

LEGISLATIVE OPERATIONS DURING A LAPSE IN APPROPRIATIONS



GUIDANCE ISSUED BY THE
COMMITTEE ON HOUSE
ADMINISTRATION

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SEPTEMBER 2013

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THE COMMITTEE ON HOUSE ADMINISTRATION HAS ISSUED THE FOLLOWING GUIDANCE TO ASSIST HOUSE OFFICES AND LEGISLATIVE BRANCH AGENCIES IN THEIR EFFORTS TO UNDERSTAND AND UPHOLD THEIR CONSTITUTIONAL RESPONSIBILITIES WHILE OPERATING DURING A LAPSE IN APPROPRIATIONS.

PLEASE NOTE THAT THIS IS ONLY GUIDANCE, AND THAT ALL STAFFING DECISIONS ARE ENTIRELY AT THE DISCRETION OF EACH EMPLOYING AUTHORITY.

FOR THE CONVENIENCE OF EACH EMPLOYING AUTHORITY, AUTHORIZATION FORMS AND SAMPLE LETTERS WILL BE LOCATED ON HOUSENET AND THE COMMITTEE'S WEBSITE AT WWW.CHA.HOUSE.GOV.

FOR ADDITIONAL ASSISTANCE, PLEASE CONTACT THE COMMITTEE AT (202) 225-8281.

Operational Overview and Decision Making

What is a “lapse in appropriations?”

A “lapse in appropriations” occurs when there are no appropriated funds to pay for an agency or program, as a result of no enacted appropriations law providing those funds. The Constitution requires that no money leave the Treasury except as a consequence of an appropriation.

What does a “lapse in appropriations” mean for the House?

The Legislative Branch, along with the rest of the federal government, is currently operating under a Continuing Resolution (CR) that provides funding through September 30, 2013. Absent any other action, there will be no appropriations for the Legislative Branch effective October 1, 2013. The House, however, will require the services of the employees that are essential to upholding its constitutional responsibilities.

What is an “essential” versus a “non-essential” employee?

In the event of a lapse in appropriations, the House, consistent with the Constitution and the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, will retain the employees essential to performing the following activities:

1. Those activities that entail or directly support Members’ performance of their constitutional responsibilities (including activities that entail the protection of the House’s and Members’ constitutional prerogatives). Members’ constitutional responsibilities include all legislative activities which are broadly defined for this purpose as all activities that are an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed bills and resolutions. Members’ other constitutional responsibilities include such matters as rulemaking, impeachments, the maintenance and publication of records of congressional proceedings, disciplinary activities (e.g., Ethics Committee proceedings and the provision of advice by that Committee), the resolution of contested elections, and the consideration of constitutional amendments. Accordingly, activities that entail Members’ performance of their constitutional responsibilities would encompass, but are not limited to, the preparation and introduction of legislation; floor activities; committee meetings, hearings and markups, and the issuance of subpoenas; meeting and negotiations in furtherance of such activities; the gathering of information (both formally and informally) in furtherance of these activities; and the like. Activities that directly support Members’ performance of their constitutional responsibilities would encompass, but are not limited to, such activities as vote tallying, bill and resolution drafting, parliamentary and legal advice and research, technical and technological support, and the like.
2. Those activities that entail the safe-guarding of human life; and
3. Those activities that entail the protection of property.

If you have questions about whether a particular activity falls within one or more of the three categories of activities defined above, please contact the Committee on House Administration (Majority) at x58281 or (Minority) x52061.

Employees performing the activities (or supporting the functions) described above as determined by their employing authority should continue performing their normal duties. All other employees should be placed in furlough status.

Who decides who is an “essential” employee?

Each Member and Committee Office is an “employing authority” under House Rules. Appointed House officers and agency directors are considered the “employing authorities” for legislative branch agencies. Employing authorities make the determination of who within their staff is an essential employee and who should be furloughed.

What is a furlough?

A furlough is the placement of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. More information is provided below, and is also available by contacting your applicable human resources official or office.

