



## **Department of Veterans Affairs**

### **VA Contingency Plan\***

## **Agency Operations in the Absence of Appropriations**

**September 29, 2021**

**\*As required by Office of Management and Budget (OMB) Circular  
A-11**

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## Introduction

The Department of Veterans Affairs (VA) is committed to providing quality, consistent care and services to Veterans and their families. VA's mission provides no exception to this standard even when operations are limited by the absence of appropriations (commonly known as a "Government shutdown"). This document outlines which employees would be necessary for the Agency's continued performance of activities that are "excepted" pursuant to applicable legal requirements or a separate funding source, and the activities that would be subject to furlough.

VA revised its biennial contingency plan for fiscal year (FY) 2022 through FY 2023 in accordance with OMB Circular A-11, Section 124, dated June 28, 2019, and OMB Memorandum, M-18-05, dated January 19, 2018. Based on the instructions contained in Circular A-11, the Antideficiency Act, and the advice of VA's Office of General Counsel (OGC), this document details VA's lapse determinations to be implemented if appropriations are not passed by Congress or if appropriations are passed by Congress, but not signed by the President before the beginning of the workday immediately following a lapse. It applies to all personnel and contractors assigned to or performing services for VA.

## Methodology

The Department pursued a comprehensive approach to diminish the impact of a potential shutdown on Veterans and their family members. In doing so, VA identified functions and programs for which there is a legal basis for designating exceptions, including those required by "necessary implication" and "for protection of life and property." VA Administrations and Staff Offices (A/SO) were asked to review their organizations and identify these specific functions and programs (and the positions required to support them). A/SO decisions were based on long-standing OMB and Department of Justice guidance, and VA's OGC. VA's OGC has reviewed this document to ensure compliance with these criteria.

Federal activities that are authorized to continue during a funding lapse are excepted activities. The two main categories of excepted activities are those authorized by law and those involving the safety of human life or the protection of property. In the Department's shutdown contingency deliberations, VA identified those functions and programs legally excepted to facilitate services the Agency must provide to the Nation's Veterans and their families. These exempt and excepted services include providing consistent, high-quality medical care, compensation and pension benefits, housing, and burial services.

VA further designated services provided by the Office of Information Technology (OIT) as excepted functions related to the Department's need to protect life and property because these functions provide the enterprise-wide infrastructure and support that facilitates healthcare services at Veterans Health Administration (VHA)'s facilities throughout VA.

An analysis of VA functions that were impacted during the previous government shutdowns revealed the following:

- Beginning with FY 2011, VHA was authorized to request advance appropriations under P.L. 111-81. VHA received the FY 2013 advanced appropriation under P.L. 112-74; thus, medical services, medical community care, support and compliance, and facilities were minimally impacted during more recent Government shutdowns since 2013.
- Some benefit activities and payments, such as benefit adjustments and insurance, were delayed.
- Loan Guaranty certificates of eligibility and certificates of reasonable value were also delayed.
- The Veterans Benefits Administration (VBA) has received advance appropriations for its entitlement programs since FY 2017.

In anticipation of a potential FY 2022 or FY 2023 shutdown, VA considered several factors (see below) that differed from the 1990s experience. The Department believes these factors provide ample justification to support a significant increase in the number of excepted VA employees and functions in the event of a present-day shutdown.

- Advance appropriations and two-year appropriations prior year balances are available for VHA. VA believes that certain key functions that support VHA's research operations are justifiable exceptions for protecting life and property.
- Benefits appeals processing is excepted by necessary implication to ensure that benefits are accurately and timely paid. Several VA benefit programs are entitlements because the authorizing statutes (in title 38, U.S.C.) for the programs unconditionally obligate the United States Government to make payments. VBA receives advance appropriations in the annual appropriations act (appropriated entitlements) to fund these programs.
- Review by OGC and VA program offices determined that any potential carryover balances in discretionary accounts from the prior year should be allocated to sustain continued operations until those account balances are depleted.

**Agency Summary**

As a result of the methodology and criteria above, the Department’s current projection is that 96% percent of VA employees would be fully funded or required to perform excepted functions during a shutdown. Approximately 367,741 (out of a pre-shutdown total of 414,316) VA employees are VHA employees funded by advance appropriations. Along with the employees funded by advanced appropriations, the projected number of employees to be retained under this plan who meet A-11, Section 124.2 criteria, is 396,958. The number of employees not otherwise exempt is 17,358.

The table below provides an overview of the impact of a lapse on the VA workforce.

