states require a 1-week waiting period before an individual qualifies for payments. In general, the law of the state in which an employee's last official duty station in federal civilian service was located will determine eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" <https://oui.doleta.gov/unemploy/unemcomp.asp>).
- Agencies or employees should submit questions to the appropriate state (or District of Columbia) office.

C. EMPLOYEES – ONBOARDING, OFFBOARDING, AND PROBATIONARY PERIODS

1. What happens to new employees who are scheduled to report to work for the first time during a shutdown furlough?

- By law, individuals do not become federal employees until they report for work and are sworn in. As a rule, components should delay the enter-on-duty date for new employees who are scheduled to start during a lapse in appropriations. The only exceptions are as follows:
 - Funded activities: To the extent that the funding to pay the new employees has not lapsed, and funding necessary to pay employees and activities required to on-board and swear in the new employees is available, the new employee may begin work.
 - Emergency activities: Where the component is funded by an appropriation that has lapsed, new employees may be brought on and begin work specifically to perform emergency activities, the delay of which will compromise the safety of human life or the protection of property. Components must ensure that a duly authorized employee is available to swear in the new employee. Excepted human resources employees may complete the paperwork necessary to bring the employee on-board. (NOTE: As a general matter, the on-board process is not an excepted function. Components bringing on new employees to perform emergency activities should perform only those minimal onboarding procedures deemed reasonably necessary until funding is restored.)

2. Can an employee resign or retire during a lapse?

- Yes. Employees may resign or retire during a lapse using standard procedures. However, because processing departures is not generally an excepted activity, the paperwork may not be processed until the responsible employees return to work. At that point the paperwork can be backdated to the date of departure. Employees who resign or retire from the Department should return all government furnished equipment, passwords for the equipment, forwarding contact information, and their PIV card to an approved excepted employee of the component with the expectation that as soon as the government reopens, staff will be in contact to complete any paperwork, obtain additional information and handle all other offboarding

responsibilities, including ethics and financial disclosure requirements.

3. Is the probationary period extended for employees whose probationary period ends during a lapse?

- No. Placement of a probationary employee (whether SES or non-SES) in a non-duty status due to a lapse in appropriations does not extend the employee's probationary period. To the extent possible, components should issue certifications under Civil Service Rule 11 before an expected lapse for non-SES employees who they would like to retain and whose probationary period expires within 30 days. If necessary, OMB has determined that employees who would otherwise be furloughed may be put in excepted duty status to process such certifications to ensure the applicable deadline is met.

D. EMPLOYEES – COMMUNICATION

1. How will employees be notified whether or not they should work during the shutdown? How will they be notified to resume working?

- Components will identify those employees who will be excepted from furlough during a lapse in appropriations, and employees will be notified by their supervisor as to whether or not they will be furloughed.
- During a lapse, employees should monitor the Department of Justice “For Employees” webpage (www.justice.gov/employees) for information specific to the Department. Employees should also monitor news reports, the Office of Personnel Management web site (www.opm.gov), and similar sources for the Federal Government's operational status.
- Once an appropriation for the Department has been enacted (either a continuing resolution or other type of appropriation), all employees are required to resume working on their next scheduled workday. If an appropriation is enacted in the middle of the day, an employee should typically resume working on the employee's next scheduled work day unless directed otherwise.

2. May employees use government issued communication devices (Smartphones), laptops, and other equipment during the lapse?

- Excepted employees may continue to use government issued communication devices (Smartphones), desktop computers, laptops, and other equipment during a lapse.
- Non-excepted employees should be advised not to use their government issued communication devices (Smartphones), desktop computers, laptops, and other equipment provided by the Department during a lapse, except in the following limited circumstances:
 - Non-excepted employees may briefly check their email remotely on the first day they would otherwise be working to confirm their status, receive a furlough notice, complete any necessary time and attendance records, and/or update an out-of-office message. Employees will be considered excepted for this brief period and should manually track their time. This activity should only occur on the first workday following the lapse.

- Non-excepted employees may also use government equipment for the following reasons: accessing personal employee records; completing a background investigation; checking the status of the furlough; checking for any Reduction in Force information and/or updates; updating personal contact information; completing or submitting Federal Employee Health Benefit changes; and completing or submitting a retirement application.
- Non-excepted litigators with active cases, and other employees who may receive notice of excepted work while on furlough that they cannot receive through other means, should be instructed to check their incoming emails once per day for electronic court notices or other critical notifications and forward any such emails to an appropriate excepted employee. This activity should typically take no longer than 15 minutes per day. Employees who are otherwise non-excepted will be considered excepted employees during the time they are performing this activity, and they should manually track this time to ensure they can accurately report it in GovTA at the end of a lapse.