What factors should an office use in determining which employees to furlough?

It is up to each employing authority to determine which positions in the office are associated with constitutional responsibilities, the protection of human life, or the protection of property. Each office should review the job duties or position descriptions of each employee when making this determination. Each employing authority should use only non-discriminatory factors when making the determination as to whether a particular employee is essential or non-essential to avoid violating the Congressional Accountability Act. Among other things, the Congressional Accountability Act prohibits employing authorities from discriminating against employees based on an employee’s race, color, religion, sex, age, national origin, military service and disability. House Rules also prohibit discrimination based on marital or parental status. If an office decides to furlough some but not all employees that hold the same job classification or perform the same (or substantially similar) duties, the office should use non-discriminatory factors, such as seniority or area of expertise, in making those decisions. Offices should document the non-discriminatory reason why a particular employee was furloughed, while another employee was retained, in the event that a question is later raised as to the basis for a furlough determination.

Should essential employees that worked their designated work schedule be furloughed on the weekend?

Employees designated as essential are expected to remain available to perform their duties whenever required by their employing authority. Employing Offices take on a salary obligation for the entire time the employees are deemed essential, including non-duty days (typically weekends).

Must employees who are essential some weekdays and furloughed on others, (whether due to a change in status or as part of a predetermined Rotating Furlough) be furloughed on weekends?

That decision shall be made by each employing authority. For employees who are not in full-time furlough status, offices should indicate on the Rotating Furlough Form the specific dates on which each employee is to be placed in furlough status, whether during the week or on weekends. Offices are reminded that on all other

dates that employees are not on furlough (whether weekday or weekend) they should be at work, or ready and available to work, at the direction of the employing Member/official.

Will the official expenses necessary to operate our office be paid?

Expenses incurred prior to midnight on September 30, 2013, will be paid using the usual procedure. Delays may occur in the processing of these vouchers. Starting the day appropriations lapse, and until funding is restored, House offices may obtain and utilize goods and services related to life safety, protection of property, or necessary to support Members' constitutional duties. Travel expenses to and from a Member's district and within the district are appropriate if it falls within the constitutional responsibilities of a Member of Congress. ***Each individual authorizing an expense should document the reason for this expense (constitutional responsibilities, the protection of human life, or the protection of property).***

Employing authorities should notify all vendors and contractors with which they have an active contract about potential delays in payment or the need for reduced service.

What House and Legislative Branch offices will definitely be closed?

Offices which are determined not to be related to the protection of human life, the protection of property, or constitutional responsibilities will be closed. Examples include, but are not limited to: the House Gift Shop, the Capitol Visitors Center (public tours by CVC guides), the Botanic Garden and the Flag Office. Other offices may be closed or have reduced service depending on needs.

What about services operated by private contractors or outside entities like the cafeterias and the House Day Care Center?

Some services will continue uninterrupted while others will be closed and some will operate at reduced levels. A list of services can be found on the Committee's website at www.cha.house.gov.

How and when will employees be paid?

Historically, when the federal government's funding has lapsed, the subsequent spending authority (whether Continuing Resolution or an enacted appropriations bill) has provided for retroactive payment to employees. ***This, however, is not guaranteed for furloughed employees.*** The exact details of retroactive payment (if any is authorized) will depend on the language of a continuing resolution or enacted appropriations bill. The normal payroll cycle may be disrupted by a lapse in appropriations and checks may be issued at irregular times.

Is a furloughed employee still an employee of the House?

Yes, furloughed employees continue to occupy a payroll slot. Furthermore, the furloughed employee will not have their health benefits interrupted, but must continue to pay the employee's portion of health benefits premiums. Other benefits may be affected differently; see additional information below. Furloughed employees are still bound by the applicable rules concerning outside employment. Employees should consult with their applicable human resources official or office for more information on furlough.

If I furlough an employee, can he/she still come into work?

No, if you have decided that an employee is non-essential, he/she cannot perform official duties, (either at the office or at home). According to the Anti-Deficiency Act and certain House rules, an employee *cannot* volunteer services.

