National Guard Bureau Guidance for Furloughs

Updated 27 September 2013

Overview

The enclosed guidance, prepared by the National Guard Bureau, Technician Personnel Management Division (NGB-J1-TN), provides Human Resources Officers (HRO) information specific to furloughs. By definition, an administrative furlough is a planned event which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budgetary situations other than a lapse in appropriations.

This guidance includes general discussion of legal issues, including collective bargaining obligations. Analysis of statutes, regulations, collective bargaining agreements, and decisions of courts and the Federal Labor Relations Authority may be required to properly address specific questions. This guidance is not regulatory in nature, nor is it a "collective bargaining agreement negotiated at the national level." Users should be informed that the language of the guidance is general, not definitive, or ultimate, and that on specific questions it is not a substitute for consulting primary legal sources.

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SUMMARY of CHANGE

Section 2: Shutdown Furlough Guidance ***Pgs.37-66***

A. General Information

1. What is Sequestration?

Sequestration is an across-the-board reduction in Federal budgetary resources in all budget accounts that are not exempted by statute. Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, across-the-board reductions took effect on March 1, 2013. Sequestration reduces each State's budgetary resources in non-exempt accounts for the remainder of the fiscal year (which runs through September 30, 2013).

2. What is a furlough?

Furlough is an action placing a technician, in a temporary non-duty, non-pay status, because of lack of work or funds, or other non-disciplinary reasons.

3. What is an administrative furlough and why are administrative furloughs necessary?

An administrative furlough is a planned event by an State, designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. This type of furlough is typically a non-emergency furlough, in that the State has sufficient time to reduce spending and give adequate notice to technicians of its specific furlough plan and how many furlough days will be required. For example, a furlough may be necessary when, as a result of Congressional budget decisions, an State is required to absorb additional reductions over the course of a fiscal year.

4. What is the difference between an administrative furlough and a shutdown furlough?

An administrative furlough is a planned event by an State that is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. Furloughs that would potentially result from sequestration would generally be considered administrative furloughs. For more information on administrative furloughs, see http://www.opm.gov/furlough/Guidance-for-Administrative• Furloughs.pdf.

In contrast, where there is a lapse in appropriations, a "shutdown" furlough may occur. A shutdown furlough is necessary when an State no longer has the funds necessary to operate and must shut down those activities that are not excepted under the Antideficiency Act. Many Federal technicians may be familiar with these types of furloughs from instances in previous years in which the Government has faced a potential shutdown. For additional information on shutdown furloughs see OPM's guidance for shutdown furloughs related to potential lapse in appropriations at http://www.opm.gov/furlough/index.asp.

5. Under what authority is a furlough taken?

There are three legal authorities under which a furlough can be taken. Furloughs of 30 calendar days or less are covered under adverse action procedures found in Subpart D of 5 Code of

Federal Regulations (CFR) 752. Furloughs of more than 30 calendar days are covered under reduction in force (RIF) procedures found in Subpart B of 5 CFR 351.

6. How is a technician notified of a furlough?

Technicians are notified of a furlough in writing by memorandum that is personally hand-delivered to the technician or, if not available in person, may be emailed to the technician with confirmation of delivery and read receipt or is mailed by certified/return receipt to their home address of record. If required to mail a notice to a technician, the certified/return receipt mail option provides proof of mailing that is a legally acceptable means of delivery.

B. Covered Technicians

1. In planning a furlough how does a State account for differences among certain groups of technicians or certain work units?

The Adjutant General (TAG) has discretion, ***in accordance with published guidelines and local collective bargaining agreements***, to identify which technicians will be furloughed and when to schedule furloughs based on the States' particular needs and mission. The Human Resources Officer ***shall*** engage in pre-decisional consultation with the exclusive bargaining representative regarding the exercise of management's discretion. To the extent required by law or applicable collective bargaining agreement, States must bargain over any negotiable Impact and Implementation (I&I) proposals with technicians' exclusive representative before implementing a furlough.

2. Which technicians may be affected by an administrative furlough?

Technicians not engaged in exempt or excepted activities may be furloughed. The Adjutant General is responsible for identifying the technicians affected by administrative furlough based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other factors. See Furlough Procedures and also see the Labor Management Relations Implications.

3. How will a technician be notified if they are affected by an administrative furlough?

Each Human Resources Office (HRO) will coordinate the method and timing to notify a technician as to whether or not he or she is affected by an administrative furlough. (See Sample Notices located at the end of this document and also refer to the Labor Management Relations Implications questions and answers).

When notifying a technician, the written notice must include the following required information: (1) reason(s) for the furlough, (2) estimated length of the furlough, and (3) right to have the furlough action reviewed by the Adjutant General. If applicable, inform the technician of the basis for selecting some positions or technicians but not others. See Sample Notice 1 for examples.

4. Who should technicians contact for information about whether sequestration will impact them and whether they may be furloughed?

Technicians should contact their HRO for information about how sequestration will impact them and whether they may be furloughed. Bargaining unit technicians may also contact their union representatives.

5. Are furloughed detailees returned to their home States following any furlough?

Detailed technicians remain officially assigned to their permanent positions during the detail. During a furlough, each State will determine the status of their technicians on detail within the State or to another State.

C. Designation of Furlough Days

1. How should a State schedule administrative furlough time off? Must all States follow the same procedures for furloughing technicians? Can a technician choose to take furlough days all at once or spread them out?

Each State will determine the timing of when technicians take administrative furlough days ***in accordance with local collective bargaining agreements***. For technicians represented by labor unions, the timing of furlough days is subject to collective bargaining. An administrative furlough may affect each State differently depending on the extent of the budget reduction requirements. For example, a State may furlough technicians for one day per pay period for a finite period of time; designate a number of furlough hours that technicians must take; designate specific dates as furlough days off; or allow technicians to select their own furlough time off.

2. Is the one day a week model mandated, or may States accomplish the furlough action differently? Can different schedules be implemented at different work locations within the State (i.e., one office may want to take a two-week "block furlough" during annual training or for a shutdown, but others may want to retain the one-day-a-week model).

Although DoD has established a general rule that no more than 16 hours per pay period should be executed, this presupposes all technicians are on a standard workweek and there are no local collective bargaining agreements detailing furlough procedures. Adjutants General may make an allowance for military technicians to schedule furlough days during Annual Training.

3. Can technicians be furloughed for partial days?

Yes. States have discretion to schedule an administrative furlough in a variety of ways. OPM encourages States to take into account the effect of commuting when multiple partial furlough days are scheduled. Adjutants General may make an allowance for military technicians to schedule furlough days during Annual Training.

4. How should a State schedule administrative furlough time off for a technician who is on a flexible or compressed work schedule under an alternative work schedule (AWS) program?

Because the definition of a work day will vary, based on the type of work schedule and/or appointment, it is best for the State to develop a decision notice that provides equity and consistency. For ease of administration and equity, the State may schedule furloughs for all technicians (both alternative work schedule and regular work schedule) in terms of hours. For example, in the event that all full-time technicians are furloughed for 40 hours, for some technicians the actual number of furlough days could be more or less than 5 days, depending on their work schedules.

5. How should the State schedule administrative furlough time off for a technician who does not work a standard work schedule (e.g., part time or uncommon tour of duty)?

Furloughs of part-time, or uncommon tour of duty technicians, must comply with the procedures in TPR 715 or TPR 351 if the technicians are otherwise covered. In scheduling such furloughs, it would be equitable to prorate a technician's furlough requirement by computing the furlough days as furlough hours in the same proportion to those hours scheduled for full-time technicians working 80 hours biweekly, based on work schedules. The hours of furlough might be computed as a percentage of the work schedule for full-time technicians working 80 hours biweekly. For example, a part time work schedule of 64 hours a pay period would equate to 64/80 of a fulltime work schedule, or 80%. This percentage could then be multiplied by the number of hours that a full-time technician is furloughed. The same method of proration would be used for uncommon tours of duty. For example, to derive the hours of furlough for a technician working 144 hours a pay period, a factor of 144/80, or 180%, would be multiplied by the number of hours of furlough designated for full-time technicians working 80 hours biweekly.

6. How should the State schedule administrative furlough time off for a technician who works on a seasonal or intermittent basis?

The State has the discretion to call seasonal or intermittent technicians to duty during an administrative furlough. The seasonal technician is recalled to duty at identified periods of the year in accordance with pre-established conditions. The intermittent technician is in a non-full-time status without a regularly scheduled tour of duty.

D. Working During Furlough

1. May a technician volunteer to do his/her job, in a non-pay status, during any hours or days designated as furlough time off?

No. A technician is not permitted to serve as an unpaid volunteer and will remain away from the work place until recalled.

2. What happens to a technician scheduled for training during an administrative furlough?

In the event that scheduled training occurs during a furlough period, affected technicians must be placed in a furlough status and ordered not to attend the scheduled training. Technicians currently on temporary duty will return to home station as soon as possible. Also, a technician

cannot work on any training assignments on a furlough day. Technicians should consult with the training provider to make other arrangements (e.g. make-up sessions or rescheduling the course.)

3. May a technician take other jobs during a period designated as furlough time off?

While on furlough, a technician remains an technician of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards, at 5 CFR 2635). In addition, there are specific statutes that prohibit certain outside activities and potentially State specific supplemental rules that may require prior approval of, and sometimes prohibit, outside employment.

4. May a technician work during a period designated as furlough time off to earn compensatory time?

No. A technician may not work to earn compensatory time during hours and/or days designated as furlough time off.

5. May a technician work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?

No. A technician may not work during a period designated as furlough time off; even to accrue religious compensatory time.

6. If a technician is away from their normal duty station on TDY at the time of a furlough, how will this be handled?

Managers within the State will determine if the technician's services are still needed at the temporary duty station based on mission critical requirements and authorized exemptions. In the case of those technicians who are notified by their State that they are to remain on travel, because the continuation of their travel is in direct support of an exempted State activity, their travel expenses are properly incurred obligations of the State (as part of the State carrying out an exempted activity), and the State will reimburse per diem and travel costs.

E. Pay and Compensation

1. When a technician's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period, resulting in a partial paycheck, what is the order of withholding precedence?

The United States Property and Fiscal Office (USPFO) will follow the guidance, at the below referenced website, to determine the order of precedence for applying deductions from a technician's pay when the gross pay is insufficient to cover all authorized deductions.
http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477

2. May the State deny or delay within-grade or step increases for a General Schedule or Wage System technician during a furlough?

It depends on the length of the furlough. Within-grade and step increases for GS and WG technicians are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of non-pay status (e.g. furlough for lack of funds) may affect the timing of such increases. For example, a GS technician in steps 1, 2, or 3 of the grade, who is furloughed for more than 2 work weeks during the waiting period, would have his/her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b))

3. Are technicians entitled to unemployment compensation while on furlough?

It is possible that furloughed technicians may become eligible for unemployment compensation. 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 a technician's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Technicians" at http://workforcesecurity.dol eta.gov/unemploy unemcomp.asp.) HROs or technicians should submit questions to the appropriate State, Territory or District of Columbia office. The Department of Labor's website provides links to individual State offices at http://www.servicelocator.org/OWSLinks.asp.

4. Will technicians in a Temporary Duty (TDY) status during the furlough period be paid their salary?

During an administrative furlough, salaries continue except furlough days are non-pay days.

5. What resources are available if a technician needs financial assistance during a furlough period?

Some Technician Assistance Programs (EAP) include financial consultation services. The HRO should counsel the technician on the benefits of utilizing the services of the EAP. The HRO should provide contact information to include a phone number. The technician may want to contact his/her financial institution or research options at the TSP website at http://www.tsp.gov.

6. If the State notifies the technician while the technician is still on TDY to return to their duty station, can the technician elect to delay the return? If the technician decides to delay the return, and as a result does the technician incur additional travel costs; and who is liable for those additional travel costs?

If the technician is notified to return home, the technician should do so as soon as practicable. If the technician returns promptly, the travel expenses incurred in the return, are properly-incurred obligations of the State (as part of the State's orderly- activities), and the State will reimburse these travel costs after appropriations are enacted and are available for that purpose. If, however, the technician elects not to return promptly and, as a result of this decision, the technician incurs additional travel expenses, those additional travel expenses are not obligations of the State, and will not be reimbursed (instead, the technician is personally liable for the additional travel expenses); while the technician will be personally liable for the additional travel

expenses, the State will continue to incur the obligation for those travel costs that would have been incurred if the technician had returned promptly, and the State will reimburse such "prompt return" travel costs for that purpose.

7. Can a technician earn travel compensatory time while on furlough?

Yes. Travel status includes only the time "actually" spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

8. Will Technicians be paid for a Federal holiday if it is their furlough day?

General guidance put forth by OPM States that it would not be proper to furlough a technician solely on a holiday. Supervisors will be responsible for making any additional furlough schedule adjustments for each pay period with a Federal holiday to ensure technicians are provided flexibility to change their scheduled furlough days in order to receive holiday leave. It is recommended that technicians have a discussion with their supervisors about their work schedule and Federal holidays.

Federal holidays occurring during the expected furlough period include:

Day of the Week	Date	Holiday
Thursday	July 4, 2013	Independence Day
Monday	September 2, 2013	Labor Day

9. Are annual Incentive Awards Program funds available for performance and/or special act or achievement?

Neither law nor regulation requires States to pay performance awards granted under 5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a) (3). If the State's performance management policies and practices require the payment of performance awards, the State may delay payment until after the furlough when funds are available.

10. When may supervisors approve compensatory time during a Furlough?

A supervisor is prohibited from approving compensatory time off during an administrative furlough, except as necessary to protect the health, safety and security of personnel or property; to ensure the direct and timely provision of services and materiel to deployed units or to units that are preparing to deploy; or to perform similar mission critical functions.