<b>Contingency Plan Summary Overview<sup>1</sup></b>	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>3 days average</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>414,316</i>
<b>Total number of employees to be retained under the plan for each of the following categories:</b>	
Compensation is financed by a resource other than annual appropriations:	<i>373,233</i>
Necessary to perform activities expressly authorized by law:	<i>1</i>
Necessary to perform activities necessarily implied by law:	<i>14,592</i>
Necessary to the discharge of the President's constitutional duties and powers	<i>9</i>
Necessary to protect life and property:	<i>9,123</i>

Table 1 - Contingency Plan Summary Overview

**Summary of Significant Activities that Will Continue During Lapse**

The following activities will continue during a lapse of appropriations:

- All functions within VHA;
- Various benefit functions under VBA, such as Education Benefit Claims processing and payments, insurance processing, loan guaranty programs, Veteran Readiness and Employment payment processing, VBA National Call Centers (except for Education), Compensation and Pension Claims processing and payments, Decision Review Operations Centers and management;

<sup>1</sup> Data aggregated as of September 2021.

- The National Cemetery Administration's (NCA) burial, scheduling of burials, first notice of death, and headstone and marker processing functions;
- Oversight and administration by Presidential appointees who cannot be placed in a nonduty, nonpay duty status;
- Direct and indirect information technology (IT) support to VA Administrations and Staff Offices as needed to maintain their excepted functions, network maintenance and protection, information security, Data Center Operations, and Enterprise Infrastructure Operations; there is not a single category of OIT employees exclusively dedicated to the direct support of patient safety. Many OIT roles support and have critical impacts on patient services and safety at several different levels. For example, the area IT support for hospitals and clinics servicing the medical providers, but also maintain the security and operations of the local information systems; providers rely on IT personnel who assure the uninterrupted operations, security, and maintenance of the network and data centers at the regional and national levels as well as those IT specialists who maintain the 120 clinical care and hospital administration applications that connect people with critical data.
- Providing Human Resource (HR) Information Systems (HRIS) support at the minimum level required to ensure current systems continue to run to support processing of personnel actions;
- Benefits appeals processing; processing of personnel actions, central office campus facilities oversight (including security); maintaining the Integrated Operations Center,
- Providing executive protection, maintaining national security communications; protection of property interests, acquisition operations, policy and logistics, lease build-out activities, and management of VA's major construction;
- Legal advice for funded programs, and court support for funded programs; policy support to senior VA leadership with respect to excepted activities;
- Oversight and management of the White House VA hotline;
- Budget execution/controls, Office of Finance senior management duties, Debt Management Center and Financial Service Center operations;
- Ongoing Inspector General (IG) criminal cases, investigations, and prosecutions;
- Electronic Health Record (EHR) Modernization strategy, oversight, and all activities required to plan for and deploy the Cerner EHR Millennium Solution;
- Completion of existing duties for Employment Discrimination Complaint Adjudication, and
- Completion of existing duties for Office of Small and Disadvantaged

Business Utilization.

### Summary of Significant Activities that Will Cease During Lapse

The following agency activities will cease during a lapse of appropriations:

- VBA Education Call Center, quality review teams, and training teams;
- Oversight and direct administration of the NCA program offices (Veterans Cemetery Grants Program, Engagement and Memorial Innovations, Cemetery Development and Improvement Service, Finance, Legislative and Regulatory Service, etc.);
- All IT functions that do not fall under “necessary implication” and related to one of the specific functions permitted, IT application management, enterprise portfolio management, demand management (business needs, architecture, engineering, cloud solutions, modernization applications), and Financial Management Business Transformation (financial and acquisition management);
- Veterans’ Appeals Freedom of Information Act/Privacy Act, quality review, policy and research;
- HR policy, resolution management, recruiting/staffing, training, labor-management relations, classification, and Veteran employment outreach, HR oversight and Congressional, Government Accountability Office (GAO), IG, OMB inquiries (except for those functions for VHA or matters related to shutdown), or any activities beyond minimum HRIS support to include customer service desk, system changes, or other support;
- Representation for the VA Secretary before the courts including the U.S. Court of Appeals for Veterans Claims and other tribunal, routine legal services regarding personnel law, ethics, torts, and other legal matters;
- All public and intergovernmental affairs functions, including national programs, special events, Tribal Government relations, and interaction with state and local Government and international visitors;
- Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving a VA senior leader, receiving, reviewing, and investigating allegations of whistleblower retaliation, advising the Secretary of Veterans Affairs on all matters relating to accountability;
- Tracking and confirming the implementation of GAO, OIG, Office of Special Counsel (OSC), and VA Office of the Medical Inspector (OMI) reports and recommendations; all Congressional relation functions (responding to requests, processing testimony and questions for the record, GAO coordination, and advisory committee management);
- Veterans Experience Office insight and design, data and statistical analysis, advisory committee oversight, and community engagement activities;
- Enterprise strategic planning and performance management, interagency collaboration, and governance functions;
- Finance policy operations, contractor oversight, strategic capital investment planning, fraud waste and abuse support services;
- IG non-law enforcement audits and evaluations, health care inspections,

contract reviews, special reviews and non-essential administrative support.