3. May supervisors use personal email addresses to communicate with non-excepted employees while they are furloughed?

- Supervisors may use personal email addresses of their own furloughed employees to send furlough notices or return-to-work notices. Absent consent by employees, when sending such messages supervisors must ensure that the recipient cannot see the personal email addresses of other employees. Personal email addresses should not be used for any official work purpose beyond orderly shutdown communications (such as a furlough notice and/or a return-to-work notice).

4. May excepted DOJ employees communicate with employees in other agencies using personal email addresses?

- Excepted DOJ employees should not seek or use the personal contact information of their counterparts in other agencies to conduct government business. Those excepted DOJ employees who need to contact employees in other agencies during a lapse should do so through the excepted designees at those agencies.

5. Will web services be available?

- Justice.gov and DOJNet will remain operational and accessible during a lapse; however, content changes will be limited to those necessary pursuant to excepted activities. A notice will be posted that content may be out of date due to the lapse. Limited web services staff will be available to manage content of an emergency nature.

6. Where can employees go for more information on how a lapse in appropriations will affect them?

- Refer to the “For Employees” webpage on the Department of Justice website (www.justice.gov/employees) and the Office of Personnel Management’s website (www.opm.gov).
- Subscribe to email updates when new information becomes available on the Justice “For Employees” page. Be sure to subscribe with a non-DOJ email

address.

7. Should employees use a standard out-of-office email and phone message?

- Yes. Employees should use the following standard message: “The appropriation that funds my salary has lapsed, and as a result I have been furloughed and am currently out of the office. If your matter is urgent, please call XXX at (xxx) xxx-xxxx. Otherwise, I will respond after funding has been restored.”

E. EMPLOYEES –WORKFORCE REDUCTION AND REALIGNMENT

1. What happens to employees who are under the Deferred Resignation Program (DRP), RIF, or other similar workforce realignment situations during a lapse in appropriations?

Some employees under DRP, RIF, or other similar workforce realignment situations may be designated as “exempt” from furlough because their functions are not funded by annual appropriated funds. Such employees will generally continue to be governed by the normal pay and leave rules during a lapse in appropriations.

For those employees who are not exempt from furlough and are scheduled to be in administrative leave status on or after October 1, 2025, under DRP, RIF, or other similar workforce realignment situations, the Department must cancel their administrative leave and place those employees in a furlough status during the lapse of appropriations. Such employees do not need to perform any orderly shutdown activities as they should have already transitioned their work to other agency staff and should not have access to Federal Government equipment or systems.

NOTE: Employees under a DRP agreement with a voluntary resignation or retirement date of September 30, 2025, are not affected by a lapse in appropriations commencing on October 1, 2025. Such employees will no longer be employed in the Federal Government after September 30, 2025, and should not be continued on administrative leave, furloughed, or placed in an excepted status upon a lapse in appropriations, and will not be entitled to any retroactive pay under 31 U.S.C. 1341(c) after the lapse ends.

2. Will furloughed employees who are under DRP, RIF, or other similar workforce realignment situations during a lapse in appropriations be paid for the time they are on furlough?

Employees on furlough during a lapse in appropriations are typically paid at the end of the lapse. After the shutdown has ended, furloughed employees who would otherwise be on DRP, RIF, or similar workforce realignment administrative leave will receive retroactive pay at the employee’s standard rate of pay. The standard rate of pay for such employees is the pay the employee would have received had he or she remained on administrative leave and not been furloughed. Should such an employee leave Federal employment due to voluntary resignation, involuntary separation, or retirement during

the lapse of appropriations, the employee will receive retroactive pay only through the effective date of separation from Federal service.

3. What happens to lump-sum annual leave and severance payments for eligible employees who separate from Federal service under a DRP, RIF, or other similar workforce realignment?

Lump-sum annual leave and severance payments for eligible employees who separate from Federal service under a DRP, RIF, or other workforce realignment initiative may be delayed or paused during a lapse. Affected employees will receive any delayed or paused payments (including any retroactive severance payments that should have been paid during the lapse) once appropriated funds are restored.