Any approval of compensatory time must be documented in advance of the time and date on which the work is to be performed, in writing, signed and dated by the approval authority that also sets forth the purpose of compensatory time and the rationale for concluding that the work meets definition above.

F. Leave and Other Time Off

1. May a technician take paid leave or other forms of paid time off (e.g., annual, sick, court, military leave, leave for bone marrow or organ donor leave, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?

No. During an administrative furlough, a technician may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time off.

2. If a technician who received a furlough notice had previously scheduled annual or sick leave on a furlough day, what happens to the scheduled leave?

Scheduled leave is canceled on furlough days only (annual leave, sick leave, or other). Absences during scheduled furlough days may not be charged to leave. Leave may be requested and approved on scheduled workdays.

3. How does the State treat a technician, who is on approved leave without pay (LWOP), during an administrative furlough period?

If a technician is scheduled to be on approved LWOP during the furlough period, he/she may designate any hours and/or days of LWOP as furlough time off in order to meet the furlough requirement. States are not required to provide a technician with a furlough notice if the technician is not expected to work during the furlough period. (e.g. the technician is deployed for a period in excess of the planned furlough period or the technician is currently serving on an AGR tour) If the technician returns to work before the end of the furlough period, the State could require the technician to take furlough time off, based on the State's furlough requirement. If upon return to service, the technician has taken enough LWOP to cover the State's requirement for furlough time off, the State may choose not to place the technician in a furlough status.

4. For technicians who are currently mobilized who restore to their technician position sometime after the furlough period, is their 14-day furlough prorated? In other words, the technician restores after 1 July 2013, how many furlough days must said technician take before 30 Sep 2013?

If the technician returns to work before the end of the furlough period, the State could require the technician to take furlough time off, based on the State's furlough requirements. If, upon return to service, the technician has taken enough LWOP to cover the State's requirement for furlough time off, the State may choose not to place the technician in a furlough status.

5. May a technician take LWOP under the Family and Medical Leave Act (FMLA) during an administrative furlough period?

Yes. A technician may take LWOP under FMLA during the designated furlough period. The technician may designate any hours and/or days of LWOP under FMLA as furlough time off in order to meet the State's furlough requirement. During a furlough any LWOP under FMLA, that is scheduled to be taken instead of a furlough day off, will not count toward the technician's 12 week FMLA leave entitlement. A technician, who takes LWOP under FMLA instead of a furlough day off, may not substitute paid leave for those days at a later time. States are not required to provide a technician with a furlough notice if the technician is not expected to work during the furlough period (e.g. a technician who has just given birth and has requested 12 weeks

of unpaid leave (LWOP under the FMLA). If the technician is scheduled to return to work, from approved LWOP during the designated furlough period, the technician should be provided with a written furlough notice (effective on the date of scheduled return).

6. What happens under sequestration if a technician has use-or-lose leave or earned compensatory time off?

Sequestration should not affect a technician's ability to take approved use or lose annual leave before the end of the leave year or to use earned compensatory time off within the established timelines.

7. Can technicians be required to perform compensatory time on non-furlough days to perform work that otherwise would be performed on a furlough day?

No.

8. Will the furlough impact leave accrual?

Once a technician's balance of non-pay hours equals their scheduled hours in a pay period (e.g., 80 hours in a biweekly pay period, fewer hours for part-time technicians), the Technician will not accrue leave for that pay period. Leave accrual resumes the next pay period. Note: This will occur once if the furlough period is 14 days.

9. May technicians who were designated as exempt from an administrative furlough be granted paid leave?

Yes. Technicians exempted from administrative furloughs would see no change from normal leave situations, subject to supervisory approval.

G. Holidays

1. May a technician be administratively furloughed on a holiday?

Yes. However, the State should select the furlough days off on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, the State may not properly furlough a technician for a 3-day period, the middle of which is a holiday, for the sole purpose of saving 3 days pay while losing only 2 days of work. (See Comptroller General opinion B-224619, August 17, 1987). Nor would it be proper to furlough a technician solely on a holiday. (See Comptroller General Opinion B-222836, May 8, 1986).

2. If a technician has a designated administrative furlough day off on the last workday *before* a holiday or the first workday *after* a holiday (but not on both days), will the technician be paid for the holiday?

Yes. The general rule is that a technician is entitled to pay for a holiday as long as he/she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The technician is paid for the holiday based on the presumption that, but for the holiday, the technician would have worked. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

3. If a technician has a designated administrative furlough day off on the last workday before a holiday *and* the first workday after a holiday, will the technician be paid for the holiday?

No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the technician is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the technician would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987). States that allow a technician to choose the furlough days off must advise the technician that he/she will not be paid for the holiday if the technician chooses to take a furlough day off both before and after the holiday.

H. Benefits

1. Will a technician continue to be covered under the Federal Technicians Health Benefits (FEHB) Program during an administrative furlough?

Technician FEHB coverage will continue if the technician's salary is sufficient to pay the premiums. If the technician's salary becomes insufficient to pay FEHB premiums due to the furlough, the leave without pay/insufficient pay rules apply: (http://www.opm.gov/insure/health/reference/handbook/fehb13.asp). If a technician chooses to remain covered, the enrollee share of the FEHB premium will accumulate and be withheld from pay until which time the pay is sufficient to cover the premiums.

(NOTE: see new section R for FEHB)

2. Will a technician's Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

The technician's FSAFEDS coverage continues, and allotments made by the technician continue if the technician's salary in each pay period is sufficient to cover the deduction(s). If the technician's salary is insufficient to cover his/her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the technician's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the technician's dependent care account, as long as the expenses incurred allow the technician (or technician's spouse if married) to work, look for work, or attend school fulltime. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the technician's annual election amount.

3. Will a technician continue to be covered under the Federal Technicians' Group Life Insurance (FEGLI) during an administrative furlough?

The technician's FEGLI coverage continues while in a non-pay status due to furlough for up to 12 months without cost to the technician or to the State. However, if the furlough is for only part of a pay period the FEGLI premiums are required. If the technician receives any pay in a pay period, FEGLI premiums for the whole pay period will be deducted from pay. The premiums are not prorated. If the technician's salary becomes insufficient to pay FEGLI

premiums due to the furlough, the leave without pay/insufficient pay rules apply: (http://www.opm.gov/insure/health/reference/handbook/fehb13.asp).

4. Will the technician continue to be covered under the Federal Technician Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?

Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from a technician's pay, BENEFEDS collects the premium up to twice the biweekly amount from the next full pay period to make up for the missed premium deduction. If the furlough continues for more than two consecutive pay periods, BENEFEDS will mail a direct bill to the technician. The technician should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

5. Will the technician continue to be covered under the Federal Long Term Care Insurance Program (FLTCIP) during an administrative furlough?

Yes. Eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premiums for two or fewer pay periods, they will adjust future premium deductions, increasing by no more than $50 per pay period to recover the missed premiums. Three consecutive pay periods of no premiums will result in the contractor billing the technician directly.

The technician also has the option to change to direct billing or to make a payment via electronic funds transfer. If premiums are not collected, or a final bill is not paid within a 30-day grace period, FLTCIP will send a termination letter. The technician has 35 days, from the date of the letter in which to pay the premium; otherwise, the technician will be disenrolled retroactively to the last pay period in which premium was paid.

6. Will furloughs impact wages considered when calculating a retirees high three for CSRS/FERS retirement?

No. The furlough does not affect this calculation; it is the technician's grade/step which is considered for retirement purposes.

7. Will this furlough be considered a qualifying life event/Open Season to adjust benefits? Some techs will face financial difficulties and may want to change/reduce coverage to reduce deductions, will they have that option?

No. The furlough is not considered a qualifying life event. The next open season is 11 November 2013 through 9 December 2013.

8. During a furlough what is the impact to technicians who will retire this year? What about in the next 2-3 years?

Generally there will be no effect on a technician's retirement pay unless the furlough causes the technician to be in a non-pay status for more than six months during a calendar year.

9. To what extent does non-pay status affect retirement coverage?

Federal Technicians Retirement System (FERS) and Civil Service Retirement System

(CSRS) coverage continue during an Administrative Furlough of 30 days or less.

10. Will social security contributions be affected?

Social security contributions are determined by a percentage of a technician's basic pay and may be stopped or reduced if the technician has no earnings or if basic pay is reduced.

I. Thrift Savings Plan (TSP)

1. What is the impact of a furlough on the TSP? What will happen to the contributions?

There will be a reduction in the technician's and State contributions, unless the technician chose a set dollar amount vice percentage of pay. By law, a technician who is in a non-pay status cannot contribute to their TSP account while on furlough.

2. How will a furlough affect the technician's TSP contributions?

TSP contributions are deducted from the technician's pay.

Example 1: If the technician is currently making contributions based on a percentage of their basic pay, here's what happens:

- If the technician earns $1,000 of basic pay every two-week pay period and they contribute 10% of it to the TSP, they will have a $100 TSP contribution every pay period.

- If they are furloughed for 2 days per pay period, then their basic pay would decrease to $800 and as a result, their TSP contribution would decrease by an equal percentage so that their contribution would be $80 per pay period.

- Simply Stated, the technician's TSP contribution decreases in direct proportion to the reduction in their basic pay. Therefore, the technician may find that lowering their contribution percentage is not necessary.

Example 2: If, however, the technician is currently making TSP contributions based on a dollar amount of their pay, that dollar amount will not automatically decrease with the reduction in pay. The technician may want to revisit whether that amount is still appropriate given the expected impact of their furlough.

3. Should technicians terminate their TSP contributions?

If the technician is making traditional contributions, it is important to remember that those contributions are subtracted from their pay before tax. It is equally important for the technician to be aware that stopping their TSP contribution could potentially increase their adjusted gross income and, as a result, their income tax liability. Technicians should think carefully about terminating their contributions.

Note: One of the great things about TSP contributions, no matter how small, is that the earnings compound over time. If the contributions are stopped, even for a short time, the technician will miss the opportunity to have their earning compound altogether. And, if the technician is a

FERS participant, they are leaving free money on the table because if they stop their contributions, their matching contributions stop as well.

4. Will the government matching contribution to TSP be reduced during the furlough period?

Government matching contributions determined by a percentage of a technician's basic pay may be stopped or reduced if the technician has no earnings, or if basic pay is reduced.

5. Will a technician's TSP investments be affected? What about disbursement?

TSP investment activity will continue. Share prices and account balances will continue to be updated each business day, and loans and withdrawals will continue to be disbursed.

6. May a technician take out a TSP loan while furlough?

Yes. By law, a TSP participant may take a TSP loan during a furlough which results in a short-term break in pay. The TSP Executive Director has determined a Government shutdown does not disqualify one from TSP loan eligibility. See the TSP Fact Sheet (Impact of a Government Shutdown on the Thrift Savings Plan, dated March 4, 2011) at: https://www.tsp.gov/PDF/formspubs/oc11-5.pdf . The technician should be referred to the cited reference for additional information specific to loan payment requirements.

7. What impact does the furlough have on a technician's loan payments?

Payments continue. If the technician's salary is insufficient, the loan may be extended or have a balloon payment at the end.

8. Is the HRO required to send in a Form TSP-41 to notify TSP of a technician's furlough status?

No.

9. Can the Government take money from the TSP to resolve this financial situation?
No. The money in the TSP is held in trust for its participants. Neither Congress nor the Administration can take money from a technician's TSP account.

J. Unemployment Compensation

1. Is a technician entitled to unemployment compensation while on furlough?

It depends. Rules for unemployment compensation eligibility differ State to State. It is possible that a furloughed technician may become eligible for unemployment compensation immediately in some locations; whereas other States require a one-week waiting period before qualifying for compensation. In general, the State's laws, relative to the location of the technician's last official duty station while in technician service, determine eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Technicians (technicians)" at http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp). Before applying for unemployment compensation, the technician should contact the HRO Technician Benefits Specialist for the required SF 8 form. The HRO Technician Benefits Specialist will

provide employment information upon request from the Department of Labor Unemployment Compensation Office. The Department of Labor's website provides links to locations of individual State unemployment compensation offices at http://www.servicelocator.org/OWSLinks.asp.

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

Federal States are required to provide technicians with an SF-8 if they will be in a nonduty status for seven or more consecutive days.

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

The address on the SF-8 should be the address for the Human Resources Office. The FIC is 422 for the Department of the Army and 424 for the Department of the Air Force.

4. Is an unemployment compensation claim based on the State where the technician lives or where they work?

Unemployment compensation claims are based on the State in which the work was performed.

5. Are technicians who are lower than a Grade 9, Step 5, exempt from paying back unemployment compensation benefits if they are later paid for the furlough period?

The decision on whether or not technicians would have to pay back unemployment compensation benefits would be decided by each State Employment Security States based on their unemployment compensation law. Overpayment requirements apply to all technicians for a particular State, regardless of their grade or salary.

6. Is information available as to what the States require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each State when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at http://www.oet.ky.gov/des/ui/Staterefguide.asp - that lists State Web sites, plus telephone numbers, for about 40 States.

