

# EPA Lapse in Appropriations – Frequently Asked Questions

For general guidance on lapse in appropriations, please refer to the [OPM Guidance for Shutdown Furloughs \(opm.gov\)](https://www.opm.gov/policy-data-oversight/shutdown/furloughs/) and [Addendum to OPM Guidance for Shutdown Furloughs: Guidance on Leave, Unemployment Compensation, Thrift Savings Plan, Retirement Services, and Workers' Compensation](#).

## TOPLINE QUESTIONS

### **1. What is a lapse in appropriations?**

The Antideficiency Act prohibits agencies from incurring financial obligations in excess or in advance of appropriations, so when Congress does not enact an annual appropriation bill or continuing resolution, a shutdown furlough occurs.

### **2. What happens during a lapse?**

In the event of a lapse in appropriations, with limited exceptions, the Agency ceases regular operations. At the beginning of a lapse, the Office of the Chief Financial Officer will determine how many days the Agency can continue to operate on what are known as “carryover” funds, typically one to two weeks. In the event of a shutdown, EPA will communicate the exact number of carryover days available for all employees to work. If the lapse in appropriations extends longer than available carryover days, employees will be either furloughed, excepted, or exempted and receive further guidance accordingly.

In 2023, EPA is piloting an approach to lapse planning given the availability of funds through the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA), which are not subject to annual congressional appropriation. Under the pilot program, employees who can work 100% on IIJA- or IRA-funded programs may be exempted and therefore continue to work and be paid under a lapse. During a lapse, these employees can only work on IIJA or IRA activities supported by available payroll in the relevant program(s). OMS will work with each office’s Senior Resource Official to designate exempt employees who can work a full pay period exclusively on IIJA and IRA activities without performing any work funded with annual appropriations.

### **3. Why is EPA changing its lapse policy?**

Since the last lapse in appropriations, Congress enacted the Infrastructure Investment and Jobs Act and the Inflation Reduction Act. These laws appropriated significant resources to EPA not part of the annual appropriations process and thus are exempt from annual appropriations lapses. The Consolidated Appropriations Act, 2023 also provided the EPA with the authority to spend funds derived from Superfund taxes collected in the prior year.

#### **4. What does it mean to be furloughed?**

Employees whose work is funded through annual appropriations but is not designated as excepted work are barred from working during a shutdown, other than to perform minimal activities as necessary to execute an orderly suspension of agency operations related to nonexcepted activities.

#### **5. What are excepted activities?**

“Excepted” activities are those legally authorized to continue despite a lapse in appropriations. An agency may incur obligations in advance of appropriations if the activity is: a) necessary to perform activities expressly authorized by law; b) necessary to perform activities necessarily implied by law; c) necessary to the discharge of the President’s constitutional duties and powers; or d) necessary to protect life and property. You can find additional information on excepted activities in the [Agency's lapse plan](#).

#### **6. What are exempted activities?**

An agency may “exempt” activities from the shutdown if the activities have funds available. The two main types of exempted activities at EPA are: (1) those that are funded with unexpired appropriations where carryover funds remain unobligated, and (2) activities that are funded with appropriations that are not subject to the annual appropriations process. Approved exempted activities may only continue for as long as there are funds available to support the exempted activities. Where funds supporting an exempted activity are exhausted, the agency may only continue the activity if it also falls into one of the excepted categories. You can find additional information on exempted activities in the [Agency's lapse plan](#).

#### **7. How will I know to which group I belong?**

If you are an excepted or an exempted employee, you will be notified by your Assistant Administrator, Regional Administrator, or their designee. If you are furloughed, you will receive a furlough notice via email.

#### **8. Whom should I contact if I did not receive a furlough notice, or an exception or exemption notice?**

You should contact the Senior Resource Official (SRO) for your organization (see the following below.)

Office	SRO	Email
OA	Wesley Carpenter	Carpenter.Wesley@epa.gov
OAR	Betsy Shaw	Shaw.Betsy@epa.gov
OCFO	Lek Kadeli	Kadeli.Lek@epa.gov
OCSPP	Rick Keigwin	Keigwin.Richard@epa.gov
OECA	Cecil Rodrigues	rodrigues.cecil@epa.gov
OEJECR	Theresa Segovia	Segovia.Theresa@epa.gov
OGC	Elise Packard	Packard.Elise@epa.gov
OIG	Kellie Walker	walker.kellie@epa.gov
OITA	Vickie Richardson	Richardson.Vickie@epa.gov
ORD	Chris Robbins	Robbins.Chris@epa.gov
OLEM	Barry Breen	Breen.Barry@epa.gov
OMS	Yulia Kalikhman	kalikhman.yulia@epa.gov
OW	Benita Best-Wong	Best-Wong.Benita@epa.gov
R1	Arthur Johnson	Johnson.Arthur@epa.gov
R2	Donald Pace	Pace.Donald@epa.gov
R3	Catharine McManus	mcmanus.catharine@epa.gov
R4	Kristy Eubanks	eubanks.krysti@epa.gov
R5	Amy Sanders	Sanders.Amy@epa.gov
R6	Mary A. Stanton	Stanton.MaryA@epa.gov
R7	Mike Brincks	brincks.mike@epa.gov
R8	Lance McCluney	McCluney.Lance@epa.gov
R9	Kerry Drake	Drake.Kerry@epa.gov
R10	Angela Chung	Chung.Angela@epa.gov

## **9. Am I guaranteed pay once the government reopens?**

Yes. In 2019, Congress enacted the Government Employee Fair Treatment Act. The law guarantees back pay to employees who are not paid as a result of a government shutdown.

## **10. Can I work at my EPA job during a shutdown?**

EPA lapse policy states that the Agency will consider available carryover in maintaining operations. The Administrator or designee will inform employees of the operating status of EPA under a lapse in appropriations. At the point the EPA is in shutdown, you absolutely cannot work during a shutdown unless you have received explicit prior approval that you are exempted or excepted. If you are not exempted or excepted (i.e., you are furloughed,) then you are not authorized to carry out any official duties during the shutdown. For example, you cannot act on behalf of the Agency, represent the Agency, attend Agency-funded training courses, use Agency resources including EPA laptops and mobile devices, answer questions regarding your EPA work, or access Agency IT systems such as e-mail, either remotely or in person.