F. TIME AND ATTENDANCE

1. What is expected of timekeepers just before a lapse in appropriations?

- If a lapse in appropriations is expected to occur at the end of a pay period, if feasible, timekeepers and/or employees should begin preparing T&As a few days before the lapse. T&As should be validated and certified by close of business on the last day before the lapse.
- If a lapse in appropriations is expected to occur in the middle of a pay period, timekeepers and/or employees should key in the time worked up to the day of the lapse for the given pay period on the day before the lapse. They should indicate that all employees whose funding will lapse are on furlough status for the rest of the time period. This can be changed if the lapse does not occur. (NOTE: excepted employees whose funding has lapsed are listed in furlough status on the T&As; the T&As are amended once an appropriation is enacted).

2. How are T&As reported for employees paid by annually appropriated funding sources during a lapse in appropriations (beyond any that are completed during the orderly shutdown)?

- T&As should not be submitted for lapse-affected employees until there is an enacted appropriation or CR and employees resume working.
- Once timekeepers resume working, they should submit new and/or corrected T&As to get both excepted and furloughed employees paid.

3. How are T&A reports handled for employees paid by funding that has not lapsed?

- Employees whose funding is not affected by the lapse in appropriations and whose salaries are fully funded should have their T&A reports prepared in the usual manner and on the normal schedule reflecting the appropriate transaction code (TC) and associated accounting.

NOTE: Specific guidance to timekeepers is provided prior to a lapse and will be reiterated during and after a lapse has ended.

G. TRAVEL

1. Is official travel for excepted employees permitted during a furlough?

- Official travel is permitted for excepted (or exempt) employees during a furlough period on a case-by-case basis if necessary to carry out an emergency function, funding for the travel is available in spite of the lapse (*e.g.*, it is funded by a permanent indefinite appropriation or carryover in no-year funds), or the travel falls within one of the other excepted categories. Travel is not permitted for non-excepted employees.

2. Is official travel for Presidential Appointees permitted during a furlough?

- While Presidential Appointees (with or without Senate confirmation) are excepted from furlough because of how their salaries are paid, their travel expenses are not subject to the same exception. Therefore, a PA or PAS may only travel during a lapse if the travel falls within one of the excepted activities, such as an emergency activity or the funding source for the travel remains available despite the lapse.

3. What happens if an employee is at a temporary duty station (TDY) when the lapse of appropriations begins?

- If an employee is in TDY status when the lapse of appropriations begins, management should consider whether the work the employee is doing in the TDY location is excepted (for example, because it involves an emergency function); if not, the component should request that the employee make arrangements to return to the permanent duty station.

4. What happens when an employee is on extended TDY status when the lapse of appropriations begins?

- The determination to continue or terminate extended TDY should be made on a case-by-case basis considering the employee's excepted status, cost, and the anticipated time frame for the furlough period.

5. What should components do about employee travel scheduled in the near future?

- Components should evaluate all official travel scheduled in the 2 weeks after the beginning of a lapse. To the extent that the planned travel is to be conducted by an excepted employee to perform an excepted activity, the travel may continue.
- If the planned travel and employee(s) are being paid for out of accounts that have funding, the travel may continue, but prudence should be exercised, and the trip should be cancelled or delayed if possible.
- To the extent that the planned travel is to be performed by a non-excepted employee and/or for a non-excepted activity, components should consider canceling such travel, since it may not occur if the Department's funding remains lapsed when the travel is scheduled. In making determinations about when to cancel such travel, components must consider whether canceling such travel now will save the Department fines and penalties that might accrue if they wait until a later date to cancel the trip.

6. How can employees make official travel changes or cancellations?

- Employees may make reservation changes or cancellations using E2, https://dojlogin.usdoj.gov/app/doj-login_doje2govtravelservicejmd_1/exkhd7d2idmulXkRR0j6/sso/saml, if they are using E2, the stand-alone on-line booking tool, <http://www.cwtsatotravel.com/>, if they are not using E2, or by calling the appropriate phone number listed below.

7. Will the Department's Travel Management Center remain operational during the furlough period?

- Yes. CWTSato, the Department's Travel Management Center, will remain operational during the furlough period. Employees may continue to change, cancel, or make travel reservations using the on-line booking tool E2 (if applicable), www.cwtsatotravel.com (if not using E2).

8. May excepted employees use their government travel card while performing officially authorized travel during a lapse in appropriations?

- Yes. Excepted employees may use their government travel cards during a lapse in appropriations if they are performing officially authorized travel. However, travel voucher processing is not an excepted function so travel vouchers may not be processed during the lapse of appropriations.