Can an employing office communicate with a furloughed employee during the furlough?

As explained, a furloughed employee may not perform official duties and may not volunteer his or her services. Therefore, an employing office may not communicate with a furloughed employee about official duties and the furloughed employee may not perform official duties by email or telephone. To ensure compliance with this rule, employing offices may require furloughed employees to turn in their blackberries, laptops, and cell phones and should require furloughed employees to set an “out of office” message on their email accounts. Offices may contact employees to notify them to return to work.

Can a furloughed employee use annual and/or sick leave in lieu of furlough?

No, an employee is not eligible to use annual or sick leave during furlough. Employees still receive salary when on annual and/or sick leave. Without an appropriation, the employee cannot be paid. Therefore, the employee cannot use their annual and/or sick leave.

All scheduled leave that occurs during a lapse in appropriations will be canceled. Essential employees who are unable to work and are absent from their duty station will be considered furloughed until they report for duty. Therefore, essential employees will not be able to use annual and/or sick leave.

Employees on FMLA leave involve unique obligations. For further guidance, contact the Office of House Employment Counsel (OHEC) at (202) 225-7075 by 5:00 p.m. on September 30, 2013.

Can a furloughed employee attend training?

Furloughed employees should not attend any scheduled training. All approval to attend training for furloughed employees during the furlough should be canceled.

What effect will a funding lapse have on security?

The Capitol Police will continue to provide protection for the Capitol complex and Members in the event of a lapse in appropriations.

Salary and Pay

What is the effect of a lapse in appropriations on salary?

An employee will not be paid for work done during a lapse in appropriations until a subsequent funding authority is in place. Historically, when the government’s funding has lapsed, the subsequent spending authority (whether Continuing Resolution or an enacted appropriations bill) has provided for retroactive payment to

all employees (whether furloughed or not). ***This, however, is not guaranteed for furloughed employees.*** The exact details of retroactive payment (if any is authorized) will depend on the language of a continuing resolution or enacted appropriations bill.

Depending on whether salary is retroactive or not, and the timing and duration of the funding lapse, it is possible that employees may receive only “partial pay” during the next regular payroll cycle.

If language allowing retroactive pay is enacted, employees may receive salary in a supplemental payroll action or at the next regular payroll cycle.

What is the process to place an employee on furlough? How will employees be notified when furloughs begin and end?

Each employing authority (Member, Chairman, Leader, Officer and Head of other House Offices) determines which employees are furloughed. Upon determination, each office must submit a Furlough Authorization Form to their applicable human resources office. Employing authorities should notify the employees which are furloughed prior to the lapse. Employing authorities should contact their employees when the furlough ends. Sample notification letters will be available on HouseNet and the Committee’s website at www.cha.house.gov.

Can staff volunteer to be furloughed?

Yes, individuals can volunteer to be furloughed. Even if an employee volunteers to be furloughed, he/she may still be required to report to work and perform their usual duties. Whether to volunteer for furlough is the individual prerogative of each employee. The voluntary furlough form (which is located on HouseNet and the Committee’s website) provides only one basis by which the employing authority will determine who to furlough. The employing authority is not bound by an employee’s willingness to volunteer to be furloughed.

If an employee is determined to be “essential,” or “non-essential,” will that categorization last throughout the entirety of any lapse in appropriations?

Not necessarily, offices should continually review the scope of duties necessary to support the protection of human life, the protection of property, or the constitutional responsibilities of Congress. The needs of Congress will fluctuate throughout any lapse in appropriations. At times, more support may be needed. At other times, minimal support will be needed. Therefore, whether an employee is essential may fluctuate throughout any lapse in appropriations. Managers may communicate with furloughed employees about the employee’s status.

Is it possible to rotate employees as furloughed/non-furloughed when they are in similarly-situated job duties?

Yes, offices may rotate employees in the same or similar job duties so long as they use non-discriminatory criteria to determine the change in status. The non-furloughed employees must be performing an essential activity.

