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Answers to Frequently Asked Post-Lapse Questions

Friday, February 8, 2019



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

MEMORANDUM FOR: HEADS OF AGENCIES AND DEPARTMENTS

From: U.S. Office of Personnel Management

Subject: Answers to Frequently Asked Post-Lapse Questions

CAREER LADDER PROMOTIONS

How should agencies handle career ladder promotions that were due to go into effect during the lapse in appropriations?

As a general matter, a promotion must be approved by an authorized management official prior to the effective date. Absent a specific agency policy or lawful collective bargaining agreement on setting promotion effective dates, a promotion may not be retroactively authorized [see Comptroller General decisions 3CG559 and 9CG20 (A-27284)]. However, if an HR office was prevented from processing a properly authorized career ladder promotion in a timely manner, the HR office is required to process the action retroactively to honor the authorized effective date. To the extent that applicable collective bargaining agreements address career ladder promotions, please consult with your labor relations office and agency general counsel.

PROBATIONARY PERIODS

What impact does the shutdown have on employees whose probationary period ended during the lapse in appropriations? Can the probationary period be extended?

The placement of a probationary employee in a non-pay status due to the shutdown furlough did not extend the probationary period (for either non-SES or SES employees). This is because we interpret the Government Employee Fair Treatment Act of 2019 to have placed furloughed employees, retroactively, into a pay status, as of the beginning of the furlough. In accordance with OPM regulations, periods of absence while in a pay status count toward completion of probation. Adverse action procedural and appeal rights accrue as soon as the applicable continuous service requirement is met and those provisions are not tolled during a furlough.

EXECUTIVE RESOURCES

Will OPM extend the 90-day time period for submitting Executive Core Qualification (ECQ) packages for Qualifications Review Board certification?

Yes, OPM will provide an extension, as follows:

- If the vacancy announcement closed prior to the shutdown, an extension will be provided for the number of business days of the shutdown (22 business days).

- If the announcement closed, or your submission was due to OPM during the shutdown, please reach out to SERS@opm.gov to confirm what extension period is appropriate.

Can lapse-affected agencies make SL/ST performance-based pay adjustments now that the first pay period of the year has passed?

Yes, for those agencies that were affected by the lapse in appropriations, SL/ST performance-based pay adjustments can be approved by an authorized agency official, and generally the adjustments will be effective prospectively, subject to agency policy and procedures (e.g., the first day of the first pay period beginning on or after the date of approval). An agency may provide off-cycle payments in accordance with the requirements set out in 5 CFR 534.510, as appropriate.

CAREER TENURE

Does the lapse have an impact on completion of requirements for career tenure?

No. We interpret the Government Employee Fair Treatment Act of 2019 (GEFTA) to have placed furloughed employees, retroactively, into a pay status, as of the beginning of the furlough (and will place future employees into a pay status throughout any future shutdown furlough). Accordingly, in the case of the most recent furlough, the lapse had no impact on completion of requirements for career tenure. Similarly, any future lapse will have no impact as long as GEFTA remains in effect.

TIME-IN-GRADE

Does time in a furlough status due to a lapse in appropriations count toward time-in-grade requirements for promotion purposes?

Yes, the time an individual spends in furlough status counts towards time-in-grade requirements for purposes of promotion.

EXTENSIONS OF APPOINTMENTS

Can an agency extend a temporary or term appointment that was scheduled to expire during the furlough?

No, because the duration of temporary or term appointments is based on calendar time, there is no basis to extend such appointments if they expired during the lapse period.

PATHWAYS PROGRAMS

Pathways Interns:

Can the 120-day conversion period for a participant in the Pathways Internship program be extended due to a lapse in appropriations?

No, there are no provisions to appoint/convert interns beyond 120 days after completing academic and work requirements. However, OPM will consider requests from agencies for a variation that would allow the conversion to occur. Please contact employ@opm.gov for more information.

Recent Graduates:

If a recent graduate completed his/her requirements for conversion to the competitive service during the lapse, how should the agency handle the conversion?

If an agency chooses to noncompetitively convert a recent graduate who otherwise meets all requirements, the conversion is effective on the date the service requirement is met. To the extent that the furlough

period prevented a recent graduate from meeting a requirement in the agency's Recent Graduates Program, the agency may, at its discretion, choose to extend the program/appointment for up to 120 days.

Presidential Management Fellows:

If a President Management Fellow's (PMF) Executive Resources Board certification is due to take place during a lapse in appropriations, and the PMF is furloughed or the staff who would review for certification are on furlough, can an agency extend the PMF's appointment?

Agencies have the authority to extend a PMF's 2-year fellowship for up to an additional 120 days for rare and unusual circumstances. PMFs and supervisors should contact their Agency's PMF Coordinator for information about extensions.

If a furloughed PMF is unable to complete a required developmental activity as part of the PMF Program's requirements, can an agency extend the PMF's appointment?

All PMFs must complete a minimum of 80 hours of formal interactive training per year, and at least one 4-6 month developmental assignment as part of the Program's requirements. If a PMF was unable to complete these mandatory requirements as a result of being furloughed, the agency may extend the PMF's 2-year fellowship for up to an additional 120 days (note that short-term rotations are optional). PMFs and supervisors should contact their Agency's PMF Coordinator for information about extensions.

WITHIN-GRADE INCREASES

How does the lapse in appropriations affect General Schedule (GS) within-grade increases?

All furlough hours for which retroactive pay is received are treated as time in a pay status for GS within-grade increase waiting periods. A within-grade increase is effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. If a furloughed employee's within-grade increase would have been effective December 23, January 6, or January 20, but for the lapse in appropriations, the agency must make the within-grade increase retroactive to the applicable date provided other eligibility conditions were met. For more information on GS within-grade increases, please see <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/within-grade-increases/>.

COMPENSATORY TIME OFF

May an employee retain compensatory time off earned in-lieu-of overtime pay that expired during a lapse in appropriations?

Although there is no authority to extend the use of compensatory time off earned in-lieu-of overtime pay not used within the 26 pay period limitation, payment for the unused compensatory time off must be made at the overtime rate in effect when earned in the following circumstances:

- For FLSA-exempt (i.e., not covered) employees, under 5 CFR 550.114(d)(2), payment must be made if an exigency of the public business beyond the employee's control prevented the employee from using the compensatory time off within the regulatory time limits. A lapse in appropriations is considered be an exigency of the public business; thus, if an agency determines that the lapse prevented the employee from using the compensatory time off that would otherwise be forfeited, the agency must provide payment for the unused compensatory time off.
- For FLSA-nonexempt (i.e., covered) employees, under 5 CFR 551.531(d), if, for any reason, earned compensatory time off is not taken within 26 pay periods during which it was earned, the employee must be paid for overtime work.

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cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs and Human Resources Directors