**VA Contingency Plan Onboard vs. Excepted Employees**

Table 2 provides the onboard vs. excepted employees by A/SO and the relevant categories that apply to excepted employees:

A/SO	Total Onboard	Exempt	Performing Excepted Functions				Total	Percent Excepted or Exempt
		(Fully Funded)	Exception Category					
		Compensation is financed by other than annual appropriations	Necessary to perform activities expressly authorized by law	Necessary to perform activities necessarily implied by law	Necessary to the discharge of the President's constitutional duties and powers	Necessary to protect life and property		
VHA	370,573	367,741	0	0	0	0	367,741	99% <sup>2</sup>
VBA	24,505	1,815	0	14,551	0	718	17,084	70%
NCA	2,093	0	0	0	0	1,437	1,437	69%
OIT	9,063	0	0	0	0	5,340	5,340	59%
BVA	1,197	0	0	0	0	1,061	1,061	89%
HRA/OSP	909	305	0	10	1	237	553	61%
OALC	1,575	1,564	0	0	0	0	1,564	99%
OGC	865	124	1	21	0	37	183	21%
OPIA	79	0	0	0	1	0	1	1%
OCLA	49	0	0	0	1	0	1	2%
OAWP	119	0	0	2	1	7	10	8%
VEO	167	15	0	0	0	0	15	9%
OEI	80	0	0	0	1	0	1	1%
OM	1,593	1,334	0	8	1	0	1,343	84%
OIG	1,085	46	0	0	1	279	326	30%
OEHRM	208	208	0	0	0	0	208	100%
OSVA	155	81	0	0	2	7	90	58%
<b>TOTAL</b>	<b>414,316</b>	<b>373,233</b>	<b>0</b>	<b>14,592</b>	<b>9</b>	<b>9,123</b>	<b>396,958</b>	<b>96%</b>

Table 2 - Onboard vs. Excepted Employees (Data aggregated as of September 2021)

<sup>2</sup> No VHA functions are suspended if Congress fails to enact a Continuing Resolution or Appropriations act (primarily due to VHA advance appropriations), a lapse of appropriations, but there are approximately 2,832 employees performing medical and prosthetic research that would be furloughed once carryover funds run out and the Medical and Prosthetic research account lapses.

## VA Functions to be Suspended

Table 3 provides a summary of organization functions to be suspended by A/SO during a lapse of appropriations.

A/SO	Description of Functions to be Suspended
<b>VHA</b>	None.
<b>VBA</b>	Quality Review Teams, Training Teams, Education Call Center, Outreach Education Liaison Representatives, Compliance Specialists, Congressional Correspondence/Support, VR&E Counseling (except payment processing functions), Fiduciary initial appointments (except payment processing functions), Legal Instrument Examiners (except payment processing functions), Transition Assistance Program, Support Services/Finance (except payment processing functions), Chapter 36 counseling (unless already assigned to a contractor), Public contact, Management Analysts, Human Resource Liaisons, Veteran Service Organizations (if access to VA space needed).
<b>NCA</b>	NCA Central Office Program Offices (Veterans Cemetery Grants Program, Engagement and Memorial Innovations, Cemetery Development & Improvement Service, Finance, Legislative & Regulatory Service, Budget, Improvement & Compliance, Policy and Planning, Contracting, Human Resources, Training and Safety, Design and Construction Business Transformation Services and most administrative support throughout NCA).
<b>OIG</b>	Non-law enforcement functions, including audits and evaluations, health care inspections, contract reviews, special reviews, and non-essential administrative support.
<b>OALC</b>	Administrative support functions for IT, space, human resources, and financial administration.
<b>BVA</b>	Administrative functions (FOIA/Privacy, Quality Review, VLJ Support, Human Resources, Logistics, Budget, Planning, Technical Infrastructure, Knowledge Management (Training)).
<b>OCLA</b>	Congressional relations, responding to Congressional requests for information, processing testimony and questions for the record, Congressional correspondence, constituent casework, advisory committee management; GAO coordination, Office administrative functions.
<b>OGC</b>	Representation for the VA Secretary before the courts including the US Court of Appeals for Veterans Claims (CAVC) (unless CAVC remains open and does not grant continuances). Other tribunal and routine legal services for VHA, VBA, NCA and Staff Offices regarding personnel law, ethics, torts, and other legal matters.