Do I qualify for unemployment compensation during a furlough?

State unemployment compensation requirements differ; it is possible that some employees may be eligible for unemployment compensation. For information, contact your state's unemployment office.

Can I take another job while furloughed?

Yes, but remember that even while on furlough, you remain a government employee. As such, you must be available to return to work when called back to work by your supervisor. You must also abide by the applicable rules and standards of conduct and not engage in outside employment that conflicts with your official duties.

If I am working on a flexible schedule or alternative work schedule, how will that affect my status?

If you work a modified work schedule and are not considered essential for the purposes of a lapse in appropriations, you will be furloughed for the number of hours per day that you would have worked. In addition, if a furlough is known to be occurring before the pay period begins, your schedule should revert to a traditional 40-hour schedule for time and attendance purposes.

Am I required to report for duty during a lapse in appropriations?

If you are an essential employee, failure to report for duty as required can result in disciplinary action, up to and including termination.

Benefits

What will be the effect on health insurance?

Enrollment continues for up to 365 days with no interruption in coverage. If partial pay is not enough to cover the health premium, the employee is responsible for the employee portion of health benefits. The unpaid premium will be deducted the next time the employee receives pay (provided the employee has sufficient pay to cover their entire premium contribution), in addition to the regular monthly premium for that pay period.

What will be the effect on retirement benefits?

A total of 6 months in a non-pay status in any calendar year is creditable service. Coverage continues at no cost to the employee while in a non-pay status. When employees are in a non-pay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay. If there are insufficient funds to withhold retirement contributions due to partial pay, the amount will be deducted upon return to work.

What will be the effect on life insurance?

Coverage continues for 12 months without cost to the employee or the House. The normal deduction will be withheld when funding resumes and the employee receives pay.

What will be the effect on TSP?

An employee cannot contribute if in a non-pay status for one or more full pay periods. Contributions will begin when funding resumes and the employee receives pay, unless the employee has elected a fixed dollar amount to be withheld. In that case, if the partial pay is not enough to cover the TSP contribution amount, there will be no partial withholding. Full withholding will resume when full salary is paid. If you are a FERS employee, the Agency automatic (1%) contributions will stop during non-pay status. Withdrawals for participants age 59 1/2 or older and financial hardship withdrawals may be made during non-pay status.

What will be the effect on my TSP loan?

Direct deposit allotments will be made when funding resumes and the employee receives pay. If partial pay is not enough to cover the entire deduction there will be no loan payment withheld. Loans are not considered in default until the participant has missed more than 2½ payments. If you miss a loan payment (or two) as a result of the furlough, you always have the option to make direct payments to the TSP using the Loan Payment Coupon available in the Forms & Publications section on the TSP website (www.tsp.gov). Otherwise, your loan term will be extended or, if you have requested the maximum loan term, you may have a balloon payment at the end of the loan term. If you miss more than 2½ payments, the TSP will notify you by mail that you must mail in a personal check for the “cure” amount to get your loan back on track.

What will be the effect on my TSP investments? What about disbursements?

Investment activity will continue. Share prices and accounts balances will continue to be updated each business day, and loans and withdrawals will continue to be disbursed.

Can I take a TSP loan while I’m furloughed?

According to guidance issued by TSP in 2013, furloughed employees may take a TSP loan while in furlough status if their furlough is expected to last 30 days or less. If the furlough exceeds 30 days, the employee may be personally required to pay all or a portion of the loan amount. For more information, please visit www.tsp.gov.

What happens to my Student Loan Repayment Program agreements? Will my student loans be paid?

Per student loan regulations, an employee’s Student Loan Agreement terminates when an employee enters into an unpaid status. In certain cases, the employing office, at their discretion, may permit the agreement to continue if the employee enters part-time or unpaid status because of illness or bereavement, or because the employee is furloughed for a reason other than for cause. Even if the agreement continues, payments may be delayed during a lapse in appropriations.

The applicable withholding taxes (Federal, State, FICA and Medicare) for any Student Loan payments made while an employee is on furlough will be withheld when funding resumes and the employee receives pay.