Alabama – http://dir.alabama.gov/uc
Alaska – http://www.labor.State.ak.us/esd_unemployment_insurance/biff-splash.htm
Arizona – https://www.azdes.gov/landing.aspx?id=4211
Arkansas - http://www.arkansas.gov/esd/UI/index.htm
California – https://eapply4ui.edd.ca.gov/ Colorado – https://wwws.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e
Connecticut –http://www.ctdol.State.ct.us/progsupt/unemplt/M1A/LogInIntro.htm
Delaware – http://www.delawareworks.com/Unemployment/welcome.shtml
District of Columbia – https://does.dcnetworks.org/InitialClaims/
Florida –

http://www.floridajobs.org/job-seekers-community-services/reemployment-assistancecenter/file-a-claim
Georgia - http://www.dol.State.ga.us/
Hawaii – http://hawaii.gov/labor/ui
Idaho – http://labor.idaho.gov/dnn/Default.aspx?alias=labor.idaho.gov/dnn/idl
Illinois – http://www.ides.State.il.us/individual/certify/default.asp
Indiana – http://www.in.gov/dwd/
Iowa – http://www.iowaworkforce.org/ui/file1.htm#1.
Kansas – www.getkansasbenefits.gov
Kentucky – http://www.kewes.ky.gov/
Louisiana – https://laors.laworks.net/laclaims/Web site/
Maine – https://gateway.maine.gov/DOL/mics/BasePage.aspx
Maryland – electronic filing not permitted if technician worked for the Federal Government in the past 18 months. File by phone at 410-949-0022 in the Baltimore area, or 1-800-827-4839 outside the Baltimore area. Information is at http://www.dllr.State.md.us/employment/unemployment.shtml
Massachusetts – initial claim by phone or in person only. File by phone at 1-877-626-6800 from Massachusetts, 617-626-6800 outside Massachusetts. Information is at http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd
Michigan – http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html
Minnesota – http://www.uimn.org/
Mississippi http://mdes.ms.gov/unemployment-claims/
form must then be brought in person to a Mississippi Job Center
Missouri – http://www.labor.mo.gov/DES/Claims/
Montana – https://app.mt.gov/ui4u/index
Nebraska – https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp
Nevada – http://www.ui.nvdetr.org/UI_Agreement.html
New Hampshire – http://www.nh.gov/nhes/
New Jersey – http://lwd.dol.State.nj.us/labor/ui/ui_index.html
New Mexico – http://www.dws.State.nm.us/
New York – https://ui.labor.State.ny.us/UBC/home.do?FF_LOCALE=1
North Carolina – https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp
North Dakota – https://secure.apps.State.nd.us/jsnd/uiiaclaims/login.htm
Ohio – http://unemployment.ohio.gov/
Oklahoma – https://unemployment.State.ok.us/instructions.asp?x=n
Oregon – http://findit.emp.State.or.us/ocs
Pennsylvania – https://www.paclaims.State.pa.us/UCEN/
Puerto Rico - http://www.trabajo.pr.gov/
Rhode Island – https://uiclaims.State.ri.us/RI-ICS/Intro/index.aspx?AC=yes
South Carolina – http://dew.sc.gov/
South Dakota – http://dlr.sd.gov/ui/default.aspx
Tennessee – http://www.State.tn.us/labor-wfd/esdiv.html
Texas – http://www.twc.State.tx.us/ui/uiclaim.html
Utah – http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx
Vermont – file by phone only, by calling 1-877-214-3330. Information is at http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx
Virginia – http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm
Virgin Islands – file in person only
http://www.vidol.gov/OP/Contact.htm

Washington – http://www.esd.wa.gov/uibenefits/index.php
West Virginia – http://www.wvuc.org/
Wisconsin – https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp
Wyoming - https://doe.State.wy.us/InetClaims/

K. Benefits under the Federal Technicians' Compensation Act

1. If a technician was in receipt of Federal Technicians' Compensation Act (FECA) wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing State

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

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

3. Are technicians who are currently reemployed from the Workers' Compensation roles exempted from furlough?

No. A technician who has been reemployed from OWCP roles is not exempt from furlough. They are to be treated the same as any other technician. However, if a returned technician is receiving lost wages from the Department of Labor (DOL), those wages will continue to be paid by DOL.

4. Will a technician with a Lost Wage Earnings Capacity (LWEC) decision in place be compensated from OWCP on the days the State is furloughed?

No. Once OWCP issues a formal LWEC decision, it cannot be changed except for one of three reasons. Those reasons are listed in the Federal Regulations, at 20 CFR 10.511, as follows: (1) Modification of such a determination is only warranted where the party seeking the modification establishes either that there is a material change in the nature and extent of the injury-related condition; (2) the technician has been retrained or otherwise vocationally rehabilitated, or (3) the original determination was erroneous. So if OWCP has issued a formal LWEC decision, and then the technician is furloughed, no additional OWCP benefits would be payable; a furlough is not one of the 3 reasons listed in these regulations.

5. If a technician is receiving wage-loss compensation from OWCP as a result of a Lost Wage Earnings Capacity (LWEC) decision, will the claimant's compensation from OWCP be reduced due to sequestration?

No. Monies received from OWCP for wage-loss compensation are not considered wages and, therefore, are not affected by a lack of funding at the employing State.

6. Is a furlough day considered a withdrawal of light duty for a technician with a work related injury, who is working light duty based on temporary work restrictions? Is the technician eligible to apply to DOL for wages lost on the furlough day?

It is the State's opinion that the furlough action is not a direct withdrawal of light duty as the furlough requirement applies to all technicians unless exempted by proper authority. DOL is the decision authority on a technician's claim for loss of wages. If the technician wishes to claim compensation from DOL for the furlough period they must submit a completed Form CA-7 to the State's ICPA. DOL in turn will issue a decision on the compensation claim.

7. How does an administrative furlough affect the compensation of a technician who is receiving FECA benefits and is under medical orders to work part-time?

When a technician is already out on total or partial wage loss benefits, FECA compensation continues at the usual rate. Claims for FECA compensation benefits submitted as a result of missing a partial day due to a furlough are not payable under the FECA.

8. How does an administrative furlough impact the compensation of a technician who is receiving FECA benefits and is required to work a modified light duty schedule?

FECA compensation benefits are not payable for work days lost as a result of administrative furlough.

9. How does a furlough affect Continuation of Pay (COP)?

If a technician sustains a traumatic injury and is receiving COP before furlough days have been scheduled, COP should continue. However, if a technician sustains a traumatic injury and has already been scheduled for one or more furlough days, then there would be no COP entitlement for any day that the technician was not scheduled to work due to an administrative furlough.

10. Are schedule awards or medical benefits affected by an administrative furlough?

No. Schedule award and medical benefits continue regardless.

L. Service Credit for Various Purposes

1. Is being furloughed or on leave without pay (LWOP) considered a break in service?

No. Both mean the technician is in a nonpay, nonduty status for those days/hours. However, an extended furlough or extended LWOP may affect the calculation of creditable service for certain purposes.

2. To what extent does non-pay status affect technician benefits and programs?

The effects of a non-pay status (which includes furlough, leave without pay, absence without leave, and suspension) on technician benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Benefits and Programs" at http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

3. What effect will a furlough have on the calculation of a technician's creditable service?

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

- Career tenure: The first 30 calendar days of each non-pay period is creditable service. (5 CFR 315.201(b)(4)(ii)(A))
- Probationary period: An aggregate of 14 workdays in a non-pay status is creditable service. (5 CFR 315.802(c))
- Qualification standards: There is no requirement to extend qualifying periods by the amount of non-pay status. However, States may require such extensions in order to meet training requirements or ability to perform.
- Time-in-Grade: Non-pay status is creditable service. (5 CFR 300.605(a))
- Service Computation Date-LEAVE: Up to six months in non-pay status is creditable. (5 U.S.C. 6303(a))
- Service creditable for within-grade-increases: The time in a non-pay status that is creditable is determined by the current step (See 5 CFR531.406(b) for GS & 532.417(c)(2) for FWS)

M. Technicians on Military Duty

1. May a National Guard technician perform military duty while furloughed? And is it a dual compensation situation?

A military technician may perform military duty while he/she is furloughed. It is not a dual compensation situation because furloughed technicians are not in a pay status. They will be compensated by the military and continue to be carried in an Absent-US status.

2. Will a technician continue to receive reservist differential payments (5 U.S.C. 5538) if the technician is affected by an administrative furlough from the technician position while on active duty?

It depends. In computing a reservist differential, the State must compare the technician's projected technician basic pay to the allocated military pay and allowances for each technician pay period. If the technician is affected by a furlough from his/her position while on active duty, the State must reduce the technician's projected basic pay during any pay period in which furlough time off occurs. If the allocated military pay and allowances are greater than, or equal to, the projected technician basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected technician basic pay (as reduced to account for furlough time off) is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

3. Will there be an impact on the within-grade increase (WGI) waiting period for General Schedule (GS) technicians affected by an administrative furlough while in an Absent Uniformed Service (AUS) status?

No. Furlough has no impact on a the WGI waiting period for GS technician's affected by a furlough while in an AUS status (i.e., Nature of Action Code 473, used when the technician has restoration rights). An absence, for the purpose of engaging in military service, is creditable service in the computation of waiting periods for successive WGIs when the technician returns to

a pay status through the exercise of a restoration right provided by law, Executive Order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4)).

N. Miscellaneous

1. Can States offer early retirements (VERAs) or separation incentives (VSIPs) to furloughed technicians? Can VERA/VSIP be offered during sequestration? Can VERA/VSIP be offered in lieu of a furlough?

Both Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) are programs to incentivize voluntary separations to avoid involuntary personnel actions associated with a State's decision to restructure its workforce. States with NGB-approved VERA and or VSIP may continue offering these options to covered technicians during a furlough.

VERA and VSIP result in permanent separations from the State workforce. (Please note that VSIP recipients may not be reemployed by the Federal Government within 5 years unless they repay the VSIP to the State that paid it.) Furloughs are associated with temporary issues, such as lack of work or funds, with the intention that technicians would return to their jobs after the furlough. The State will decide which option to take based on its situation, e.g., the need to permanently reduce or restructure its workforce or to save funds by furloughing technicians.

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

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

3. What impact will a furlough have on a technician's Combined Federal Campaign pledge?

The technician's allotment to charity will continue if their salary is sufficient to pay the deduction according to the order of precedence and unless they provide other instructions to the payroll office representative. They may lower or cancel a CFC pledge by contacting their payroll office representative or CSR. If they cancel a CFC pledge, they will not be able to restart it until the next campaign season (for the 2014 payroll year).

4. Will the furlough impact a technician's mass transit subsidy/benefits?

Furlough does not change the maximum monthly limit (currently $245) for mass transit subsidy/benefits. Since participants may claim only the days for which mass transit was used, furloughed participants--commuting fewer days in a month--will claim fewer days.

O. Furlough Procedures - 22 workdays or Less

1. May the State schedule administrative furlough days consecutively or discontinuously (e.g., one workday per week for 22 weeks)?

Yes. Nothing in law or regulation prohibits discontinuous furloughs. Moreover, discontinuous furloughs can be advantageous to both the technician and the State by distributing the furlough days over time, minimizing the financial impact on a technician, and lessening the disruption of State services to the public.

In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Labor Relations Authority held that a proposal, giving the furloughed technician the right to determine whether his/her furlough was to be continuous or discontinuous, is a negotiable 5 U.S.C. 7106(b)(3) "appropriate arrangement."

For ease of administration and equity, the State may also schedule furloughs for all technicians (both alternative work schedule and regular work schedule) in terms of hours. For example, all full-time technicians would be furloughed for 40 hours; even though for some technicians, the actual number of furlough days could be more or less than 5 days.

2. How is an administrative furlough documented?

NG-J1-TN will process the mass actions to prepare an SF-50, Notification of Personnel Action for each technician subject to furlough. The appropriate Nature of Action Code (NOAC) to use according to the Guide to Processing Personnel Actions (GPPA) Chapter 15, will be NOAC 471 – Furlough. Since NOAC 471 is being used, there is no requirement for a Return to Duty (NOAC 292) personnel action to be processed at the conclusion of the furlough period. The actual furlough days will be coded via technician timecards using technician leave code "KE" (Furlough). The furlough hours used by pay period and the accumulated furlough hours will flow back into the Defense Civilian Personnel Data System (DCPDS) from the Defense Civilian Pay System (DCPS) to allow HROs to track the hours for each technician.

3. What remark will indicate the period of the furlough on the SF-50?

DoD has received permission from OPM to use the following remark with the NOAC 471 – Furlough. The remark has been modified to read "To be furloughed on discontinuous days between (beginning date of furlough period) and (ending date of furlough period) not to exceed a maximum of (number of hours) during the furlough period. Prior to the beginning of each pay period supervisors will inform technicians of the specific date(s) that he/she will be furloughed during the pay period."

4. How will furlough hours be shown on the technician's Leave and Earning Statement (LES)?

All furlough hours will show on the technician's Leave and LES in Leave Category as Furlough and will be combined with any LWOP in the LWOP Used YTD field.

5. How will supervisors track the furlough hours used by technicians?

Supervisors will be able to track the furlough hours their technicians use by running the "Furlough Indicator" report in the My Workplace located within the Defense Civilian Personnel Data System (DCPDS). The data will be updated one week after the end of each pay period

6. Are Correction SF-50 actions required if the furlough ends early?

Correction SF-50 is not required or necessary to correct the ending date of the furlough period if the furlough ends early and the furlough SFs-50 were coded with the optional "M73" remark that OPM recently approved.

7. How are timecards coded if technicians are on non-continuous furlough days? KE-Furlough vs. KG-Furlough Military(Absent-US) (Pending official NGB guidance)

Scenario: A Dual Status Technician's work schedule is Mon-Fri. On their scheduled furlough day the technician wants to perform military duty, AT, UTAs, or other IADT.

- **Question**: Can the technician perform military duty (AT, UTAs, or other IADT) on their furlough day?
    - **Answer**: Yes.
- **Question**: If technicians perform military duty (AT, UTAs, or other IADT) on their furlough day, how is the time coded on their time card?
    - **Answer**: Code the time card: KE – Furlough.
- **Question**: Can DS Tech's time card be coded "KG – Military Furlough (Absent-US)" instead of KE - Furlough?
    - **Answer**: Yes, if the technician was called to active duty. **If not, use KE – Furlough**.

