

NLWJC- Kagan

Counsel - Box 007 - Folder 002

Shutdown [2]



## U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D. C. 20530

September 13, 1995

**MEMORANDUM FOR THE HONORABLE ABNER J. MIKVA,  
COUNSEL TO THE PRESIDENT**From: Walter Dellinger   
Assistant Attorney GeneralRe: Authority to Employ the Services of White House Office Employees during an  
Appropriations Lapse

You have asked us to survey the authority available to the White House office to employ the services of White House employees during a lapse in appropriations. As you know, no salaries can be paid to any government employee, including those in the White House office, without an appropriation; so no White House employee could receive salary or other compensation payments during such a lapse. The Antideficiency Act further prevents federal officials from incurring financial obligations, such as the obligation to pay salaries, in advance of appropriations except as authorized by law. 31 U.S.C. § 1341. The Antideficiency Act and the organic statutes providing for the White House office and staff create three different authorizations under which certain White House employees may continue to work during a lapse in appropriations.

**1. Excepted Functions.** The Antideficiency Act permits the White House to employ personnel who perform functions that are excepted from the Antideficiency Act's general prohibition. The Act itself expressly excepts from its coverage functions relating to emergencies involving an imminent threat to the safety of human life or protection of property. It also acknowledges that there may be authorization provided by other law. We identified three categories of such authorizations in our August 16, 1995, memorandum for Office of Management and Budget Director Alice Rivlin: those functions as to which express statutory authority to incur obligations in advance of appropriations has been granted; those functions for which such authority arises by necessary implication; and certain functions necessary to the discharge of the President's constitutional duties and powers. These three categories are discussed more fully in the August memorandum as well as in a 1981 opinion by Attorney General Benjamin Civiletti.

To reiterate, employees who perform excepted functions may not be paid until appropriations are enacted. Because, however, the Antideficiency Act permits incurring obligations in advance of appropriations and "employ[ing] personal services" for excepted

functions, the appropriate White House administrative official may obligate the federal government to pay the salaries of employees who perform such functions in advance of the enactment of appropriations.

**2. Nonsalaried Positions.** The President has statutory authority to "appoint and fix the pay of . . . such number of . . . employees as he may determine to be appropriate . . ." 3 U.S.C. § 105(a)(2)(D). It is our understanding that most White House office employees are appointed under this or a similarly formulated authority. See, e.g., 3 U.S.C. § 107 (domestic policy staff). This office has consistently taken the position that the quoted portion of § 105 authorizes the President to create nonsalaried positions in the White House office. See, e.g., The White House Office -- Acceptance of Voluntary Service, 2 Op. O.L.C. 322 (1978). We have also concluded that the Antideficiency Act's prohibition on acceptance of voluntary services "does not prohibit a person from serving without compensation in a position that is otherwise permitted by law to be nonsalaried." Id. at 322.

The President may use this authority to create and fill nonsalaried positions in the White House office during an appropriations lapse. By definition, the President does not incur an obligation on behalf of the federal government where he employs the services of persons in nonsalaried positions -- there is no obligation to pay those who hold such positions. Then, § 1341 is not violated.

The President may appoint White House office employees who have been furloughed from their salaried positions to work in newly created, nonsalaried positions. This office has previously opined that White House employees may simultaneously occupy two different positions within the White House office, one salaried and one nonsalaried, as long as the two positions are compatible. The positions will typically be compatible as long as one is not subordinate to the other. See Memorandum for Arnold Intrater, General Counsel, Office of White House Administration, from John McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, re: Dual Office of Executive Secretary of National Security Council and Special Assistant [to the President] (March 1, 1988).

Unlike those employees who perform excepted functions, employees who occupy nonsalaried positions cannot receive an obligation for payment for the services they perform in that capacity. If, however, Congress enacts the form of "lookback" appropriation that it has in recent years -- one that pays the salary of furloughed employees for the period when they were on furlough status -- White House office employees who were furloughed from their salaried position during the period of appropriations lapse could be paid for the salaried position on the same basis as other furloughed employees even though they held a nonsalaried position during the period of lapse.

**3. Waiver of Salary.** As to positions for which compensation is fixed by law -- that is, where a statute establishes either a fixed salary or a minimum salary for a position -- the holder may not waive the salary in whole or in part. On the other hand, it is the position of the Comptroller General that compensation may be waived where the compensation is not

fixed by law. Those positions on the White House office staff that are appointed pursuant to § 105 do not bear compensation that is fixed by law, as § 105 only sets forth maximum salaries.

Under the Comptroller General's approach, then, White House employees appointed under § 105 may waive their compensation. If they do so, their services may be accepted because doing so would not create any obligation to compensate them, let alone an obligation in advance of appropriations. By virtue of having waived any claim to compensation, however, it is highly unlikely that such White House employees would receive compensation even if a lookback appropriation is eventually enacted.

We have urged that, if the President decides to appoint employees to nonsalaried positions, "the papers relating to the appointment or employment of [such] persons . . . expressly provide that they will serve will serve without compensation." 2 Op. O.L.C. at 323. Similarly, any employee who voluntarily waives his or her salary or compensation should do so in writing.

Telecom Kambhi 11/14/15

OVT payroll

non-exempt EE

Volunteer for DNC to advance  
a VT trip, being paid for by DNC

NO

Telecom - Kamile

#/

multi-yr  
approp

Agency reqs/detailed - excepted.

AOK.

receptions - asked I  
not to attend.

~~Detail - e Procure Party  
As vet - who comes~~

re yr, by yr approp.  
can - by - core function

talking to w/H -  
critical - function in w/H  
not job title <sup>is</sup> have in house  
agency.

W/H call in end?

them selves

should be certain -  
excepted functions  
↓

Telecon - Kathy Whalen

---

Details - from Ag.

I said: AOK

Show up to normal party  
station (here)

~~James~~

Foz Rothman

No perm approp  
or - yes?

Chris Schwader -

May be A; may be elits

Because - [Art II, section 1]

⇒ Court expressly protects salary from abuse  
- So Cong can't have lever over Pres. -

Pres / mbrs of Congress  
no const necess. that They get paid  
no const equiv. in Article 1.

Yes, they do. || Cong may have perm approp. tho  
↓  
only mbrs (taken care of selves)

for case w/ Evelyn Liberman



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D. C. 20503  
November 9, 1995

THE DIRECTOR

**M-96-01**

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

FROM: Alice M. Rivlin  
Director

SUBJECT: Planning For Agency Operations

This memorandum is designed to help you plan your agency's activities for next week, in light of recent developments on fiscal 1996 appropriations.

The current Continuing Resolution (CR) expires at midnight on Monday, November 13, 1995. At this point, only two appropriations bills have been enacted for fiscal 1996. We do not know if Congress will pass a second acceptable CR by Monday that will continue funding for activities that lack appropriations. Because there is a real chance that this may not occur, you should begin planning now, as a contingency matter, as follows:

Today, Thursday, November 9. You should review your shutdown plans and ensure that your employees are properly informed. As noted above, the CR expires at midnight, Monday. Therefore, Monday, November 13th will be a normal workday for the Federal Government. You should advise employees to report for work on Monday.

Monday, November 13: All employees should report for work. We will advise you of further developments, including whether a CR will likely be enacted. If not, you should prepare to implement your shutdown plan on Tuesday.

Tuesday, November 14: Regardless of whether a CR has been enacted, all employees should report to work on Tuesday. We will advise you on whether your shutdown plan is to be implemented, as follows.

-- Shutdown. If no CR has been enacted or will likely be enacted Tuesday, we will issue instructions initiating a phase-down of activities for non-excepted employees. You should complete such phase-down activities for non-excepted personnel, if called for, during the first three hours of the workday.

-- Normal Operations: If a CR will likely be enacted on Tuesday, we will advise agencies to operate in a normal manner.

Attached is a summary of our general guidance on agency operations in the absence of appropriations.

Thank you for your cooperation in these difficult circumstances. We will keep in close touch with you as developments unfold.

Attachment

**General Guidance on Agency  
Operations in the Absence of Appropriations**

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981), requires all agencies to maintain plans to deal with an appropriations hiatus. If a shutdown occurs, we assume each agency will be operating under its shutdown plan as approved by OMB in September. As a reminder, the Attorney General's opinion dated January 16, 1981, updated by the opinion of the Office of Legal Counsel dated August 16, 1995, remains in effect. In general:

- o Employees of affected agencies performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property.
- o Agencies may not permit voluntary performance of non-excepted services; and
- o Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice opinions and this memorandum, and pursuant to normal agency processes for the resolution of issues of law and policy).

Please address any questions to your OMB budget examiner(s), or to OMB General Counsel Robert Damus (395-5044), or Associate General Counsel for Budget Rosalyn Rettman (395-4778).

We have received many calls about the Federal Government's potential shutdown beginning Tuesday, November 14. In that regard, please pass along the following message to the staff in your offices:

Please DO NOT PANIC! We will be operating BUSINESS AS USUAL, and will continue to operate in the hopes that we will not shutdown.

Please report to work on Monday as usual. However, on Monday, if shutdown is imminent, all personnel will be notified of this status.

If your position is deemed as "Emergency personnel", you will be informed in writing that you must report to work on Tuesday morning.

If you plan to take leave on Monday due to the holiday weekend, please report to work on Tuesday regardless of the shutdown status.

Chris Shrader. Telecon 11/9

Musings in Div. opin - opaque

Auth'd by law - discharge of const responsibls.

Vague H - range of active P. underlines when statutes auth the activ.

Then buttress the auth.

What sort of stats? a) explicit authorization < any sanction  
bathed in peculiar Pres. responsibls.  
inher- any didn't mean to pull plug.  
more narrow than we've interpreted  
it, in convs. w/ The St Dept.

We've allowed more to go ahead. ←

State Dept: They can maintain contact/info gathering fines. w/ for govts

- try to do minimal staffing
- activ can't be stopped - need reg. supplies. Can't recover.  
(depends on length of shutdown?)

The hip- need reason to believe that putting off trip compromised  
some identifiable for policy interest. - for doing it + doing it now.

May be a case you can make always.

- no more activ than nec to carry on excepted  
function w/out impairing it.  
do need to examine level of staffing.  
urg: if hip occurs, it's done ~~lean~~ <sup>- but adequate</sup>

All on credit card.

Chris Shrader again

Additional fact of what would State - may embargo above.

At core - things I can do w/out any stat auth -

few + far between

Do + then go to T. + seek compens.

Foreign hand not in that categ.

For State, almost always some authorizing statute in neighborhood  
that we can point to.

But here? Is there a statute ~~or~~ link in neighborhood?

May be statute re this.

Or - not need statute so much for President himself?

Call: Alan Kazko -  
stat law of these  
actions?

Bob Dammus

Telecom 11/9

Preparing memo today - situation

(managerial. communicating msg - do something today! review;  
make sure ee's know. advise you further.)

Cabinet mtg this aft.

ATR will make presentation - ✓

hand this out; brief them.

Q. - Pres travelling in Japan -

Pres has to be able to carry out his job.

ok legally for him to go, take enough people.

More a political q. - perceptic - really strict? In middle?

A. Its supposed to make them detailed decisions.

This would be w/ing guidance

oec has approved documents.

Post-shutdown

Ag heads determine what goes on in agency

otherwise - to oec  
- to omb

Day-by-day: need sp to monitor situation, coordinate.

262

Neil Kinloch

Telecom 11/9

Haven't done very much.

Received/reviewed OMB letter - approved

but now sending something today.

occ/OMB - law/fact distinction

Funds in P's hand - no funds available  
to take public.

Cost auth to conduct foreign affs.

Doesn't mean cost auth to take a  
trip.

In absence of continuing verol., can  
make trip?

How to say - Can't we have this trip.

Depends: how nec to conduct us for affs?

If trip auth'd - staffing is incidentally  
authorized.

FORGET  
THIS

Ek -

Why diff std -

as to a) acceptance of vol services

b) actual expenditures - trip.

EXECUTIVE OFFICE OF THE PRESIDENT

09-Nov-1995 01:19pm

TO: Jack M. Quinn

FROM: Elena Kagan  
Office of the Counsel

SUBJECT: shutdown

Chris passed on to me your note on the shutdown issue, because he knew I'd done a fair bit of work on this 6 weeks ago. (When you asked Chris to get up to speed on debt limit questions, he and I agreed that that was easily severable and that he should just do it.) I hope it's OK with you for me to continue on this matter. If not, that's fine too.

I've been in pretty close touch with Bob Damus and Chris Schraeder (of OLC) and talked to them again this morning. Not much new is happening. Agencies (and the EOP) completed shutdown plans the last time this loomed, and they presumably will implement those plans on Tuesday if there's no new CR. OMB is preparing a memo to be sent out today to all agency heads, telling them to prepare to implement their plans. And Alice Rivlin will reiterate that message in the context of a larger presentation she is giving at today's Cabinet meeting on budgetary issues.

Bob told me that a question came up at one of the morning meetings concerning how a shutdown would affect the President's scheduled trip to Japan. I imagine this is much more a political issue than a legal issue, but I did spend some time talking with Chris Schraeder about it this morning. As you know, certain activities are excepted from a shutdown: though the government can't actually pay any money to conduct these activities, the government can obligate itself to make payment. Among the excepted activities are those necessary to protect life or property (the emergency exception) and -- more to the point here -- those integral to the carrying out of the President's core constitutional powers, such as foreign policy. The critical questions in determining whether a trip of this sort falls within the "core executive powers" exception are whether the trip serves a significant foreign policy interest and whether postponement of the trip (until after the shutdown is expected to end) would compromise that interest. Assuming the trip is authorized under this standard, there is a more-than-ordinary burden to examine the level of staffing to ensure it is as lean as possible, consistent with the foreign policy interest. This is a preliminary analysis -- Chris S. said he'd like to do some more thinking about the issue -- but it's probably pretty close to the final product.

If you would like additional briefing on any shutdown issues, either in person or on paper, just let me know.

THE WHITE HOUSE

Jack Quinn

Jack -  
I'm going to  
ask Chris Cef in  
the Counsel's office  
to touch base with  
Bob Dams. I  
want to be sure  
that we are  
aware of all the  
legal issues that  
may come up and  
that we and DOJ  
are of service  
as necessary

Jack

Bob has always  
kept closely in touch  
w/ WH Counsel + OLC + will →

Right  
to Chris Cef.

C - this is an  
exchange b/w me  
and Jack Lew.  
Pls ck w/ Dams  
re shutdown, etc.  
Thanks - Jack



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 8, 1995

GENERAL COUNSEL

MEMORANDUM FOR THE DIRECTOR

FROM: Bob Damus *RD*

SUBJECT: Shutdown

This memo discusses (a) the differences between a shutdown beginning November 14th and one beginning December 2nd, and (b) implementation of a shutdown.

