

January 23, 2019

MEMORANDUM

TO: Chapter Presidents and Legislative Coordinators

RE: Update on the Shutdown and FY19 Government Funding

SUMMARY: An update is provided on government funding for Fiscal Year 2019 for agencies currently in a lapse of appropriations.

As a reminder, the following NTEU-represented agencies are currently under a lapse of appropriations: IRS and other Department of Treasury Offices and Bureaus, CBP and FLETC, CFTC, EPA, FCC, FDA, FEC, NPS, PTO, SEC, and USDA.

Tomorrow the Senate is scheduled to have two votes related to reopening the federal government. The first is the President's proposal that would fund federal agencies through Fiscal Year (FY) 2019 and contains several immigration and border security provisions, as well as disaster assistance funds. The second is a Continuing Resolution (CR) to February 8th with additional funds for disaster assistance. Both measures require 60 votes for passage.

The House passed a continuing resolution (H. J. Res. 28) today to reopen closed government agencies through February 28th by a vote of 229 to 184. The House also passed a legislative package, H.R. 648, which contains 6 of the 7 the pre-conferenced appropriations bills that would fund federal agencies through the end of FY 2019, by a vote of 234 to 180. Tomorrow the House plans to vote on H. J. Res. 31, a short-term CR for the Department of Homeland Security lasting through February 28th. House Democrats are also reportedly working on legislation to provide additional resources to secure the border.

The Office of Personnel Management (OPM) released the attached updated fact sheet for employees impacted by the shutdown. As part of this guidance, OPM reiterates that employee vision and dental coverage will continue during the lapse in appropriations and notes that if the lapse period is less than three consecutive pay periods, premiums will accumulate and be withheld later when the lapse ends. However, if individuals do not receive pay for three consecutive pay periods, BENEFEDS will begin to bill employees directly for premium payments and those payments must be made on a timely basis in order to continue coverage. Senators Mark Warner (D-VA), Ben Cardin (D-MD), Tim Kaine (D-VA), and Chris Van Hollen (D-MD) sent the attached letter asking OPM to work with the contractors administering the dental and vision benefits to develop alternative payment arrangements to ensure that benefits are not terminated.

OPM also issued new guidance to agencies on the implementation of the Government Employee Fair Treatment Act, which was signed into law last week. The NTEU-supported act provides retroactive pay for federal employees affected by a lapse in appropriations that begins on or after December 22, 2018, as soon as possible after the lapse in appropriations ends,

regardless of scheduled pay dates. The new law covers employees affected by the current and any future shutdown.

According to OPM, the standard rate of pay for furloughed employees is the pay the employee would have received for the furlough hours had the lapse in appropriations not occurred and the employee had performed work and includes the following types of payments:

- the employee's rate of basic pay;
- overtime and other premium pay for regularly scheduled work;
- regular premium payments (such as law enforcement availability pay); and
- allowances and differentials payable on a regular basis.

For the purpose of any pay, leave, or benefit entitlements, furlough hours for which retroactive pay is received are considered paid hours of work. For example, furloughed employees will accrue annual and sick leave as if they had been in pay status during the furlough periods. The furlough hours will also be considered to be paid hours of work in applying overtime rules, including the Fair Labor Standards Act overtime rules.

For excepted employees who are required to work during a lapse in appropriations, they must be paid for those work periods occurring during the lapse at the employee's "standard rate of pay," which is the pay the employee is entitled to for the actual hours of work under the normally applicable pay rules. For example, if an excepted employee performed additional overtime work beyond the normal requirements for his or her job, he/she would be paid for that actual overtime work.

The Government Employee Fair Treatment Act also allows excepted employees who are required to perform work during a lapse in appropriations to use leave. According to OPM, the use of such paid leave is subject to the normally applicable rules for the applicable leave program, including leave request and approval procedures. While excepted employees have the option to use their paid leave (i.e., establish entitlement to paid leave to be paid after the lapse ends), they are not required to use leave to cover periods of authorized absence from work. Instead, they may choose to remain in the default status of being furloughed during any such authorized absence during the lapse.

As the government shutdown continues into its fifth week, NTEU is urging Congress and the Administration to act now to pay impacted employees and end this needless suffering. I will keep you updated on further developments. For more information, please [click here](#).

Anthony M. Reardon
National President

Attachments