A/SO	Description of Functions to be Suspended
<b>HRA/OSP</b>	HR Policy, Recruiting, Hiring, Staffing, Training, Labor-Management Relations, Office of Resolution Management processing of Equal Employment Opportunity complaints & Alternative Dispute Resolution, Diversity & Inclusion activities, Classification, VACO building maintenance support, Veteran Employment Outreach, oversight & compliance, planning, correspondence management, Congressional, GAO, IG, OMB inquiries, OSP Front Office, any administrative non-supervisory work in organization.
<b>OIT</b>	All functions that do not fall under “Necessary Implication” and related to one of the specific functions permitted. Application management (testing, design, analysis); Demand Management (business needs, architecture, engineering, cloud solutions, modernization applications); Enterprise Portfolio Management (testing, design, and engineering with business partners); Financial Management Business Transformation (financial and acquisition management); IT Operations and Services (solution delivery, service management and planning, continuous service improvements); Office of IT Resource Management (Space and Facilities [limited to non-security functions only], Strategic planning and analysis, and talent management); OIT Budget and Finance (Accounting, programming, budgeting and execution life-cycle; and Budget Operating Plan); Talent Management Office (Human Capital Management; Workforce Training; and Employee Engagement); Quality, Performance and Risk (Strategy and Governance Management, business process reengineering, audit engagements, and privacy/records management assessments).
<b>OM</b>	Routine operations performed by VA Chief Financial Officer office, Budget formulation, oversight, and analysis, Improper Payment Elimination and Recovery Act and STOP Fraud, Waste, and Abuse support services, Financial Management Business Transformation VA’s Integrated Financial and Acquisitions Management System, development and operations, capital asset management functions (e.g., Strategic Capital Investment Planning, Energy, Management Program, and Enhanced-Use Lease program), Finance Policy Operations.
<b>OPIA</b>	National programs and special event, Tribal Government Relations, National Veterans Awareness Campaign, and Interaction with state and local Government and international visitors. National programs and special event, Tribal Government Relations, National Veterans Awareness Campaign, and Interaction with state and local Government and international visitors.

<b>A/SO</b>	<b>Description of Functions to be Suspended</b>
<b>OAWP</b>	Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving a VA senior executive; allegations of whistleblower retaliation; while advising the Secretary of VA on all matters relating to accountability; tracking and confirming the implementation of GAO, OIG, OMI, and OSC reports and recommendations.
<b>VEO</b>	Insight & Design, Data and Statistical Analysis, Advisory Committee Oversight, Community Engagement Activities, and Technology & Implementation related to multi-channel operations.
<b>OSVA</b>	Non-critical day-to-day operations support for SECVA and executive-level support and guidance to the entire Department.
<b>OEHRM</b>	None.

## Appendix A: Agency Contacts During a Funding Lapse

<b>Role</b>	<b>Name</b>	<b>Primary Phone</b>	<b>Primary Email</b>
Chief Human Capital Officer	Ms. Tracey Therit	202-461-0235	Tracey.Therit@va.gov

**Appendix B: Memorandum Templates for Lapse of Appropriations**

**VA Memorandum for Lapse of Appropriation Implementation Procedures**

**Date:** TBD

**From:** Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness (006)

**Subj:** Lapse of Appropriation Implementation Procedures

**To:** Department of Veterans Affairs Managers, Supervisors, and Human Resources Management Officers

1. **Purpose.** The purpose of this memo is to provide guidance for the emergency shutdown of Department of Veterans Affairs (VA or the Department) operations due to lapse of appropriation. The following guidance addresses the process for notifying employees of a shutdown furlough.
2. **Policy.** When an Appropriation Act or a Continuing Resolution has not been signed by the President, thereby causing a lapse of appropriations, it is the policy of the Department that all employees who are not performing excepted or funded activities be placed on emergency furlough. Employees performing non-excepted activities 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. Employees will not be permitted to volunteer the performance of non-excepted services.
3. **Authorization Coverage.** 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. All furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H.
4. **Notice.** In accordance with Section 752.404 (d)(2) of 5 CFR, the advance written notice and opportunity to answer are not required for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.
5. **Procedures for Issuing Notices.**
  - a. If appropriations are passed by Congress and signed by the President before the beginning of a workday, employees should report to work as usual.
  - b. On the first day on which appropriations are not passed by the Congress and signed by the President before the beginning of a workday, the following actions are required:
    - (1) Employees will report to work as scheduled to begin phase-down activities and to await instructions on whether a furlough will be necessary. Supervisors must ensure shutdown activities are completed in the most expeditious manner

Memorandum Templates for Lapse of Appropriations possible; generally, such activities may not exceed three to four hours. These shutdown activities may include: receiving and acknowledging furlough notices; completing any required time and attendance reporting; setting email/voicemail out-of-office notifications; securing files; and other activities necessary to preserve the employee's work. Employees performing these activities will be entitled to compensation.