## **11. Am I still considered to be an EPA employee even during the shutdown?**

Yes, even during the shutdown, you are still an EPA employee and subject to the Hatch Act, conflict of interest laws, and standards of ethical conduct, including rules regarding outside employment. See Office of Government Ethics (OGE) [Legal Advisory 18-02](#), "Ethics Laws and Regulations Continue to Apply to Federal Government Employees during Furlough Periods" (01/19/18) and OGE [Legal Advisory 18-16](#), "Ethics Laws and Regulations Continue to Apply to Federal Government Employees during Furlough Periods" (12/21/18)

In addition, there are ethics rules that prohibit certain outside activities and EPA-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. See, e.g., [Office of Government Ethics Legal Advisory 18-02](#), which references [OGE Legal Advisory 13-02](#) and [OGE memorandum 04 x 6](#) before engaging in outside employment, you should consult with Justina Fugh, Director of the Ethics Office, at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or [ethics@epa.gov](mailto:ethics@epa.gov). Justina is permitted to answer ethics-related questions during the shutdown.

## **12. If an employee is furloughed, how much time do they have to perform their orderly shutdown activities?**

Up to four hours to shut down your workstation and secure your work area. If you believe the nature of your work or workstation requires longer than four hours to shut down and secure, consult your SRO (see list in Question 8). If it takes you less than four hours to complete shutdown activities, you will indicate that in PeoplePlus.

## **13. What does it mean to "shutdown" your workstation?**

Shutdown responsibilities include:

- a. Accessing your email and reading your furlough notice.
- b. Changing your voicemail message.
- c. Changing and enabling your email “out of office” message in accordance with the template provided in your furlough notice.
- d. Securing your work documents appropriately, including any PII, CBI, etc.
- e. Completing your timecard.
- f. Securing your workstation and personal objects.
- g. Removing or disposing of any food at your desk or in the refrigerator.
- h. Removing plants or anything else that could attract pests while the shutdown lasts.
- i. Completing any travel vouchers or associated approvals.

Employees are not to work on any project, task or respond to emails as part of their shutdown responsibilities.

**14. Does EPA equipment (computers, mobile devices, etc.) need to be secured before an employee departs the office upon furlough?**

There are no plans to collect or lock up these devices formally before employees depart on furlough status beyond the normal measures an employee would take when departing their workstation at the end of a day, such as locking office doors where appropriate. However, furloughed employees with telework agreements in place should take their computers with them at the conclusion of their shutdown activities in the event the furloughed employee is recalled and becomes excepted or exempted sometime during the lapse on a day that is not their regular in-office day (see Question 20 regarding work schedules).

**15. Can shutdown activities be performed remotely?**

It depends on which shutdown activities are applicable to the individual employee. While many, such as enabling an “out of office message” or completing travel vouchers, can be performed remotely, others, such as disposing of any food, require an in-person presence. Employees should not access EPA space beyond hours dedicated to the orderly shutdown unless they are on the excepted or exempted personnel list.

**16. I’m scheduled to attend training (e.g., FEI) during the shutdown. Can I go?**

No. Training is an assignment of work. Employees who are not permitted to work during the shutdown cannot attend training, even if the training has already been paid for. Although the training vendor may have the funds to operate during a shutdown, without an appropriation, EPA has no money to pay your salary. Therefore, if you are furloughed, you cannot attend training during the time the agency is shut down. Exempted employees should consult their SROs regarding training (see list in Question 8). Training will usually not qualify as an “excepted” activity.

**17. During a lapse in appropriations, what documentation is needed to apply for unemployment benefits?**

According to the Department of Labor, federal employees applying for unemployment benefits in the state in which they work need the following information at a minimum:

- a. Standard Form 8 – Unemployment Compensation for Federal Employees.
- b. Standard Form 50 – Notification of Personnel Action or W2 Form – Wage & Tax Statement.
- c. Earnings & Leave Statements – Past 12 Months if Possible.

Depending on the state, additional information may be needed; therefore, EPA employees are encouraged to contact their [state unemployment insurance office](#). It is also important to point out that EPA employees can obtain a copy of the SF-8 on the [EPA Internet](#), the SF-50 in their [eOPF](#), and the W2 Form in [Employee Express](#). Please keep in mind that the eOPF can only be accessed while inside the EPA firewall.

### **18. Is a furlough greater than 30 days subject to reduction in force regulations?**

Reductions in Force (RIF) furlough regulations and SES competitive furlough requirements 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 agency action. The RIF furlough regulations and SES competitive furlough requirements are only applicable to planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days.

### **19. Will I get paid during a lapse?**

It depends on whether you are designated as furlough, exempt, or excepted. An employee designated as an exempt employee is in a pay status during a lapse. An employee in a furloughed or excepted status is not in a pay status during a lapse. Whether an employee actually receives pay checks during a shutdown depends on the duration of the lapse. EPA intends to complete payment for any work performed in the pay period immediately prior to an employee being put in a non-pay status. This would include all EPA employees who worked prior to the lapse. Employees who are not paid during a lapse will receive their pay retroactively once the lapse is over. Excepted employees will be paid during a lapse for as long as there are funds available to support exempted work. If a lapse begins in a middle of a pay period, employees would receive a partial paycheck, which would cover work performed prior to them being put in non-pay status.

### **20. If I am an excepted or exempted employee, should I continue to work my current telework schedule?**

Yes, excepted and exempted employees should work their current, approved telework schedules. Some excepted employees, however, may not need to work a full-time schedule.

## **CONTRACTS AND GRANTS**

**21. Will contractors be allowed to work during a lapse?**

Contractor employees that support approved excepted, exempted and funded activities (as defined in [EPAAG 42.3.3.4](#)), will continue to work in the event of a lapse in appropriation except where instructed otherwise by the appropriate Contracting Officer.

Funded activities are fully funded contracts which do not require Agency interaction, as defined in [EPAAG 42.3.3.4](#). These contract types may continue during a lapse in appropriations if the contractor does not require interaction from Agency officials.

When the Agency is shut down due to an appropriation lapse, EPA Contracting Officers will notify contractors as part of the shutdown activities to stop work on other than excepted and funded activities on existing contracts. The contractor is responsible for notifying its employees of the status of the contractor's contract with the Agency (e.g., excepted, funded, or stopped) during a shutdown. The Agency, not the contractor, determines the contract's status (e.g., excepted, funded, or stopped).

**22. Do support contractors such as IT and facilities contractors continue to work in EPA space during a shutdown if the contracts are fully funded?**

Fully funded contracts would continue under a lapse in appropriations if Government oversight is not required or if Government oversight is required and government personnel is available to provide oversight. See the Office of Acquisition Solutions intranet page for [acquisitions shutdown activities](#).

**23. Are SEE enrollees allowed to work under a furlough?**

With very limited exceptions, the vast majority of SEE enrollees will be notified of a furlough in accordance with their grant procedures. Additional guidance will be provided through the Agency's SEE program manager. OMS's Office of Human Capital Operations will provide guidance to SEE Program recipients on shutdown procedures.