**November 14 v. December 2.** While in most respects they are the same, there are a few differences between a shutdown that would begin at midnight November 13th and one that would begin at midnight on Friday, December 1st:

o A shutdown midnight December 1st would occur over a weekend, whereas a midnight, November 13th shutdown would occur during the week. Very few programs or employees are affected by a weekend shutdown (except for some very visible effects such as shutdown of parks, e.g. the Washington Monument, and Smithsonian museums on the mall).

o There are some differences in VA payments, but they do not affect the main VA benefit programs. Under both shutdown scenarios, veterans (GI bill) education benefit checks would not be received on time since monthly benefits are paid weekly as veterans certify school attendance. A 11/14 shutdown would delay checks to 30,000 veterans. A 12/1 shutdown would impact more veterans (about 52,000) since most education benefits are paid during the first week of the month. (VA Compensation and Pension benefits would not be interrupted in either case since all checks are mailed or funds transferred on the 1st of the month.)

o If a debt limit crisis occurs when the government is shutdown, there could be some adverse interactive effects, though these are presumably limited because Treasury can keep on board all employees necessary to work on debt limit matters. A November 14th shutdown would occur shortly before (and during) a debt limit crisis on November 15th. The current debt extension measure introduced in Congress extends to December 12th, well after a December 1st shutdown.

Other than these matters, a quick review did not uncover any significant differences between a shutdown beginning on November 14th and one beginning December 2nd. In both cases the basic situation is described in Attachment 1, which lists programs that do (and do not) have funding available. There are some differences from the last threatened shutdown on October 1st. Since the Agriculture appropriations bill has been enacted, programs funded by that bill would not now be affected by a shutdown, including food stamps, WIC and farm subsidies. Also, the SMI trust fund that funds Medicare Part B now has large balances. Even without new appropriations, the SMI fund can continue to make payments through the end of the year.

**Implementation of a Shutdown.** If a shutdown becomes necessary next week, it would be implemented by a memorandum from you similar to Attachment 2. The memorandum would be sent on Monday, November 13th, instructing agencies to prepare for shutdown the following day.

In the past, only some agencies have reacted in the first day or two and promptly carried out their shutdown plans. Agencies have tended to delay the more irreversible aspects of a shutdown. Nevertheless, as shutdown moves beyond the first day or two, additional, more drastic elements of existing shutdown plans would be implemented. Most visible would be the beginning of furloughs of some 500,000 nondefense and 300,000 defense employees. Also, since no shutdown has lasted more than two full work days, the application of the Justice opinions, OMB guidance and agency shutdown plans have not been tested beyond that time frame. Beyond a few days, the effects of a shutdown would be significantly magnified, and in unpredictable ways.

Finally, attached is a highlights memo briefly summarizing key points on shutdown (Attachment 3).

cc: Lew  
Koskinen  
Kieffer  
Anderson  
Haas

**Status Of Programs During  
Appropriations Hiatus**

**I. ACTIVITIES THAT HAVE FUNDING**

**A. Permanently Appropriated**

1. Social Security (OASDI) benefits payments
2. Medicare Part A
3. Interest on public debt
4. Deposit Insurance

**B. Activities With Advance Appropriations For 1st Quarter**

1. Medicaid
2. SSI
3. AFDC
4. Child Support Enforcement
5. Disabled Coal Miners

**C. Contract Authority Previously Provided**

1. Federal-Aid Highways

**D. No Appropriations, but Considered "Excepted Activity" Under Agency Plans (and thus operating at reduced personnel levels)**

1. Admin expenses for activities supporting existing Social Security beneficiaries.
2. Weather Service
3. FBI
4. DEA
5. Bureau of Prisons
6. VA hospitals - open
7. Marshall's Service
8. INS
9. Emergency disaster assistance
10. Power administrations ?
11. Most DOD activities - but see II.C.12

**E. Funded By Enacted Appropriations (Ag. bill and Mil. Con. bill)**

1. Agriculture Department, including
  - WIC
  - Food Stamps
  - Meat inspections
  - Farm subsidies

2. Military Construction

**F. Other Funding Available**

1. Medicare Part B (has balances available sufficient to allow full operation through the end of the year)

**II. ACTIVITIES WITH NO FUNDING**

**A. Entitlements**

1. Social Security (new applicant processing shutdown for first week or two)

*just that?*

**B. Appropriated Entitlements**

1. Veterans Benefits
2. Foster Care
3. Child Nutrition
4. Trade Adjustment Assistance
5. NAFTA Transitional Adjustment Assistance

**C. Discretionary Appropriated Activities That Lack Full Funding and Are Considered Not Excepted Under Agency Plans**

1. Unemployment compensation administration (some funding available to States to keep offices open initially)
2. NASA, excl. space shuttle (space shuttle considered "essential")
3. National parks
4. FCC
5. HUD (mostly closed)
6. FTC (some carry-over funds)
7. EPA (mostly closed)
8. HHS, Energy grant awards to States, locals, universities
9. IRS (90%)
10. Treasury (90%)
11. Partial shutdown:
  - DOD (almost 300,000 furloughed, 3/8ths of workforce)
  - Justice (except FBI, prisons, and INS)
  - Labor (minimal staffing)
  - State (mostly open)
  - Veterans (VA health - 92% on job; VA benefit - 97% furlough)
  - Interior (mostly closed)

- Commerce
  - PTO & NTIS - user fees & perm appro.
  - NIST (some carry-over funds)
  - BEA, NTIA, Census, MBDA, ESA, ITA, TA,  
EDA - closed
- Energy
- Transportation (mostly closed except for FAA  
and Coast Guard)
- Education (mostly closed)



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
November 13, 1995

THE DIRECTOR

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

FROM: Alice M. Rivlin  
Director

SUBJECT: Agency Operations in the Absence of Appropriations

The Continuing Resolution (CR) expires at midnight tonight, Monday, November 13, 1995. At this point, only two appropriations bills for fiscal year 1996 have been enacted. We have no indication that Congress will act today and pass an acceptable CR covering the remaining eleven appropriations bills. Therefore, the head of each agency must be prepared to implement his or her existing plan for closing down activities funded by accounts that have not received appropriations beginning tomorrow, Tuesday, November 13, 1995.

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981), requires all agencies to maintain plans to deal with such an appropriations hiatus. We assume each agency will be operating under its shutdown plan as approved by OMB in September. As a reminder, the Attorney General's opinion dated January 16, 1981, updated by the opinion of the Office of Legal Counsel dated August 16, 1995, remains in effect. In general:

- o Employees of affected agencies performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property.
- o Agencies may not permit voluntary performance of non-excepted services; and
- o Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice opinions and this memorandum, and pursuant to normal agency processes for the resolution of issues of law and policy).

Implementation of this shutdown process will take place as follows:

- o **Today, Monday, November 13:** You should prepare to implement your shutdown plan tomorrow. All regular employees performing non-excepted activities, as well as excepted employees, should be instructed to report for work on Tuesday, November 14th, as scheduled.
  
- o **Tomorrow, Tuesday, November 14:** We will instruct you on whether your shutdown plan is to be implemented, as follows.
  - **Normal Operations:** If a CR is clearly likely to be enacted on Tuesday, agencies will be instructed to operate in a normal manner.
  
  - **Shutdown.** If no CR has been enacted or is likely to be enacted tomorrow, we will issue instructions initiating a phase-down of activities for non-excepted employees. Such phase-down activities for non-excepted personnel, if called for, should be completed during the first three hours of the workday.

Please address any questions to your OMB budget examiner(s), or to OMB General Counsel Robert Damus (395-5044), or Associate General Counsel for Budget Rosalyn Rettman (395-5600).

### Highlights of Shutdown

- o When funds are not available, nonexcepted employees must be furloughed, while excepted employees can continue working.
- o Excepted employees (the term "essential" is not used) are generally those engaged in the preservation of human health and protection of property.
- o Funded activities (that continue) include such things as:
  - Agriculture (the Agriculture appropriations bill has been signed),
  - VA hospitals (excepted),
  - FAA (excepted),
  - Medicare Part A, interest on the debt (both permanently appropriated).
- o Each agency has its own shutdown plan--
  - The plans were reviewed by OMB for consistency and general adherence to Justice guidance.
  - The plans were done on the assumption of a 5-10 day shutdown; the plans will change if the shutdown is longer.
- o Social Security checks continue to be sent (due to permanent appropriation of these trust fund payments).
- o New contracts requiring FY'96 funds will not be signed, and payments on old contracts will cease since agency contract payment personnel are not excepted.
- o About 800,000 civilian employees would be furloughed during a shutdown -- 300,000 defense, 500,000 nondefense.
- o No shutdown has lasted more than two work days. Any shutdown beyond that time will start to impose large costs in disruption and delayed payments.

~~7.2~~

~~3.2~~

→ Certainly can give the T. back to the T.

(Then, he'll have income - for tax purposes)

→ Can he just waive his salary?

6-2632

reading this  
can't put it  
to show that

decrease  
company can't ~~lower~~ or ~~remove~~ <sup>remove</sup>

But he himself can waive it.

② Superintending exec branch  
 (what's left of it)  
 oversight role smaller - but  
 continues to exist  
 oblig to ensure those events.

which laws continue to be executed are  
 executed faithfully.  
 continues to have auth to  
 recommend if he thinks expedient  
 "recommendations clause" - may entail sup  
 staff

① In affs power -  
 very vague, context-specific  
 Does APP auth any  
 specific func? Depends  
 on facts / gives  
 Categ - diff to give  
 content to.  
 can't be everything  
 what Pres could do w/out  
 Const. One const func  
 Const may auth, even if given  
 ADA. (Other statutes may buttress  
 assertion)

Unless travel, fit w/in catgs of exceptions  
 - emerg  
 - const func / powers (??)  
 - continuing appropriations for WH travel?

General Counsel  
 Office of Administrative

OMB

no-yr \$ - USTR -  
 forfeiture - OASD CUP  
 funds  
 no-yr acct

Pres salary - may not be reduced while in office  
 → const oblig to approp \$  
 prob. unenforceable.  
 { until approp - obligated already, but no \$  
 (like exopted func)  
 ADA doesn't apply to him.  
 → Const mandates the oblig.

Visit to Pope  
 Mexico \$ Dinner.

Art III judges - same. J

VP - ch whether const says anything  
 about VP's salary.  
 If not - fall w/in exceptions of ADA.  
 But would

Nelson Cunningham -

Call Andrea Rutledge r Di-9 with Admin Office

6-2500

Can refuse to receive his salary  
get a check / tears up.  
does that count as income?  
[Think that contrib to Treas. is  
deductible - offset income.

- tax law says -  
\$ imputed to him, ?? - for tax purposes  
regardless, whether ~~not~~ he has  
accepted it; cashed the check.

He can't direct  
any not to  
appropriate;  
indeed, Corp  
has a const  
oblig to approp.  
the \$.

(of course, he  
can request)

Const. - nothing to do w/ it.

nothing prevents him  
from refusing  
to accept  
the \$.

(within 1/2  
or 1/2)

JFK - 1 per yr.  
Don't know how it  
was structured when came  
time to do tax accounting

1,000

1,000  
units  
1,000

200,000  
- 1,000

199,000

- minimum tax /  
cap on charit contribs -

doesn't let you  
avoid paying  
certain level  
of taxes.

$$\frac{200,000}{1,000} = \boxed{199,000}$$

0/2-9

I. During a fund gap, what happens?

- A. No monies may be paid out unless there exists a multi-year or no year appropriation

this means almost all of the discretionary portion of the budget (about 35% of the total) is not funded

- B. No contracts may be entered into or obligations incurred unless authorized by law

II. What activities are authorized by law?

First, bear in mind that even finding that something is an "excepted" or "emergency" activity simply authorizes incurring an obligation -- employees cannot actually be paid until funds are appropriated

The significant activities that are authorized by law:

- A. the emergency exception (safety of human life and protection of property)
- B. activities essential to the President's constitutional role (e.g., foreign affairs and national security)
- C. special rules for White House staffing
- D. personnel necessary to maintain an activity that has multi-year or no-year appropriations (e.g., medicare checks)
- E. special statutes (e.g., authorizing contracts in advance of appropriations)

III. What the other branches are doing

- A. Congress members have permanent appropriation
- B. Courts plan to remain open, but so far as we can tell, only Supreme Court Justices have permanent appropriations
- C. So far as we know, no executive branch officials have permanent appropriations, although there may be isolated instances here and there



U. S. Department of Justice

Office of Legal Counsel

NC 919-613-7096

Washington, D.C. 20530

DATE: \_\_\_\_\_

FACSIMILE TRANSMISSION SHEET

FROM: Neil Kinkopf/Chris Schroeder OFFICE PHONE: 514-3713

TO: Elena Kagan OFFICE PHONE: \_\_\_\_\_

NUMBER OF PAGES: 1 PLUS COVER SHEET

FAX NUMBER: \_\_\_\_\_

REMARKS:

Get 15 or 20 mins of lay of land out for people like Panetta

Get some sense of thinking in WH H - how when discret. calls come up, people want to learn.

Reconnaissance as to other branches -

Cong - pt. paycheck - staff: essential to leg function.

Whether how can create positions + set salary. Doesn't exist w/ other agencies.

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OF KEVIN SMITH ON 514-2057

OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563  
FTS NUMBER: (202) 368-0563

Cong has same kind of facility. People are working for free.

Notes for 12:30 mtg - which did not happen

All expenditures / obligations precluded unless fall w/in "excepted functions." What are those?

1. <sup>for</sup> emergencies involving safety of human life or protection of prop.  
imminence requirement.

2. necessary to discharge of P's const duties + powers  
no simple catalog - depends on facts + circumstances  
difficult to give content to

a) for affairs / national security / commander in ch.

(but even here - some notion of urgency + importance?)  
(must be necessary to discharge)

b) superintendence of executive branch Also: extent of oblig.

overseeing what's left of govt

ensuring that laws are faithfully executed

c) recommend legislation (?)

3. Permanent or multi-year approps

None, really (exceptions for USIA + ONDCA)

4. Nec to implement shutdown / nec to resolve shutdown

vs? untested services

1. Waive pay - but then will never get back, though  
furloughed employees may w/ a congressional  
lookback provision.

2. Be furloughed / appointed to new ~~position~~ position at 0 salary  
then - would get pay under general provision for  
all furloughed employees

looks terrible - a sort of end-run around the law

but - given all these people will probably be paid if they  
stay home, what's the cost?

urgency/  
extent  
of obligation

## THE ROAD AHEAD:

This morning, the Bulletin invites Charles Sethness, Assistant Secretary of the Treasury for Domestic Finance during the second term of the Reagan Administration, to discuss the looming issue of Federal debt extension.

**BULLETIN:** Should, at some point over the next month or so, the Congress not pass a debt limit extension and should Treasury face a problem of not being allowed to borrow money in its traditional way, can it find ways to pay its bills?

**SETHNESS:** My understanding is that there really are not any practical alternatives in sufficient size that are available. Even if one tried to figure a way to reinterpret rules to create additional flexibility, I think that would be a mistake. ... If you were to interpret that there was some other way to do it, it would have its own ugly, unfortunately political dynamics. You would have to deem something not to be debt. Making up artificial and unfortunate distinctions only creates uncertainty. And the real cost to all of this is the fact that you are creating uncertainty. So, I am not aware of any practical way to finance the payment of bills in sufficient size without increasing the debt limit. You would end up not being able to pay your bills.