- (2) Employees in travel status must return to their duty station immediately upon finding out or being notified of the furlough.
- (3) Employees who are scheduled to telework (or who are remote) are permitted on their next scheduled workday to perform necessary shutdown activities from their telework location, if an existing telework agreement is in place. To the greatest extent practical, and as locally determined, the supervisor may allow other employees to conduct necessary shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities are *de minimis* (i.e., can be completed in approximately 15 minutes). For example, such activities would include receiving and acknowledging receipt of an electronic furlough notice and adjusting voicemail and email to reflect current work status.
- (4) Employees that are on their scheduled compressed workday off (also known as regular day off (RDO)) must be contacted via phone or email by their supervisor and notified of the furlough and their designation as furloughed, excepted, or funded. The supervisor must provide the employee with a written notice as soon as possible and should receive written confirmation of their notification to the employee and the employee's acknowledgement of receipt of the notice. A copy of the notice should be provided to the servicing HR office for retention in the furlough folder for up to two years.
- (5) VA employees who are on detail out of VA on Intergovernmental Personnel Act (IPA) assignments and are being paid directly from VA should prepare to return to their VA duty station of record. These employees will be notified by their VA manager or supervisor when to return, if necessary. VA employees paid by the sponsors of their IPA assignments are not affected by the lapse of appropriations.
- (6) Employees in a training status off VA premises must return to their duty station. Employees in training on VA premises will immediately contact their supervisor office for instructions regarding returning to their duty station.
- (7) Employees on approved leave (annual, sick, court, or military) at the time of a lapse of appropriations will be treated for pay purposes in the same manner as those employees not on leave. Employees performing nonexcepted activities must be provided a furlough notice instructing them to cease performing nonexcepted or funded activities; and employees performing excepted or funded activities must be provided a notice indicating that they have been deemed as such.

- (8) Employees that have received Permanent Change of Station (PCS) orders and are in route should continue to their destination. Employees that have received their PCS orders but have not begun travel should not begin travel.
  - (9) Employees designated as “excepted” employees will continue to perform necessary activities to ensure the protection of human life or protection of government property in the event that a delay in the performance of their assigned activities would compromise the protection of human life or property. When their work is complete, if there is still a lapse in appropriations, they will be placed on emergency furlough. These employees may be required to work on an intermittent basis during the emergency furlough.
- c. Managers and Supervisors should avoid, if possible, assigning an employee that is not reachable as a result of: 1) being on annual leave and on personal travel in a remote and/or distant geographical location; or 2) is on sick leave and is incapacitated due to an illness to an excepted activity during the furlough. The employee should be placed in a non-pay status and the activity should be assigned to another qualified employee within the competitive level to perform the activity.
  - d. The HRO must maintain notification records that certify each employee’s receipt and acknowledgment of the notice of furlough. Furlough records should be maintained in the servicing HR office for two years for future reporting.
  - e. The Manager and Supervisor must ensure that timecards are processed, approved, and released for all “excepted” employees that are working during the furlough. Since “nonexcepted” employees will not be working and will be in a non-pay status, timecards for “nonexcepted” employees should not be processed, approved and released during the furlough period.

## 6. End of Furlough.

- a. Furloughed employees should be instructed to watch the VA Internet [www.VA.gov](http://www.VA.gov) , Office of Personnel Management Internet [www.OPM.gov](http://www.OPM.gov) and major news media broadcasts for information on when to return to duty. Furloughed employees must return to work at the beginning of their next regularly scheduled tour of duty following notification that the emergency furlough period has ended.
- b. Managers and Supervisors may communicate to their employees that the emergency furlough period has ended. This communication can be sent to an employee’s personal contact (i.e., home email, personal cell phone, home phone).
- c. Employees that do not return to work at the beginning of their next regularly scheduled tour of duty will be determined to be absent without leave (AWOL) and placed in non-pay status. Employees that had approved scheduled leave interrupted as a result of the furlough should defer to their supervisor to confirm if they should resume the leave after the furlough.

**7. Pay, Benefits and Leave During Furlough.**

- a. Furloughed employees are in a non-pay, nonduty status during an emergency furlough. Employees identified as “excepted” may or may not receive pay in the absence of appropriations.
- b. Furloughed employees may be eligible for Unemployment Compensation, especially if they are on consecutive furlough days. Supervisors should provide each employee an SF-8 at the same time the furlough letter is issued. State Unemployment Compensation requirements differ. Agencies or employees should submit their questions to the appropriate State office within their geographic location.

The SF-8 informs employees of their right to file a claim for Unemployment Compensation, explains the basic eligibility requirements, provides general information as to how, when, and where to file a claim, and describes the documents which the individual should take when filing a claim (20 CFR Part 609.20). Components must annotate the address and Agency Code of the separating federal agency where wage and separation information can be obtained. This document may be posted to an accessible automated information sharing site used to communicate useful and required information that would normally be attached to the furlough notice.