**24. Would an Oak Ridge Institute for Science and Education (ORISE) program participant be allowed to work under a furlough?**

No. Because EPA does not anticipate having the resources available to provide mentorship and other necessary administrative support for the work of ORISE program participants, ORISE program participants should not continue to work during a lapse in appropriations. Participants and the Oak Ridge Associated Universities (ORAU) will be notified by their EPA Mentor or Project Officer.

**25. How will grantees be notified of the shutdown?**

The Office of Grants and Debarment will send notifications to EPA grantees.

**26. During the shutdown will the RTP Finance Center be open to process contract payments and grants drawdowns?**

RTP Finance Center will maintain limited operability to enable the processing of certain contract payments and grants drawdowns where the intervention of an RTP Finance Center employee is necessary and failing to make the payment would prevent or significantly damage the agency's execution of a funded function (such as IJIA or IRA work) or failing to make the payment would imminently threaten the safety of human life or the protection of property. Incurring interest on a contract invoice under the Prompt Payment Act alone is not a reason to make a payment.

## **COMMUNICATIONS**

**27. How will I know if the government is shut down and how will I know when to report back to work?**

Senior management will inform employees if the Agency is instructed to shut down operations. For information on when to report back to work, employees should monitor local news stations for updates, the EPA lapse internet site (<https://www.epa.gov/lapse>) or [OPM's website](#). The agency will also send a notification through the EPA's Mass Alert and Notification System (MANS). You are encouraged to update your personal contact information in MANS here: <https://member.everbridge.net/337966681555075/login/sso>

**28. If I am furloughed and a Senior Resource Official later decides it is necessary for me to become excepted or exempted, how will they contact me?**

They will reach out to employees through the EPA's Mass Alert and Notification System (MANS) and on their personal device. You are encouraged to update your personal contact information in MANS here: <https://member.everbridge.net/337966681555075/login/sso>

## **FACILITIES**

**29. How will security be handled at all EPA Facilities during a shutdown?**

EPA facilities will be closed to the public during a shutdown. Facilities supported by the Federal Protective Service will have guard services on a weekend/holiday schedule, unless arranged otherwise by the local Security Manager. EPA-owned facilities should maintain guard services as deemed appropriate by the local Security Manager.

**30. Will employees have access to facilities to collect personal belongings and water their plants?**

No. Employees must gather their belongings during the hours allocated for shutdown activities and should not access EPA space after that time unless they are on the excepted or exempted personnel list.



**31. Will fitness centers be open?**

This will vary by location. Please call the location before visiting.

**32. Will health units remain open?**

This will vary by location. Please call the location before visiting.

**33. How will mail service be handled during a shutdown?**

Regular mail service will not occur during a shutdown. Decisions on receipt of mail/deliveries during a shutdown will be based on the need to support excepted or exempted activities. These decisions will be made at the local level.

**FUNDRAISING / GIFT ACCEPTANCE**

**34. May I, or may someone on my behalf, start a crowdsourcing campaign to raise funds because I am in non-pay status?**

Generally, no. Neither you nor anyone acting on your behalf (including a spouse or family member or friend) may solicit any gift for you based on your federal employment status. Any fundraising campaign should not include your agency, title, or status as a federal employee. Additionally, you cannot generally accept gifts from prohibited sources, such as contractors or anyone who does business with EPA. You will have to identify and reject any such prohibited donations. You may, though, accept donations from friends or relatives when it is clear that the donations accepted are based on that friendship or family relationship. Please consult with an ethics official before embarking on any such fundraising campaign. See [OGE Legal Advisory 19-01](#), "Ethics Guidance for Employees in Non-Pay Status During a Lapse in Appropriations" (2/15/09) and [OGE Legal Advisory 20-07](#), "Answers to Frequently Asked Questions for Employees Engaged in Crowdsourced Fundraising" (10/6/20). You may, though, accept donations from friends or relatives when it is clear that the donations accepted are based on that friendship or family relationship. Please consult with [ethics@epa.gov](mailto:ethics@epa.gov) before embarking on any such fundraising campaign.

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

It depends. Such offers of assistance may be accepted only if: (1) the assistance is offered to a broad class of government employees that does not discriminate based on responsibility, rank, or rate of pay (such as all furloughed federal employees), and (2) the campaign organizer is not a prohibited source. Check with an ethics official for a definitive answer based on your specific facts.

### **36. May I accept free meals or discounts offered to all federal workers or the general public?**

Yes. You may accept an offer of free meals, discounts, or other support to federal workers during a government shutdown. Provided that the offer is extended to all federal employees, you may accept it as a benefit available to a class consisting of all Government employees or all uniformed military personnel, even if the offer is restricted by geography. If required, you may also provide your EPA credentials to demonstrate that you are indeed a federal employee. In this limited instance, providing that identification is not deemed a misuse of your federal position.

### **37. May I accept a small gift, other than cash, offered as an individual gesture of goodwill?**

Yes, provided certain conditions are met. Career employees may accept such offers so long as the offer is unsolicited, the offered gift's value is \$20 or less, the offered gift is not cash or a cash equivalent (such as a VISA or MasterCard gift card), and the employee does not accept more than \$50 from the same person in a year. For example, an employee may accept an unsolicited offer to provide or pay for the employee's lunch as long as the lunch bill is \$20 or less. However, political appointees cannot use this exception to accept a gift from a lobbyist.

*EXAMPLE: The members of the EPA Alumni Association, a non-profit organization not directly associated with EPA, offer to provide employees with \$20 gift cards (but not cash equivalent cards). You may accept one card from an individual donor.<sup>1</sup>*

## **HUMAN RESOURCES AND BENEFITS**

### **38. How will the furlough affect employee pay, benefits, TSP and taxes, etc.?**

Detailed information on the range of issues about which employees may have questions can be found in [OPM's Guidance for Shutdown Furloughs](#) dated December 2021 and in the [Addendum to OPM Guidance for Shutdown Furloughs](#) dated January 2024. The most frequently asked questions relate to the continuation of health benefits coverage. Health benefits coverage will continue, although employees will pay the employee share of the health insurance premiums when they return to duty.

### **39. Are employees entitled to unemployment compensation while on furlough?**

It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in

---

<sup>1</sup> <sup>1</sup> The EPA Alumni Association has informed us that they will be offering assistance during any prolonged shutdown to EPA employees (GS-12 or less) and EPA SEE enrollees who are having trouble putting food on the table or buying essential medicines. Information on their program can be found at [EPAalumni.com/shutdown](https://EPAalumni.com/shutdown).

which an employee'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 Employees" at <https://oui.doleta.gov/unemploy/unemcomp.asp>.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices (See Department of Labor's website at [Unemployment Benefits Finder | CareerOneStop](#)). States will require you to provide your Agency's Federal Identification Code when you file your application.