**BULLETIN:** Is it possible to use trust funds to help temporarily finance the debt?

**SETHNESS:** If you were to interpret that the trustees of the Social Security trust fund could agree to turn in their Treasury securities for a different kind of promise to pay [the government's obligations] that didn't count as debt, several questions arise. Would it be interest bearing, for example. A set of other questions would come up about what was it that was being held by the Social Security trust fund. My concern in doing that, in addition to any legal issues..., is what kinds of additional uncertainties are you creating out there in the world? Not only would you have uncertainty about the US Government's willingness to create enough debt to meet its legitimate legal mandatory obligations, but we would add a question of whether the Treasury Department or the Congress feels free to tinker with the investments of the Social Security trust fund.

**BULLETIN:** Congressman Nick Smith has legislation that, under a default scenario, would allow the Clinton Administration to switch from a first come, first served bill-paying system to one under which priorities could be set. Would this work or help?

**SETHNESS:** It would move the monkey from one back to another for a while until you finally run out of full discretion on how far you could string things out. Giving the executive branch discretion to decide which bills they are going to pay, without giving them direction in legislation as to what the priorities ought to be, is giving them such wonderful choices as: Would you rather pay interest on the debt, Social Security checks, government employees, the military, the many government contractors that perform services and supply goods. ... It could buy time but the price of

each purchase of time is some kind of an ugly negative fallout.

BULLETIN: But the alternative would be the Clinton Administration's interpretation that they would have to pay whatever bill comes in first.

2. | SETHNESS: Every Administration of both parties has taken that interpretation. In fact, there is no law that says some full faith and credit obligations of the US Government are more full faith and credit than others. And therefore, you pay in the order that it comes in until you run out of cash. And that's what the debt limit is all about.

BULLETIN: The Clinton Administration is making a strong argument that a default will cause concern in the markets and will damage the future credibility of the US Government. Do you consider this to be a realistic concern?

SETHNESS: I do believe that it is a more significant concern than I have heard people over the years in both parties on the Hill express. I think there is an additional cost to the government debt from uncertainty. Not paying on time would introduce an uncertainty and a chaos into things which would have a material cost. I don't think anybody could tell you exactly what that cost would be and how long the uncertainty effect would last, but given the size of the debt, and the amount of it that rolls over, it doesn't take much of an affect on the interest rate on the debt to represent very, very large numbers.

# Dilemma Over Debt Limit

## Rubin Has Options, Both Good and Bad

By Clay Chandler  
Washington Post Staff Writer

AL

The Clinton administration and congressional Republicans both say it's a financial crisis that never has to happen.

Just so long as the other side backs down.

But suppose there is no budget deal by Nov. 15, the day the Treasury Department, confronting the need borrow to meet a \$25 billion interest bill, is expected to run out of cash unless Congress approves an increase in the federal debt limit. What's a Treasury secretary to do?

Quite a bit, it turns out.

Financial specialists say that failure to increase the \$4.9 trillion limit

on the government's total borrowings won't necessarily trigger the first default in U.S. history.

The specialists contend that there are a variety of steps that Treasury Secretary Robert E. Rubin could take to keep the government afloat, possibly even through the November 1996 election, if the administration and Congress cannot settle their differences.

But there's a catch: Most of the legal steps are probably impractical, and most of the practical steps are probably illegal.

Either way, protecting the government's creditworthiness would force Rubin to march deep into treacherous financial and political

See DEBT, A8, Col 1

DEBT, From A1

territory that has never been explored.

Rubin acknowledges the Treasury has options to avert default should Congress block an increase in the debt limit. He isn't talking about them, though. To do so, many administration officials say, would only egg on Republican hard-liners in Congress—and diminish White House bargaining power in the budget fight.

There are a number of measures, a lot, that you can consider taking," Rubin said at a meeting last week with editors and reporters of The Washington Post. "Each of those measures involves certain legal and practical questions and we have not resolved any of that."

In fact, White House and Treasury department officials are frantically mashing out answers to those questions in what one Clinton aide called "unterminable" planning sessions.

Among the options available to

drawing on money held in public trust funds, such as the Social Security Trust Fund, or the retirement funds for civil servants and military personnel.

Calling back federal funds on deposit at commercial banks.

Tapping the Exchange Stabilization Fund, the little-known kitty that was used to help bail out Mexico.

Borrowing from the International Monetary Fund.

Selling U.S. gold reserves or other federal assets.

Delaying payments to government contractors or federal employees.

On Friday, House Speaker Newt Gingrich (R-Ga.) appeared to back off a bit from previous threats to risk default if necessary to get his way on the budget. Gingrich, in an interview with Bloomberg Business News, said he might consider raising the debt limit for "a couple of days or week" until the two sides could reach a deal.

But even beyond a temporary extension, financial experts see wiggle room for Rubin.

"If Congress and the White House fail to provide more borrowing authority [by Nov. 15], we don't doubt that the Treasury would bend the rules rather than default on its obligations," wrote Louis Crandall, chief economist at R.H. Wrightson & Associates Inc. in New York, a bond market consulting firm, in recent client newsletter.

"The White House took executive action in the face of Congressional delays to avert a Mexican government default in January," Crandall said. "We assume that it would be equally inventive in finding ways to avert a U.S. government default in November."

Tapping the public trust funds is probably the most practical of the temporary solutions available to Rubin, although the legal implications of such a move are murky. Each day the Treasury takes in several billion dollars for these funds in the form of payroll taxes. Normally, it "invests" that money immediately by buying non-marketable government bonds.

But during some previous budget standoffs the Treasury has dispensed with its ordinary accounting practices, choosing to "underinvest" revenue as it comes in. The public funds are given a temporary IOU that does not count against the debt ceiling, and the withholdings are used to pay off the government's cash obligations until an increase in the debt ceiling can be worked out.

A much more radical use of the trust funds involves freeing up cash by "disinvesting" some of the money used to buy government bonds. In essence, this approach entails redeeming bonds held on behalf of the trust accounts ahead of schedule with a promise to make up foregone interest later.

Cashing in bonds held by the public trusts is an appealing option because the accounts hold so much money—more than \$1.2 trillion, according to a recent projection by the Congressional Budget Office. That's more than enough to keep the Treasury from running out of money until the second half of the fiscal year, when income tax revenue begins pouring in and the Treasury's cash flow improves significantly.

If all the bonds in the public trust funds were redeemed, the Treasury would have enough cash to keep the government afloat through the end of the century without increasing the debt limit.

Critics warn, however, that sustained disinvestment of the public trusts would set a dangerous precedent and could be difficult to explain politically, given the sensitivity of seniors to Social Security. In 1985, when President Ronald Reagan bat-

tered a Democratic Congress over the Gramm-Rudman budget reduction package, the Treasury redeemed bonds earmarked for the Social Security trust fund a few days early to meet a pending payment to Social Security beneficiaries.

The action provoked a suit from the American Association of Retired Persons. The challenge was eventually dismissed, but it's unclear how the courts would react if the Treasury cashed in bonds held by the trust funds to pay off obligations beyond those to beneficiaries.

"Once the Treasury starts disinvesting the trust funds in order to make interest payments or to meet other general obligations, there is no telling where the process would end," warned Wrightson's Crandall.

Other possible measures are less attractive, in part because they would free up less cash. It is unlikely that the Treasury could come up with much more than \$5 billion or \$6 billion in additional credit by calling in government deposits in commercial banks or tapping the Exchange Stabilization Fund. The Treasury is already near its borrowing limits with the IMF.

Crandall estimates that the Treasury could come up with about \$90 billion, enough to finance government operations through the end of 1995, if it could sell its entire gold reserve to another country at the current market price of about \$395 an ounce. But he warns that dumping federal gold reserves on the open market is a "fanciful solution" that is "clearly out of the question" because it would swamp demand for the precious metal, driving down its value and sending shock waves through financial markets.

Alternatively, Rubin could simply choose to pay some bills on time and let other creditors wait their turn. That is technically a form of default, although one with less severe consequences than stiffing bondholders.

Many House Republicans have, however, advocated that approach. To counter Treasury warnings that Rubin has no legal authority to pay the government's bills on anything other than a first-in, first-out basis, Reps. Nick Smith (R-Mich.) and Chris Shays (R-Conn.) have drafted legislation they say would let the administration decide which creditors should get first claim.

"Pay off the [Treasury] notes, pay off the interest on the debt, pay off Medicare, Medicaid and Social Security and then think about prioritizing how you pay the rest," Smith recommended.

House Majority Leader Richard K. Arme (R-Tex.) said yesterday on CBS-TV's "Face the Nation" yesterday that he will work for passage of such a bill, which he said would give Clinton the authority to manage federal finances on a "cash-flow basis, during an interim period between debt ceilings."

"We're prepared to give the president the authority to exercise prerogative and discretion, and pay out bills as a family does," Arme said.

But Treasury Undersecretary John D. Hawke dismissed Arme's suggestion as a "half-baked" proposal that "doesn't make any sense at all."

"It's a simplistic idea that you can treat the obligations of the U.S. government like the obligations of an individual citizen with a credit card," Hawke said yesterday in a telephone interview. "The payments of the U.S. are vastly more complicated."

Hawke argued that even if sorting out which of the government's millions of creditors do and don't get checks were mechanically possible—and he said he doubted that—Arme's proposal "would still require making intolerable decisions. How do you decide whether you are going to pay for goods and services the government has purchased, or the wages of employees?"

Nor is it lost on House Republicans that such decisions, which could spell bankruptcy for many creditors, would be a political nightmare for the White House.

For now, administration officials are hoping Republican brinkmanship on the debt limit will trigger a backlash on Wall Street that forces a retreat.

Most analysts say even a temporary default could have disastrous consequences for both individual and institutional investors. Many bondholders could be thrust into insolvency by even a momentary failure of the Treasury meet its obligations. Other experts warn that a default, however brief, would do permanent

damage to the dollar's reputation as the world's most stable currency.

House Minority Leader Richard A. Gephardt (D-Mo.), in a meeting with reporters Friday, warned that federal borrowing costs could soar. "That is just irresponsible, to have interest rates go up, to threaten the economic recovery that we're in. . . . You can pay higher interest rates as a result of letting the debt ceiling go down and us defaulting on our debt, you can pay a price for that for 10, 15, 20 years."

But many younger Republicans in the House last week seemed only to grow more adamant in their opposition to approving a permanent increase in the ceiling.

Shays, for example, vowed that unless Clinton endorsed a plan to balance the budget in seven years, he would not accept a bill to raise the debt limit even if Gingrich "got down on his knees and begged me."

"I'm just not going to do it," Shays said in an interview. "I'd rather face a recall than tell my daughter I'm leaving her generation with all this debt."

THE WASHINGTON POST  
MONDAY, SEPTEMBER 25, 1995

# Old Wounds, New Schisms

THE WASHINGTON POST  
MONDAY, SEPTEMBER 25, 1978

## A Fractious Exile Community Is Torn as U.S., Vietnam Mend Relations

By Lena H. Sun and Lan Nguyen  
Washington Post Staff Writers

A1

**H**ung Tri Le fled his native Vietnam as a teenager two decades ago to escape the communists. Now that the United States has normalized relations with Vietnam, the 34-year-old technology consultant wants to return and offer his expertise to help rebuild the economy.

But when he broached the idea to his father, he was rebuked for being naive. Le's father, a colonel in the former South Vietnamese army,

spent 10 years in a political reeducation camp under the Vietnamese communists. His advice: Never trust them.

"We argued about it," recalled Le, whose boyish haircut is beginning to show gray. "I said, 'Even if you don't trust the government, wouldn't it be better to open the country up and try to make the system work better for the people?' He just shook his head."

For many Americans, the formal establishment of diplomatic relations between the United States and Vietnam on Aug. 5 closed decades of hostility and enmity. But for many Vietnamese Americans, normalization has reopened old wounds and created new schisms.

Last year, the Vietnamese were second only to the Salvadorans in the number of immigrants entering the Washington area, according to the Immigration and Naturalization Service. For the estimated 50,000 Vietnamese Americans who make up one of the area's fastest-growing ethnic populations, the formal recognition of Vietnam's communist government is dividing an already fractious community. It is sowing

See VIETNAMESE, A12, Col. 1

### VIETNAMESE, From A1

fear and bitterness in the older generation, sparking curiosity and nationalism in the younger generation and creating business opportunities for those who want to make up for lost time—but don't dare say so in public.

### Background of War, Politics

The issue is emotionally explosive because most of the 950,000 Vietnamese Americans in the United States came here as refugees escaping the communists. They include highly educated professionals and elite members of the former U.S.-backed South Vietnamese government who fled after Saigon fell in 1975; entrepreneurs; "boat people," those of more modest backgrounds who escaped with tens of thousands of others from the late 1970s to early 1980s; Amerasians, children of U.S. servicemen and Vietnamese women; and most recently, former political prisoners, jailed because they held military or government positions in the former South Vietnamese government.

This background—the traumatic flight from war and political conflict—is what most distinguishes Vietnamese Americans from the majority of immigrants in U.S. history, who were drawn more by economic rather than political forces.

As refugees from the Cold War as well, Vietnamese Americans have much in common with Cuban Americans, the most successful and visible group of political exiles in the United States. For both groups, the defining moment of their lives is going into exile, said Ruben Rumbaut, a Michigan State University sociologist who is Cuban American and studies Indochinese refugees in the United States.

As a result, exiles spend the rest of their lives justifying that decision, which makes it difficult for many Vietnamese Americans to accept normalization with Hanoi. Acceptance is tantamount to acknowledging that "the reason I left everything behind, to start from below scratch, was really not that important," Rumbaut said.

### A Growing Presence

The politics of normalization reaches deeply into daily life. It dominates dinner table conversations, as families talk about the possibility of returning to Vietnam to live and work. It influences whether people attend certain Vietnamese cultural performances and whether the Buddhists among them worship at any of the area's three Vietnamese temples. One young Vietnamese American professional even dropped her Vietnamese American doctor, in part because they clashed over normalization.

Vietnamese Americans were part of the largest refugee resettlement program in U.S. history. They were resettled in all 50 states, partly to avoid a concentration in one city, such as the Cubans in Miami, Rumbaut

said. Over the years, concentrations have developed in several areas, including California, Texas and here.

Locally, the largest numbers of Vietnamese Americans have settled in Arlington and Fairfax counties. The Northern Virginia telephone directory lists nine pages of Smiths—and four pages of Nguyens, the most common Vietnamese surname. The Eden Center, a complex of Vietnamese shops in Falls Church, flies the South Vietnamese flag. Two years ago, Le Chi Thao, a lawyer, became the first Vietnamese American to serve on the Fairfax School Board.

Vietnamese communities also have sprung up in Silver Spring and Langley Park. As families become more established, they have tended to move from the close-in suburbs to outlying ones: Springfield, Herndon, Rockville and Gaithersburg.

Relatives often live close to one another. Hung Le bought a five-bedroom colonial in Falls Church down the street from the house where his father lives with Le's older sister, a Georgetown restaurant manager. But Le has moved to a nearby condominium, and his aunt is living in his house temporarily. Le sees his father nearly every weekend.

When he dreams at night and when he balances his checkbook, Le thinks in Vietnamese. But in other ways, including his fluent English, he considers himself "American." He especially likes the "American" way of resolving conflicts.

"In America, you can have disagreements in a meeting, but outside the meeting, you're still friends," said Le, sipping tomato soup in a cafe not far from his office at the Federal National Mortgage Association on Wisconsin Avenue NW. "In the Vietnamese community, that's not true. Lots of times, people don't talk [to one another] any more. You feel like a wall is starting to develop."