What will be the effect on my Flexible Spending Account (Health and Dependent Care)?

If partial pay is not enough to cover the entire deduction there will be no deduction withheld. The employee's account is put in a hold status until contributions resume when the employee receives pay. When contributions restart and are received by Benefeds or FSAFeds, the hold is removed and the employee's leave dates become eligible again. For example, for a person on Leave Without Pay (LWOP) status (which is similar to furlough status) from October 1- October 31, expenses incurred during that time would not be eligible because the employee is not contributing to his/her Benefeds. When contributions resume, the leave dates would be removed and expenses from October 1- October 31 would be eligible again. The deduction amount will be recalculated to ensure the participant reaches the full election by the end of the year.

What will be the effect on my Supplemental Dental and Vision benefits?

Coverage will continue and premiums will continue to be withheld during all salary cycles. Partial premiums will be withheld even if pay is not enough to cover the total premiums, and the remaining premium will be deducted in the subsequent pay period. However, if a deduction is not withheld over two pay periods Benefeds or FSAfeds will send a bill to the employee for missed payment.

What will be the effect on my Long Term Care insurance?

Employees make premium payments directly to LTC Partners. The CAO Office of Payroll and Benefits does not withhold Long Term Care from employee's paychecks. There is no interruption in coverage.

Will I receive Transit Benefits?

Future transit benefits could be reduced, depending on the number of days furloughed and the timing of the beginning and end of the funding lapse. This delay, if it does occur, would be because the Office of Finance must submit transit benefit information well in advance.

Additional Deductions

What will be the effect on withholding for Federal, State, FICA and Medicare taxes?

Withholding will be commensurate with actual pay received, i.e., withholding will be adjusted proportionately if an employee receives partial pay.

What will be the effect on garnishments?

The garnishee remains responsible for payment during the furlough, even though the garnishment is not paid through a payroll deduction. The deduction will resume when the employee returns to paid status. Most garnishments are based on a percentage of disposable earnings; however if partial pay is not enough to cover the entire deduction the deduction will not be taken. If the garnishment is for a fixed amount then a partial deduction will be withheld even when pay is not enough to cover the total garnishment.

What will be the effect on my savings bond(s)?

If partial pay is not enough to cover the entire allotment, there will be nothing sent to Treasury Direct for a savings bond. It will be the employee's responsibility to request a withholding change to make up for the lost allotment.

Will there be an effect on taxes for my reserved parking space?

The applicable federal and state tax withholding will be made when funding resumes and the employee receives pay.

What will be the effect on my Combined Federal Campaign contribution?

If partial pay is not enough to cover the entire deduction there will be nothing withheld. The normal monthly deduction will be made when funding resumes and the employee receives pay. No supplemental "catch-up" deductions will be withheld from future pay.

Benefits & Deductions Chart

BENEFIT/DEDUCTION	STATUS DURING FURLOUGH	PAYMENT AFTER FURLOUGH ENDS
HEALTH INSURANCE	No interruption in coverage. Employee still responsible for paying employee share of monthly premium.	Any unpaid premium(s) will be taken when salary resumes. Partial premiums will not be taken. Full premiums will be deducted, for current and any previous months, when salary is sufficient to cover the amount due each month.
SUPPLEMENTAL DENTAL AND VISION INSURANCE	No interruption in coverage. Employee still responsible for paying employee share of monthly premium.	Premiums deducted when salary resumes. If partial pay is insufficient to cover full premium owed, partial premium will be deducted. Remaining premium due will be deducted in subsequent pay periods.
FLEXIBLE SPENDING ACCOUNT (FSA)	Employee's account is put in a hold status.	Contributions resume when salary resumes. The deduction amount will be recalculated to ensure the participant reaches the full annual election.
LIFE INSURANCE	No interruption in coverage. Coverage continues for 12 months without cost to employee or agency.	Normal deduction resumes when salary resumes. There are no retroactive premium deductions.
RETIREMENT BENEFITS	No interruption in coverage. Creditable service continues for up to 6 months of furlough (non-pay) status.	Contributions are adjusted in proportion to time in furlough (non-pay) status.
TRANSIT BENEFITS	Existing benefits may be used only for official purposes, so must not be used when in furlough status.	Benefits may be partially reduced in future months, depending on timing and duration of furlough.
LONG TERM CARE (LTC) INSURANCE	No interruption in coverage. Insurance and payment responsibility are independent of pay status. Employee remains responsible for payments directly to LTC Partners.	Employee remains responsible for payments directly to LTC Partners.