**40. During a lapse in appropriations, do excepted federal employees qualify for unemployment benefits?**

According to the Department of Labor, federal employees who are excepted and working full-time are not considered to be unemployed and do not qualify for unemployment benefits. Therefore, only furloughed employees and excepted employees not working full-time may qualify for unemployment benefits. Employees are encouraged to contact their state unemployment insurance office at <https://workforcesecurity.doleta.gov/unemploy/unemcomp.asp> for additional information.

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

Yes. While an employee 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 nor is it a requirement that the notice be signed in person. Advance written notice (including written notice 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.

**42. How will employees on extended leave receive furlough notices? Are they required to report to the office?**

Employees on long term leave do not have to report to the office to receive their furlough notice. Furlough notices will be mailed to their address of record or sent via email.

**43. What are employees entitled to during the furlough when it comes to cost-of-living allowances and benefits such as post allowances, danger pay, differential pay, etc.?**

(1) A furlough does not interrupt Post COLA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the Post COLA is interrupted for the duration of the furlough status. Living Quarters Allowances continue without interruption while the employee is in nonpay status not excess of 30 consecutive calendar days at any one time. For periods in

nonpay status longer than 30 consecutive calendar days, LQA payment shall be suspended as of the day the employee enters such status, and payment is not to be made for any part of such period.

(2) Employees do not receive Danger Pay or Post Hardship Differential for any furlough days.

#### **44. Can I take leave during a lapse and will I be paid for the leave?**

Furloughed employees' leave is cancelled for the duration of the furlough.

Exempted employees may request leave during a lapse and, if leave is approved and the type of leave selected is "with pay" (e.g., annual leave or sick leave, as opposed to "leave without pay"), exempted employees will be paid for their leave time as usual on the normal scheduled pay day. Leave taken during a lapse will count against the appropriate leave balance.

Excepted employees may request to be excused from duty, and the Agency may place the employee in furlough status for approved periods. Being placed in furlough status will not count against leave balances. Alternatively, excepted employees may request leave during a lapse, but the request will count against the employee's leave balance. Regardless of the method by which an excepted employee takes leave, excepted employees will not be paid until the lapse ends.

An excepted employee cannot use paid leave to cover an unauthorized period of absence. If an excepted employee is directed to perform excepted work but fails to report to duty, the employee may be placed in absent without leave (AWOL) status for missed work hours, in accordance with agency policy and procedures.

#### **45. If an employee is currently using leave from the leave bank, can they continue to be on leave? If not, do the leave bank hours carry forward for future use?**

No. Employees using leave from the leave bank during a furlough also have their leave cancelled. In certain situations, the leave bank leave may be available for future use. Consult with your local [Leave Bank Coordinator](#) for specific information applicable to an individual situation.

#### **46. Can/should employees contact their supervisor during the shutdown period?**

Supervisors and staff may have limited contact during the furlough. However, during the furlough, employees are in a nonpay, nonduty status and are not permitted to work, so any contact should be limited to necessary communications about furlough or lapse-related matters.

#### **47. Can employees continue to work "unofficially" at home during a government shutdown?**

No. Unless otherwise authorized by law, an Agency may not accept the voluntary services of an individual (31 U.S.C. § 1342).

**48. Are employees responsible for TSP loan payments if the Government is shut down?**

On March 4, 2011, the Thrift Savings Plan (TSP) issued a fact sheet titled "Impact of a Federal Government Shutdown on the Thrift Savings Plan." See the [TSP Fact Sheet](#).

**49. Who can an employee contact should he/she encounter a problem with their health insurance?**

Employees should first contact their Federal Employees Health Benefits (FEHB) carriers with questions or concerns (i.e., coverage, claim issues, covered service, etc.).

**50. If I'm not on the initial list of excepted or exempted personnel, could I be contacted later and asked to perform an excepted activity due to an emergency situation? If contacted, can I refuse to perform an excepted/exempted activity?**

EPA has the authority to modify its list to address Agency needs. If designated by an SRO as excepted or exempted at any time, employees must report to work. If you are furloughed and contacted by an employee who is not your SRO (see list of SROs in Question 8), you should verify your excepted or exempted status prior to continuing the conversation.

**51. If an employee has properly scheduled "use-or-lose" annual leave before the start of the third biweekly pay period prior to the end of the leave year (by 11/30/2024), but is unable to use some or all of the scheduled leave because of the shutdown furlough, does the furlough constitute an "exigency of the public business" that would permit EPA to restore the leave after the beginning of the new leave year?**

An employee with scheduled leave that falls during the shutdown will have their leave cancelled. Employees in this situation should make every effort to reschedule "use-or-lose" annual leave for use before the end of the current leave year (January 13, 2024). However, if this is not possible due to a lapse in appropriations, EPA has the authority to restore any lost annual leave by determining that the employee was prevented from using his or her leave because of an exigency of the public business, namely, the lapse in appropriations.

**52. If an employee 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 restoration period—end of the leave year beyond 2 years from the restoration) but that leave is cancelled and lost due to lapse in appropriations, can EPA 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 leave annual leave may not be restored after expiration of the use period.

**53. If there is a government shutdown due to a lapse in appropriations, may EPA’s federal advisory committee activities continue during the shutdown period?**

In the event of a shutdown due to a lapse in appropriations, all advisory committee activities involving lapsed appropriated funds or involving EPA personnel funded through annual appropriations must cease during the shutdown period. During the shutdown, EPA employees may not coordinate or participate in advisory committee meetings, nor may they approve travel, expense reimbursements or other advisory committee expenditures and activities. Additionally, during the shutdown period advisory committee members may not plan or begin any travel funded with appropriated dollars; incur any committee expenditures involving federal appropriations; or seek EPA reimbursement for any previously authorized travel or other expenditure. Because the Designated Federal Official is required to be present at advisory committee and subcommittee meetings, EPA’s advisory committees and subcommittees may not conduct meetings, video conferences or conference calls during the shutdown. FACMD in the Office of Resources and Business Operations provides notifications regarding federal advisory committees.

**54. Does a government shutdown automatically extend outstanding details and temporary promotions?**

No, a government shutdown does not automatically extend details or temporary promotions. For lateral details, gaining organizations can negotiate extending the detail end date with the employee’s home office. Noncompetitive temporary promotions, however, cannot exceed 120 calendar days.

**55. Will Pathway Interns receive retroactive pay under the Government Employee Fair Treatment Act?**

Yes.

