



**NATIONAL MEDIATION BOARD**  
WASHINGTON, D.C. 20572

(202) 692-5000

**National Mediation Board**  
**Contingency Plan for Shutdown of Operations**  
**October 1, 2021 – Beginning of FY 2022**

**1. Purpose**

This directive provides contingency planning in the event of a funding hiatus caused by the absence of appropriations for the Washington, D.C and Chicago, IL National Mediation Board (NMB) offices.

**2. Reference**

The Attorney General issued two opinions in the early 1980's, stating that the language and legislative history of the Anti-deficiency Act unambiguously prohibit agency officials from incurring obligations in the absence of appropriations ("Applicability of the Anti-deficiency Act Upon a Lapse in an Agency's Appropriations" (1980) and "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations" (1981)). The Office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995, that reaffirms and updates the 1981 opinion.

**3. Policy**

It is the policy of the NMB that in the event of a funding hiatus, the agency will proceed with the orderly shutdown of operations, beginning on the first workday of the hiatus, and will limit all work activity to actions necessary for such a shutdown, or those activities deemed excepted under applicable law and regulation. The first workday of FY 2022 will be Friday, October 1, 2021.

It is estimated that such actions will require not more than one-half workday. Since it is assumed that such a hiatus would be temporary and of a short duration, no action will be taken that will impede the orderly commencement of operations once funds are available. The Director, Office of Administration (DOA) in consultation with the Board will notify senior staff (General Counsel, Director, Office of Mediation Services, Director, Office of Arbitration Services, Director, Office of Fiscal Services, and the Director, Office Information Services) regarding which activities and personnel are designated as excepted on the first workday of the shutdown.

All NMB staff employed at the time of the funding hiatus will be furloughed, unless individuals have been identified as excepted. The DOA and General Counsel will identify employees who will be made excepted at various times during the furlough period to perform mission critical functions. The three Presidential Appointees with Senate

confirmation cannot be furloughed.

All NMB contractors will be inactive during the funding hiatus. The NMB website will not be updated during the funding hiatus, and will contain a banner announcing that the NMB is closed due to lapse in funding. NMB e-mail will continue to operate during a shutdown.

#### **4. Definition**

A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary 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. All furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H.

#### **5. Excepted Activities**

Excepted activities established by the Office of Management and Budget (OMB) are those that protect life and property, and those necessary to begin phase down of other activities. The NMB has no no-year or multi-year funds, therefore any expenses incurred during the performance of excepted activities will not be paid until such time as an appropriation is enacted.

#### **6. NMB Implementation Plan**

A. In accordance with the Office of Personnel Management guidance, the DOA will communicate with NMB employees regarding the implementation plan if it becomes necessary to affect an orderly suspension of agency operations.

B. The Office of Administration will prepare “emergency” furlough decision notices for electronic distribution to employees.

C. Employees will be advised by the DOA of a possible funding hiatus as soon as such an event is deemed likely.

D. On the first workday of the hiatus, all employees will report to work according to their work schedule for October 1<sup>st</sup> (office, telework, pandemic telework). Supervisors will inform employees of the status of funding and instruct them to limit their work activities to those functions necessary for the orderly cessation of operations.

E. The Director of each office will be responsible for notifying absent employees of the furlough as soon as possible.

(1) On Annual Leave and Sick Leave – employees on approved annual leave will be notified that as of the completion of shutdown activities, all leave is cancelled for the duration of the shutdown. Such employees will be furloughed for the full hiatus period and, when funds are

restored, either returned to duty or placed on annual leave, as appropriate. The Director or supervisor must make every effort to reschedule the annual leave cancelled due to a shutdown for use before the end of the current leave year, especially if such leave may be subject to forfeiture at the beginning of the subsequent leave year.