9. Are all employees required to pay their government travel card accounts during a lapse in appropriations?

- Yes. Employees, whether excepted or non-excepted, remain obligated to pay their government travel card accounts on time regardless of whether they have been reimbursed for travel, in accordance with their cardholder agreement. (NOTE: processing travel vouchers is not an excepted function and therefore will not occur during the lapse.) However, JMD will attempt to work with the travel card bank to ensure financial hardships due to the lapse in appropriations are taken into consideration. That said, JMD will not intervene on behalf of individual cardholders. Cardholders must contact the travel card bank to address their financial hardships associated with the lapse in appropriations.

10. If an employee's government travel card was already delinquent prior to the lapse in appropriations, is the employee excused from paying?

- No. Payment is due as required by the statement due date. If the account was delinquent prior to the lapse in appropriations, it will continue to be considered delinquent until full payment is made. The number of days the payment is delinquent does not stop accruing in the event of a lapse in appropriations.

11. May payments be made for employee transit subsidies?

- Payments may not be made from an annual appropriation account that has lapsed. However, payments may be made from non-annual accounts as long as funding is available, and payments are typically made from that account. Excepted employees will be reimbursed once funding has been restored for costs normally paid for by the transit subsidy.

H. TRAINING

1. May we train new employees during a lapse?

- In order to ensure the proper execution of the Department's emergency functions, components may determine that the training of new employees in positions that have been designated as "emergency" is an excepted function. Training may also continue for employees whose appropriation has not lapsed.
- To the extent that the training of new "emergency" employees is in process or about to begin when a lapse occurs, components should consider whether a short delay (for example, over the weekend) in the training will compromise emergency functions. If such a delay will not compromise emergency functions, components should consider keeping the employees at the training center but delaying the training itself or not sending the employees to the training during the brief delay. If at any point the component determines that the delay in training might impact emergency functions the training should resume.
- New employees who are not in positions that have funding or are designated as "emergency" should not start work during the lapse and should not be trained.

2. May we continue training for current employees?

- Training of current employees whose appropriation has lapsed, even those who are excepted for emergency reasons, should be cancelled or delayed, unless immediate training is necessary to protect human life or property.

3. May we continue training state and local law enforcement officers?

- Generally, training of state and local officers should be cancelled during a lapse of appropriations. However, components should use their judgment to determine whether, in exceptional circumstances, there is a reasonable and articulable connection between the training and the safety of human life or the protection of property, and there is a reasonable likelihood that the safety of human life or the protection of property would be significantly compromised if the training were delayed. If so, such training may continue.

4. May we train international law enforcement officers during a lapse in appropriations?

- With respect to training of international law enforcement officers abroad (such as the training of officers who will be working in a combat zone), components should use their judgment to determine whether, in exceptional circumstances, there is a reasonable and articulable connection between the training and the safety of human life or the protection of property, and there is a reasonable likelihood that the safety of human life or the protection of property would be significantly compromised if the training were delayed. If so, such training may continue.

I. LITIGATION

1. Will the courts be open?

- During the most recent lapse, the federal courts remained open. We will keep the litigating components informed of any communications from the Administrative Office of United States Courts in any future lapse.

2. Will criminal litigation and investigations continue?

- To the extent that the courts are operational, criminal prosecutions have typically continued without interruption during a lapse based on the judgment they are essential to the safety of human life and protection of property.
- All criminal investigations have also continued during past lapses, including those investigations where a determination has not yet been made as to whether to proceed civilly or criminally and available evidence continues to suggest the possibility of criminal liability.

3. Will civil litigation continue?

- Civil litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property.
- Litigators will need to approach the courts and request that active cases be postponed until funding is available, except for those cases in which postponement would compromise to a significant degree the safety of human life or the protection of property. Litigators should typically request a stay on the first business day following the lapse in appropriations. A sample stay motion will be provided to the litigating divisions if a lapse in appropriations occurs.
- If a court denies such a request and orders a case to continue, the government will comply with the court's order.
- Supervisors are reminded that they need to limit their staffing to the minimum level of essential activities to comply with the court's order and to protect life and property.
- In situations where the Department's funding has not lapsed, but the funding for the agencies the Department is representing in civil litigation has lapsed, litigators need to consider in the context of each case whether input and assistance will be required from the agency the Department is representing during the first few days of a lapse. If input and assistance is required from that unfunded agency, then typically the litigator should seek a stay, and a sample stay motion will be provided. If the sample stay motion is granted, the litigation will be on hold and the litigator may continue to work on the case but may not seek input or assistance from the unfunded agency; if the stay motion is denied, then the denial order would authorize work by the unfunded agency being represented to the extent necessary for the litigation to proceed. There may be some cases where the litigators assess that seeking or receiving a stay would harm the litigation itself or the statutory program the litigation supports; in those cases, the litigators should seek further guidance from their supervisors.