**IP Assignments**  
**(incoming to and outgoing from EPA)**

**56. Are persons working for EPA pursuant to the Intergovernmental Personnel Act (IPA) affected by the furlough/shutdown?**

The specific authority for furloughing personnel who are working under mobility agreements pursuant to the IPA will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- a. Personnel on detail to federal agencies from non-federal organizations may continue working, if the IPA scope of work already states that the non-federal organization is paying the total costs of the detail.
- b. Personnel on detail to federal agencies from non-federal organizations may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. Note that reimbursements for the federal share of the cost of an assignment might not occur on time due to the lapse. If a furlough takes place during a time for which no funds are appropriated, the assignment should be terminated.
- c. Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Please note that the [IPA.OHR@epa.gov](mailto:IPA.OHR@epa.gov) inbox will not be monitored during a lapse.

#### **57. May I work for my home organization during the time that EPA is shut down and can they pay me?**

Because you are subject to the federal ethics rules, we will consider that working for your home organization is an “outside employment” for which you will need prior approval from an ethics official. Please refer to the section on “Outside Employment.”

#### **58. I am an EPA employee who is on an IPA agreement. Can I volunteer to work for the non-profit entity with whom I have the IPA agreement during the shutdown period?**

No. What you propose is that you work as a volunteer at the same organization to which EPA assigned you to work as part of your official duty. Because this outside activity – even though uncompensated – involves the same entity, you will have to seek prior approval from your Deputy Ethics Official pursuant to the ethics rules, [5 C.F.R. § 2635.802](#) and [5 C.F.R. § 6401.103](#). Be advised that EPA Ethics believes it is extremely unlikely that we could ethically approve employees to provide volunteer services at the same organization to which they are assigned to work in their official capacity. Once you volunteer for the non-profit, you become an active participant and, under the impartiality regulations, have a “covered relationship” with that entity. [5 C.F.R. § 2635.502\(b\)\(1\)\(v\)](#). You will have to recuse yourself from participating as part of their official duty with that entity, which will obviously cause a material impairment to the IPA. While you are required to seek prior approval for the volunteer activity pursuant to [5 C.F.R. § 6401.103\(a\)\(4\)](#), the ethics official cannot approve the request pursuant to [5 C.F.R. § 2635.802](#).

#### **59. What if I’m on an IPA assignment now but will return to the Agency prior to a shutdown. During the shutdown, may I volunteer to work at the non-profit where I worked on my IPA?**

You will have to request prior approval of this outside activity because the activity relates in significant part to official duties to which you have been assigned in the previous year. See [5 C.F.R. 6401.103](#). Unlike the above example, however, this time, the ethics official may be able to grant the request.

**60. I am on an IPA assignment to a non-profit entity. Can I still go to work for the non-profit during a shutdown?**

No, you are not allowed to work on any day that EPA is shut down. Most likely, EPA pays your salary and benefits while you are on the IPA. Even though you are not paid during the shutdown, you remain an EPA employee who is subject to our laws, rules and policies. You must abide by the shutdown and cannot work for the non-profit on those days.

**61. Can I volunteer to work at another non-profit during the shutdown?**

You need to consider whether the volunteer activity requires that you seek prior approval from an ethics officer. You do not need prior approval to work at a retail store or to volunteer at a hospital or animal shelter, for example, but you will need prior approval to work at an environmental consulting firm.

## **IT MANAGEMENT**

**62. Will employees that are on furlough be allowed access to email and other agency systems?**

Employees are prohibited from working while furloughed, including the use of agency owned computers, mobile devices (e.g. iPhones), and utilizing the Agency's remote access service to access email or other applications.

**63. Will mobile device service through EPA issued devices be maintained during a shutdown or only for the excepted personnel?**

EPA's email system (including on mobile devices) will remain in operational status but can only be used by excepted or exempted (non-furloughed) employees.

**64. Should employees identify any sensitive PII material and ensure it is returned to the office before furlough?**

Sensitive PII should be properly protected and secured according to existing EPA policy, regardless of a furlough (see <https://work.epa.gov/privacy>). OMB recommends limiting access to those who need access, reducing its collection, and using encryption, strong authentication procedures, and other security controls to make information unusable by unauthorized individuals. Removing sensitive PII from



the workplace without sufficient need and protections (such as those listed above) increases the potential for inadvertent disclosure and should be avoided.

## **OUTSIDE EMPLOYMENT**

### **65. Can I work in another job during the shutdown?**

You may be able to work at another job, but you need to know the ethics rules and procedures. If you are considering working during the shutdown, then please review the [EPA Ethics FAQ on outside employment](#) and follow the prior approval process if necessary prior to the furlough. You may be required to seek prior approval even if you will not be compensated for the work.

Although you may not need to seek formal prior approval for certain outside activities, EPA Ethics always recommends that you seek ethics counseling. If you have questions that arise during the shutdown, consult with Justina Fugh, Director of the Ethics Office, at [ethics@epa.gov](mailto:ethics@epa.gov). Justina is permitted to answer ethics-related questions during the shutdown.

### **66. Before the shutdown, can I apply for another job so that I have some income?**

You should consult with an ethics official. Depending on what you want to do, you may or may not be able to be compensated. In addition, there are several criminal conflict of interest statutes to know. Here's a quick summary:

- a. Do not engage in outside activity -- compensated or not -- that will conflict with your EPA official duties and/or violate the laws and regulations.
- b. You cannot be compensated for teaching, speaking, or writing that deals in significant part with the Agency's program, policies, or operations. While there is a small exception to allow for compensation for teaching a course at certain institutions, that exception does not likely apply to consulting work. The teaching exception extends only to teaching a course involving multiple presentations at certain institutions. See [5 C.F.R. § 2635.807\(a\)\(3\)](#).
- c. You cannot represent the interests of another back to the United States Government.  
***EXAMPLE:** You are a lawyer who wants to represent veterans before the VA. You cannot do so because 18 U.S.C. §§ 203 and 205 prohibit federal employees from serving as agent or attorney for another in any particular matter in which the US is a party. Taken together, these statutes prohibit representation for compensation and without compensation.*
- d. Be careful if you seek employment with an entity that does business with EPA or that you deal with in your EPA capacity. You should consult an ethics official to be sure that you do not run afoul of the financial conflict of interest statute or the seeking employment regulations.

There is a higher likelihood for conflicts when there is a nexus between your official duties or the Agency's mission and the outside activity. For example, getting paid for consulting work that deals in significant part with the mission of the Agency may present ethics issues, while working at a retail store will not. You do not have to seek prior approval to work at a retail store or to give music lessons.

## **67. When do I have to seek prior approval for outside activity?**

You do not need to seek prior approval for all outside activities. Rather, you are required to seek prior approval when you wish to engage in employment – with or without compensation – that involves:

- a. Consulting services;
- b. Practicing a profession;
- c. Holding State or local public office;
- d. Subject matter that deals in significant part with the policies, programs or operations of EPA, or any matter to which you are currently assigned or to which you have been assigned in the previous year;
- e. Providing services to an EPA contractor or subcontractor; the holder of an EPA assistance agreement or sub-agreement; or a firm that is regulated by your Region or Office.