Much of the normalization debate within the Vietnamese community is dominated by the older refugees, many of whom feel that they are being forced to live once again with the enemy.

"Normalization has changed the power relationship between the government in Vietnam and the [Vietnamese American] community here," said Bich Ngoc Nguyen, executive director of the National Congress of Vietnamese in America, a Springfield-based federation of about 200 organizations

across the country.

### A Deep-Seated Fear

The official Vietnamese presence here is a staff of about 10 people who operate out of temporary quarters in a fifth-floor suite on 20th Street NW. The plan is to move eventually into the Vietnamese Embassy on R Street NW—between the embassies of the Philippines and Kenya—when renovations are complete.

No one knows how much influence the new embassy will wield among the Vietnamese communities in the United States.

But for many, that is not the point. There is a deep-seated fear that formal recognition has opened the way for Hanoi's operatives to infiltrate local communities.

"Their officials will be able to go places and present their viewpoint. They will even be able to publish newsletters or . . . finance some kind of Vietnamese language newspaper," said Nguyen, a former Reagan administration official.

Younger Vietnamese Americans tend to see things differently. They still have strong emotional ties to Vietnam, but unlike their parents, they tend to view recent developments with less fear and more optimism.

"We have the opportunity, we have the education, and we want to give something back," said Maria Vu, 29, an administrator for Johnson & Johnson who heads a recently formed organization of Vietnamese American professionals.

Vu and Le said it is time to find ways to help Vietnam, even if it means alienating their elders by working with the communists.

Both have returned for visits. Le went in June and lectured about financial markets at a university in Ho Chi Minh City, formerly Saigon. He is helping the Vietnam Veterans of America Foundation and other groups bring 50 Vietnamese business officials to the United States for eight-week fellowships with U.S. companies, the first high-level business training exchange since normalization. The Vietnamese delegation arrived in Washington yesterday.

Other Vietnamese Americans also are eager to do business. One of them is a former South Vietnamese government official who spent several years in a reeducation camp digging ditches before escaping Vietnam on a boat in 1980. His Washington consulting company recently opened an American-products showroom next door to the former U.S. Embassy in downtown Ho Chi Minh City. Pictures from the grand opening show smiling U.S. and Vietnamese officials standing near new Carrier air conditioners.

The businessman, in his forties, did not want to be identified for fear of retaliation by what he called "fanatic" anti-communists. "History is history," he said, gesturing impatiently over a plate of ginger chicken in a Vietnamese restaurant in Falls Church. "The only way Vietnam can develop faster is to tap into the Vietnamese Americans out here."

Interest is surging. Since the Vietnamese liaison office in downtown Washington opened six months ago, it has issued more than 20,000 visas, more than half to Vietnamese who want to return and visit relatives.

1/2

**(Untitled on wire) By Philip J. Trounstine  
Knight-Ridder Newspapers**

SAN FRANCISCO President Clinton on Thursday declared "technological literacy" an educational imperative and pledged his support to connect every classroom in the country to the world-wide computer network by the year 2000.

"Preparing our children for a lifetime of computer use is now just as essential as teaching them to read and write," Clinton said. Pointing to a school-wiring project sponsored by Silicon Valley and other high-tech companies as a model for the nation, Clinton likened their \$15-million effort to a "high-tech barn-raising."

"Tens of millions of parents all across our nation have watched their children play every kind of video game from 'Mortal Kombat' and 'Primal Rage' to 'Killer Instinct' and 'Super Streetfighters,'" Clinton said, drawing a giggle from about 200 youngsters beneath the dome at the Palace of Fine Arts.

"But the really important new computer game is America is learning," Clinton said. "I want to get the children of America hooked on education through computers."

Although he offered no details, Clinton also pledged that in coming weeks he would unveil a plan to achieve technological literacy for the country's youth. Jonathan Sallet, director of the Office of Policy and Strategic Planning in the Commerce Department, said the goal of connecting schools and libraries across the country would demand a combination of public and private spending, a specific plan for which has not yet been devised.

Speaking outside of the Exploratorium, where he earlier met with executives whose companies are working to provide Internet access to California's 12,000 schools, Clinton stole some of the high-tech glow that Gov. Pete Wilson has sought as governor of the state that is home to the computer revolution.

While Clinton and Vice President Al Gore, who accompanied him, have paid unusual attention to high-tech policy issues, aligning themselves with the initiative of glamorous electronics companies also is a crafty political move. Winning the imprimatur of Silicon Valley executives, many of them Republicans, was an important coup for Clinton in 1992 a feat he'd like to replicate in 1996 when he needs to win California.

White House press secretary Michael McCurry was careful to credit Wilson with having supported efforts to proliferate computers in the schools. But one less charitable White House source turned on its head Wilson's claim to be a governor who gets things done. "There's been a lot of talk and not much happening," the source said of efforts to wire California schools that Wilson seemed unable to catalyze. "The president was anxious to really make this happen."

Wilson aides responded defensively to the president's incursion.

"We could have a computer on the desk of every fifth grader in the state of California if we didn't have to spend \$1.75 billion per year on educating illegal immigrants," said press secretary Paul Kranhold.

"This is nothing new," said Maureen DiMarco, secretary of child development and education, pointing to the \$30 million Wilson has invested this year in classroom computer technology and a longstanding commitment to interconnecting schools.

In his closed-door meeting with about 15 high-tech leaders at the Exploratorium, Clinton said he sees Internet access in the schools as a way for educators and students to learn from one another how to solve educational challenges, according to one participant.

Use of the Internet will allow advances made in one school to be shared easily with others, the president said. Computer links will also make schools and teachers more accountable

because they will have easy access to innovations pioneered by others.

The executives in turn told the president that teacher training will be a fundamental barrier toward acceptance of the Internet, since educators will have to instruct young people how to use computer technologies. In turn, the firms said they are working to create small, relatively inexpensive machines that would permit easy access to the Internet.

The Clinton-Gore trip to San Francisco, on day four of a five-day political tour, was not just a romp through what Clinton called "the world of modems and megabytes." In the president's words the reality not just virtual reality of the visit was underscored by a \$1,000-per-napkin fund-raising luncheon at the San Francisco Fairmont where Clinton-Gore raised \$650,000.

There, before a decidedly partisan crowd, Clinton warmed with the same appeal he has peddled from Florida to Pennsylvania to Colorado: that "it is a violation of our solemn obligation to give people a chance to make the most of their own lives" to needlessly cut spending on education, training, Medicare, environmental regulation and other programs threatened by Republicans in Congress.

"It is not fundamentally about money," Clinton insisted. "It's about whether we're going to be a community or a crowd."

And though Clinton was expected to steer clear of some of the hot-button issues that have riled up Californians, he seemed unable to resist, vowing again to fix, not eliminate, affirmative action programs, and standing against anti-immigration rhetoric.

"Let's not forget something," he said. "Except for the Native Americans, all the rest of us come from somewhere else. We're a nation of immigrants."

Later in the day, Clinton participated in a live call-in radio show with Larry King in Los Angeles. He told callers he will delay formally declaring his candidacy for a second term as long as possible and said he hoped America would be blind to Colin Powell's race if he seeks the White House.

Thursday evening Clinton attended two more fund-raisers, including one at the House of Blues. Friday he is scheduled to make appearances in Orange County and San Diego.

(Michael Zielenziger of Knight-Ridder Newspapers contributed to this report.)

(This article is from the San Jose Mercury News.)

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**U.S. budget: Raid on trust funds proposed if debt-hike delayed By Steve Marcy Knight-Ridder Financial News**

WASHINGTON Robert Reischauer, one of the more savvy, more experienced fiscal policy advisers in Washington, thinks he's figured out how President Bill Clinton can overcome Republican intransigence to raise the U.S. debt limit: raid the civilian federal employees' retirement funds.

Such a maneuver would allow the U.S. in effect to lower its outstanding debt by \$350 billion and sell new securities for that amount of cash, enough funds to finance the U.S. deficit for well over a year, if necessary, he said.

Congressional Republicans have already set in motion measures to tie an increase in the debt limit to legislation they will pass this fall to balance the budget by 2002. Clinton doesn't like the upcoming legislation because it cuts too deeply into taxes, Medicare, Medicaid and programs he favors.

Republicans figure that by tying the balanced-budget package to a needed increase in the debt limit, Clinton will be forced to sign it, since his officials have all warned of a meltdown on U.S. creditworthiness if he vetoes it and risks the possibility of a default. That possibility looms Nov 15, when

Republicans exert over the political system.

The only real argument against it is that one can hardly imagine an egoist like Perot shelling out that much money in order to be No. 2. To tell the truth, I can't imagine anyone doing it, egoist or not.

Which brings us to the second intriguing possibility: Powell challenging Bill Clinton in the Democratic primaries.

Powell fits in with the New Democrats far more cozily than he does with any Republican group (unless you count Rockefeller Republicans, of whom there are barely enough to form a circle). He is a fiscal conservative, a social moderate, a believer in downsizing government and in keeping the nation militarily strong. If that's not the New Democrat template, what is?

He'd be a devastating opponent for Clinton, pitting his glowing military record against Clinton's draft-dodging history, his exemplary personal conduct against Clinton's scandal-stained resume. He could not only draw Perotistas and disaffected Republicans into the Democratic primaries, he could appropriate much of Clinton's base-support -- blacks and other minorities.

Once nominated as a Democrat, he could bring all of that constituency with him against a Republican opponent who has painted himself into a very tight right-wing corner. Which would mean ...

(SLAP!)

Thanks, I needed that. I got carried away. You have to admit, though, that those scenarios are no more screwball than the Powell plots emanating from the "distinguished political analyst" wing of the press. Neither are they less.

Those who view Powell as a legitimate contender for the Republican nomination imagine that there is a vast reservoir of Republican moderates out there, yearning to breathe free. They see Powell as the catalyst who can galvanize this inert mass into forming a crusading army.

Maybe they're right about there being a lot of Republican moderates and maybe they're not, but one thing is for sure: You don't see them walking around during the daytime.

He won't run.

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## CLINTON COURTS THE WEST

By Jack W. Germond and Jules Witcover

DENVER -- When President Clinton passed through Colorado the other day mining for votes and campaign money, he appropriately wore brown cowboy boots, albeit with a business suit.

An element of his 1992 presidential victory was his ability to carry Western states like Colorado. Three years later, issues like grazing rights and Clinton's continued support of gun control, as well as general coolness toward his performance in office, make winning the West in 1996 a dicier proposition for him.

A recent survey by Denver pollster Floyd Ciruli gives the president little comfort. On one hand, it found that his disapproval rating had fallen from 49 percent to 41. On the other, the telephone poll of 500 Denver-area voters indicated that only 41 percent expressed approval of him as president and 69 percent said they would consider voting for an independent.

Democratic Gov. Roy Romer, talking to reporters, noted Clinton's lower disapproval rate and offered cautiously that the president "can win here." He said Colorado is a "conservative state" but the Republicans have gone too far and the political pendulum "needs to swing back into a more rational position."

Romer said a generally low-key speech Clinton made here at a retirement and nursing home in defense of Medicare and

Medicaid would appeal to Colorado voters' "sense of elemental justice." The president in the speech urged Americans to be "a community, not a crowd." They should take collective responsibility for the nation's elderly, he said, and not continue to mortgage the future of its children with budget-busting deficits and interest payments on the national debt.

It was an appropriate speech for delivery at a home for the aged. That night, though, when a crowd of big contributors showed up for a re-election campaign fund-raiser, they probably expected something more partisan than a reprise of that speech. But that was essentially what they got.

Instead of the usual red-meat Republican-bashing of the sort fat-cat Democrats look for when they shell out for such events, they got basically the same Bill Clinton lecture on the difference between a community and a crowd.

Clinton did charge that Republican health care changes could deny 300,000 seniors access to nursing homes and deprive a million others of in-home care. In these and other warnings about the Republicans, however, he acknowledged that changes had to be made, but "in the right way."

About as close as the president got to an old-fashioned partisan harangue was his familiar recitation of how Republican Presidents Ronald Reagan and George Bush had quadrupled the federal deficit in the 12 years before he entered the White House, and how the Republicans now are out to undercut Medicare and Medicaid to pay for tax cuts for the rich.

But Clinton notably avoided any direct mention of the Republican many Democrats love to hate, House Speaker Newt Gingrich, whose name can be guaranteed to get Democratic blood boiling and voices screeching.

One reason for this treatment of the opposition seems to be that Clinton isn't entirely against what the Republicans want to do; he just wants to do less of it, and take longer to do it. He agrees there should be a tax cut, for example, but proposes a smaller one, and he would take two years longer to balance the budget than the Republicans propose.

Clinton's challenge to be re-elected is often compared to President Harry Truman's in 1948, when Truman ran against what he called "the do-nothing Congress" and promised to "give 'em hell." Clinton seems to be running against "the do-too-much Congress" and settling for giving 'em heck.

It is, to be sure, still early in the 1996 presidential campaign season. Clinton is diligently attempting to demonstrate that the best combination the country can hope for in Washington now may be having a Democratic president to temper the excesses of the Gingrich revolution. If it turns out he can't do business with the GOP legislative leaders in the current waning session, there will be ample time next year for Republican-bashing in earnest.

Until then, deep-pockets Democrats who buy tickets for Clinton campaign fund-raisers may have to be content with dissertations rather than full-throated battle cries. But the primary purpose of such dinners, after all, is to raise money, not raise blood pressures. The Denver affair reportedly added \$600,000 to the Clinton campaign war chest, which isn't bad for one night's lecture on communities and crowds.

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the U.S. must make a quarterly interest payment of about \$25 billion on its outstanding debt.

Republican leaders also say financial market participants are telling them that markets won't extract an interest-rate penalty from the U.S. for a short-term delay on interest payments if Congress withholds an increase in the debt limit.

Reischauer, a former director of the non-partisan Congressional Budget Office and currently a senior fellow at the Brookings Institution, said the Republican leaders will have miscalculated badly if they follow through on the strategy.

"The notion that the president is going to sign a reconciliation bill that he finds abhorrent on policy grounds to keep the US government from defaulting is fanciful," Reischauer told the National Association of Home Builders on Thursday.

"He (Clinton) is not going to be blackmailed or coerced," Reischauer continued. "If he were, it would be a sign of weakness ... (and) he would be pointing out that he put Wall Street's interests ahead of grandma's interests. That's not a good thing to go into an election with." Clinton is expected to run for re-election in 1996.

Clinton would veto the measure containing the debt limit hike and then "take the high road, charge the Republican Congress with fiscal irresponsibility, say that they are jeopardizing the stability of not only national but international financial markets ... and that they potentially are imposing a risk premium on future (US government) borrowing, the cost of which will swamp any Medicare or Medicaid savings that they were considering,"

Reischauer said.

Reischauer, who has advised warring legislators in many budget battles during two different stints at CBO, says Clinton has a ready fall-back position if financial markets begin to tremble.

At the "11th hour" before the debt ceiling was breached, Clinton could "pick up the phone, call (Treasury) Secretary (Robert) Rubin and say, 'Rip up some of the securities in the Civil Service retirement fund, transform those securities into cash balances, thereby lowering the amount of debt subject to limit, and go out and borrow short-term money.'"