8. How can HROs track technicians' cumulative furlough hours?

HROs will be able to track the cumulative furlough hours by having their Human Resources Specialist (Information Systems) run reports in the Business Intelligence 4 system. Available furlough hour fields include: "Furlough Hours Used PP" and "Furlough Accumulated Hours".

9. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by procedures in TPR 715, or is it covered by the reduction-in-force (RIF) procedures in TPR 351?

Based on the definition of "day" as "calendar day" (5 CFR 210.102), OPM has determined that 22 workdays equates to 30 calendar days for adverse action purposes for technicians. Thus, a discontinuous furlough of 22 workdays or less would be covered by ***Voluntary and Non-Disciplinary Action*** procedures(TPR 715), and one of more than 22 workdays would be covered by RIF procedures (***TPR 300(351))***. For example, if a holiday is included in a furlough of 22 *consecutive* workdays, the furlough might equate to more than 30 calendar days (e.g. the month of November has two holidays: Veterans Day and Thanksgiving Day. Therefore, the number of calendar days will be extended beyond 30 by two days).

10. What procedural rights would apply for an administrative furlough of 30 calendar days or less for technicians covered under TPR 715?

For a short furlough, the law (5 U.S.C. 7513) gives a covered technician the following rights:

• At least 30 calendar days advance written notice, from the organization, stating the specific reasons for the proposed action. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins effective upon the technician's ***receipt*** of the written notice. Therefore, the HRO should plan accordingly and allow time for mailing the notice when hand delivery is not possible. (See Sample Notice 1 for proposal to furlough and Sample Notice 2 for decision to furlough.)

• A technician may request a review of the furlough action, in writing, through the HRO to the Adjutant General (TPR 715, paragraph 3-7/TPR 351).

• The right of the technician to be represented by an attorney or other representative.

• Allow at least seven calendar days for the technician to answer, orally and in writing, to the proposal notice and to furnish documentary evidence in support of his/her answer. (A summary of any oral answer must be made and maintained by the HRO.)

• A written decision by the organization with the specific reason(s) for the action at the earliest time practicable.

Additionally, TPR 715 requires that the HRO inform the technician of the right to review the material it relied on to support the reasons for its action. The State must designate an oral reply official who can either make or recommend a decision, and must issue its decision on or before the effective date of the action.

NOTE: In accordance with TPR 715, the Adjutant General has the inherent authority to furlough any or all of its technicians if there are legitimate reasons. If the State is furloughing some, but not all technicians in a competitive level, the notice of proposal must State the reasons for the furlough. States who anticipate furloughing some, but not all technicians, should ensure the accuracy of established competitive levels in order to meet the obligations under this guidance. The term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable. Where bargaining unit technicians are concerned, additional procedural rights may be provided by their negotiated agreement.

11. What procedures and appeal rights are applicable for probationers, technicians under temporary appointments, technicians in the Excepted Service with less than 2 years of continuous service, and others not covered by 5 U.S.C. Chapter 75 but also affected by an administrative furlough?

There are no mandatory procedures. However, States should ensure that all administrative procedures required by negotiated agreements or internal personnel policies are followed, subject to any exceptions to those procedures that would apply in the event of an administrative furlough. Any request to review/appeal a furlough is limited to the Adjutant General. (Note: VRA appointments are initially made as two year excepted appointments followed by noncompetitive conversion to a competitive appointment.)

12. How should the decision letter for an administrative furlough be framed if the State has not set a specific number of furlough days?

While it is desirable, whenever possible, to inform the affected technician of a specific number of furlough days in the decision letter, the State only needs to set out the maximum time that may be involved, so that the technician has as much information as possible.

P. Furlough Procedures - More Than 22 workdays (Extended Furlough)

1. When is the Adjutant General required to use reduction in force (RIF) procedures to administratively furlough technicians?

The Adjutant General must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays. (NOTE: a furlough is a temporary placement in a non-pay/non-duty status. It is not a permanent separation from service).

2. Is there a maximum period a technician may be administratively furloughed for an extended period?

Yes. A technician may be placed on an extended furlough only when the State plans to recall the technician to his/her position within 1 year. The furlough may not exceed 1 year.

3. If the State needs to administratively furlough a technician for more than 30 calendar days (or more than 22 workdays) must all RIF procedures be followed?

Yes. The RIF procedures in TPR 351 must be followed, and include a minimum lead time of 60 days for a specific written notice of the furlough action. The only exception to the regular procedures involves assignment rights referenced in Question 4.

4. When does a technician, who is reached for an extended furlough action during an administrative furlough, have a right of assignment to another position?

A technician reached for release from the competitive level, because of an extended furlough, has assignment rights to other positions on the same basis as a technician reached for release as a result of other RIF actions (e.g., separation or downgrading).

Because of the requirement in TPR 351 that assignment rights apply only to positions lasting at least 3 months, a technician reached for an extended continuous furlough does not have assignment rights to a position held by another technician who is not affected by the furlough, unless the furlough extends for 90 or more consecutive days. A technician reached for a discontinuous extended furlough action does not have assignment rights to another position.

The undue interruption standard could apply to an extended furlough over 90 consecutive days. As defined in TPR 351, "undue interruption" essentially means that a higher-standing technician, who is otherwise qualified for the assignment, may exercise the assignment right only if the technician is able to perform the work of the position of the lower standing technician within 90 days of the assignment. In such cases, the State must consider whether undue interruption would result from both (1) the displacement of a lower-standing technician from the competitive level affected by the furlough, and (2) the recall of both technicians to their official positions at the end of the furlough period.

5. Are there any other situations in which a TAG may restrict a technician's assignment rights in an administrative furlough situation?

The TAG may make a temporary exception to the order of release and assignment rights to keep the incumbent in his/her position for 90 days or less after the commencement of the furlough, when needed to continue an activity without undue interruption. (See TPR 351 for additional reasons that a temporary exception may be used.)

The TAG may make a continuing exception to the order of release and assignment rights to keep the incumbent in a position that no higher standing technician can take over within 90 days and without undue interruption to the activity.

6. What action is taken if a technician refuses an offer of assignment during an administrative furlough?

The technician is furloughed from his/her position.

7. If a technician "bumps" to a different job as a result of an administrative furlough, is the technician temporarily assigned to that job?

No. The technician becomes the incumbent of that job even though the furlough anticipates the technician's eventual recall to his/her former job.

8. If circumstances change and the State is unable to recall an administratively furloughed technician at the point specified in the technician's extended furlough notice, what additional action is required?

In this situation, the State must issue the technician a new notice of an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in TPR 351 (e.g., 60 day advance notice).

9. Do these requirements also apply if the State finds that it can recall a technician before he/she has reached the administrative furlough limits specified in the notice?

No.

10. What happens to a temporary technician serving under an appointment limited to 1 year or less in extended administrative furlough situations?

The State may not retain a temporary technician in pay status to furlough a permanent technician in the same competitive level. The temporary technician is either separated or furloughed in such situations, and is not entitled to the protections of adverse actions or RIF procedures when this occurs. As a matter of good human resources management, the State should try to give the temporary technician as much advance written notice as possible.

Time spent in furlough status by a temporary technician counts the same as time in a pay status toward the appointment's not-to-exceed date and the 2 year limit on the overall service specified in 5 CFR 316.401(c).

11. What notice must the State provide to a technician of an extended administrative furlough action?

The State must give the technician a minimum 60 day specific written notice before the effective date of any action, including furlough. The same notice requirements are applicable to both a continuous and a discontinuous furlough.

12. What option is available if the State is unable to provide a technician with the minimum required notice of an extended administrative furlough?

When the action is caused by unforeseeable circumstance, the State may request that NGB authorize a notice period of less than 60 days. However, the State must still provide each technician with a minimum of 30 calendar days written notice of the action.

13. Is the State required (or permitted) to register technicians administratively furloughed in the DoD's Reemployment Priority List, or is the technician eligible for priority consideration under placement programs such as the DoD Priority Placement Program or the InterState Career Transition Assistance Program?

No. These programs are only available to technicians who are separated. These programs are not available to technicians who are furloughed.

14. What if the State plans for and gives notice of an administrative furlough of 22 workdays or less, but then finds it needs to extend this furlough time beyond 22 workdays in order to meet budget requirements? Must the State use TPR 351 furlough procedures when it extends the furlough beyond 22 workdays?

If the State's initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the State complete that furlough effected under TPR ***715*** procedures and issue new furlough notices under either TPR ***715*** or TPR 351, as appropriate, in the event it determines that additional savings are necessary.

Q. Labor Management Relations Implications

1. When the State is required to effect an administrative furlough, what is the State's obligation to bargain?

The decision to furlough technicians, and ***determination of*** those activities exempt from furlough, are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a).

When the State determines that an administrative furlough is necessary, the TAG is required to notify the exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the labor organization may submit; unless the matter of furlough is already "covered by" a collective bargaining agreement.

The TAG should be aware that collective bargaining agreements may also contain provisions with respect to the time frame within which to provide the labor organization a notice of a change in conditions of employment. It is advisable to check the individual labor agreement for applicable notice provisions and to comply with those provisions.

State contracts may also contain provisions regarding "adverse actions" and "reduction- in-force" (RIF) whereby States must comply in giving notice to bargaining unit technicians of pending furloughs. It is advisable to check the State's individual labor agreements for applicable "adverse action" and "reduction in force" notice provisions, and to comply with those provisions.

In the event that States are required to absorb unexpected substantial budget cuts during a short term continuing resolution, or because of the limited time remaining in the fiscal year to absorb these unexpected budget cuts, States might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution or remainder of the fiscal year and cannot be deferred until later in the year or into a new budget year. In this event, the written notice of furlough, to individual technicians, and the opportunity to be heard are not required because of unforeseeable circumstances. Unforeseeable circumstances could include unexpected cuts by the Congress to an State's budget late in the fiscal year. ***The statutory requirement that States provide appropriate notice to labor organizations of changes in conditions of employment, however, still applies.***

2. May the State effect an administrative furlough for technicians in a bargaining unit before negotiations are completed?

If the parties bargain to impasse and the labor organization does not invoke the services of the Service Impasses Panel in a timely manner, the State may furlough technicians without further delay provided the State HRO gives the labor organization adequate notice of its intent to implement its last bargaining offer on a specific date. If the labor organization invokes the services of the Service Impasses Panel by that date, the State may not furlough technicians unless it can show it is necessary to do so without further delay.

States required to absorb substantial budget cuts during a short term continuing resolution, or because of the limited time remaining in the fiscal year to absorb those cuts, might be required to furlough without further delay because the budget cuts must be absorbed during the term of the continuing resolution or the current fiscal year and cannot be deferred until later in the year or into a new budget year. However, in the case of cuts that can be absorbed over the course of the fiscal year, it would be difficult to demonstrate that a furlough could not be delayed pending

resolution of the bargaining impasses. If bargaining is not completed and the State must furlough technicians, the State should continue to bargain and, if possible, implement any agreement retroactively. NGB advises that all attempts should be made to complete the collective bargaining process first, if possible.

3. While no decision has been made to administratively furlough technicians, the labor organization has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. A State's collective bargaining agreement is silent on furlough procedures and the labor organization is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Does a State have an obligation to bargain when no decision has been made to furlough technicians?

Even though no decision has been made to furlough technicians, it is possible that the State has a duty to bargain regarding the labor organization initiated mid-term bargaining request; assuming the matter is not already covered by the State collective bargaining agreement. The law requires a State bargain during the term of a collective bargaining agreement on negotiable union initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the labor organization has waived its right to bargain about the subject matter involved. With this in mind, the State will have to evaluate the circumstances of the situation to determine whether or not there is a duty to bargain on furlough procedures.

4. Along with a bargaining request on furloughs, the labor organization has submitted an information request under 5 U.S.C. 7114 seeking information, such as the State administrative furlough plan and a list of technicians expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Does the State have to provide this information?

It depends. The State is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a labor organization. A labor organization who is requesting information must establish a particular need for the information by articulating, with specificity, why it needs the requested information, including how the labor organization will use this information and the connection between the use of this information and the labor organization's representational responsibilities under statute. The labor organization must establish that the requested information is required in order for it to adequately represent its members. A State denying a request for information must assert and establish any countervailing anti-disclosure interests. The State may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, the State must evaluate the circumstances of the situation to determine whether to provide the requested information.

5. If a bargaining unit technician decides to challenge a discontinuous administrative furlough, what is the time frame for the technician to file a grievance under the negotiated grievance procedure (NGP)?

The time limits and other procedures applicable to bargaining unit technicians are spelled out in applicable provisions of the State's negotiated collective bargaining agreements.

6. May a manager or supervisor have a meeting with technicians in a bargaining unit to discuss an administrative furlough without a union representative present?

The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit technicians if the meeting concerns issues such as personnel policies or practices or other general conditions of employment. Under the law, this meeting is referred to as a ―formal discussion.‖ With this in mind; you will have to evaluate the circumstances of your situation to determine whether the meeting constitutes a formal discussion. If you have determined the meeting is a formal discussion, advance notice of the meeting must be provided to the union. See 5 U.S.C. 7114(a) (2) (A).

7. Are technicians who serve as union representatives on 100% official time subject to the furlough?

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

8. Will written agreements with the union on furloughs be subject to State Head Review?

Yes. Any agreement reached with a local union that is documented in writing is subject to State head review per 5 U.S.C. 7114 (c) (1). However, DCPAS is not normally reviewing furlough agreements at this time. If a State desires a review, the agreement should be sent to the NGB, Technician Personnel Division, Labor Relations Branch.

9. A union has proposed that management rotate the designation of "excepted from the furlough" among technicians who are equally qualified. This minimizes the impact on all technicians, especially if Congress does not provide pay for those furloughed. Is this negotiable?