For more information, please see EPA's supplemental regulations at [5 C.F.R. § 6401.103\(a\)](#).

## **68. How do I seek prior approval?**

If your anticipated activity does require prior approval, then you should ordinarily send a written request (email is acceptable) through your supervisor to your Deputy Ethics Official (DEO). But a shutdown is not an ordinary time, so you may send your request directly to your DEO or to EPA Ethics with a cc to your supervisor. To find your own DEO, go to [EPA Ethics Program's DEO Finder](#) or contact [ethics@epa.gov](mailto:ethics@epa.gov).

To reach EPA Ethics, write to [ethics@epa.gov](mailto:ethics@epa.gov). Your request is not approved unless and until an ethics official approves it. Your request must address the following:

- a. your name, title and grade;
- b. the nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;

- c. the name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next six months);
- d. the estimated time to be devoted to the activity;
- e. whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
- f. a statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;
- g. the basis for compensation (e.g., fee, per diem, per annum, etc.)
- h. a statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 ([Subpart H on "Outside Activities"](#)) and Section 6401.102 ([EPA's Supplemental Regulations](#)); and
- i. an identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

For more information, see EPA supplemental regulations at [5 C.F.R. § 6401.103\(b\)](#).

**69. Do I have ethics implications regarding my former employer during the shutdown when I return to EPA duty status?**

Yes, you will have been an employee of this entity, and there may be appearance concerns or actual criminal conflict of interest issues when you return to work. For one year, you cannot participate as part of your official duty in any specific party matter that involves that entity. If you continue to work for the entity after a shutdown, then you will have a financial conflict of interest issue with it. Again, consult an ethics official.

**70. Can I use EPA equipment, email, or resources to assist my outside employment?**

No. The de minimis exception under the Agency's limited personal use of resources does not extend to compensated, outside employment.

**71. Can I volunteer to work at a non-profit during the shutdown?**

You need to consider whether the volunteer activity requires that you seek prior approval from an ethics officer. You do not need prior approval to volunteer at a hospital or animal shelter, for example, but you will need prior approval to work at an environmental NGO.

## **PARTICIPATING IN RALLIES**

**72. Can I participate in rallies, union activities, or other group activities (including those before Congress)?**

From an ethics perspective, employees in their personal capacity (including those who are furloughed) may participate in rallies, but you must make clear that you are not speaking on behalf of the Agency. If excepted or exempted, you should take annual leave to participate and CANNOT use EPA equipment, resources, email addresses or official time to engage in this sort of personal activity.

## **PAY, TIME AND ATTENDANCE**

### **73. What about return-to-work notification - what are EPA's plans?**

Employee furlough notifications instruct employees to return to work on their next regular duty day after a continuing resolution or an appropriation has been enacted into law. Employees are encouraged to monitor public news broadcasts and the Office of Personnel Management's website for regular updates. Employees may also check the [EPA lapse internet site](#).

In the event an employee has extenuating circumstances or personal challenges that impact their ability to return to work on their next workday immediately following the end of a lapse in appropriations, supervisors may use the flexibilities in existing EPA policies as appropriate. For example, the employee could request to take annual leave, use compensatory time off, or use credit hours. The supervisor should consider the request in accordance with the applicable existing EPA leave policy.

### **74. Does EPA have any plans to offer loans to employees who are living paycheck to paycheck?**

The Agency has no authority to offer loans to employees. Employees who contribute to the TSP may be eligible for a loan. You can access the TSP Fact Sheet on "Impact of a Federal Government Shutdown on the Thrift Savings Plan" at: <https://www.tsp.gov/PDF/memos/oc11-5.pdf>

### **75. If the Agency implements a shutdown, when will employees receive pay for the last pay period that they worked?**

Employees will be paid on schedule for their hours worked prior to the shutdown.

### **76. May an excepted employee be permitted to earn premium pay (e.g., overtime pay, Sunday premium pay, night pay, availability pay) during the furlough period?**

Yes. Excepted employees who met the conditions for overtime pay, Sunday premium pay, night pay, availability 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.

### **77. Some employees have other payroll deductions being paid to banks, mortgage companies, and other automatic deductions. Will employees need to make changes so their payments will not be late?**

Yes. In the event of a furlough significantly impacting pay for any pay period, employees should plan to avoid/contain late payments for voluntary deductions or personal account allotments. See Q. 81 for more information on how deductions are processed. Employees can access Employee Express (EEX) and make changes to their tax exemptions and various other deductions. Most changes are effective the following pay period.

**78. How does a government shutdown impact Public Health Service (PHS) Officers?**

Commissioned Officers are employees of the PHS. If EPA has a lapse in appropriations, PHS Officers will continue to work at the EPA because they are authorized by law to continue working. They will be paid after Congress passes and the President signs a new appropriation or continuing resolution.

**79. If I am designated as an exempted employee, how do I complete my timecard? What time reporting codes do I use?**

An exempted employee would complete their timecard using their organization's approved exempted time reporting codes. Employees with questions about their approved exempted time reporting codes should contact their SROs. For example, employees who are exempted for purposes of IIJA and/or IRA should only be using the appropriate IIJA and/or IRA codes.

**80. If I am designated as an excepted employee, how do I complete my timecard? What time reporting codes do I use?**

An excepted employee will complete their timecard using the time reporting code FURWK when working and FURSD when not working.

**81. If my pay is insufficient to permit all deductions to be made, what is the order of precedence for deductions from my salary check?**

Some deductions that are based on the amount of your gross pay (or basic pay) will be reduced in size. Deductions from pay are taken in this order: 1) retirement; 2) Social Security tax; 3) Medicare tax; 4) federal income tax; 5) health insurance under FEHB; 6) basic life insurance under FEGLI; 7) state tax; 8) local tax; 9) government housing; 10) debts owed to the federal government; 11) court-ordered debts; 12) optional benefits such as Federal Dental and Vision, FLTC, FSA, TSP, TSP loans, ROTH; other voluntary deductions such as Association or Union dues, Combined Federal Campaign, allotments ; 13) IRS tax levies

**82. After these deductions, is it possible that my check could be zero?**

Depending on the amount of basic pay received, and the obligations an individual employee may owe or have previously elected to contribute, it is possible the net resulting pay could be minimal or even zero.

**83. Can I stop these deductions from coming out of my pay?**

Employees can access Employee Express (EEX) and make changes to their tax exemptions and various other deductions. Most changes are effective the following pay period.