Those retirements accounts contain about \$350 billion in surpluses, which are invested in U.S. securities, Reischauer noted.

Raiding the trust fund "would be illegal, but the alternative (default) is also illegal," Reischauer said.

Clinton and the Congressional Republicans probably would continue to tangle over the budget until the polls showed the electorate grew so tired of the exercise that the two sides were forced into a compromise. Public frustration probably would yield a final budget compromise accompanied by long-term debt hike early next year, Reischauer speculated.

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## Nonpartisan body thinks GOP overestimating willingness of elderly to switch from Medicare to private insurance By R.A. Zaldivar Knight-Ridder Newspapers

WASHINGTON The House Republican plan to overhaul Medicare may have a major flaw: The nonpartisan Congressional Budget Office is challenging a key GOP assumption that the elderly will eagerly leave traditional Medicare for cost-conscious private insurance plans.

In an apparent attempt to pre-empt criticism of the plan, Speaker Newt Gingrich, R-Ga., told reporters Thursday that the CBO believes far fewer elderly will pick private insurance than Republicans are counting on. Gingrich said he strongly disagreed with the budget agency's assessment.

Republicans released more specifics of their proposal but still no detailed estimates of how it would save \$270 billion over seven years by slowing Medicare's growth from

10 percent a year now to around 6 percent.

The GOP also wants to slow spending on the Medicaid program for the poor, the disabled and the elderly in nursing homes by \$182 billion over seven years. Medicare serves 37 million people, and Medicaid reaches 36 million.

Democrats, meanwhile, stepped up their charges that Republicans are trying to ram Medicare changes through Congress before the public fully understands what's at stake. President Clinton has said he would veto the plan.

(EDITORS: NEXT 2 GRAFS OPTIONAL)

Rep. Sam Gibbons, D-Fla., called the latest GOP details "pablum" and "spin-doctor materials." Gibbons, a 75-year-old D-Day paratroop veteran, got into a shouting match over Medicare on Wednesday with 53-year-old Rep. Bill Thomas, R-Calif., and wound up pulling Thomas' tie.

The Congressional Budget Office, the closest thing to an impartial referee on Capitol Hill, played a crucial role in raising questions about Clinton's ill-fated health reform plan. Back then, Republicans praised CBO's analysts, but on Thursday Gingrich called them "bureaucrats."

(END OPTIONAL TRIM)

The House proposal would divide Medicare in two: the traditional fee-for-service program, and a MedicarePlus program in which the elderly could choose from a variety of private health plans or a medical savings account. (The plans would be required to offer benefits that match or exceed Medicare's, and government would pay premiums for beneficiaries.)

Getting the elderly into cost-conscious private insurance is the linchpin of the GOP strategy. It would allow the government to reap savings without significantly raising costs for beneficiaries or gutting the traditional Medicare program.

(EDITORS: NEXT GRAF OPTIONAL)

Originally, House Republicans considered raising copayments and deductibles in traditional Medicare to push beneficiaries into cost-effective plans. But they dropped the idea to avoid a political backlash. Now they must confront criticism that their plan doesn't do enough to get beneficiaries out of traditional Medicare.

(END OPTIONAL TRIM)

If savings from private insurance fall short, the House plan calls for "failsafe" automatic cuts in payments to hospitals and doctors serving the patients in traditional fee-for-service Medicare. Lobbyists and health policy analysts estimate the GOP plan is more than \$50 billion short.

"What this really is, is another hit on hospitals and doctors without the benefit of a subsequent congressional vote," said John Rother, a top lobbyist for the American Association of Retired Persons. "It really risks being excessive." Rother's fear is that lower payments for hospitals and doctors would translate into lower quality for beneficiaries.

(EDITORS: NEXT 2 GRAFS OPTIONAL)

Unofficial estimates are that the Republican plan would save about \$110 billion over seven years from scaling back payments hospitals and doctors, and another \$60 billion to \$80 billion from raising Part B premiums and charging well-to-do elderly more for coverage. That would leave a gap of at least \$80 billion to be closed through the switch to private insurance.

Gingrich said he believes the shift to private insurance would save Medicare \$70 billion. However, he said the CBO estimates that only one-fourth to one-third of the beneficiaries that Republicans are counting on to switch would actually do so.

(END OPTIONAL TRIM)

If the plan becomes law, Gingrich said there would be a two-month education effort next year to persuade the elderly to change.

"We believe that it will reach a level of conversion dramatically higher than the Congressional Budget Office

agrees to," Gingrich said.

Among other details, the Republican plan would:

Create a two-year transition period during which beneficiaries could switch between different types of Medicare coverage once every 30 days. After that, switching would be allowed once a year.

Set up a special commission to plan how Medicare would provide coverage for the baby boom generation. The Republican proposal would extend the life of Medicare's hospital trust fund to 2014. It's now expected to go bankrupt in 2002.

Cut special payments to hospitals that serve a large number of poor patients by 25 percent. The change would affect mainly inner-city and rural hospitals.

Repeal much of a law that banned doctors from gaming the Medicare system by referring patients for tests and therapy at facilities in which the doctors had a financial stake. Republicans say the law has proved unworkable; Democrats said the new loopholes invite abuse.

Allow hospitals and doctors to compete with major insurance companies and managed care organizations by setting up their own local insurance plans. This would require overriding many state laws that keep doctors and hospitals from assuming the role of insurers. A new federal agency would be created to oversee the plans.

Senate Republicans are nearing completion of their own Medicare proposal. A hearing on the House plan is scheduled Friday.

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## Former FBI official tells Senate subcommittee he is innocent of wrongdoing during Ruby Ridge siege By Aaron Epstein Knight-Ridder Newspapers

WASHINGTON The former No. 2 official in the FBI insisted Thursday that he was innocent of any wrongdoing during or after the bloody siege at Ruby Ridge in 1992 and that documents concealed by the Justice Department will prove him right.

Larry A. Potts, who has been censured and suspended and is one of five top FBI officials under a federal criminal investigation, told a skeptical Senate Judiciary subcommittee he neither approved unconstitutional guidelines to shoot any armed men on sight nor participated in any subsequent cover up.

The standoff between white separatist Randy Weaver and federal agents on a mountainside in northern Idaho resulted in the fatal shootings of Deputy U.S. Marshal William Degan and Weaver's wife, Vicki, and their 14-year-old son, Sam.

Potts said he rejected his lawyers' advice to assert his Fifth Amendment right not to testify because "when you have nothing to hide, there is no reason not to explain your actions."

Declaring that he had been treated unfairly, Potts said, "At no time did I order or encourage any person to destroy or alter records relating to this incident."

He said his denials could be corroborated by documents that the Justice Department refuses to turn over to him or the subcommittee.

"We have a criminal investigation going on and we don't hand out documents that could allow people to tailor their testimony to the documents," said a department spokesman, Bert Brandenburg.

Potts has been censured by the FBI for improper supervision at Ruby Ridge, and was suspended because of the criminal investigation.

As a result, Potts said, a legal cloud continues to hang over his head and "my life has become an absolute disaster for myself and my family."

Potts and Danny Coulson, who supported Potts' in testimony Thursday, were the No. 2 and No. 3 officials in the FBI's

criminal investigative division in Washington during the standoff at Ruby Ridge.

Both men disputed earlier testimony by Eugene Glenn, the FBI's field commander at Ruby Ridge, that his superiors had made him a scapegoat, much as a ship's captain might throw a tuna to hungry sharks.

Coulson said he was "shocked" by a "violent" plan of operation that Glenn faxed to him on the day that Vicki Weaver was fatally shot by an FBI sharpshooter.

Under the proposed plan, "an armored vehicle would destroy portions of the Weaver compound and would insert tear gas into the cabin if the Weavers did not surrender," Coulson said. "This plan escalated an already violent situation and did not contemplate a negotiated settlement ... I thought it was imprudent and ... I therefore rejected the plan."

A key focus of the inquiry by the subcommittee on terrorism is to pinpoint responsibility for a unique FBI shoot-on-sight instruction in effect at Ruby Ridge.

Standard FBI policy on the use of deadly force conforms to a Supreme Court ruling that allows deadly force to be used by a law enforcement officer only when confronted by immediate danger of death or serious bodily harm.

During the Ruby Ridge siege, Potts said he approved a departure that said any armed adult male seen near the Weaver cabin "should be considered an immediate threat and deadly force can be used."

Later, Potts said, Richard Rogers, commander of the FBI's Hostage Rescue Team, changed the phrase "can be used" to "can and should be employed." Potts said he never approved the change and did learn of it until more than a year later.

But either way, the instruction called for an unconstitutional use of deadly force, said the subcommittee chairman, Sen. Arlen Specter, R-Pa.

The sharpshooter, Lon Horiuchi, and an FBI official who investigated the incident have said Horiuchi followed the standard FBI policy, Horiuchi said he fired a shot at a man with a gun, who was running into the cabin, and accidentally hit Vicki Weaver as she stood behind the cabin door.

Sen. Herb Kohl, D-Wis., suggested that the result would have been the same no matter which deadly force instruction the sharpshooter had followed. Potts and Coulson agreed.

(EDITORS: STORY CAN END HERE)

Other senators criticized Potts and Coulson for sloppy management and assailed the idea that the Justice Department and the FBI could objectively investigate the Ruby Ridge incident.

Sen. Dianne Feinstein, D-Calif., denounced the two men for remaining in Washington instead of flying to Ruby Ridge to supervise what Potts described as "the most dangerous" mission faced by the Hostage Rescue Team to that point.

"You're responsible," Feinstein said. "It makes me angry. You shouldn't have ducked that responsibility."

Both men said FBI policy required bureaucrats to stay in Washington and leave the operation to the field commander. They conceded, however, that they had believed Weaver was far more heavily armed than he actually was.

But they firmly denied a charge by Weaver's lawyer that the FBI had sent trained killers to Ruby Ridge to avenge the death of Deputy Marshal Degan.

"The Hostage Rescue Team is not a group of trained killers," Potts said. "That suggestion is an insult. In fact, the HRT motto is 'To Save Lives.'"

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF ADMINISTRATION  
Washington, D.C. 20503

Clena-

Question 15 on page 6  
is the one I was referring to.

Call me when you have  
read it - there are couple of additional  
wrinkles.

The rest of the guidance has  
little impact on Title 3 employees.



# Guidance and Information on Furloughs



Revised July 1995

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## APPENDICES:

### Appendix A:

- A-1 OMB Memorandum, *Agency Operations in the Absence of Appropriations*, (October 5, 1990)
- A-2 OMB Bulletin No. 80-14, Supplement No. 1, *Agency Operations in the Absence of Appropriations*, (August 20, 1982)
- A-3 OMB Memorandum, *Agency Operations in the Absence of Appropriations*, (November 17, 1981)
- A-4 OMB Bulletin 80-14, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*, (August 28, 1980)

Appendix B: Sample Furlough Decision Notice due to Lapse of Appropriations

Appendix C: Sample Furlough Proposal due to Planned Reduction in Agency Expenditures

Appendix D: Sample Notice of Decision to Furlough

Appendix E: Sample Notice of Career SES Furlough

Appendix F: List of OPM Contacts

## **Furlough Under Adverse Actions Procedures (General)**

This section discusses two types of furloughs--a "shutdown" or "emergency" furlough and a "save money" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities which are not excepted by OMB standards. In many cases, the agency will have very little lead time to plan for the furlough, making it an "emergency" furlough. A good example of a "shutdown" or "emergency" furlough is if there are no fiscal year 1996 funds appropriated for an agency by October 1, 1995.

On the other hand, a "save money" furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other event which requires the agency to save money. A "save money" furlough is typically a "non-emergency" furlough in that the agency has sufficient time to reduce spending and therefore give adequate notification of its specific furlough plan and how many furlough days will be required. A good example of a "save money" furlough would be when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year. In order to provide agencies with a broad spectrum of information on these matters, both types of furloughs are addressed in the following questions and answers.

1. Q. What is a furlough?
  - A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons. For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under 5 CFR part 752, adverse action procedures. A furlough of more than 30 calendar days is covered under 5 CFR part 351, reduction-in-force procedures.
  
2. Q. What can agencies do to prepare for the likelihood that there may be neither appropriations nor a continuing resolution passed by the beginning of the new fiscal year?
  - A. OPM recommends agencies take the following steps:
    - Communicate with employees and their representatives regarding agency plans if it becomes necessary to effect an orderly suspension of agency operations.
    - Prepare draft "emergency" furlough decision notices and plans for distribution to employees to the extent possible within the limited time available.
    - Determine which positions are excepted under the guidelines established

by the Office of Management and Budget (OMB). See **Appendix A** for copies of OMB bulletins and memoranda.

3. Q. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30 calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring curtailment of activities.

OPM's position that this regulation applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987). Similarly, under 5 CFR 359.806 (a), the full notice period for career SES appointees may be shortened or waived in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

4. Q. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A. 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 furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

5. Q. What information should be included in the notice of decision when no advance notice is issued?

A. 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 agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities defined by OMB guidelines, we recommend a statement such as the following:

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations, or they are performing one of the excepted activities defined by the Office of Management and Budget.

There are other reasons an employee may not be furloughed. The language in sample letters at Appendices C and E may be applicable. The notice must include a statement of applicable appeal and grievance rights. Agencies are reminded that adverse action coverage for excepted service employees was substantially expanded by the Civil Service Due Process Amendments of 1990 (P.L. 101-376). If a copy of the MSPB appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

6. Q. Suppose an agency wishes to effect a furlough action discontinuously (e.g., one workday per week for 15 weeks) rather than consecutively, to lessen the effect on the agency's employees or its workload. These furloughs will be used for "save money" situations. Is there any prohibition on doing so?
- A. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by MSPB on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public.

In *OPM, 22 FLRA No. 29*, the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable § 7106 (b)(1) "appropriate arrangement." That decision was affirmed by the D.C. Circuit in an unpublished opinion: *OPM v. FLRA*, 829 F.2d 191 (1987).

7. Q. If a discontinuous furlough extends for more than 30 calendar days, is it a "short" furlough covered by adverse action procedures in 5 CFR part 752, or is it covered by the reduction-in-force procedures of 5 CFR part 351?
- A. Based on the definition of "day" as "calendar day" (5 CFR 210.102 and 752.402), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for employees not under alternative work schedules. Thus, a furlough of 22 workdays or less would be covered by adverse action procedures, and one of more than 22 workdays would be covered by the RIF procedures of part 351. (If a holiday is included in a furlough of 22 consecutive workdays, the furlough might equate to more than 30 calendar days. See **Holidays**.)
8. Q. What procedural rights would apply for a furlough of 30 calendar days or less for employees covered under 5 CFR part 752?
- A. For a short furlough of a covered employee, the law (5 U.S.C. § 7513) gives a covered employee the following rights:

At least 30 calendar days advance written notice by the agency 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 upon an employee's receipt of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible.

- At least seven calendar days for the employee to answer orally and in writing to the proposal notice and to furnish documentary evidence in support of his or her answer. (A summary of any oral answer must be made and maintained by the agency.)
- The right of the employee to be represented by an attorney or other representative.
- A written decision by the agency with the specific reasons for its action at the earliest time practicable.
- The right to appeal the agency's action to MSPB.

In addition, the regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to MSPB, but not both.