- c. The furlough will have no effect on an employee’s entitlement to health and life insurance; and
- d. The furlough causes cancellation of any paid leave (annual, sick, court, etc.) previously approved or planned for use during the furlough period.

## Employee Furlough Notice Templates

### *Notice for Furloughed Non-SES Employee*

**To:** [Name of Furloughed Non-SES Employee]  
**Subject:** Furlough Decision Notice Due to Lapse of Appropriations (5 CFR Part 752)

1. The purpose of this letter is to notify you that \_\_\_\_\_ (VA organization) is placing you on furlough without pay effective \_\_\_\_\_ (enter month, day, and year). The Department of Veterans Affairs (VA) does not expect this furlough to exceed 30 calendar days (22 workdays). Therefore, this furlough notice expires no later than \_\_\_\_\_ (enter month, day, and year).
2. The reason for this furlough is that \_\_\_\_\_ (VA organization) does not have full funding through either a continuing Federal Government budget resolution or a Fiscal Year (FY) 2022 appropriation. Thus, VA may incur no further financial obligations except for those related to the orderly suspension of affected VA operations, those covered by 2022 appropriations; or those in the performance of excepted activities as defined in the Office of Management and Budget (OMB) Circular No. A-11, dated June 2019, and OMB Memorandum M-18-05 dated January 19, 2018.
3. Though the work you perform is valued, your position will not be required to be engaged in the orderly suspension of affected VA operations, is not an activity with available appropriations; or is not engaged in one of the excepted functions; therefore, you must be placed in a furlough status.
4. During the furlough period, you will be in a non-pay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace unless and until recalled, and should not perform any work in a nonexcepted or unfunded activity. An employee of VA and the United States Government who “knowingly and willfully” violates this law shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office and shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both. The furlough also causes cancellation of any paid leave (annual, sick, court, etc.) previously approved or planned for use during the furlough period.
5. This action is being taken because of a sudden emergency requiring curtailment of VA activities; therefore, no advance notification is possible. Thus, the customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d)(2).
6. You should access VA’s website ([www.va.gov](http://www.va.gov)), Office of Personnel Management’s website ([www.OPM.gov](http://www.OPM.gov)) and monitor public news broadcasts for notice that either a continuing Federal Government budget resolution or an FY 2022 appropriation for all of the Department of Veterans Affairs has taken effect.

Once either of those events occurs, you should return to work on your next regular scheduled duty day. Employees that do not return to duty after the furlough has adjourned will be determined to be absent without leave (AWOL). AWOL is an unauthorized absence from duty in which the employee receives no pay and is subject to disciplinary action.

7. As a furloughed employee, you have the following appeal or grievance rights:
  - a. Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board. See paragraph 9 below for specific instructions on how to file an appeal.
  - b. Employees in the excepted service who have Veterans' preference may appeal to the Merit Systems Protection Board if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. See paragraph 9 below for specific instructions on how to file an appeal.
  - c. Employees in the excepted service who do not have Veterans' preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the Merit Systems Protection Board if they have completed 2 years of current continuous service in the same or similar positions in an Executive department or agency under other than a temporary appointment limited to 2 years or less. See paragraph 9 below for specific instructions on how to file an appeal.
  - d. Employees in the excepted service who do not have Veterans' preference and who have completed more than 1 year (but less than 2 years) of current continuous service in the same or similar positions in an Executive department or agency under other than a temporary appointment limited to 2 years or less may appeal the action under the VA grievance procedure. Your formal grievance must be addressed to the official that signed the letter of furlough, within 15 calendar days after you receive this furlough. For further information about the VA grievance procedure, you may consult your local Human Resource Office.
  - e. Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement (*provide citation to negotiated agreement*), if covered by the agreement, or may appeal to Merit Systems Protection Board in accordance with the procedures outlined in paragraph 9, but not both. However, to be eligible to appeal to the Merit Systems Protection Board, in lieu of filing a negotiated grievance, you must meet one of the criteria in paragraphs a through d above. To obtain information on filing a grievance under the negotiated grievance procedure, contact (*name of exclusive union representative*).

f. If you do not meet any of the criteria under paragraphs a through e above, you do not have any appeal or grievance rights.

8. Employees have a right to representation in this matter and may choose an attorney or other person to represent them.

9. If you have the right of appeal to Merit Systems Protection Board, your appeal may be submitted by mail, facsimile, by commercial overnight delivery, by electronic filing at <https://e-appeal.mspb.gov/>, or in person at any time after you receive this letter, but not later than (30) calendar days after the separation has been effected.