BENEFIT/ DEDUCTION	STATUS DURING FURLOUGH	PAYMENT AFTER FURLOUGH ENDS
THRIFT SAVINGS PLAN (TSP) CONTRIBUTIONS – WHEN PERCENTAGE OF SALARY IS WITHHELD	Employee cannot contribute when in furlough (non-pay) status.	Contributions will resume when salary resumes, at the percentage of salary received.
THRIFT SAVINGS PLAN (TSP) CONTRIBUTIONS –WHEN FIXED AMOUNT IS WITHHELD	Employee cannot contribute when in furlough (non-pay) status.	If partial pay is insufficient to cover fixed amount, partial payment will NOT be withheld. Fixed amount will be withheld only when salary sufficient to cover contribution.
TSP CONTRIBUTIONS FOR FERS EMPLOYEES	Agency automatic (1%) contributions stop during furlough (non-pay) status.	Agency automatic (1%) contributions resume when salary resumes.
TSP INVESTMENTS & DISBURSEMENTS	No interruption in investment activity, disbursements, loans or withdrawals. Share prices and account balances still updated each business day.	No interruption in investment activity, disbursements, loans or withdrawals. Share prices and account balances still updated each business day.
TSP LOANS	Employees may take a TSP loan while in furlough status if their furlough is expected to last 30 days or less.	If the furlough exceeds 30 days, the employee may be personally required to pay all or a portion of the loan amount.
TREASURY SAVINGS BONDS	No deduction during furlough (non-pay) status.	Allotment resumes when salary resumes.
STUDENT LOAN REPAYMENT PROGRAM	Employee's student loan agreement terminates when employee is in (furlough) non-pay status, but agreement may be continued at option of employing office.	Applicable federal, state, FICA and Medicare taxes for student loan payments that may have been made while on (non-pay status) furlough will be withheld when salary resumes.
GARNISHMENTS	Garnishee is responsible for payment during furlough (non-pay) status.	Deduction will resume when salary resumes.

Sample Notice to Outside Vendors, Consultants and Contractors

DATE 2013

Name
Address
City, State, Zip

Re: Payments to Vendors, Consultants, and Contractors of the U.S. House Representatives During
Period of Federal Government Shutdown

Dear Name:

You currently provide [describe product/service] to this office. As you may be aware, the legislation that appropriates funding for the federal government is scheduled to expire at midnight, September 30, 2013. If new appropriations legislation is not enacted prior to that time, many federal government operations will be suspended until funding is restored. Because of the lack of appropriated funds, this office will be unable to disburse payments as it normally would and, accordingly, in the event of a government shutdown, your bills may not be paid in a timely fashion.

In addition, with certain limited exceptions, the federal government is prohibited from incurring any new debts or obligations during a period in which appropriated funding has lapsed. Accordingly, if new appropriations legislation is not enacted prior to October 1, 2013, we will work with you to determine what, if any, reduction in [products/services] may be required. Once new appropriations legislation is enacted, the legitimate debts and obligations of this office will be paid, including those incurred before the shutdown that were not paid due to lack of funds, as well as those incurred during the shutdown.

We appreciate the difficulty this situation creates for you and we hope to restore normal operations as soon as possible if a shutdown occurs. Should you have any questions regarding this matter, please do not hesitate to contact [point of contact] in my office. Thank you for your continued understanding and cooperation.

Sincerely,

[Member Office or House Officer/IG]



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