NOTE: Under 5 CFR 752.404 (b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable. (See 5 CFR 351.403 (a).) Where bargaining unit employees are concerned, additional procedural rights may be provided by their negotiated agreement.

9. Q. In addition to statutory and regulatory procedural requirements, what additional forms of communication should an agency consider in effecting a furlough?
- A. Considering the uncertain and changing circumstances surrounding furlough, agencies should make efforts toward assuring that employees are provided with up-to-date and accurate information as warranted. This may

be done through effective union-management communication, employee briefings, periodic bulletins, newsletters or other means available to agencies.

10. Q. How should the decision letter be framed if the agency has not set a specific number of furlough days in the proposal?
- A. While it is desirable when possible to inform the affected employee of a specific number of days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible, if they choose to appeal.
11. Q. If an employee decides to challenge a discontinuous furlough, from what point would the time for appeal to MSPB run? For filing a grievance under the NGP?
- A. Employees cannot file an appeal until the first day after the effective date of the adverse action (in this case, the first day after the initial day of furlough) and must file not later than the 30th calendar day after the effective date of the furlough. The time limits and other procedures applicable to bargaining unit employees are spelled out in applicable provisions of negotiated agreements.

### **Employee Coverage and Procedural Requirements**

12. Q. What procedures are applicable for probationers, employees under temporary limited appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, and others not covered by 5 U.S.C. chapter 75?
- A. There are no mandated procedures; however, agencies should ensure that all procedures required by negotiated agreements or internal personnel policies are followed.
13. Q. What about SES appointees?
- A. Furloughs of SES career appointees (other than reemployed annuitants) are covered under 5 U.S.C. § 3595a and subpart H of 5 CFR part 359. The regulations provide only for a single 30-calendar day advance written notice, which must tell the appointee: the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; for a probationer, the effect (if any) on the duration of the probationary period; and the appointee's appeal rights to

the MSPB, including the time limit for the appeal and the MSPB office to which it should be sent. A career appointee may appeal a furlough of any length. Competitive procedures are required to select career appointees for any furlough of more than 30 calendar days (or 22 workdays). An agency may furlough an SES noncareer or limited appointee, or a reemployed annuitant holding a career appointment, under agency designated procedures.

14. Q. How do agencies effect adverse action furloughs of administrative law judges?
- A. 5 U.S.C. § 7521 provides that adverse action furloughs of 30 calendar days or less may be taken against administrative law judges, "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." If an agency believes it has good cause for such a furlough it should notify such employees in accordance with part 752 procedures and ask the Board for an expedited hearing.
15. Q. Are individuals appointed by the President subject to furlough?
- A. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. § 6301 and attendant regulations governing leave in the Federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his entire salary is recorded for tax purposes. The following exception must be noted: former career SES appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392 (c), are subject to furlough at the discretion of the agency.
16. Q. What about persons working for Federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?
- A. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the Federal government or with other organizations, 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:

- Personnel from non-Federal organizations on appointments to the Federal government are subject to furlough in the same manner as other employees.
- Personnel on detail to Federal agencies from non-Federal organizations may continue working, provided that the non-Federal organizations pay the total costs of the detail.
- Personnel on detail to Federal agencies from non-Federal organizations which share part of the costs of detail may continue to work if the Federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to Federal agencies from non-Federal organizations which do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

17. Q. Would employees who are detailed or assigned outside the agency during part, or the entire period, of furlough be subject to furlough?

A. Employees on a reimbursable detail from the agency would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Agencies may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-Federal organizations who are on leave without pay from their Federal positions may continue working.

18. Q. How should agencies schedule a furlough for employees on flexible or compressed work schedules under an alternative work schedules (AWS) program?

A. In scheduling a furlough for an employee on a flexible work schedule with no daily work requirement, the furlough should be expressed in terms of the number of hours of the required furlough, rather than in terms of the number of days or specific dates or times. If a furlough is expressed in terms of the number of days, for a full-time employee under a flexible work schedule, the length of a furlough day is 8 hours. For a part-time employee under a flexible work schedule, the length of a furlough day is the number of hours the employee is scheduled to work in order to fulfill the basic work requirement during the biweekly pay period, divided by the number of days that comprise the employee's biweekly tour of duty.

In scheduling a furlough for an employee on a compressed work schedule,

agencies should take care to make sure that the furlough is scheduled for the days and times during which employees otherwise would be scheduled to work under the compressed work schedule. The length of a furlough day under a compressed work schedule is the same as the length of the employee's compressed workday; e.g., the length of a furlough day under a 4-10 compressed work schedule is 10 hours.

19. Q. How would the agency schedule a furlough for part-time employees?

A. Furlough of part-time employees must comply with the procedures of 5 CFR part 752 or part 351 if the employees are otherwise covered. In scheduling such furloughs, it would be equitable to compute the furlough days in the same proportion to those days scheduled for full-time employees, based on work schedules. (The hours of furlough might be computed as a percentage of the work schedule for full-time employees. For example, if an employee worked 64 hours a pay period, that would equate to 64/80 of a full-time work schedule, or 80%. This percent could then be multiplied by the number of hours which a full-time employee is furloughed during a pay period.) Again, if some part-timers in a competitive level are furloughed but not others, 5 CFR 752.404 (b)(2) would require that the notice of proposed action must tell the employees the basis for selecting those furloughed.

20. Q. What about employees who work on a seasonal or intermittent basis?

A. Seasonal employees are recalled to duty at identified periods of the year in accordance with preestablished conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty. Whether either group is called for work during the period in which furloughs are scheduled is discretionary with agencies.

### **Employment during Furlough**

21. Q. May employees take other jobs while on furlough?

A. Except for conflict of interest restrictions (which preclude outside employment in a non-government facility that contracts with a Federal agency, and other incompatible activities as well as those which give the appearance thereof) or Hatch Act restrictions (which deal with political activities of Federal employees), employees may accept employment outside the Federal service while on furlough. Employees must obtain agency approval of any such outside employment. Furloughed employees may, absent any agency restrictions, accept temporary appointments with other Federal agencies during furlough.

22. Q. What happens to employees' benefits (e.g., retirement, health benefits, life insurance, leave) if they receive temporary appointments in another agency

while furloughed?

A. The leave should be transferred as if the employees had been transferred (see Comp. Gen. opinion B-167975, September 1, 1970). Retirement, health benefits, life insurance, and leave should be handled as if the employees had been transferred.

23. Q. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

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

24. Q. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. § 5550 (a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

#### **Deductions from Pay**

25. Q. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?

A. The correct withholding precedence is established by the General Accounting Office in its *Policy and Procedures Manual for Guidance of Federal Agencies, Title 6, Pay, Leave, and Allowances*, June 1989.

#### **Service Credit for Various Purposes**

26. Q. Is furlough or leave without pay (LWOP) a break in service?

A. No, either merely places employees in a nonpay status.

27. Q. To what extent does nonpay status affect civil service benefits and programs?

A. Nonpay status (which includes furlough, LWOP, absence without leave, and suspension) is credited as follows:

For **career tenure**, the first 30 calendar days of each nonpay period is creditable service.

- For **completion of probation**, an aggregate of 22 workdays in a nonpay status is creditable service.
- For **X-118 qualification standards**, there is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- For **time-in-grade** requirements, nonpay status is creditable service.
- For **retirement** purposes, an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. §§ 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- For **health benefits**, enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303 (e)). The government contribution continues while employees are in a nonpay status. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.
- For **life insurance**, coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401 (c)) or to the agency (5 CFR 870.401 (d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- For **within-grade increases**, an aggregate of 2 workweeks nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406 (b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417 (b)).
- For **annual and sick leave**, when an employee accumulates 80 hours of nonpay status, his or her annual and sick leave credits are reduced by

an amount equal to the amount of leave the employee earns during that pay period (5 CFR 630.208). For purposes of computing annual leave accrual rates, creditable service is limited to an aggregate of 6 months nonpay status in a calendar year (5 U.S.C. 6303 (a) and 8332 (f)).

- For **reduction in force**, an aggregate of 6 months nonpay status in a year is creditable service.
- For **severance pay**, nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595 (b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the computation of an employee's severance pay fund under 5 U.S.C. 5595 (c)(1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service. (This is the same rule used in crediting nonpay status time as "service" in determining annual leave accrual rates.)
- For the **Thrift Savings Plan**, agencies should refer to the *Thrift Savings Plan Bulletin for Agency TSP Representatives*, No. 95-15, dated May 12, 1995. For additional information, the agency representative should contact the Federal Retirement Thrift Investment Board at (202) 942-1460.
- For **military duty or workers' compensation**, nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

## Retirement

28. Q. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?
- A. Generally there will be no effect on the high-3 average unless the furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.
29. Q. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?
- A. Yes.
30. Q. What happens to retirement and insurance in a discontinuous furlough?

- A. As explained above, retirement credit is not affected as long as an employee does not exceed 6 months of nonpay status in a calendar year. Retirement deductions are taken on the basic pay the employee earns during the pay period.

FEHB premiums are deducted from the employee's pay. If the employee's pay is insufficient to cover the FEHB premium, he or she can pay the premium directly to the agency or have it withheld from pay when he or she returns to regular duty. The enrollment continues for up to 365 days of nonpay status. The nonpay status may be a continuous period or it may include an employee's return(s) to pay status for a period(s) of less than 4 consecutive months.

FEGLI coverage continues, and contributions made by the employee and the employee's agency continue if the employee's salary in each pay period is sufficient to cover deductions. If the employee's salary is insufficient to cover his or her withholding, the employee's coverage will continue for up to 12 months without cost to the employee or the employee's agency.

31. Q. What happens if employees cancel FEHB coverage while in a nonpay status in order to avoid the expense?

- A. Employees are cautioned not to cancel FEHB coverage to avoid payment of premiums while in a nonpay or reduced-pay status. Normally, an employee must wait for an FEHB open season to re-enroll. Further, cancellation of FEHB coverage may affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

## Holidays

32. Q. May employees be furloughed on a holiday?

- A. Employees may be furloughed for periods of time that include holidays. However, the selection of the furlough period in question should be justified on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees 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.) Neither would it be proper to furlough an employee solely on a holiday. (See Comptroller General opinion B-222836, May 8, 1986.)

33. Q. If employees are furloughed on the last workday before a holiday or the first workday after a holiday (but not on both days), will they be paid for the holiday?

- A. Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (45 Comp. Gen. 291 (1965)) (Note: A holiday should not be the first or last day of the period covered by a furlough.)
34. Q. If employees are furloughed on the last workday before a holiday and the first workday after a holiday, will they be paid for the holiday?
- A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.)

### Requests for Leave during Furlough

35. Q. If employees request annual, sick, court, military leave, or leave for bone marrow or organ donation after receiving a notice proposing specific days of furlough, can the requests be denied for those days that coincide with the dates of furlough? If an agency has approved requests for these categories of leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?
- A. The answer to both questions is yes. However, the agency may choose to furlough the employees at another time if there is no requirement that the employees be furloughed at a given time or in a given order. The agency may designate whichever days it chooses as furlough days. If employees request leave for a day designated as a furlough day, the agency is not required to grant leave. Further, if employees have been granted leave for a day subsequently designated as a furlough day, that leave is automatically canceled because the necessity to furlough supersedes leave rights. To avoid confusion, it is advisable to state in the furlough notice that any annual, sick, court, military leave, or leave for bone marrow or organ donation approved for use on the furlough days is canceled if this is the intent of agency management. Furlough days are nonworkdays. Annual, sick, court leave, and leave for bone marrow or organ donation cannot be granted on a nonworkday. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty. Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court.
36. Q. If an employee properly schedules "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 a furlough, does the furlough constitute an "exigency of the public business" that would permit an agency to restore the leave after the beginning of the new leave year?

A. 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. However, if this is not possible, agency heads (or their designees) may exercise their discretionary authority to determine that an employee was prevented from using his or her leave because of an exigency of the public business--namely, the need to furlough employees because of lack of work or funds.

37. Q. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during furlough days, do the furlough days count towards the 12-week entitlement to FMLA leave?

A. No. Similar to the answers provided in questions 35, 36, 38, and 39, an employee cannot take leave (either paid or unpaid) under the FMLA on days that coincide with the dates of furlough. Therefore, the furlough days cannot be counted towards the 12-week entitlement to FMLA leave.

#### Leave Without Pay (LWOP)

38. Q. If employees are on approved LWOP, can the LWOP be terminated and the employees furloughed?

A. Yes. The LWOP can be terminated, but if there is no expectation that the employees may return to duty on the proposed furlough days, it is unnecessary to cancel the LWOP, since there is no work or funds involved. However, if the employees may potentially return to duty during the approved LWOP, the agency may propose to furlough on the days of approved LWOP and cancel the LWOP.

#### Leave in Lieu of Furlough

39. Q. May agencies allow employees to use leave without pay (LWOP) in place of furlough? How about annual or sick leave?

A. Agencies may allow employees to elect days of LWOP instead of furlough days. LWOP would be a nonpay status and accomplish the same cost savings. However, agencies may not require employees to take a specified number of days or hours of LWOP. Annual or sick leave is not appropriate if the furlough is for lack of funds because the employees would be in a pay status, contrary to the intent of the furlough.

40. Q. May an employee voluntarily request LWOP for a holiday?
- A. No. A holiday is considered a "nonworkday" for leave purposes (5 U.S.C. § 6302 (a)). Therefore, an employee may not request or be granted LWOP for a holiday. However, if an employee is on LWOP on the last workday before a holiday and the first workday after a holiday, he or she is not entitled to pay for the holiday. (See **Holidays**.)

#### **Continuation of Pay (COP)**

41. Q. If employees are receiving COP due to job-related injuries, can the COP be terminated or interrupted by furlough?
- A. No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

#### **Injury While on Furlough or LWOP**

42. Q. If employees are injured while on furlough or LWOP, are they eligible for workers' compensation?
- A. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose.

#### **Unemployment Compensation**

43. Q. Are employees entitled to unemployment compensation while on furlough?
- A. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Agencies or employees should submit their questions to the appropriate State office.

#### **Performance Awards and Within-grade Increases**

44. Q. If agency performance management plans require the payment of performance awards to employees, can the payment be delayed until after the furlough?
- A. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR part 430, subpart E). If agency performance management plans require the payment of performance awards, agencies may delay payment until after the furlough when funds are available.

45. Q. Are agencies required to pay performance awards to SES employees?
- A. No. Neither law (5 U.S.C. § 5384) nor regulation (5 CFR 534.403) requires agencies to pay performance awards. Under the law and regulation, total performance award payments in an agency during a fiscal year may not exceed 3 percent of the aggregate career SES payroll as of the end of the previous fiscal year (with an alternative formula for small agencies). There is no requirement, however, that any or all of this amount be paid out.
46. Q. May agencies deny or delay within-grade or step increases for white-collar and blue-collar employees?
- A. Within-grade and step increases for white-collar and blue-collar employees 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 General Schedule employee in steps 1, 2, or 3 of the grade who is furloughed for 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).)

#### **Documentation of Furlough**

47. Q. How is time on furlough and leave without pay documented?
- A. An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough (or a list form of notification for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is necessary only for return from a consecutive furlough, not for a return from a discontinuous furlough. (See Chapters 15 and 16 of *The Guide to Processing Personnel Actions*.)