10. The address to mail your appeal is \_\_\_\_\_ (*insert address from list below*). You must submit an original and one copy of both your appeal and all attachments. If you do not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide you an opportunity to show why the appeal should not be dismissed as untimely. Copies of the Instructions for the Merit Systems Protection Board Appeal Form (Form 185) are at <http://www.mspb.gov/appeals/appeals.htm>. Please refer to [www.mspb.gov](http://www.mspb.gov) for information regarding the appeals process and procedures that must be followed. You may be represented by an attorney or other representative of your choice.

11. Attached is the SF-8, Notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at: <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Unemployment-Insurance-Resources>

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

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision and notice to furlough.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

Attachment: SF-8

*Notice for Furloughed SES Employee*

**To:** [Furloughed SES]  
**Subject:** Furlough Decision Notice Due to Lapse of Appropriations (5 CFR Part 752)

1. The purpose of this letter is to notify you that (*this VA organization*) is placing you on furlough without pay effective \_\_\_\_\_ (*enter month, day, and year*). The Department of Veterans Affairs (VA) does not expect this furlough to exceed 30 calendar days (22 workdays). Therefore, this furlough notice expires no later than \_\_\_\_\_ (*enter month, day, and year*).
2. The reason for this furlough is that (*this VA organization*) does not have funding through either a continuing Federal Government budget resolution or a Fiscal Year (FY) 2022 appropriation. Thus, VA may incur no further financial obligations except for those related to the orderly suspension of affected VA operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) Circular No. A-11, dated June 2019, and OMB Memorandum M-18-05 dated January 19, 2018. Because the Veterans Health Administration (VHA) has received its FY 2022 appropriation, the furlough does not apply to VHA facilities or VHA employees except for those engaged in some VHA Research and Development activities whose funding expires. The furlough also does not apply to those other VA employees who either must handle the orderly suspension of affected VA operations or are performing one of the excepted activities defined in the OMB circular and memorandum.
3. Though VA values the work that you perform, because you will not be engaged in the orderly suspension of affected VA operations and you are not engaged in one of the excepted functions, VA must place you in a furlough status. You should access VA website ([www.va.gov](http://www.va.gov)) or monitor public broadcasts for notice that either a continuing Federal Government budget resolution or an FY 2022 appropriation for all of the Department of Veterans Affairs has taken effect. Once either of those events occurs, VA recalls you to return to work on your next regular duty day.
4. Because a sudden emergency requiring curtailment of VA activities has caused this furlough action, no advance notification is possible. Thus, the customary 30-day advance notice period and opportunity to answer will not occur, in accordance with the provisions of 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees.
5. During the furlough period, you will be in a non-pay, nonduty status. During the furlough, you may not serve as an unpaid volunteer to perform your duties but must remain away from your workplace unless and until recalled. The furlough also causes cancellation of any paid leave (annual, sick, court, etc.) previously approved or planned for use during the furlough period.
6. This furlough will have no effect on your entitlement to health and life insurance. Nor will the furlough change your service computation date.

7. Furloughed SES noncareer or limited appointees, and reemployed annuitants holding career SES appointments, may not appeal this action to the Merit Systems Protection Board. SES career appointees adversely affected may appeal this action to Merit Systems Protection Board and have a right to representation in this matter and may choose an attorney or other person to represent them.
8. If you have the right of appeal to Merit Systems Protection Board and wish to so appeal this action, you must file the appeal within 30 calendar days of the effective date of your furlough. To obtain a copy of the Merit Systems Protection Board regulations and appeal form and the address of the Merit Systems Protection Board Regional Office having jurisdiction, notify (*VA contact and telephone number*).
9. Attached is the SF-8, Notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at: <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Unemployment-Insurance-Resources>.

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

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision and notice to furlough.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