Yes. Management retains the right to determine which duties and responsibilities must be performed during the furlough and which technicians are qualified to perform such duties and responsibilities. How these technicians are selected from among those that are qualified, however, is negotiable. While the excepted designation is not negotiable, once it has been determined which positions are excepted, the determination of which among equally qualified technicians should be designated excepted is negotiable.

10. If rotation of the excepted designation is negotiable, do the parties have to agree? The burden on management for processing so many actions would be great.

No. The parties must deal in good faith with each other, either in partnership or through collective bargaining. They are not required in either approach to reach agreement. Where agreement cannot be reached, the services of a neutral third party may be used. If the parties have not reached agreement before the furlough, then management has no choice but to proceed by implementing its last offer. Management should, to the maximum extent possible, continue to negotiate with the union during implementation. Management must be prepared to show that the requirement to rotate technicians would impose an undue burden on the State.

R. Federal Technicians Health Benefits (FEHB) Program

1. If a technician is furloughed, does their FEHB coverage continue or terminate?

Yes, the technician's FEHB coverage will continue if the technician's salary is sufficient to pay the premiums. If pay becomes insufficient to cover premiums, a technician that has FEHB coverage and participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) has several options available. If the furlough results in pay for a regular pay period to be insufficient for the technician's employing office to withhold the technician's share of premium from that pay (after the State applies all deductions in accordance with the required order of precedence, see Question E.1.), the HRO must notify the technician and give the technician an opportunity to elect to either continue or terminate FEHB coverage. If the technician does not respond to this notice within the time for response, the HRO will terminate the FEHB coverage. In some instances, a technician may cancel FEHB coverage. See Questions R.7., R.8., and R.9. for more information.

2. Can a technician terminate FEHB coverage because he/she thinks it's not affordable?

No, the technician's view of his/her ability to afford FEHB coverage is not a basis for terminating coverage. However, if the technician has insufficient pay to cover the technician's share of the premium (as explained in Question R.1.), the technician may choose to terminate coverage.

3. How can a technician continue FEHB coverage if his or her pay is not enough to cover the premium?

If a technician elects to continue FEHB coverage, the technician may directly pay the DFAS to keep premiums current, or the technician may incur a debt that the DFAS will recover when the technician's pay becomes sufficient to cover the premium.

4. What happens if FEHB coverage terminates for insufficient pay during furlough?

If a technician elects to terminate FEHB coverage, or if the technician does not respond to the election notice, the coverage will end retroactive to the last day of the last pay period in which the premium was withheld from pay. The technician and any covered family members are entitled to a 31-day temporary extension of coverage which commences retroactively to the day after the coverage ended. The technician will also have the right to convert to an individual contract for health benefits.

5. If a technician's coverage terminates, can the technician re-enroll once pay returns to a level that covers the technician's share of the FEHB premium?

Yes. A technician may re-enroll in FEHB upon returning to sufficient pay status and does not have to wait for an open season to re-enroll. The technician must reenroll within 60 days of becoming eligible as a result of renewed sufficient pay. Otherwise, the technician will be required to wait for an open season or a Qualifying Life Event (QLE) that allows for enrollment outside of open season.

6. How will the technician's termination affect his or her 5-year participation for purposes? of continuing FEHB after retirement?

For purposes of meeting the 5-year participation requirement, counting of the time the technician is covered under FEHB will *stop* when the technician's enrollment terminates and *resume* upon re-enrollment ***provided*** the technician reenrolls within 60 days of becoming eligible as a result of renewed sufficient pay. In other words, the technician does not start a new 5-year participation period in this circumstance. However, the period of time in which the technician is not covered due to insufficient pay will be considered a period of ineligibility for FEHB, and will not be held against the technician for purposes of meeting the 5-year continuous coverage requirement. A technician who does not re-enroll within 60 days but postpones re-enrollment until the next open season must begin a new 5-year participation period for purposes of continuing FEHB coverage into retirement.

7. Can a technician who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) just cancel FEHB coverage if the technician is furloughed?

No. For technicians participating in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis), an administrative furlough is not a Qualifying Life Event (QLE) that would allow a cancellation. If the administrative furlough causes a technician's pay for a pay period to become insufficient for the HRO to withhold his or her share of the FEHB premium for that pay period, the HRO must give the technician an opportunity to elect to continue his or her FEHB and incur a debt or to terminate enrollment. The HRO will terminate FEHB coverage if no response is timely received. This termination, either by election or by default, is not a cancellation for FEHB purposes.

8. What options are available to a technician who does not participate in premium conversion (therefore, paying his or her share of FEHB premiums after taxes) and gets furloughed?

A technician who specifically waived premium conversion (therefore, paying their share of FEHB premiums after taxes), and whose pay for a pay period is insufficient to cover the technician's share of premium, will be offered the same choices available to a technician covered by Question R.7. However, unlike a technician who participates in premium conversion, he or she may cancel FEHB coverage at any time. He or she does not need a QLE.

9. If a technician cancels his or her FEHB enrollment, will the technician forfeit rights to 31-day temporary extension, Temporary Continuation of Coverage and conversion to an individual policy, coverage while receiving workers' compensation, continuation into retirement and coverage for survivors?

A technician who elects to cancel coverage should be made fully aware that if coverage is cancelled:

(1) the technician and all eligible family members do not get a 31-day temporary extension of coverage upon cancellation, and the technician may not reenroll in FEHB until he or she has another QLE that permits enrollment, or the next FEHB Open Season, even upon transfer to another Federal State;

(2) if the technician separates from employment without reenrolling before separation, he or she will not be eligible to purchase temporary continuation of coverage (TCC) or an individual conversion policy;

(3) if the technician is injured and receives benefits from the Office of Workers' Compensation Programs (OWCP) during the time coverage is cancelled, the technician will not have an FEHB enrollment to continue during the period of OWCP coverage;

(4) if the technician retires while coverage is cancelled, the technician will not have a FEHB enrollment to continue into retirement. Moreover, even if the technician while still employed reenrolls in FEHB on account of a QLE or at FEHB Open Season, the period of cancellation is considered a break in FEHB coverage that may preclude his or her ability to continue FEHB coverage into retirement;

(5) if a technician dies while coverage is cancelled, there will be no self and family enrollment for survivors to continue, even if they are eligible for a survivor annuity.

10. Can a technician make an enrollment change because the technician is under an administrative furlough?

No. An administrative furlough is not a QLE that would permit a technician to change his or her FEHB plan or option. A technician who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) may not change to a self only enrollment.

Note that a technician who waived premium conversion (therefore, paying his or her share of FEHB premiums after taxes) may change to self only at any time. However, the technician should be aware that this will deprive his or her covered family members of FEHB coverage and the technician cannot change back to self and family until the technician has a QLE or the next FEHB Open Season. In the event of the technician's death, there will be no FEHB enrollment for surviving family members to continue, even if they are eligible for a survivor annuity.

11. Will full-time technicians receive a lower, pro-rated Government share of FEHB premiums if their hours are reduced under an administrative furlough?

No. FEHB law (title 5, U.S. Code, section 8906(b) (3)) requires the Government contribution toward FEHB premiums to be prorated (thus a larger technician share) for *part-time career technicians*, i.e. technicians with a documented regularly scheduled workweek of 16-32 hours per week. An administrative furlough does not change a technician's *regular work schedule*, e.g., from full-time to part-time. Thus, as long as a full-time technician does not change to *part-time career employment*, the technician remains entitled to a full Government contribution and the proration does not apply even if the number of hours per pay period is reduced during the furlough to within 16-32 hours per week.

12. Will part-time technicians receive a lower prorated Government share of the FEHB? premiums if their hours are reduced under an administrative furlough?

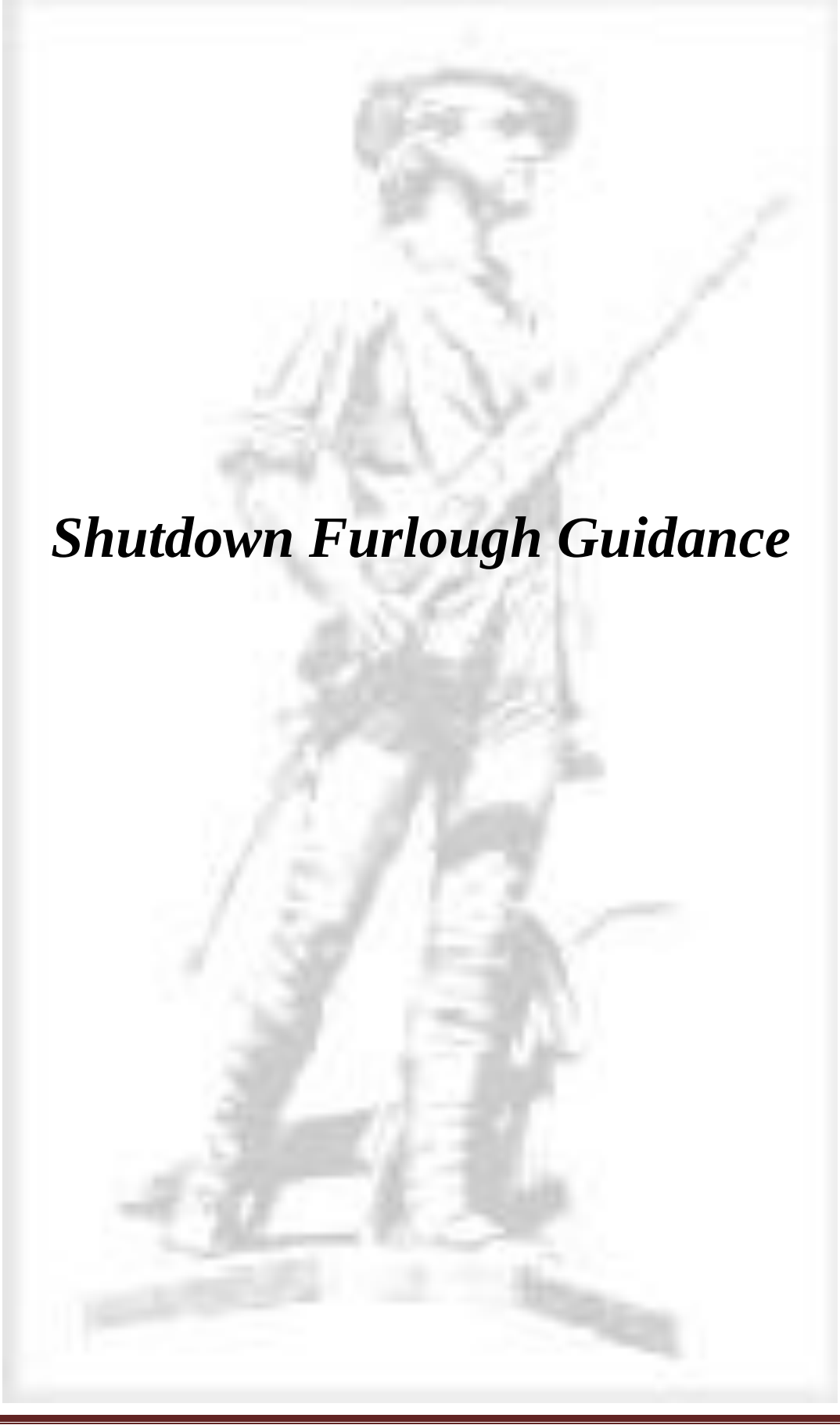
No. The Government contribution toward the FEHB premium for a technician working part-time is prorated based on the technician's *regular work schedule*. A technician's Notification of Personnel Action (SF 50) documents the technician's work schedule and number of part-time hours the technician is scheduled to work per pay period (blocks 32 and 33). This part-time

schedule should be the part-time schedule established for leave usage purposes (i.e., the schedule from which leave is charged for absences). A furlough action will place the technician in a non-duty/non-pay status during an otherwise scheduled workday, but it does not change the technician's *regular work schedule.* Therefore, the Government's prorated share of FEHB premium will not decrease.

Note: Additional Sources of Information
A list of QLEs for the FEHB Program may be obtained at http://www.opm.gov/forms/pdf_fill/sf2809.pdf.

OPM's FEHB webpage on Leave Without Pay and Insufficient Pay Status may be found at http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay.

SECTION 2



Shutdown Furlough Guidance

Shutdown Furlough Guidance

A. General

1. What is a furlough?

A furlough is the placing of an technician in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. What is a shutdown furlough and why is a shutdown furlough necessary?

In the event that funds are not available through an appropriations lapse or continuing resolution, a "shutdown" furlough occurs. A shutdown furlough is necessary when an State no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act.

B. Excepted Technicians

1. Who are "excepted" technicians?

In the context of shutdown furloughs, the term "excepted" is used to refer to technicians who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, must continue to be performed during a lapse in appropriations. Excepted technicians include technicians who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work. The Adjutant General is responsible for identifying those technicians considered "excepted" from a shutdown furlough.

2. Who are "exempt" technicians?

Technicians are "exempt" from furlough if they are not affected by a lapse in appropriations. This includes technicians who are not funded by annually appropriated funds. Technicians performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules.

3. What about technicians who are neither "excepted" nor "exempt"?

Technicians who are funded through annual appropriations but are not designated as excepted are barred from working during a shutdown, except to perform minimal activities as necessary to execute an orderly suspension of State operations related to non-excepted activities. These technicians will be furloughed.

4. How will technicians be notified whether they have been designated to be handling "excepted" or not?

Each Human Resources Office (HRO) will coordinate the method and timing to notify a technician as to whether or not he or she is affected by a shutdown furlough. (See Sample Notices located at the end of this document and also refer to the Labor Management Relations Implications questions and answers).