If the specific furlough dates are known when a 471/Furlough action is prepared, these dates must be shown in the remarks section of the 471/Furlough action document (SF-50, or list form). If specific dates are not known, then agencies must prepare an 002/Correction action (SF-50) to the 471/Furlough action (or a list form of notification for a group of employees similarly situated) with remarks documenting the total number of days or hours of the furlough when those dates become known.

When the total number of days for a 472/Furlough NTE is increased, a 772/Ext of Furlough NTE (date) must be prepared. For new calendar periods of furlough, a new furlough action must be prepared. For all other changes in the dates on which a furlough will occur, an 002/Correction action must be prepared.

Agencies are reminded that for members and former members of the uniformed services who are subject to the "pay cap" reporting procedures, a copy of the furlough notice, and of the return to duty notice when one is issued, must be sent to the appropriate uniformed service finance center (addresses of the centers are in Chapter 8 of *The Guide to Processing Personnel Actions*), since days in nonpay status will affect the person's retirement pay. When an SF-50 or a list form of the notice is issued to document a furlough, the copy of the notice which is sent to the pay center must have the employee's SSN and DOB and dates of furlough added to it to ensure proper adjustment of his/her retirement pay.

Note: When using the list form of notification in any of the instances cited above, agencies must be aware of their obligation, under the Privacy Act, to ensure that only identifying information pertaining to the individual employee is placed in the Official Personnel Folder (OPF) or is shown on the copy given to the employee. Therefore, in using the list form, all information pertinent to other employees must be deleted before a copy of the list form may be placed in the OPF or distributed to the affected employees.

### **Labor Management Relations Implications**

The following section provides general information about agency bargaining obligations during a time of reduced budgets. Officials responsible for preparing for furloughs, reductions in force, hiring and promotion freezes, or the like, should work closely with the agency's labor relations staff.

Agencies should work with their partnership councils in planning and implementing changes required by reduced budgets. Many of the actions agencies may find necessary are protected by the management rights section of the Federal Labor Relations Statute. However, this should not prevent agencies and unions from working together to meet the challenge of budget cuts with the least possible disruption. Employees and their representatives have an important stake in this area and their suggestions can be valuable.

48. Q. What is an agency's obligation to bargain when it becomes necessary to furlough employees?
- A. The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. § 7106 (a)(2)(A). However, the agency must bargain over the impact and implementation of its decision and over appropriate arrangements for employees affected by the furlough, unless the matter of furloughs is already "covered by" the agreement. See, in this connection, 44 FLRA Nos. 96, 99 and 114, and other cases in which the Authority has applied its "covered by" doctrine to determine whether the agreement provisions relieve the agency of any duty to bargain on impact and implementation on this matter. If in doubt, prudence dictates that the

agency give adequate notice and bargain on impact and implementation rather than run the risk of being ordered to pay backpay to furloughed employees as a remedy for committing a refusal-to-bargain unfair labor practice.

49. Q. Can an agency effect a "save money" furlough for employees in a bargaining unit before negotiations are completed?
- A. If the parties bargain to impasse and the union does not invoke the services of the Federal Service Impasses Panel in a timely manner, the agency can furlough employees without further delay provided the agency gives the union adequate notice of its intent to implement its last bargaining offer on a specific date. If the union invokes the services of the Federal Service Impasses Panel by that date, the agency may not furlough employees unless it can show it is necessary to do so without further delay. Agencies required to absorb substantial budget cuts during a short term continuing resolution might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution and cannot be deferred until later in the 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 the furloughs could not be delayed pending resolution of the bargaining impasse. If bargaining is not completed and the agency must furlough employees, the agency should continue to bargain and, if possible, implement any agreement retroactively.
50. Q. In the event of a lapse of appropriations necessitating a "shutdown" furlough, what is an agency's obligation to bargain?
- A. Although the circumstances are more urgent than those described in question 49 above, agencies still have a duty to notify the union and bargain upon request on whatever negotiable impact and implementation proposals the union may submit. Because the agency must act by a date certain, whatever bargaining that takes place must be accomplished in the little time available before action is necessary. If agreement isn't reached in the time allowed, the agency should tell the union what actions it will take. Although the union may try to invoke the services of the Impasses Panel, it is unlikely that, in the circumstances posed by this question, the Panel will have time to get involved. But whether or not FSIP gets involved, the agency can justify its actions--as FLRA put it in Treasury, 18 FLRA No. 61--where "consistent with the necessary functioning of the agency."

Some of the urgency could be reduced if the agency, as it approaches the lapse of its appropriation, were to notify the union of the actions it plans to take were certain scenarios to take place and ask the union for its views and suggestions. That is, nothing prevents the parties from bargaining in advance of a looming crisis so as to eliminate any need for bargaining when

the crisis actually occurs. FLRA has frequently held that there is no need to engage in I&I bargaining on matters already "covered by" the agreement. See the cases mentioned in answer 48.

51. Q. What steps should an agency take to meet its obligation to bargain?
- A. Under the labor-management statute, the agency must give the union "adequate" notice of its intent to furlough employees who are represented by the union. "Adequate" is not defined and the Federal Labor Relations Authority determines what is adequate notice based on the nature of the action taken by the agency and amount of time it judges adequate to bargain. These statutory notice requirements may have been augmented or modified by any negotiated agreements.
52. Q. What are the implications if an agency furloughs employees before it gives the union timely notice and meets its bargaining obligations?
- A. It is an unfair labor practice to refuse to negotiate in good faith. If the Federal Labor Relations Authority finds that the agency engaged in an unfair labor practice it may order the agency to renegotiate an agreement with retroactive effect and may require reinstatement of affected employees with backpay.
53. Q. May the agency issue its notice of proposed furlough before it has completed bargaining?
- A. Probably not (unless one can make a § 7106 (a)(2)(D) case that the action was "necessary to carry out the agency mission during emergencies"). See, in this connection, *Scott AFB*, 44 FLRA No. 92, where the Authority found that the agency committed a ULP when it directed the activity to issue notices of proposed furlough without providing the union with adequate notice and an opportunity to bargain over impact and implementation. In the process, the Authority rejected the ALJ's conclusion that the issuance of proposed furlough to unit employees without notice to the union and bargaining was not a ULP because the notices did not effect a change in conditions of employment. Regarding the latter, FLRA said the following:

[T]he issuance of the notices of proposed furlough constitutes a step necessary to furlough employees and, in fact, places employees in a status in which they can be furloughed. In this regard, the notices of proposed furlough issued to employees in this case are similar to the RIF notices issued to employees in *Scott AFB*, [33 FLRA No. 92]. Both notices changed affected employees' conditions of employment by placing the employees in a status in which they "became subject to actions to which they had not been subject prior to the issuance of the notices." [44 FLRA at 125.]

54. Q. If an existing negotiated agreement requires the agency to give a longer notice period than that required by law before employees are furloughed, either through adverse action or reduction in force procedures, must the agency delay the furlough until the negotiated period has expired?

A. Generally, an agency would be required to wait. However, if it would be impossible to meet statutory budget limits by waiting, the agency should furlough when statutory requirements are met. An agreement provision that is not a § 7106 (b)(3) appropriate arrangement cannot prevent the exercise of a management right such as the right to layoff employees. In most cases, a delay in the exercise of a management right is not viewed by the Authority as preventing the agency from "acting at all." Moreover, management has the right to "take whatever actions may be necessary to carry out the agency mission during emergencies." The Authority has not issued a decision which would apply to the present circumstances but agencies should consider the requirement to make substantial cuts over a short period of time to be an emergency.

55. Q. What is the effect of outside directives on the obligation to bargain or to continue to abide by existing agreement provisions?

A. This depends on the nature of the outside directive. Any agreement must conform to existing law and any laws enacted during the life of the agreement. Any freeze imposed by Executive Order issued by the President would preempt any agreement provisions or bargaining proposals.

With respect to other kinds of directives, it is an unfair labor practice for an agency "to enforce any rule or regulation . . . which is in conflict with any collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed." This means that any OMB directive would not preempt existing agreement provisions. However, because agreements must conform to Governmentwide regulations, an OMB or OPM directive would limit bargaining over new agreement provisions.

Agency-wide regulations or directives do not supersede existing agreement provisions and cannot be enforced until the agreement expires. Also, they do not limit negotiations unless the agency can support a "compelling need" for the regulations. The Authority rarely finds a compelling need for an agency-wide regulation.

### **Furlough Under Reduction-in-Force Procedures (General)**

56. Q. When is an agency required to use reduction-in-force (RIF) procedures to furlough employees?

A. Agencies must follow RIF procedures when furloughing employees for 31 or

more continuous calendar days, or for 23 or more discontinuous workdays.

57. Q. Is there a maximum period an employee may be furloughed?
- A. Yes. An employee may be placed on a RIF furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.
58. Q. If an agency needs to furlough employees for more than 30 calendar days (or 22 workdays), must the complete RIF procedures be followed?
- A. Yes. The complete RIF procedures must be followed, including a minimum 60 days specific written notice of the RIF furlough action. (Question 71 has additional information on RIF notice requirements.) The only exception to regular RIF procedures involves assignment rights (i.e., "bump" and "retreat" rights).
59. Q. When does an employee who is reached for a RIF furlough action have a right of assignment to another position?
- A. An employee reached for release from the competitive level because of RIF furlough has assignment rights to other positions on the same basis as an employee reached for release as a result of other RIF actions (e.g., separation or downgrading), including the "Undue Interruption" standard. (As defined in 5 CFR 351.203, "Undue Interruption" essentially means that a higher-standing employee who is otherwise qualified for RIF assignment may exercise the assignment right only if the employee is able to perform the position of the lower-standing employee within 90 days of the RIF.)

In applying the undue interruption standard to a RIF furlough situation, the agency must consider whether undue interruption would result from both (1) the displacement of a lower-standing employee from the competitive level affected by the furlough, and (2) the recall of both employees to their official positions at the end of the furlough period.

Because the undue interruption standard used in determining employees' RIF assignment rights is based on 90 consecutive days, an employee reached for a continuous RIF furlough generally does not have assignment rights to a position held by another employee who is not affected by the furlough unless the furlough extends for 90 or more consecutive days. Also, an employee reached for a discontinuous RIF furlough action does not have assignment rights to another position.

60. Q. Are there any other situations in which agencies may restrict employees' RIF assignment rights in a furlough situation?

- A. An agency may make a temporary exception to order of release and assignment rights to keep the incumbent in his or her position for 90 days or less after the commencement of the furlough when needed to continue an activity without undue interruption. (For additional reasons that a temporary exception may be used, see 5 CFR 351.608 (a).)

An agency may make a continuing exception to order of release and assignment rights to keep the incumbent in a position that no higher standing employee can take over within 90 days and without undue interruption to the activity. (See 5 CFR 351.607.)

61. Q. Some employees within a competitive area are paid from appropriated funds. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are employees who are paid from these other sources exempt from the furlough and the RIF process?

- A. Agencies should follow OMB guidance to determine whether positions paid from other sources are subject to furlough. Regardless of the source from which an employee is paid, each employee within a competitive area would be subject to displacement by higher standing employees within the same competitive area.

62. Q. If a program, project, or activity (PPA) takes other actions to obviate or lessen the need for a RIF, how will the employees in the PPA be affected by RIF?

- A. Even though their positions are not subject to furlough, the employees in this PPA would be subject to displacement by higher standing employees in other PPAs within the competitive area.

63. Q. What action is taken if an employee refuses an offer of assignment?

- A. The employee is furloughed from his or her position.

64. Q. If an employee bumps or retreats to a different job as a result of a furlough, is the employee temporarily assigned to that job?

- A. No. The employee becomes the incumbent of that job even though the RIF furlough anticipates the employee's eventual recall to his or her former job.

65. Q. If circumstances change and the agency is unable to recall furloughed employees at the point specified in their RIF notice, what additional action is required?

- A. In this situation, the agency must issue those employees new notices of either an extended furlough or proposed RIF separation, as the situation

requires. This new action must meet all the requirements in the RIF regulations (for example, 60 days advance notice).

66. Q. Do these requirements also apply if an agency finds that it can recall employees before they have reached the furlough limits specified in their RIF notice?

A. No.

67. Q. Are Presidential appointees, Schedule C employees, and members of the Senior Executive Service (SES) covered by the RIF furlough procedures?

A. An employee whose appointment must be confirmed by or made with the advice and consent of the Senate is not covered by the part 351 RIF procedures. All Schedule C employees are covered by part 351 except those under appointments of 1 year or less who have less than 1 year of service. SES members are covered by separate furlough procedures in 5 CFR part 359, subpart H, which provide that an agency must use competitive procedures in selecting SES career appointees for furloughs of more than 30 calendar days. Agencies may use the same procedures they have established for competition for job retention under an SES RIF situation. Any competitive procedures used must be made known to the SES members.

68. Q. What happens to temporary employees serving under appointments limited to 1 year or less in RIF furlough situations?

A. An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or RIF procedures when this occurs. As a matter of good human resource management, however, the agency should try to give these employees as much advance written notice as possible.

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

69. Q. How do agencies furlough administrative law judges for more than 30 calendar days (or more than 22 workdays)?

A. Administrative law judges are subject to the RIF procedures in part 351. However, since judges are not given performance ratings, the part 351 provisions dealing with the effect of performance ratings on retention standing would not apply.

70. Q. What notice must an agency provide an employee of a RIF furlough action?
- A. An agency must give an employee covered by OPM's retention regulations a minimum 60-day specific written notice before the effective date of any RIF action, including furlough. The statutory basis for the RIF notice requirements is found in 5 U.S.C. 3502 (d). The RIF notice requirements are further implemented through regulations published in subpart 5 CFR 351, subpart H.

An employee of the Department of Defense (DoD) is entitled, under implementing regulations issued by DoD, to a specific written notice of at least 120 days before the effective date of a RIF action, including furlough, when a significant number of employees will also be separated by RIF during the same RIF.

The same notice requirements are applicable to both a continuous and a discontinuous RIF furlough.

71. Q. What option is available if an agency is unable to provide an employee with the minimum required notice of a RIF furlough?
- A. When a RIF is caused by unforeseeable circumstance, an agency may request OPM to authorize a RIF notice period of less than 60 days, or less than the 120-day requirement applicable to a significant RIF in DoD. However, the agency must still provide each employee with a minimum of 30 calendar days specific written notice of the RIF action. (Refer to 5 CFR 351.801 (b).)
72. Q. 5 CFR 351.807 states that during the notice period when, "in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee . . . in a nonpay status without his or her consent." If an agency is unable to give 30 calendar days notice in an emergency (or longer period if required by administrative or negotiated provisions), may an agency use 351.807 to place employees on furlough before the notice period is satisfied?
- A. Yes.
73. Q. Is the agency required (or permitted) to register employees furloughed by RIF in either the agency's Reemployment Priority List (RPL), or in OPM's Interagency Placement Program (IPP)?
- A. No. The RPL and the IPP are open only to employees who are separated, not employees who are furloughed by RIF. An agency also has the right to offer internal placement assistance to its furloughed employees.