**SPEAKING TO THE PRESS**

**84. May I speak to the press or others about my shutdown experience?**

Yes, you may exercise your right to freely express your opinion in your personal capacity. But remember that you cannot misuse your EPA position, title or affiliation. You must be clear that you are speaking in your personal capacity only and not on behalf of the United States or the EPA. You may identify yourself by name and indicate that you are a federal employee whose agency has been shut down. If the context of the conversation or interview is clear that you are expressing your personal opinion, then you may say you work at EPA. But if you do mention EPA, then please be careful not to engage in any political activity, such as advocating for or against any candidate for partisan election, political party or political group, or to use your official authority to interfere with the results of any election.

**TRAVEL**

Please note that all travel during the shutdown timeframe should be coordinated with your organization's Senior Resource Official.

**85. I have been approved for travel during the shutdown timeframe. Can I continue to travel?**

No travel is allowed during a lapse in appropriations, except for travel required for excepted or exempted activities. All personnel on official travel must return to their duty station as soon as possible, unless continued travel is necessary for excepted or exempted activities.

The only travel authorized during a lapse include the following:

- Travel necessary for excepted activities. This travel should be approved by senior managers and occur only if there are no alternate means to complete excepted work.
- Travel for exempted activities, where all obligations (both salary and travel obligations) are funded by exempted resources, such as IJIA or IRA funding. Exempted employees should consult with their SRO on an appropriate routing to use in Concur during a lapse.
- Employees assigned overseas whose overseas location is their permanent duty station.
- Employees on extended TDY travel where a detail personnel action (SF52) was issued and funded. Employees should not return to their home location unless instructed by their receiving office.

Employees on extended TDY travel overseas that is not excepted or exempted and whose permanent duty station remains in the U.S. must return home.

Employees on TDY whose travel is not excepted or exempted cannot avoid being recalled by taking leave / personal travel in order to remain in place.

**86. Will EPA-approved travel agencies be accessible?**

The Agency Travel Management Centers (TMC) will be open. Employees performing excepted or exempted activities can make reservations through Concur or by calling the TMC (BCD Travel) at 1-866- 964-1346. Furloughed employees can cancel upcoming reservations by calling BCD Travel. EPA's Cincinnati Finance Center travel help desk (513-487-2346) will also have someone available to assist with travel arrangements.

**87. Who will approve travel if the approving official is in furlough status?**

For all exempted and excepted travel activity, the Senior Resource Official for each office will serve as the approver for all travel authorizations and travel vouchers (see list of SROs in Question 8).

**88. The Agency funded my participation at a conference which includes a non-refundable registration fee. If EPA is shut down during the days of my scheduled training and I am furloughed, may I travel in my personal capacity and still make use of the registration since it's not refundable anyway?**

If the activity and the employee are exempted or excepted, then attendance to the conference is allowed as normal. However, if the employee is furloughed, then you cannot use the registration for your own personal use. You cannot misuse government-paid benefits for your personal use. If you wish to attend in your personal capacity, you must pay for your own registration and cannot represent yourself as an EPA official and cannot carry out the functions that you would have done in official capacity. You may attend in your personal capacity only and at your own expense and cannot conduct any Agency business. Please consult with EPA Ethics at [ethics@epa.gov](mailto:ethics@epa.gov).

**89. For regions and programs with centralized travel desks, will travel preparers be available to book travel and prepare all associated authorizations and vouchers?**

If an organization or region determines that centralized travel desks are not exempted or excepted employees, then it is incumbent upon the traveler to complete their travel bookings, authorizations, and vouchers. All of these actions can be performed in Concur and training resources are available at <https://work.epa.gov/travel/concur>.

**90. I am an exempted employee who has a trip planned for IIJA and IRA coming up around the time that the government will shutdown. Do I have to cancel the trip and if not, when will I see reimbursement?**

While reduced, this travel would continue as planned because, so long as both salary and travel are covered by IIJA and IRA funding, these would be exempted activities. Reimbursement for the trip will take place in the normal course of business, as long as your SRO is available to approve the travel voucher.

**91. I have to go on work travel but the government is shutdown. Can I still travel and how do I set up the travel?**

Please work with your Senior Resources Official for travel needs during a lapse.

**92. A non-federal source is paying for me to travel to speak at a conference. EPA Ethics already approved the acceptance of these travel benefits. May I still travel?**

No, you may not travel unless it is related to exempted or excepted work. Because the government is shut down, you cannot travel on official travel orders. You also cannot accept the gift of travel in your personal capacity, because doing so is considered a misuse of government position (using federal office or authority for private gain). Please advise the source that is funding your travel that you are not able to speak and must decline this invitation. Please cancel all travel arrangements. For employees where the travel is tied to exempted or excepted activities, please coordinate with your SRO (see list of SROs in Question 8).

**93. My supervisor has canceled my upcoming travel. EPA Ethics already approved the acceptance of these travel benefits to be paid by a non-federal source. Do I need to do anything?**

Please contact EPA Ethics ([ethics@epa.gov](mailto:ethics@epa.gov)) so they can cancel your ethics travel form.

**94. Can I instead travel on my own time as a personal activity?**

No, if the travel was accepted by EPA, then you cannot now “convert” the gift for your own personal advantage. You cannot accept the gift of travel in your personal capacity. Doing so is considered a misuse of government position (using federal office or authority for private gain). Please advise the source that is funding your travel that you are not able to participate and now must decline the invitation. Please cancel or advise the source to cancel all travel arrangements they made on your behalf.

**95. I expect to receive a bill during a lapse for travel expenses on my government-issued travel card. Am I expected to pay the bill during a lapse in appropriations?**



Employees are responsible for any charges to the travel card and should ensure that they are submitting their vouchers within five days of the end of travel. However, it is anticipated that the General Service Administration will be working with the travel card bank to obtain an extended grace period for payments (this has been customary in past shutdowns). If an employee receives a travel card bill during a lapse, look out for notification of an extended deadline on the bill. (Note: If a bill was received prior to the lapse, it is expected that employees make payment as normal, as extended deadlines usually have applied only for bills received during a shutdown.) For more information on travel card activities during a shutdown, please go to [Frequently Asked Questions \(FAQs\) for the Federal Government Shutdown | Smartpay \(gsa.gov\)](#).

**96. I have exempted or excepted travel during a lapse in appropriations. Will the government-issued travel card work as normal?**

Yes; the GSA SmartPay banks will continue to function as normal when there is a government shutdown and travel cards will continue to function normally.

**97. Will I need to cancel upcoming travel if there is a government shutdown?**

Yes, you will need to cancel all non-excepted/non-exempt travel, including any reservations made outside of Concur, if there is a government shutdown. Your SRO will communicate specific dates for which you will need to cancel travel as part of orderly shutdown activities.

## **WRITING TO A MEMBER OF CONGRESS**

**98. Can I write a letter to or contact my Senator/Representative about the sequestration, furloughs, etc.? Can I write social media posts?**

From an ethics perspective, employees in their personal capacity may contact their legislators and/or post opinions on social media. They may refer in passing to their EPA or federal employment, personal and individual capacity. Be advised, however, that employees CANNOT use EPA equipment, resources, email addresses or official time to engage in this sort of personal activity during a shutdown.