(2) On COP Leave – Employees absent on continuation of pay (COP) leave in connection with a job-related injury at the time of the lapse of appropriations will remain in a COP status until determined to be fit for duty by a competent medical authority, or until COP leave totals 45 days, if that is earlier. If the hiatus remains in effect when the employee is adjudged fit for duty, he/she will be placed on furlough. At the end of the maximum allowable 45 days of COP leave, if the employee remains incapacitated, he/she will be placed on leave without pay and instructed to file an application with the Department of Labor for receipt of workers' compensation payments.

(3) Advanced Sick or Annual Leave – No advanced sick or annual leave is authorized for use during a funding hiatus. Upon a lapse of appropriations such leave must be canceled and the employee furloughed.

(4) Leave Use – Except as stated in (2) above, no annual or sick leave may be granted during a funding hiatus.

(5) On Travel – Employees in travel status, including those on travel in connection with training, should be contacted by their supervisors and told that they will be furloughed as of the completion of the shutdown and must return to their duty station immediately.

(6) Local Training – Employees absent from the worksite in connection with training at local facilities must be advised that they will be placed on furlough for the duration of the funding hiatus.

## **7. EMPLOYEE BENEFITS**

(1) Unemployment Benefits – Furloughed employees are not eligible for unemployment compensation benefits for any week in which salary exceeds the maximum unemployment compensation payable. Claims should be filed during the first week in which the employee's salary does not exceed the maximum unemployment compensation benefit. The first week in which a claim is filed is considered a waiting period and no unemployment compensation will be paid for that week. Unemployment compensation payments will commence at the beginning of the week after the one in which an eligible claim is filed. The information and employment certification necessary to file unemployment compensation claims will be furnished to all furloughed employees by the Office of Administration as an attachment to the notice of furlough. Employees at the Washington, DC, duty station should apply for unemployment compensation with the District of Columbia Unemployment Compensation Board. Employees at the Chicago, IL, duty station should file with the Illinois Department of Employment Security.

(2) Health Benefits Costs – All employees enrolled for coverage under the Federal Employees Health Benefits Program are required to pay the employee's share of the premium cost for the elected coverage for each pay period during which enrolled, whether in a pay or non-pay status. Therefore, enrolled employees will incur a debt to the

Government equal to the amount of the employee contribution for health benefits for each pay period in which no deductions are made. Once returned to a pay status, the delinquent amount will be automatically deducted from the bi-weekly gross pay, in addition to other authorized deductions, until the debt is liquidated. Employees may cancel their health benefits enrollment at anytime, thereby avoiding a debt accumulation beyond the pay period after the one in which the cancellation request is received. Reenrollment following the furlough period will not be permitted, however, until the employee is again eligible due to the occurrence of a qualifying event, including open season. It should be noted however, that such a break in coverage would make the cancelling employee ineligible to continue health benefits coverage under the Civil Service Retirement System if he/she retires within five years of the date of cancellation.

- (3) Leave Accrual – For leave accrual purposes, the effect of the furlough period for covered employees will be as described below: No sick or annual leave accrual will be credited for any pay period during the leave year in which an employee accumulates 80 hours in a non-pay status.
- (4) Retirement and Life Insurance – For most employees these two benefits remain unaffected by the furlough period. However, employees where the furlough period when added to previously accumulated leave without pay (LWOP), will cause the total non-pay time to exceed six months in the current calendar year or twelve consecutive months, should contact the Office of Administration for additional information.

**6. Personnel and personnel records** – NMB will take necessary personnel actions to release employees in accordance with applicable law and regulations of the Office of Personnel Management. NMB must prepare employee notices of furlough and process personnel and pay records in connection with shutdown furlough actions. These functions are to be performed by employees who are retained for orderly termination of agency activities as long as those employees are available.

**7. Termination of Shutdown** - OMB will notify the DOA when the hiatus of appropriations has ended. The DOA will inform, the Board and then inform the staff that the hiatus is over. In addition, employees should listen to public broadcasts, view the OPM website, the NMB website, and check NMB email as instructed to learn when an appropriation has been approved. Employees are required to return to work on their next regular duty day.