74. Q. Competitive service employees may appeal a RIF action to the Merit Systems Protection Board. What about excepted service employees?
- A. All excepted service employees, as well as competitive employees, who are covered by the RIF regulations may appeal or grieve as follows: An employee covered by a negotiated grievance procedure that does not exclude RIF actions must use the negotiated grievance procedure. Otherwise, an employee may appeal to MSPB. See 5 CFR 351.202 and 351.901.

↳ Koshinner going to call Jody -  
need plan?

just ask for "agencies" plan.

Do we have one?

Send it up?

Untenable not to end up EXOPs?

Plans to be sent up tmrw or Friday?

Asking for trouble not to end up EXOP plan?

(Larry Haas)

Haas: No-brainer: ~~EXOP~~ w/ all Ops -  
early.

MONDAY

AR said she would send all plans.

Plans. but @ else.

~~On some~~ Summary data to be provided on request.

Indiv calls to agencies

Foreign state - still up at 80-10!

Exempt from leave act

Always on duty

↳ By virtue of status / NOT actual wh.

Confirmed  
by  
Senate

# Status of Agency Shutdown Plans

09/20/95

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<u>Agency</u>	<u>Status of Review</u>	<u>Employees Excepted from Furlough</u>	<u>Employees To Be On Furlough</u>	<u>Percent To Be At Work</u>
Agriculture .....	Completed	71,053	37,817	65
Commerce.....	Completed	12,626	25,077	33
Defense.....	Pending	500,000	300,000	63
Education .....	Completed	509	4,394	10
Energy.....	Pending	20,549	0	100
HHS.....	Completed	27,133	34,570	44
HUD.....	Completed	107	11,772	1
Interior.....	Pending <i>camp</i>	20,600	54,740	27
Justice .....	Completed	74,334	27,423	73
Labor .....	Pending	6,681	10,965	38
State (Domestic).....	Completed	1,440	6,327	19
State (Overseas).....	Pending			
Transportation.....	Pending	41,288	18,039	70
Treasury.....	Completed	37,407	126,083	23
Veterans Affairs .....	Pending	200,392	36,354	85
Corps of Engineers.....	Completed	4,150	21,733	16
Environmental Protection Agency .....	Completed	686	17,716	4
General Services Administration .....	Completed	3,633	13,067	22
NASA.....	Completed	1,573	19,774	7
Office of Personnel Management .....	Completed	2,330	2,124	52
Small Business Administration.....	Completed	2,156	2,933	42
Social Security Administration.....	Completed	4,780	61,415	7
AID (Domestic).....	Completed	421	1,579	21
AID (Overseas).....	Pending			
Armed Forces Retirement Home.....	Pending <i>camp</i>	708	235	75
American Battle Monuments Comm.....	Completed	26	345	7
Arms Control and Disarmament Agency.....	Completed	44	207	18
Cemeterial Expenses, Army .....	Completed	35	98	26
Commission on Civil Rights .....	Pending	0	72	0
Commodity Futures Trading Comm.....	Completed	24	521	4
Consumer Product Safety Comm.....	Completed	40	447	8
Corporation for Natl/Comm Service.....	Pending	103	462	18
Defense Nuclear Facilities Safety Board.....	Completed	150	0	100
Equal Employment Opportunity Comm.....	Pending	0	2,755	0
Export-Import Bank .....	Completed	23	425	5
Federal Communications Commission.....	Completed	100	2,171	4
Federal Election Commission.....	Pending	14	313	4
FEMA.....	Pending	384	4,086	9
Federal Labor Relations Authority.....	Completed	4	206	2
Federal Maritime Commission.....	Completed	23	182	11
Federal Mediation and Conciliation .....	Completed	2	287	1
Federal Trade Commission .....	Pending	979	0	100
International Trade Commission .....	Completed	10	420	2

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# Status of Agency Shutdown Plans

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<u>Agency</u>	<u>Status of Review</u>	<u>Employees Exceeded from Furlough</u>	<u>Employees To Be On Furlough</u>	<u>Percent To Be At Work</u>
Interstate Commerce Commission .....	Completed	2	426	0
Intelligence community manage acct.....	Completed	14	227	6
Merit Systems Protection Board .....	Completed	3	267	1
National Archives and Records Admin.....	Completed	32	2,431	1
National Credit Union Administration .....	Completed	905	0	100
NEA.....	Completed	6	232	3
NEH.....	Completed	5	240	2
National Labor Relations Board .....	Completed	5	2,012	0
National Science Foundation.....	Completed	22	1,235	2
NTSB.....	Pending	375	0	100
Nuclear Regulatory Commission.....	Pending	3,218	0	100
OPIC.....	Completed	100	0	100
Panama Canal Commission.....	Completed	8,772	0	100
Peace Corps .....	Pending	547	686	44
Railroad Retirement Board.....	Completed	538	998	35
RTC Inspector General.....	Pending	1	117	1
Securities and Exchange Commission .....	Completed	66	2,780	2
Selective Service System .....	Completed	1	180	1
Smithsonian Institution.....	Completed	779	4,765	14
Tennessee Valley Authority.....	Pending	16,609	0	100
US Holocaust Memorial Council.....	Completed	15	196	7
US Information Agency (Domestic).....	Completed	1,739	1,929	47
US Information Agency (Overseas).....	Pending			
<b>Total, Department of Defense.....</b>		<b>500,000</b>	<b>300,000</b>	<b>63</b>
<b>Total, Non-DOD.....</b>		<b>570,271</b>	<b>565,855</b>	<b>50</b>
<b>Total.....</b>		<b>1,070,271</b>	<b>865,855</b>	<b>55</b>

*Pres appointees (EEOC) can't be furloughed.*

**Cost Resulting from Appropriations Hiatus  
(Dollars in Millions)**

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<u>Agency</u>	<u>Employees To Be On Furlough</u>	<u>Employee Cost (w/Benefits) 1-Day Hiatus</u>	<u>Employee Cost (Pay Only) 1-Day Hiatus</u>
Agriculture .....	37,817	6.4	4.8
Commerce.....	25,077	5.0	3.8
Defense.....	300,000	51.8	38.8
Education .....	4,394	1.0	0.7
Energy.....	0	0.0	0.0
HHS.....	34,570	7.6	5.7
HUD.....	11,772	2.9	2.2
Interior.....	54,740	10.1	7.5
Justice .....	27,423	6.6	4.9
Labor .....	10,965	2.6	1.9
State (Domestic).....	6,327	1.4	1.0
State (Overseas).....			
Transportation.....	18,039	4.7	3.5
Treasury.....	126,083	24.0	18.0
Veterans Affairs .....	36,354	6.9	5.1
Corps of Engineers.....	21,733	4.0	3.0
Environmental Protection Agency .....	17,716	4.3	3.2
General Services Administration .....	13,067	2.8	2.1
NASA.....	19,774	5.5	4.1
Office of Personnel Management .....	2,124	0.3	0.3
Small Business Administration.....	2,933	0.7	0.5
Social Security Administration.....	61,415	11.3	8.5
AID (Domestic).....	1,579	0.0	0.0
AID (Overseas).....			
Armed Forces Retirement Home.....	256	0.0	0.0
American Battle Monuments Comm.....	345	0.1	0.0
Arms Control and Disarmament Agency.....	207	0.1	0.0
Cemeterial Expenses, Army .....	98	0.0	0.0
Commission on Civil Rights .....	72	0.0	0.0
Commodity Futures Trading Comm.....	521	0.1	0.1
Consumer Product Safety Comm.....	447	0.1	0.1
Corporation for Natl/Comm Service.....	462	0.1	0.1
Defense Nuclear Facilities Safety Board.....	0	0.0	0.0
Equal Employment Opportunity Comm.....	2,755	0.6	0.4
Export-Import Bank .....	425	0.1	0.1
Federal Communications Commission.....	2,171	0.5	0.4
Federal Election Commission.....	313	0.1	0.1
FEMA.....	4,086	0.6	0.5
Federal Labor Relations Authority.....	206	0.1	0.0
Federal Maritime Commission.....	182	0.0	0.0
Federal Mediation and Conciliation .....	287	0.1	0.1
Federal Trade Commission .....	0	0.0	0.0

**Cost Resulting from Appropriations Hiatus  
(Dollars in Millions)**

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<u>Agency</u>	<u>Employees To Be On Furlough</u>	<u>Employee Cost (w/Benefits) 1-Day Hiatus</u>	<u>Employee Cost (Pay Only) 1-Day Hiatus</u>
International Trade Commission .....	420	0.1	0.1
Interstate Commerce Commission .....	426	0.1	0.1
Intelligence community manage acct.....	227	0.1	0.1
Merit Systems Protection Board .....	267	0.1	0.1
National Archives and Records Admin.....	2,431	0.4	0.3
National Credit Union Administration .....	0	0.0	0.0
NEA.....	232	0.1	0.0
NEH.....	240	0.1	0.0
National Labor Relations Board .....	2,012	0.5	0.4
National Science Foundation.....	1,235	0.3	0.2
NTSB.....	0	0.0	0.0
Nuclear Regulatory Commission.....	0	0.0	0.0
OPIC.....	0	0.0	0.0
Panama Canal Commission.....	0	0.0	0.0
Peace Corps .....	686	0.0	0.0
Railroad Retirement Board.....	998	0.2	0.1
RTC Inspector General.....	117	0.0	0.0
Securities and Exchange Commission .....	2,780	0.7	0.5
Selective Service System .....	180	0.0	0.0
Smithsonian Institution.....	4,765	0.8	0.6
Tennessee Valley Authority.....	0	0.0	0.0
US Holocaust Memorial Council.....	196	0.0	0.0
US Information Agency (Domestic).....	1,929	0.5	0.4
US Information Agency (Overseas).....			
<b>Total, Department of Defense.....</b>	<b>300,000</b>	<b>51.8</b>	<b>38.8</b>
<b>Total, Non-DOD.....</b>	<b>565,876</b>	<b>114.6</b>	<b>85.9</b>
<b>Total.....</b>	<b>865,876</b>	<b>166.4</b>	<b>124.8</b>

FY 1995 Agency FTE Levels Published in the Budget

Type: Agencies with 100 FTEs or More

Department of Agriculture	108,894
Department of Commerce	36,000
Department of Defense--Military	834,105
Department of Health and Human Services	62,735
Department of the Interior	76,340
Department of Justice	101,963
Department of Labor	17,632
Department of State	25,006
Department of the Treasury	161,402
Social Security Administration	64,930
Department of Education	5,131
Department of Energy	20,549
Environmental Protection Agency	18,879
Department of Transportation	65,154
General Services Administration	16,936
Department of Housing and Urban Development	12,883
National Aeronautics and Space Administration	23,285
Office of Personnel Management	5,472
Small Business Administration	6,090
Department of Veterans Affairs	229,902
The White House Office	400
Office of Administration	192
Office of Management and Budget	557
Office of the United States Trade Representative	168
Agency for International Development	3,838
Peace Corps	1,233
Overseas Private Investment Corporation	182
Cemeterial Expenses, Army	133
Corps of Engineers--Civil	27,739
Armed Forces Retirement Home	1,020
American Battle Monuments Commission	371
Arms Control and Disarmament Agency	251
Commission on Civil Rights	105
Commodity Futures Trading Commission	545
Consumer Product Safety Commission	487
Defense Nuclear Facilities Safety Board	150
Equal Employment Opportunity Commission	2,860
Export-Import Bank of the United States	448
Farm Credit Administration	404
Federal Communications Commission	2,271
Federal Election Commission	327
Federal Emergency Management Agency	3,944
Federal Housing Finance Board	118
Federal Labor Relations Authority	232
Federal Maritime Commission	205
Federal Mediation and Conciliation Service	302
Federal Retirement Thrift Investment Board	107
Federal Trade Commission	979
International Trade Commission	454
Interstate Commerce Commission	428
Merit Systems Protection Board	286
National Archives and Records Administration	2,486

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FY 1995 Agency FTE Levels Published in the Budget

Type: Agencies with 100 FTEs or More

National Credit Union Administration	944
National Endowment for the Arts	273
National Endowment for the Humanities	262
National Labor Relations Board	2,054
National Science Foundation	1,267
National Transportation Safety Board	350
Nuclear Regulatory Commission	3,218
Panama Canal Commission	8,772
Railroad Retirement Board	1,638
Securities and Exchange Commission	2,944
Selective Service System	228
Smithsonian Institution	5,544
Tennessee Valley Authority	16,609
United States Holocaust Memorial Council	218
United States Information Agency	8,028
Intelligence community management account	241
Corporation for National and Community Service	603
United States Enrichment Corporation Fund	125
Financial Institutions (FDIC/RTC)	16,328
Total, Agencies with 100 FTEs or More	2,016,156

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OFFICE OF MANAGEMENT AND BUDGET

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FY 1995 Agency FTE Levels Published in the Budget

Type: Agencies with Less Than 100 FTEs

Executive Residence at the White House	89
Official Residence of the Vice President	1
Special Assistance to the President	21
Council of Economic Advisers	35
Council on Environmental Quality and Office of Environmental Qua	16.
Office of Policy Development	34
National Security Council	60
Office of National Drug Control Policy	45
Office of Science and Technology Policy	40
Trade and Development Agency	38
Inter-American Foundation	82
African Development Foundation	53
Forest and Wildlife Conservation, Military Reservations	4
Administrative Conference of the United States	18
Advisory Commission on Intergovernmental Relations	13
Advisory Council on Historic Preservation	40
Appalachian Regional Commission	11
Architectural and Transportation Barriers Compliance Board	36
Barry Goldwater Scholarship and Excellence in Education Foundati	2
Board for International Broadcasting	14
Commission of Fine Arts	7
Committee for Purchase from People who are Blind or Severly Disa	18
Court of Veterans Appeals	83
Delaware River Basin Commission	2
Farm Credit System Insurance Corporation	10
Federal Financial Institutions Examination Council Appraisal Sub	9
Federal Mine Safety and Health Review Commission	60
Harry S. Truman Scholarship Foundation	5
James Madison Memorial Fellowship Foundation	7
Japan-United States Friendship Commission	6
Marine Mammal Commission	12
Martin Luther King, Jr. Federal Holiday Commission	3
National Capital Planning Commission	55
National Commission on Libraries and Information Science	7
National Council on Disability	11
National Mediation Board	58
Nuclear Waste Technical Review Board	27
Occupational Safety and Health Review Commission	75
Office of Government Ethics	91
Office of Navajo and Hopi Indian Relocation	93
Office of Special Counsel	96
Office of the Nuclear Waste Negotiator	10
Pennsylvania Avenue Development Corporation	37
State Justice Institute	25
Susquehanna River Basin Commission	2
United States Institute of Peace	53
Christopher Columbus Fellowship Foundation	2
Institute of Museum Services	19
National Commission on Cost of Higher Education	2
National Commission on Independent Higher Education	2
Morris K. Udall Scholarship and Excellence in National Environme	1
Community Development Financial Institutions	30

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OFFICE OF MANAGEMENT AND BUDGET

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FY 1995 Agency FTE Levels Published in the Budget

Type: Agencies with Less Than 100 FTEs

JFK Assassination Records Review Board	24
National Education Goals Panel	13
National Education Standards and Improvement Council	7
Ounce of Prevention Council	7
National Bankruptcy Review Commission	3
Total, Agencies with Less Than 100 FTEs	1,624
** Report Total **	2,017,780