C. Working during Furlough

1. May a technician volunteer to do his or her job on a nonpay basis during a shutdown furlough?

No. Unless otherwise authorized by law, the National Guard may not accept the voluntary services of an technician. (See 31 U.S.C. 1342.)

2. What happens to technicians scheduled for training during a shutdown furlough?

Technicians who are neither excepted nor exempt and are scheduled for training during a shutdown furlough must be placed in a furlough status and ordered not to attend the scheduled training.

3. May technicians take other jobs while on furlough?

While on furlough, a technician remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards), at 5 CFR part 2635). In addition, there are specific statutes which prohibit certain outside activities, and State-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, technicians should review these regulations and then consult their State ethics official to learn if there are any State-specific supplemental rules governing the technician.

4. If a technician receives a temporary appointment in another State while furloughed, what happens to his/her benefits (e.g., retirement, health benefits, life insurance, leave)?

Retirement, health benefits, and life insurance are handled as if the technician had actually transferred to the new State. Leave balances are transferred as if the technician had actually transferred. (See Comptroller General opinion B-167975, September 1, 1970.)

5. How should an State determine the number of furlough hours for alternative work schedule (AWS) technicians during a shutdown furlough? Can a technician reschedule a non-workday that occurred during the furlough?

Technicians are furloughed based on the number of hours they are scheduled to work on the days for which there is a shutdown furlough. Each State that has an AWS program should have a policy specifying how flexible and compressed work schedules must be established and when they may be changed. Normally, such schedules are established in advance of the pay period

involved. Under such a policy, an AWS non-workday scheduled to occur during a shutdown furlough should not be changed after the pay period begins.

D. Pay

1. Will "excepted" technicians be paid for performing work during a shutdown furlough? If so, when will excepted technicians receive such payments?

States will incur obligations to pay for services performed by excepted technicians during a lapse in appropriations, and those technicians will be paid when Congress passes and the President signs a new appropriation or continuing resolution.

2. Will technicians who are furloughed get paid?

Congress will determine whether furloughed technicians receive pay for the furlough period.

3. Will technicians receive a paycheck for hours worked prior to a lapse in appropriations?

Under Office of Management and Budget (OMB) guidance issued in 1980 (below), technicians will receive this paycheck. Although the payroll for the last pay period before the lapse will be processed potentially during a period of furlough, the minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to issue the checks, including checks for the last pay period before the lapse. This guidance can be found in OMB's August 28, 1980, Bulletin No. 80-14, Shutdown of State Operations Upon Failure by the Congress to Enact Appropriations, paragraph 3.b.(1) (Appropriations and funds). OMB has reviewed and concurs in this answer.

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

Payroll offices will follow the guidance on the order of precedence for applying deductions from the pay of its civilian technicians when gross pay is insufficient to cover all authorized deductions found at http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477.

5. May an excepted technician be permitted to earn premium pay (e.g., Sunday premium pay, night pay) during the furlough period?

Excepted technicians who meet the conditions for Sunday premium pay, night pay and other premium payments will be entitled to payment in accordance with applicable rules, subject to any relevant payment limitations. Premium pay may be earned but cannot be paid until Congress passes and the President signs a new appropriation or continuing resolution.

E. Performance Awards and Within-Grade Increases

1. If State performance management policies and practices require the payment of performance awards to technicians, can the payment be delayed until after the shutdown furlough?

Yes. Neither law nor regulation requires States to pay performance awards granted under 5 U.S.C. chapters 43 and 45 and 5 CFR 451.104(a)(3). If State performance management policies and practices require the payment of performance awards, States may delay payment until after the furlough when funds are available.

2. **May States deny or delay within-grade or step increases for General Schedule and Federal Wage System technicians during a shutdown furlough?**

It depends on how long the shutdown furlough lasts. Within-grade and step increases for General Schedule (GS) and Federal Wage System technicians are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS technician in steps 1, 2, or 3 of the grade who is furloughed an aggregate of more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b).)

F. Leave and Other Time Off

1. **May an technician not excepted from the furlough take previously approved paid time off (e.g., annual, sick, court, military leave, or leave for bone marrow/organ donor leave, or compensatory time off, including religious compensatory time off) during a shutdown furlough?**

No. All paid time off during a shutdown furlough period must be canceled because the requirement to furlough supersedes leave and other paid time off rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid time off creates a debt to the Government that is not authorized by the Act. Therefore, States are instructed that during a shutdown furlough, all paid time off must be canceled.

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

No. When an excepted technician is not working or not performing excepted activities in compliance with the Antideficiency Act, he or she cannot be in a pay status. Excepted technicians must be either performing excepted activities or furloughed during any absence from work. The furlough must be documented by a furlough notice. If an excepted technician refuses to report for work after being ordered to do so, he or she will be considered to be absent without leave (AWOL) and will be subject to any consequences that may follow from being AWOL.

3. **May a technician work during the furlough period to accumulate religious compensatory time off hours for religious observances?**

A. An technician who is not "excepted" may not work during the furlough period, even to accrue religious compensatory time. However, an excepted technician may work additional hours for religious purposes if the technician is performing excepted activities, though the technician may not use those hours until after the lapse in appropriations is over.

4. **If an technician is scheduled to take approved unpaid leave during a shutdown furlough, should the State provide the technician with a furlough notice?**

It depends. If the technician is not expected to work during the furlough period (e.g., a 1- year period of leave without pay to accompany a military spouse overseas), then States are not required to provide the technician with a furlough notice. If, however, the technician is scheduled to return from unpaid leave to Federal service during the furlough period, the technician should be provided with a furlough notice (effective on the date of scheduled return), unless the technician is expected to be at work performing an excepted activity.

5. **If an technician is scheduled to take unpaid leave under the Family and Medical Leave Act (FMLA) during a shutdown furlough, should the State provide the technician with a furlough notice?**

It depends. If the technician is not expected to work during the furlough period (e.g., an technician who has just given birth and has requested 12 weeks of unpaid leave (leave without pay (LWOP)) under the FMLA), the State is not required to provide the technician with a furlough notice. If, however, the technician is scheduled to return from LWOP to Federal service during the furlough period, the technician should be provided with a furlough notice (effective on the date of scheduled return), unless the technician is expected to be at work performing an excepted activity. A technician on LWOP under FMLA during a shutdown furlough may not later substitute paid time off for the days of LWOP.

6. **Does LWOP under FMLA that is scheduled to be taken during a shutdown furlough period count toward the technician's 12-week FMLA leave entitlement?**

No.

7. **If a technician is scheduled to take paid leave or other paid time off under FMLA during a shutdown furlough, should the technician be furloughed?**

Yes. A technician must be placed in furlough status during any paid time off scheduled to be taken during a lapse in appropriations. If an technician is scheduled to take paid time off under FMLA during a shutdown furlough (either continuously or intermittently), the paid time off must be canceled and the technician must be furloughed for any period during which paid time off was scheduled. Thus, any days of scheduled paid time off are documented as furlough days. Any previously scheduled days of unpaid leave under FMLA will continue to be documented as LWOP. No days associated with a shutdown furlough period will be counted against a technician's 12-week FMLA leave entitlement.

8. **Are technicians who are not excepted from the furlough allowed to take paid leave or other paid time off during periods when other technicians are performing work necessary for an orderly suspension of State operations?**

No. All paid leave or other paid time off is cancelled during a period when a lapse in appropriations is in effect. There is no authority to obligate funds for paid time off during a lapse in appropriations. Technicians who are not excepted from the furlough are allowed to perform minimal activities as necessary to execute an orderly suspension of State operations related to non-excepted activities. Being on paid leave is not an activity necessary to execute an

orderly suspension of State operations. States should determine on a case- by-case basis whether it is necessary to require technicians who had been scheduled to take paid time off to report to duty to perform orderly suspension activities.

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

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

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

Technicians in this situation should make every effort to reschedule "use-or-lose" annual leave for use before the end of the current leave year. However, if this is not possible due to a lapse in appropriations, the Adjutant General can use their discretionary authority to restore any lost annual leave by determining that the technician was prevented from using his or her leave because of an exigency of the public business—namely, the need to furlough technicians because of the lapse in appropriations.

11. If an technician has properly scheduled use of "restored annual leave" that is due to expire at the end of the leave year (because it is the end of the 2-year restoration period) but that leave is canceled and lost due to lapse of appropriations, may the employing State restore that leave again?

Unfortunately, no—unless Congress enacts legislation providing otherwise. There is nothing in existing law or regulation that allows restored annual leave to be restored a second time. In fact, the Comptroller General has determined that unused restored annual leave may not be restored after expiration of the 2-year period. (See B-188993, December 12, 1977.)

G. Holidays

1. Will technicians get paid for a holiday that occurs during a shutdown furlough?

No. A technician (including excepted technicians) who does not work on a holiday will not receive pay for a holiday that occurs during a shutdown furlough.

2. Can excepted technicians be required to perform work on a holiday that occurs during a shutdown furlough?

Yes. Each State is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to such excepted activities. If an excepted

technician refuses to report for work on a holiday after being ordered to do so, he or she can be considered absent without leave (AWOL) and will be subject to any consequences that may follow from being AWOL.

3. **What pay entitlements will accrue to an excepted technician who performs work on a holiday during a shutdown furlough?**

The Federal Government will be obligated to pay an excepted technician who performs work on a holiday according to the normal rules governing pay for work on a holiday. For example, under 5 U.S.C. 5546(b), a covered technician would receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the technician's rate of basic pay. In addition, if such a technician performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the technician would receive overtime pay (or compensatory time off) for that work. Of course, an technician cannot receive payment for working on a holiday until an appropriations act or a continuing resolution is enacted.

H. Benefits

1. **Will an technician continue to be covered under the Federal Technician Health Benefits (FEHB) program during a shutdown furlough if the State is unable to make its premium payments on time?**

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

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

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

3. **If an technician submitted a new application or a change to his/her health insurance plan (e.g. because of a Qualifying Life Event) and the paperwork was not processed by the HRO because of a shutdown furlough, how would the technician seek services or coverage?**

New enrollments or changes in enrollment due to a Qualifying Life Event do not take effect until the technician has been back in pay status for any part of the prior pay period.

4. **Would a lapse in appropriations alter the effective date of an FEHB Open Season enrollment if an enrollment request was fully processed by the HRO and submitted to the health plan prior to the lapse?**

No. The effective date would still be the first day of the first full pay period in January.

5. **What happens if an individual makes an FEHB Open Season enrollment change but it did not get processessed before the furlough?**

The individual should continue to use the old health plan until he or she returns to pay status and the enrollment is processed to the new health plan.

6. **If an enrollee required healthcare after making an FEHB Open Season enrollment change that was not processed before a furlough and received coverage under the old health plan, will the new health plan be responsible for the coverage received once the furlough is over?**

Yes.

7. **If a furlough delays processing of FEHB Open Season enrollment changes, will the enrollment be retroactive?**

Yes. Per FEHB regulations, all Open Season enrollments and enrollment changes are effective on the first day of the first full pay period in January.

8. **If an individual's health plan is terminating participation in the FEHB Program at the end of the current benefit year, and an Open Season enrollment change has not been processed, what should the individual do in January?**

If the individual needs services urgently, he or she should incur the expenses and file a claim with the new plan once the enrollment change has been processed.

9. **How will someone know whether his or her FEHB enrollment request was fully processed and sent to the new health plan?**

If the individual receives an ID card, the enrollment in the new plan is effective. If an ID card is not received, the enrollment has not been processed.

10. **How will someone know if an electronic FEHB Open Season enrollment change was fully processed?**

If an ID card is received, the enrollment in the new plan is effective. If an ID card is not received, the enrollment has not yet been processed.

11. **What happens to an individual not currently covered under the FEHB who elected to enroll during Open Season if the enrollment has not been processed and will not be processed until after the furlough? Does this individual still have coverage with the elected plan? If so, when?**

Yes, such an individual would have coverage beginning on the first day of the first full pay period in January. Expenses incurred will be reimbursed by the plan once the enrollment has been processed. We suggest that such individuals ensure they use the plan's providers to get the maximum benefits. For fee-for-service plans, check the health plan's website for a list of network providers.

12. What happens to a technician's Federal Employees' Group Life Insurance (FEGLI) Program coverage if furloughed?

Coverage continues for 12 consecutive months in a nonpay status without cost to the technician or to the State. Neither the technician nor the State incurs a debt during this period of nonpay.

13. What happens to a technician's Flexible Spending Account (FSAFEDS) coverage if furloughed?

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

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

14. Will the effective date of my FSAFEDS enrollment be affected?

No.

15. What happens to a technician's Federal Long Term Care (FLTCIP) Program coverage if furloughed?

Payroll deductions will cease for any technician that does not receive pay. Coverage will continue so long as premiums are paid. If Long Term Care Partners does not receive payment for three consecutive pay periods, they will begin to direct bill the enrollee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

16. What happens to a technician's Federal Dental and Vision (FEDVIP) Program coverage if furloughed?

Payroll deductions will cease for any technician that does not receive pay. BENEFEDS will generate a bill to enrollees for premiums when no payment is received for two consecutive pay periods. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

17. Will the effective date of my FEDVIP Open Season enrollment be affected?

A. No.

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

States and technicians should refer to the TSP website or contact their State representative for

information. State representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1450 for additional information.

I. Technician Assistance

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

It is possible that furloughed technicians may become eligible for unemployment compensation. 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 technician's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Technicians" at http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp.) States or technicians should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices at http://www.servicelocator.org/OWSLinks.asp.

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

States and technicians should refer to the TSP website or contact their State representative for information. State representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1450 for additional information.