J. ETHICS

1. Do the ethics rules apply to both excepted and non-excepted employees during a lapse in appropriations?

- Yes. Whether or not employees are excepted, their status as federal and Department of Justice (DOJ) employees does not change during a lapse, even though non-excepted employees are not reporting to work at their federal facilities. Therefore, all ethics rules continue to apply to all employees.

2. Where can employees seek guidance if they have an ethics-related question during a lapse in appropriations?

- Unless they are excepted based on other duties, ethics officials are non-excepted; therefore, they will not be available to answer questions during a lapse. If an employee is concerned that his or her action may violate the ethics statutes, standards of conduct, or DOJ supplemental regulations, it is best to refrain from that action until the employee is able to seek the necessary guidance or authorization from the ethics official.
- However, below are questions and answers to assist employees with the most common ethics-related issues that may arise during a shutdown.
- Online resources that will remain available to employees include:
 - [The Departmental Ethics Office's webpage](#)
 - [The website for the U.S. Office of Government Ethics.](#)

OUTSIDE ACTIVITIES/OUTSIDE EMPLOYMENT

3. May employees seek and accept a non-federal job during the shutdown?

- It depends. See the answers to the questions below for the outside activities/outside employment that are prohibited or that require Component Head approval. However, because employees will not have access to their ethics officials or be able to obtain prior approval for the outside activity during a shutdown, they must evaluate the activity closely. If there is a risk that the outside activity/employment would not be approved, the employee should refrain from participating during the shutdown.

4. What outside activities/employment are strictly prohibited?

- Regardless of a government shutdown, the following outside activities are prohibited unless a waiver from the Deputy Attorney General is obtained prior to the shutdown: the paid practice of law, involvement in criminal or habeas corpus matters, and involvement in matters in which the Department is a party or represents a party.

5. What outside activities/employment are permissible but only after receiving prior Component Head approval?

- The uncompensated practice of law and activities that involve a subject matter, policy, or program that is in the employee component's area of responsibility (e.g., working for a DOJ contractor who provides products or services to a component) are permissible only after approval from the employee's Component

Head. If there is a risk that the outside activity/employment would not be approved, the employee should refrain from participating during the shutdown.

6. Must employees seek review and approval of outside activities/employment that they began during the shutdown?

- Yes. Upon their return to work, employees must contact their ethics officials and seek a review and any necessary approvals for their outside activities/employment.

7. What outside activities/employment are permissible without prior approval?

- Generally, no prior approval is required for certain outside employment such as sales positions at a retail store or food service positions at restaurants. Positions such as these likely will not conflict with an employee's duties at DOJ.

8. May employees volunteer to continue to carry out their Department duties during a shutdown?

- No. Employees deemed non-excepted may not volunteer their services and continue working on Department business during a government shutdown.

9. May employees participate in pro bono legal work?

- No, unless it was approved prior to the shutdown. Volunteers will not be able to seek guidance on government ethics questions or other issues during the shutdown; therefore, they cannot engage in new pro bono activities that were not cleared before the shutdown. However, pro bono commitments that were made and approved prior to the shutdown remain active because pro bono work is done in one's personal capacity. In sum, Department employees may only engage in pro bono legal activity that was approved before the shutdown.

10. May employees volunteer for a partisan political campaign or candidate during the shutdown?

- It depends. Under the Hatch Act (5 U.S.C. §§ 7321–7326), employees have different restrictions on their political activities based upon their positions at DOJ. Refer to the Office of Special Counsel's website (www.osc.gov) or the Departmental Ethics Office webpage (www.justice.gov/jmd/departamental-ethics-office), if active. If there is a risk that the contemplated activity violates the Act, employees should refrain from participating in the activity.

11. May employees use their official title or position in connection with their outside activity/employment?

- No. Employees must not use their official status in order to obtain outside employment, nor may they use their titles or positions to benefit the outside activities/employment.