Attachment: SF-8

*Notice for Excepted Non-SES Employee*

**To:** [Name of Excepted Non-SES Employee]

**Subject:** Exception from Furlough Notice During Lapse of Appropriations (5 CFR Part 752)

1. The purpose of this letter is to notify you that \_\_\_\_\_ (*VA organization*) is retaining you for duty to perform excepted activities as defined in the Office of Management and Budget (OMB) Circular No. A-11, dated June 2019, and OMB Memorandum M-18-05 dated January 19, 2018. As an excepted employee, you will continue to perform your VA functions during the furlough.
2. In accordance with 5. U.S.C. 1342, it is unlawful to accept voluntary services for the United States, or employ personal services not authorized by law if you are performing a nonexcepted or unfunded activity. An officer and employee of VA and the United States Government who “knowingly and willfully” violates this law shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office and shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.
3. Because a sudden emergency requiring curtailment of VA activities has caused this furlough action, no advance notification is possible. Thus, the customary 30-day advance notice period and opportunity to answer will not occur, in accordance with the provisions of 5 CFR 752.404(d)(2).
4. The furlough also causes cancellation of any paid leave (annual, sick, court, etc.) previously approved or planned for use during the furlough period.
5. This furlough will have no effect on your entitlement to health and life insurance. Nor will the furlough change your service computation date.
6. Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board. Employees in the excepted service who have Veterans’ preference may appeal to the Merit Systems Protection Board if they have completed 1 year of current continuous service in the same or similar positions as the ones they now hold. Employees in the excepted service who do not have Veterans’ preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the Merit Systems Protection Board if they have completed 2 years of current continuous service in the same or similar positions in an Executive department or agency under other than a temporary appointment limited to 2 years or less. Employees have a right to representation in this matter and may choose an attorney or other person to represent them.
7. If you have the right of appeal to Merit Systems Protection Board and wish to so appeal this action, you must file the appeal within 30 calendar days of the effective date of your furlough. To obtain a copy of the Merit Systems Protection Board regulations and appeal form and the address of the Merit Systems Protection Board Regional Office having jurisdiction, notify (*VA contact and telephone number*).

8. Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement (*provide citation to negotiated agreement*) or may appeal to Merit Systems Protection Board in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact (*name of exclusive union representative*).
9. Attached is the SF-8, Notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at:  
<https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Unemployment-Insurance-Resources>

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

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision and notice to furlough.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

Attachment: SF-8

*Notice for Excepted SES Employee*

**To:** [Excepted SES]

**Subject:** Retention and Conditional Furlough Decision Notice Due to Lapse of Appropriations  
(5 CFR Part 752)

1. The purpose of this letter is to notify you that (*this VA organization*) is temporarily retaining you for duty as an excepted employee to assist in the orderly suspension of VA operations affected by the furlough that is effective \_\_\_\_\_ (*enter month, day, and year*). The Department of Veterans Affairs (VA) does not expect this furlough to exceed 30 calendar days (22 workdays), or \_\_\_\_\_ (*enter month, day, and year*).
2. The reason for this furlough is that (*this VA organization*) does not have funding through either a continuing Federal Government budget resolution or a Fiscal Year (FY) 2022 appropriation. Thus, VA may incur no further financial obligations except for those related to the orderly suspension of affected VA operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) Circular No. A-11, dated June 2019, and OMB Memorandum M-18-05 dated January 19, 2018. Because the Veterans Health Administration (VHA) has received its FY 2022 appropriation, the furlough does not apply to VHA facilities or VHA employees except for those engaged in some VHA Research and Development activities whose funding expires. The furlough also does not apply to VA employees who are performing one of the excepted activities defined in the OMB circular and memorandum or to employees like you during the period/s that you must handle the orderly suspension of affected VA operations.
3. Because you will be engaged in the orderly suspension of affected VA operations, VA must retain you for part or all of 1 or more workdays, of which your supervisor will notify you. Though VA values the work that you perform, after you complete your duties on the assigned workdays assisting in the suspension of affected VA operations, VA must also then place you on furlough in a non-pay, nonduty status. You should access VA website ([www.va.gov](http://www.va.gov)) for public broadcasts for notice that either a continuing Federal Government budget resolution or an FY 2022 appropriation for all of the Department of Veterans Affairs has taken effect. Once either of those events occurs, VA recalls you to return to work on your next regular duty day.
4. Because a sudden emergency requiring curtailment of VA activities has caused this furlough action, no advance notification is possible. Thus, the customary 30-day advance notice period and opportunity to answer will not occur, in accordance with the provisions of 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees.
5. When not performing duties to assist in the suspension of affected VA operations, you will be on furlough and may not serve as an unpaid volunteer to perform your duties but must remain away from your workplace unless and until recalled. The furlough also causes cancellation of any paid leave (annual, sick, court, etc.) previously approved or planned for use during the furlough period.
6. This furlough will have no effect on your entitlement to health and life insurance. Nor will the furlough change your service computation date.

7. Furloughed SES noncareer or limited appointees, and reemployed annuitants holding career SES appointments, may not appeal this action to the Merit Systems Protection Board. SES career appointees adversely affected may appeal this action to Merit Systems Protection Board and have a right to representation in this matter and may choose an attorney or other person to represent them.
8. If you have the right of appeal to Merit Systems Protection Board and wish to so appeal this action, you must file the appeal within 30 calendar days of the effective date of your furlough. To obtain a copy of the Merit Systems Protection Board regulations and appeal form and the address of the Merit Systems Protection Board Regional Office having jurisdiction, notify (VA *contact and telephone number*).
9. Attached is the SF-8, Notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at: <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Unemployment-Insurance-Resources>

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

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision and notice to furlough.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date