3. What resources are available if a Federal technician needs financial assistance during a government shutdown?

Some State technician assistance programs (EAP) include financial consultation services. In addition, technicians may want to contact their financial institution, credit union or learn about their options through the Thrift Savings Plan (www.tsp.gov).

4. How will Federal technicians access Employee Assistance Program (EAP) services in the event of a government shutdown?

EAP services can be helpful in providing confidential counseling and coaching with experienced, licensed counselors—including legal and financial consultation. Federal technicians are advised to contact their State's EAP office to determine whether services will be available in the event of a lapse in appropriations. Many Federal State EAPs are serviced by Federal Occupational Health (FOH), a division of HHS. Technicians who know their State uses FOH as a provider may contact their toll free EAP phone number (800) 222-0364 (TTY 888-262-7848) to find out how to access EAP services during a lapse in appropriations.

J. Service Credit for Various Purposes

1. Is furlough or leave without pay (LWOP) considered a break in service?

No, both mean the technician is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain

purposes.

2. To what extent does nonpay status affect Federal technician benefits and programs?

The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal technician benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" at http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

K. Federal Technicians on Military Duty

1. Can technicians who are taking military leave under 5 U.S.C. 6323 for days covered by a furlough continue to do so during a shutdown furlough?

No. As with other types of paid leave, paid military leave must be canceled for days covered by the furlough.

For technicians on active military duty, their status as Absent-Uniformed Service (formerly Leave Without Pay-Uniformed Service (LWOP-US)) is unchanged by periods of intermittent annual or military leave, per the guidance in Q&A 9 of the Frequently Asked Questions on Military Leave, at http://www.opm.gov/oca/leave/HTML/MILQA.asp.

2. Will technicians continue to receive a reservist differential payment (5 U.S.C. 5538) while on active duty when they are furloughed from their Federal civilian employment?

No. The reservist differential payments are intended to make up the difference between the technician's customary civil service compensation and his or her military pay, and they are made from the funds of the employing State appropriated for the payment of technicians' salaries. Since funds are not available for technicians' salaries during a furlough, no funds may be obligated towards any type of payment for reservist differential. However, if subsequent legislation is passed reimbursing technicians their civilian pay for the period of the furlough, it will be necessary for the State to calculate any reservist differential payments that may be owed.

3. Will there be an impact on an technician's General Schedule or Federal Wage System within-grade increase (WGI) waiting period due to an technician being in an Absent- Uniformed Service status during a shutdown furlough?

No. The furlough has no impact on a technician's General Schedule or Federal Wage System WGI waiting period if the technician is in an Absent-Uniformed Service status. An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when the technician returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).

L. Retirement

1. **If a shutdown furlough occurs during the 3 years of service prior to retirement, what effect will time in a furlough status have on a technician's high-3 average pay?**

Generally there will be no effect on the high-3 average pay unless the furlough causes the technician to be in a nonpay status for more than 6 months during the calendar year.

2. **Are the retirement rules concerning the effect of a shutdown furlough the same for technicians under the Civil Service Retirement System and the Federal Technicians Retirement System?**

Yes.

3. **What will happen to technicians who would have retired during a shutdown furlough?**

For technicians who, on or before the requested retirement date, submitted some notice of their desire to retire, States should, when the lapse in appropriations ends, make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement), and can be either mailed or personally submitted to the State. Any additional required paper work, such as the formal retirement application form, may be completed when the State reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an technician of the State.

4. **If an technician is scheduled to retire before the end of the leave year with an annual leave balance of over the maximum leave ceiling (e.g., 240, 360, or 720 hours, as applicable) and the furlough prevents the technician's retirement from getting processed until January, does the technician lose his or her annual leave above the maximum leave ceiling?**

No. The technician's retirement would be retroactively applied to a date prior to the end of the leave year, and the technician would receive the full amount of accumulated and accrued annual leave in a lump-sum payment.

M. Payments upon Separation from Federal Service

1. **If there is a shutdown furlough, how does this impact a separating technician's lump- sum payment for their unused annual leave?**

In the event of a shutdown furlough, any payments incurred by the State for an technician's lump-sum payment will be delayed until funds are available.

2. **How are separated technicians' entitlements to severance pay affected by a shutdown furlough?**

Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the Government of the United States.

(Severance pay is suspended or terminated when the individual is reemployed by the Federal Government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the Federal Government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period). Thus, in the case of a shutdown furlough, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as payroll checks for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of nonexcepted activities, severance pay checks covering days before the lapse may also be processed.

No funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

Additional information on severance pay (including eligibility criteria and payment formulas) can be found at http://www.opm.gov/oca/pay/HTML/severance_pay.asp.

N. Continuation of Pay

1. How is Continuation of Pay (COP) under the Federal Technicians' Compensation Act affected by a Government shutdown?

The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Technicians' Compensation Act (FECA) advises that, in the event of a Government shutdown, an technician who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the State does not have monies available to pay the salary of that technician. If the State does not have monies to pay salary during the shutdown but the State's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown period, the technician should receive COP for any period of disability that occurs within the shutdown. In the event a State is legally unable to pay COP to an technician because of a lapse in appropriations, the technician may file a claim for regular FECA wage loss compensation for that period.

O. Unemployment Compensation

1. Is a technician entitled to unemployment compensation while on furlough?

It depends. Rules for unemployment compensation eligibility differ State to State. It is possible that a furloughed technician may become eligible for unemployment compensation immediately in some locations; whereas other States require a one-week waiting period before qualifying for compensation. In general, the State's laws, relative to the location of the technician's last official duty station while in technician service, determine eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Technicians (technicians)" at http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp). Before applying for unemployment compensation, the technician should contact the HRO Technician

Benefits Specialist for the required SF 8 form. The HRO Technician Benefits Specialist will provide employment information upon request from the Department of Labor Unemployment Compensation Office. The Department of Labor's website provides links to locations of individual State unemployment compensation offices at http://www.servicelocator.org/OWSLinks.asp.

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

Federal States are required to provide technicians with an SF-8 if they will be in a nonduty status for seven or more consecutive days.

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

The address on the SF-8 should be the address for the Human Resources Office. The FIC is 422 for the Department of the Army and 424 for the Department of the Air Force.

4. Is an unemployment compensation claim based on the State where the technician lives or where they work?

Unemployment compensation claims are based on the State in which the work was performed.

5. Are technicians who are lower than a Grade 9, Step 5, exempt from paying back unemployment compensation benefits if they are later paid for the furlough period?

The decision on whether or not technicians would have to pay back unemployment compensation benefits would be decided by each State Employment Security States based on their unemployment compensation law. Overpayment requirements apply to all technicians for a particular State, regardless of their grade or salary.

6. Is information available as to what the States require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each State when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at http://www.oet.ky.gov/des/ui/Staterefguide.asp - that lists State Web sites, plus telephone numbers, for about 40 States.

Alabama – http://dir.alabama.gov/uc
Alaska – http://www.labor.State.ak.us/esd_unemployment_insurance/biff-splash.htm
Arizona – https://www.azdes.gov/landing.aspx?id=4211
Arkansas - http://www.arkansas.gov/esd/UI/index.htm
California – https://eapply4ui.edd.ca.gov/ Colorado – https://wwws.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e
Connecticut –http://www.ctdol.State.ct.us/progsupt/unemplt/M1A/LogInIntro.htm
Delaware – http://www.delawareworks.com/Unemployment/welcome.shtml
District of Columbia – https://does.dcnetworks.org/InitialClaims/
Florida –

http://www.floridajobs.org/job-seekers-community-services/reemployment-assistancecenter/file-a-claim
Georgia - http://www.dol.State.ga.us/
Hawaii – http://hawaii.gov/labor/ui
Idaho – http://labor.idaho.gov/dnn/Default.aspx?alias=labor.idaho.gov/dnn/idl
Illinois – http://www.ides.State.il.us/individual/certify/default.asp
Indiana – http://www.in.gov/dwd/
Iowa – http://www.iowaworkforce.org/ui/file1.htm#1.
Kansas – www.getkansasbenefits.gov
Kentucky – http://www.kewes.ky.gov/
Louisiana – https://laors.laworks.net/laclaims/Web site/
Maine – https://gateway.maine.gov/DOL/mics/BasePage.aspx
Maryland – electronic filing not permitted if technician worked for the Federal Government in the past 18 months. File by phone at 410-949-0022 in the Baltimore area, or 1-800-827-4839 outside the Baltimore area. Information is at http://www.dllr.State.md.us/employment/unemployment.shtml
Massachusetts – initial claim by phone or in person only. File by phone at 1-877-626-6800 from Massachusetts, 617-626-6800 outside Massachusetts. Information is at http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd
Michigan – http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html
Minnesota – http://www.uimn.org/
Mississippi http://mdes.ms.gov/unemployment-claims/
form must then be brought in person to a Mississippi Job Center
Missouri – http://www.labor.mo.gov/DES/Claims/
Montana – https://app.mt.gov/ui4u/index
Nebraska – https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp
Nevada – http://www.ui.nvdetr.org/UI_Agreement.html
New Hampshire – http://www.nh.gov/nhes/
New Jersey – http://lwd.dol.State.nj.us/labor/ui/ui_index.html
New Mexico – http://www.dws.State.nm.us/
New York – https://ui.labor.State.ny.us/UBC/home.do?FF_LOCALE=1
North Carolina – https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp
North Dakota – https://secure.apps.State.nd.us/jsnd/uiiaclaims/login.htm
Ohio – http://unemployment.ohio.gov/
Oklahoma – https://unemployment.State.ok.us/instructions.asp?x=n
Oregon – http://findit.emp.State.or.us/ocs
Pennsylvania – https://www.paclaims.State.pa.us/UCEN/
Puerto Rico - http://www.trabajo.pr.gov/
Rhode Island – https://uiclaims.State.ri.us/RI-ICS/Intro/index.aspx?AC=yes
South Carolina – http://dew.sc.gov/
South Dakota – http://dlr.sd.gov/ui/default.aspx
Tennessee – http://www.State.tn.us/labor-wfd/esdiv.html
Texas – http://www.twc.State.tx.us/ui/uiclaim.html
Utah – http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx
Vermont – file by phone only, by calling 1-877-214-3330. Information is at http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx
Virginia – http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm
Virgin Islands – file in person only
http://www.vidol.gov/OP/Contact.htm

Washington – http://www.esd.wa.gov/uibenefits/index.php
West Virginia – http://www.wvuc.org/
Wisconsin – https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp
Wyoming - https://doe.State.wy.us/InetClaims/

P. Injury While on Furlough

1. Are technicians who are injured while on furlough or LWOP eligible to receive workers compensation?

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

Q. Procedures

1. Should HROs process SF-50s, or equivalent, for furloughed technicians at the outset of the shutdown?

A. No. When the furlough begins, HROs should not prepare an SF-50, "Notification of Personnel Action" (or a List Form of Notice for a group of technicians who are to be furloughed on the same day or days each pay period). Further guidance regarding documentation will be communicated to States at the conclusion of the furlough.

2. In the event of a shutdown furlough, can an technician be furloughed without first receiving a written notice of decision to furlough?

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

3. What information should be included in the notice of decision of a shutdown furlough when no advance notice is issued?

The notice must specify the reason for the furlough and State that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of State operations.

See "Sample Shutdown Furlough Decision Notice Due to Lapse of Appropriations."

4. **In addition to statutory and regulatory procedural requirements, what other forms of communication should a State consider when implementing a shutdown furlough?**

A. Considering the uncertain and changing circumstances surrounding a shutdown furlough, States should make efforts to ensure that technicians are provided with up-to-date and accurate information. If time permits before a furlough starts, this may be done through effective union-management communication, technician briefings, periodic bulletins, and newsletters. Once a furlough begins, States can also consider using 800 numbers and emails to home email accounts.

5. **How does the length of a shutdown furlough affect the procedures that are used to implement the furlough of technicians?**

The length of a shutdown furlough does not affect the procedures that are used. Reference TPR 715. e.

NOTE: RIF furlough regulations are not applicable to emergency shutdown furloughs because the ultimate duration of an emergency shutdown furlough is unknown at the outset and is dependent entirely on Congressional action, rather than State action. The RIF furlough regulations, on the other hand, contemplate planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days.

6. **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 technicians until they report for work and are sworn in. States should consider delaying the enter-on-duty date for new technicians who are scheduled during a shutdown furlough.

7. **At the time of an appropriations lapse, an technician who is funded through a lapsed appropriation is on temporary duty assignment away from the technician's normal duty station. The State notifies the technician to return to the technician's normal duty station. Can the technician elect to delay the return? If the technicians decides to delay the return, and as a result the technician incurs additional travel costs, who is liable for those additional travel costs?**

Technicians who are notified to return home should do so as soon as practicable. When a technician returns promptly, the travel expenses that the technician incurs in the return are properly-incurred obligations of the State (as part of the State's orderly-shutdown activities), and the State will reimburse these travel costs after appropriations are enacted and are available for that purpose. If, however, an technician elects not to return promptly and, as a result of this decision, the technician incurs additional travel expenses, those additional travel expenses are not obligations of the State, and will not be reimbursed (instead, the technician is personally liable for the additional travel expenses); while the technician will be personally liable for the additional travel expenses, the State will continue to incur the obligation for those travel costs that would have been incurred if the technician had returned promptly, and the State will reimburse such

"prompt return" travel costs after appropriations are enacted and are available for that purpose. Finally, in the case of those technicians who are notified by their State that they are to remain on travel, because the continuation of their travel is in direct support of an excepted State activity, their travel expenses are properly-incurred obligations of the State (as part of the State carrying out an excepted activity), and the State will reimburse the travel costs after appropriations are enacted and are available for that purpose.