GIFTS

12. Do the gift rules apply during a shutdown?

- Yes, all ethics rules continue to apply to federal employees during a government shutdown. The general rule concerning gifts from an

outside source (versus gifts among employees) is that a federal employee may not accept a gift from a prohibited source or a gift that is given because of his official position. There are a few exceptions to this rule, addressed below.

13. May employees accept a discount offered by a bank or other commercial organization?

- Generally, yes, IF the discount is offered to ALL federal employees regardless of pay or agency. (For example, a local deli is offering free sandwiches to all federal government employees for the first 2 days of the shutdown.) Employees also may accept a discount offered to the public. (For example, a local pizza delivery shop offers large pizzas for \$7 every Monday.) A discount offered to all federal employees or to the public is not limited to \$20 per occurrence or \$50 per year.

14. May employees present their government identification badge to receive a permissible discount offered to all federal employees?

- Yes. Employees may show their government ID to prove they are eligible for an existing discount offered to all federal employees. However, employees may not use their government ID to solicit or encourage a new gift or special treatment – this is a misuse of position.

15. May employees accept a gift either that is from a prohibited source or that is offered because of their federal position, if the gift is valued at \$20 or less?

- It depends. Although the letter of the gift rules may permit receipt of this gift, the spirit of the rules requires prudence when applying them. If receipt of a gift from an outside source would raise a concern about an employee's impartiality, it would be wise not to accept it. (For example, during the shutdown, Microsoft offers an upgrade to its suite of programming products to DOJ IT technicians for their personal computers; it is valued at \$19.99. A number of DOJ IT technicians are evaluating programming needs under a pending IT contract; Microsoft is one of the bidders under the pending contract. To avoid any appearance of a conflict of interest, the IT technicians working on the pending contract should decline Microsoft's offer.)

FUNDRAISING

16. May I, or may someone on my behalf, start a crowdsourcing campaign (e.g., GoFundMe) to raise funds because I am in non-pay status?

- It depends. An employee (or a person acting on the employee's behalf, such as a spouse) may not solicit a gift using the employee's government position or title to induce a benefit. Additionally, employees cannot generally accept gifts from prohibited sources. Employees must be able to identify and reject any prohibited gifts, which prohibits gifts from anonymous donors. An employee could accept donations from the employee's friends or relatives when it is clear that any donations accepted are based on that friendship or family relationship.

17. May I accept assistance from a crowdsourcing campaign designed to provide assistance to federal employees in non-pay status?

- It depends. Such offers of assistance may be accepted if (1) the assistance is offered to a broad class of government employees that does not discriminate based on responsibility, rank, or rate of pay (such as all furloughed federal employees) and (2) the campaign organizer is not a prohibited source.

SOCIAL MEDIA

18. May employees comment/blog about the government shutdown on social media sites?

- Department employees should refer to [Justice Manual 1-9.000 – Personal Use of Social Media](#) to ensure their social media use complies with Department policy. Employees should also remember that information that is not appropriate for disclosure by employees in work status continues to be inappropriate for disclosure when employees are in shutdown status.

19. May employees continue to conduct Department business during a shutdown using their personal email or social media sites?

- No, employees may not continue to work using their personal email or social media sites. This equates to employees volunteering their services to DOJ during the shutdown, which is prohibited. However, supervisors may use personal email addresses to send notices, particularly return-to-work notices.

REPORTING

20. Do employees need to submit financial disclosure reports during the shutdown?

- Furloughed employees do not need to complete financial disclosure reports (new entrant, annual, or termination reports) while on furlough. Employees that are excepted, and furloughed employees that are called back temporarily to work on excepted matters, also do not need to submit financial disclosure reports during the lapse. However, the suspension of this requirement does not relieve employees from the statutory restrictions on participating in matters in which they have a financial interest. For more information on financial conflicts of interest see [Conflicts \(justice.gov\)](#) <https://www.justice.gov/jmd/conflicts>.
- However, if completion of a financial disclosure form is necessary to conduct excepted activities, Component Heads or DDAEOs may require excepted employees to complete financial disclosure forms. This includes the GCO financial disclosure forms used by EOUSA.
- We also note that some employees are subject to the public financial disclosure periodic transaction reporting (OGE Form 278-T) requirements of the Ethics in Government Act (EIGA). Although there is no authority in the EIGA to suspend the filing requirement, a designated agency ethics official (DAEO) has authority to grant an extension, including to an employee who is unable to file a periodic transaction report during a furlough. Under the circumstances of the furlough, the extension may be granted retroactively and may be up to 90 days.