## **EXCEPTED/ EXEMPTED EMPLOYEES**

**99. What work can I perform during a lapse? Do I have to work 100% on certain work only?**

Generally, excepted employees may perform work as instructed by their supervisor (or other EPA official who communicated the employee's excepted status to them) that is:

- (1) expressly authorized by law to continue despite a lapse in appropriations (very rare);

- (2) necessarily implied by law to continue despite a lapse in appropriations, such as:
  - a. performing orderly shutdown activities (common), or
  - b. supporting a funded (i.e. exempt) function where there are no funds available to cover payroll for the function being excepted and the funded function being supported would be prevented or significantly damaged if the excepted employee did not also work (rare);
- (3) necessary to the discharge of the President's constitutional duties and powers (very rare); or
- (4) necessary to protect against imminent threats to the safety of human life or the protection of property in which EPA has a legal interest (e.g. lease or ownership) (common).

Generally, exempted employees will continue to work on the activities for which there are appropriated funds as instructed by the supervisor or other official who communicated the employee's exempted status. Such activities may include:

- (1) Activities necessary to carry out funds-in interagency agreements where EPA payroll is allocated to reimbursable funds;
- (2) Activities funded by certain special sources of funding, such as Superfund Special Accounts, that exist in perpetuity and are divorced from annual congressional appropriation;
- (3) Activities funded by Superfund Taxes; and
- (4) Activities necessary to carry out activities authorized and funded by the Infrastructure Investment and Jobs Act (IIJA) or the Inflation Reduction Act (IRA).

#### **100. What constitutes IIJA, IRA, or Superfund tax work that is exempted?**

Exempted in this context means a lapse in appropriations does not apply to the financial obligation that needs to be incurred because there are funds legally available for that purpose that have not lapsed. Accordingly, during a lapse in annual appropriations, EPA may incur any obligation that would be properly chargeable to unlapsed IIJA, IRA, or Superfund tax funds. Employees may incur salary obligations by working in a way deemed attributable to carrying out IIJA, IRA, or Superfund tax authorities in accordance with their home organization's existing payroll charging methodology for such funds. Funds may be obligated to contracts and interagency agreements so long as those costs would be properly chargeable to unlapsed IIJA, IRA, or Superfund tax funds under EPA's preexisting policies for funding contracts and interagency agreements. Similarly, grants may be awarded so long as those grants are properly fundable with unlapsed IIJA, IRA, or Superfund tax funding.

#### **101. What constitutes IIJA, IRA, or Superfund work that is excepted?**

Excepted means there are no unexpired funds available for a particular purpose, but certain, limited financial obligations may nevertheless continue to be incurred.

In the context of IJIA and IRA, EPA may incur obligations on an “excepted” basis only when (1) there are no funds available in the entire Agency for the function being excepted and (2) IJIA and IRA activities would be “prevented or significantly damaged” if EPA did not incur the financial obligation in the lapsed account. These conditions will rarely be met unless and until the duration of a shutdown becomes very extended.

In the context of Superfund, most employees who are excepted will fall under the “necessary to protect against imminent threats to the safety of human life” rationale.

**102. Does that mean I can keep working and incurring financial obligations anytime one of EPA’s activities would be prevented or significantly damaged if I didn’t?**

No. A financial obligation may be incurred against a lapsed appropriation on an excepted basis under the “prevent or significantly damage” rationale only if (1) funds are unavailable to cover payroll for the function being excepted and (2) the function that would be “prevented or significantly damaged” is a funded function. There are some agency functions (no matter how important) that will cease because there is no available unexpired funding behind any aspect of the function on which EPA can rely. Such damage to certain Agency priorities is an unavoidable outcome of a lapse in appropriations.

**103. Why is IJIA, IRA, and Superfund tax work allowed to proceed while other EPA work is not?**

The determination of an employee’s work and pay status under a government lapse in appropriations is strictly a legal determination based on availability of funds. All employees perform essential work at the EPA to protect human health and the environment. The difference is that IJIA, IRA, and the Superfund tax are appropriations independent of the annual appropriations process. Under the pilot approach employees who can perform 100% IJIA, IRA, or Superfund tax work as designated by their SRO will continue to work.

**104. Who determines the exempted or excepted status of an employee and how is that decision made?**

The status of each employee is determined through a multi-part process run by the Office of Mission Support. OMS maintains a list, as required by the Office of Management and Budget, of employee statuses. This list is updated each time there is a high potential for a shutdown. OMS shares the list with the Senior Resource Official in each regional office and national program manager. Based on allowable activities for excepted and exempted employees, each SRO confirms or adjusts the list.

**105. If I am exempted, and I have completed all of my exempted work (e.g., IIJA, IRA, or Superfund tax work) for the day or week, should I be placed on furlough?**

EPA attempts to consolidate the exempted functions to the greatest extent possible by assigning work to a smaller number of employees than usual during the lapse, ideally resulting in sufficient exempted work to occupy a full-time schedule for each exempted employee. However, if an exempted employee finds that they are frequently running out of exempted work during the lapse, the employee should consult their Senior Resource Official (or other EPA official who communicated their exempted status).

**106. If I am excepted, and I have completed all of my excepted work (e.g., life or property protection, or support for an exempted function) for the day or week, should I be placed on furlough?**

Maybe, it depends. If the excepted support function can be performed in less than an entire day, generally the employee is required to resume furlough status after completing the function. Your supervisor (or another EPA official) will communicate the general duration of your exception status to you.

There may be cases in which an employee is required to perform an excepted function intermittently throughout the course of the day, and the intervals in between are too short to enable the employee to be furloughed and then recalled in time to perform the excepted function again. In such cases, the employee may remain at work, and may perform non-excepted functions intermittently during the intervals between excepted functions. The intervals should generally be such that the employee is unable to use the time to effectively to engage in personal activities. To minimize the number of employees performing these “intermittent” functions, EPA has attempted to consolidate excepted functions to the extent possible for performance by a smaller number of employees.

**107. If I am excepted for an amount less than full-time, do I get to decide when to complete those duties? For example, if my excepted duties take 10 hours per week, can I work those 10 hours all in one day, and be furloughed for the rest of the week, or do I have to work 2 hours per day Monday through Friday?**

Employees should follow the instructions of their supervisor or other EPA official who communicates their excepted status to them regarding work schedule, i.e., when the duties may be performed. As a general matter, duties should be consolidated wherever possible to avoid inefficiencies and intermittent activities, but the Agency retains the discretion to fashion work schedules as needed consistent with the needs of the Agency.