8. What happens to current Federal technicians who are scheduled to transfer to a new State during a shutdown furlough?

States should consider delaying the enter-on-duty date for technicians who are scheduled to transfer to a new State during a shutdown furlough. Such technicians would remain on the rolls of their former State until the new transfer effective date.

9. If a Government shutdown occurs, how will furloughed technicians be informed when it is over?

Technicians should follow their State procedures, including any applicable collective bargaining agreements, which may include monitoring OPM's website (www.opm.gov) and media outlets for notification that a continuing resolution or appropriation has been signed by the President.

10. When a Government shutdown ends, when are furloughed technicians expected to return work?

If a shutdown were to occur, guidance concerning when furloughed technicians should come back to work at the conclusion of the shutdown would have to be tailored to the specific situation. In the absence of such guidance, States should apply a rule of reason in requiring technicians to return to work as soon as possible, taking into account the disruption in the lives and routines of furloughed technicians that a shutdown causes.

R. Labor Management Relations Implications

1. When a lapse in appropriations requires a shutdown furlough, what is a State's obligation to bargain?

The decision whether to furlough technicians and which activities are excepted from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. §7106(a). However, when State determines that a shutdown furlough is necessary, States have a duty to notify their exclusive representatives and, upon request, to the extent possible conduct impact and implementation with the union, unless the matter of furloughs is already "covered by" a collective bargaining agreement.

In the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities due to a Government shutdown, whatever bargaining that can occur prior to taking action should occur to the extent possible before furlough actions are necessary.

However, if agreement isn't reached in the time allowed, the State should tell the union what actions it will take and offer to continue bargaining on a post implementation basis.

2. What is the State's obligation in responding to a union request under 5 U.S.C. 7114 seeking the State's furlough plan and a list of excepted and nonexcepted technicians?

A State is required to provide data that is normally maintained, reasonably available and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. A State denying a request for information must assert and establish any countervailing anti-disclosure interests. A State may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, States will have to evaluate the circumstances of their situation to determine whether they should provide the requested information.

3. Can union officials work on "official time" during a shutdown?

Furloughed technicians are prohibited from working on official time, because official time is a paid status, and States may not incur financial obligations during a lapse in appropriations. Official time is not permitted for excepted technicians because they are only permitted to work on activities that are authorized under the Antideficiency Act. Official time is used for Union representational activities, which do not fall within any of the Anti-Deficiency Act's exceptions.

4. Will union officials have access to their union offices if they are in furlough status and therefore not entitled to official time for representational activities?

Generally, access to facilities during a furlough may be restricted based on funding, security or other issues. Depending on State operations, 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. If furloughed union officials are allowed access, it would be solely for the purpose of performing voluntary representational functions (i.e., they could not be working on official time or in any other way incurring obligations that would require subsequent State payment).

SAMPLE NOTICE 1— Notice of Proposed Furlough Under 32 USC § 709(f)(3)

1. This memorandum notifies you that the **[State name]** National Guard proposes to furlough you no earlier than 30 days from receipt of this notice. This furlough is being proposed in accordance with Technician Personnel Regulation (TPR) 715, *Voluntary and Non-Disciplinary Actions*. This administrative furlough is necessitated by the extraordinary and serious budgetary challenges facing the Department of Defense (DoD) for the remainder of Fiscal Year (FY) 2013, the most serious of which is the sequester that began on March 1, 2013. The Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012, makes across-the-board reductions to budgetary resources for the Federal government. In addition, the DoD must and will protect wartime operations funding for our troops in harm's way. This inevitably means larger cuts in base-budget funding for the Operation and Maintenance (O&M) accounts. Thus, the DoD will need funding in other accounts that can be used to provide the warfighters with what they need to protect national security and fight the war. This furlough is proposed to help meet their need while avoiding a deficit of funds in FY 2013.

2. If other technicians in your competitive level (*i.e.*, generally, positions at the same grade level and classification series, the duties of which are generally interchangeable) are not being furloughed or are being furloughed for a different number of days/hours, it is because they (1) are currently in a non-pay status; (2) are on an assignment not otherwise causing an expenditure of funds to the State; or (3) are in a position whose duties have been determined to be of crucial importance to this State's military mission and responsibilities and cannot be curtailed. *[This paragraph may be changed only based upon approved Component management plan.]*

3. We plan to apply the following procedures and conditions related to the furlough: *[Items 1, 2, 3, and 4 of this section may need to be modified based on the results of collective bargaining]*

4. The furlough will be on discontinuous (intermittent) days, unless the needs of the State military mission require otherwise, and beginning **[date]** through approximately **[date]**. Full-time technicians will be furloughed no more than 14 workdays or 112 hours. If you are a part-time technician, your furlough time off will be prorated, based on your work schedule.

5. Due to the uncertain and potentially fluctuating amount of funding which may be available to this State, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of each pay period of the number of furlough hours required to allow financial obligations of the DoD to be met. Generally, you will not be furloughed for more than 16 *[this number may change based on when the furlough is implemented]* hours for each pay period between **[date]** and **[date]**.

6. Based upon mission and workload considerations and subject to management approval, you may request a specific schedule for furlough.

7. Annual, sick, court, military leave, or leave without pay which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a non-pay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

8. At this time, we do not reasonably anticipate the need for furlough beyond 14 workdays (112 hours). However, should additional furlough days/hours become necessary, technicians will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the State funding level becomes available. If you have questions, contact **[contact name, phone number, and email address]**.

9. You will be allowed seven calendar days from receipt of this letter to respond in accordance with TPR 715. You may requests review of your furlough action by submitting your objections to the Human Resource Officer (HRO). The Adjutant General (TAG) will take whatever action he/she deems appropriate to thoroughly review your objections along with management's need for the furlough. To review the supporting materials, please contact the appropriate individuals listed below: *[This paragraph may be modified as needed to fit Component requirements.]*

10. **[Contact names, phone numbers, and email addresses]**

11. Your written reply should be mailed to the HRO **[name and title]**, **[address]** or may be delivered to **[address/room number]**.

12. A final decision will be issued by TAG as soon as possible after the seven days allowed for your reply has elapsed.

13. No decision to furlough you has been made or will be made until full consideration is given to your reply.

Human Resource Officer Date

I acknowledge receipt of this notice.

Technician's Signature Date

SAMPLE NOTICE 2— Notice of Decision to Furlough Under 32 USC § 709(f)(3)

1. By written notice of **[date]**, you were notified of a proposal to furlough you pursuant to the procedures in TPR 715, *Voluntary and Non-Disciplinary Actions*.

2. I have determined that the reasons for the proposed furlough, as Stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning **[date]** through **[date]**.

3. In accordance with the procedures and conditions outlined in the notice of proposal dated **[insert date]**, you will be furloughed for no more than **[number]** hours in each of the pay periods or parts thereof, between **[date]** and **[date]**. The maximum furlough time for full-time technicians will be no more than 14 discontinuous workdays, for a maximum of 114 hours. For full-time technicians, this maximum is based on a regular work schedule of 80 hours per pay period. A part-time technician's number of hours required for furlough is prorated according to the specific work schedule.

4. Your supervisor will inform you of the amount of furlough time required prior to each pay period. Please contact your supervisor if you have any questions concerning the scheduling of your furlough days.

5. When you are on furlough, you will be in a non-pay, non-duty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace, and are prohibited from performing any work-related duties during that time.

6. In accordance with 32 U.S.C. § 709(f) (4), there is no right of appeal beyond the adjutant general.

7. We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the State funding level becomes available. If you have questions, contact **[contact name, phone number, and email address]**.

Adjutant General Date

I acknowledge receipt of this decision.

Technician's Signature Date

SAMPLE NOTICE 3— Notice of Decision to Furlough Under 32 USC § 709(f)(3)

1. By written notice of **[date]**, you were notified of a proposal to furlough you pursuant to the procedures in TPR 715, *Voluntary and Non-Disciplinary Actions*.

2. Your reply(ies) received in response to that proposal notice have been reviewed and carefully considered. I have determined that the reasons for the proposed furlough, as Stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning **[date]** through **[date]**.

3. In accordance with the procedures and conditions outlined in the notice of proposal dated **[insert date]**, you will be furloughed for no more than **[number]** hours in each of the pay periods or parts thereof, between **[date]** and **[date]**. The maximum furlough time for full-time technicians will be no more than 14 discontinuous workdays, for a maximum of 112 hours. For full-time technicians, this maximum is based on a regular work schedule of 80 hours per pay period. A part-time technician's number of hours required for furlough is prorated according to the specific work schedule.

4. Your supervisor will inform you of the amount of furlough time required prior to each pay period. Please contact your supervisor if you have any questions concerning the scheduling of your furlough days.

5. When you are on furlough, you will be in a non-pay, non-duty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace, and are prohibited from performing any work-related duties during that time.

6. In accordance with 32 U.S.C. § 709(f)(4), there is no right of appeal beyond the adjutant general.

7. We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the State funding level becomes available. If you have questions, contact **[contact name, phone number, and email address]**.

___
Adjutant General Date

I acknowledge receipt of this decision.

___
Technician's Signature Date

SAMPLE NOTICE 4— Notice of Decision to Modify Furlough Under 32 USC § 709(f)(3)

1. By written notice of **[date]**, you were notified of a proposal to furlough you pursuant to the procedures in TPR 715, *Voluntary and Non-Disciplinary Actions*.

2. Your reply(ies) received in response to that proposal notice have been reviewed and carefully considered. While I have determined that the reasons for the proposed furlough, as Stated in the notice of the proposal, remain valid, I have decided to mitigate your furlough as follows.

3. ***[This paragraph may be modified to properly reflect relief granted.]*** You will be required to be on a discontinuous furlough during the period beginning **[date]** through **[date]**. You will be furloughed for no more than **[number]** hours in each of the pay periods or parts thereof, between **[date]** and **[date]**. The maximum furlough time for full-time technicians will be no more than 14 discontinuous workdays, for a maximum of 112 hours. For full-time technicians, this maximum is based on a regular work schedule of 80 hours per pay period. A part-time technician's number of hours required for furlough is prorated according to the specific work schedule.

4. ***[This paragraph may be modified to properly reflect relief granted.]*** Your supervisor will inform you of the amount of furlough time required prior to each pay period. Please contact your supervisor if you have any questions concerning the scheduling of your furlough days.

5. When you are on furlough, you will be in a non-pay, non-duty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace, and are prohibited from performing any work-related duties during that time.

6. In accordance with 32 U.S.C. § 709(f)(4), there is no right of appeal beyond the adjutant general.

7. We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the State funding level becomes available. If you have questions, contact **[contact name, phone number, and email address]**.

___
Adjutant General Date

I acknowledge receipt of this decision.

___
Technician's Signature Date

SAMPLE NOTICE 5— NOTIFICATION TO UNION OFFICIAL OF PLANNED TECHNICIAN ADMINISTRATIVE FURLOUGH

[Note: This is the advance written notice required by collective bargaining agreements, when the State is planning an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where the State chooses to furlough on discontinuous days. States who choose to furlough on a continuous-day basis should amend the sample accordingly.]

1. Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, across-the-board reductions are scheduled to take place March 1, 2013, unless legislation is enacted that avoids such reductions. If this happens, sequestration will reduce each State's budgetary resources in non-exempt accounts for the remainder of the fiscal year (which runs through September 30, 2013).

2. If sequestration occurs, the Department of Defense and National Guard Bureau have directed the execution of technician furloughs not to exceed 14 discontinuous days. A furlough is the placing of a technician in a temporary non-duty, non-pay status because of lack of work, reduction/ lack of funds, or other non-disciplinary reasons.

3. This letter serves as management's advance notice of a possible furlough affecting bargaining unit technicians in the [State] National Guard. Our Human Resources Office personnel are reviewing furlough procedures outlined in our collective bargaining agreement(s). We invite a cooperative approach from your officers to help us all get through these challenging times.

4. Questions or concerns regarding this correspondence may be addressed to [name of labor relations specialist], [State] Human Resources Office, [POC email and phone number].

Sincerely,

Signature Block

SAMPLE SHUTDOWN FURLOUGH DECISION NOTICE DUW TO LAPSE OF APPROPRIATIONS

This notice would be used for a "shutdown" furlough, where the State no longer has the necessary funds to operate and must curtail those activities not excepted by OMB standards. In such instances there is no advance written notice proposing the action. See 5 CFR 752.404(d) and 359.806(a)).

NOTICE

SUBJECT: Notice of Decision to Furlough due to a Lapse in Appropriation

In the absence of either a Fiscal Year (FY) 14 appropriation, or a continuing resolution for the Department of Defense, no further financial obligations may be incurred by [state NG], except for those related to the orderly suspension of [state NG] operations or performance of excepted activities as defined by National Guard Bureau guidance. This action is being taken because of a sudden emergency requiring curtailment of the state's activities; therefore, no advance notification is possible. You are hereby notified of a furlough pursuant to the authority in Technician Personnel Regulation 715, *Voluntary and Non-Disciplinary Actions*.

The Adjutant General has determined that your services are not required to perform minimal activities as necessary to execute an orderly suspension of agency operations and you are not engaged in one of the excepted functions. Therefore, you are being placed in a furlough status effective [enter date]. This furlough is not expected to exceed 30 days. This furlough notice expires on [enter date]. You should monitor public broadcasts and the Internet. When a continuing resolution or an FY [state year] appropriation for [agency name] is approved, you will be expected to return to work on your next regular duty day.

When you are on furlough, you will be in a non-pay, non-duty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace, and are prohibited from performing any work-related duties during that time.

In accordance with 32 U.S.C. §709(f)(4), there is no right of appeal beyond the adjutant general.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact **[contact name, phone number, and email address]**.

_____ _____
Adjutant General Date

I acknowledge receipt of this decision.

_____ _____
Technician's Signature Date

"Supporting those who are Always Ready…Always There"