

Chapter 10

Furlough in the Senior Executive Service

10.1 General Information and Responsibility

A. Purpose

This policy establishes, in accordance with applicable laws and regulations, the responsibilities, procedures, and guidelines for conducting a furlough for Commerce members of the Senior Executive Service (SES) in compliance with 5 CFR 359 Part H. Commerce will conduct such actions based on careful consideration of legitimate budget, management and mission-related requirements. This policy provides agency direction to be used in conjunction to the referenced statutory and regulatory requirements. The Office of Executive Resources, Office of Human Resources Management should be consulted for further information and guidance.

B. Applicability

This policy is applicable to all SES career appointees, including career appointees serving in a probationary period in all bureaus and components of Commerce, with the exception of the Office of Inspector General (OIG), which has independent authority pertaining to management of OIG human resources under Public Law 95-452 and United States Patent and Trademark Office under P.L. 106-113.

Noncareer, limited term, and limited emergency SES appointees, as well as reemployed annuitants, may be furloughed without regard to these provisions.

Former career SES appointees who accepted appointments at Level V of the Executive Schedule or higher and elected to retain SES leave benefits under 4 U.S.C. 3392(c) are subject to furlough at the Department's discretion.

C. Authorities

5 U.S.C §3595a, Furlough in the Senior Executive Service

5 CFR Part 359, Subpart H, Furloughs in the Senior Executive Service

10.2 Definitions

A. Furlough. A furlough is the placement of an employee in a temporary status without duties and pay because of lack of work or funds, or for other nondisciplinary reasons. There are two types of furloughs.

1. An emergency furlough most commonly is implemented in situations when the Department no longer has the necessary funds to operate and by law must shut down all activities which are not excepted by standards issued by the Office of Management and Budget. The Department will usually have very little lead time to plan for an emergency furlough, and therefore may be unable to provide advance notice or to determine how many furlough days will be required. An example of a situation which warrants an emergency furlough is when there is neither appropriations legislation nor a continuing resolution in place at the beginning of a fiscal year to fund activities.
2. A planned furlough is a planned event designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other event which requires the Department to save money. A planned furlough differs from an emergency furlough in that the Department has sufficient time to give adequate notice of its specific furlough plan and how many furlough days will be required. An example of a situation which warrants a planned furlough is if, as a result of Congressional budget decisions, the Department is required to absorb spending reductions over the course, or a portion of the course, of a fiscal year.

There are two types of planned furloughs.

- a. A short furlough is one that will last for 30 consecutive calendar days or fewer or for 22 workdays or fewer (within a 12-month period beginning on the first day of the furlough) if the furlough does not cover consecutive days

An agency need not use competitive procedures in selecting the SES appointees to be furloughed for short periods. However, it should make its selections for sound management reasons.

- b. A long furlough is one that will last for 30 consecutive calendar days or more or for 22 workdays or more (within a 12-month period beginning on the first day of the furlough) if the furlough does not cover consecutive days. The furlough may not exceed one year.

A SES appointee may be furloughed for more than 30 days only when the Department intends to recall the appointee to a duty status with pay within one year from the beginning of the furlough. A furlough should not be used when it is known that the SES appointee will have to be separated through a RIF action when the furlough ends.

- B. Noncareer Appointment. This is an executive appointment to a General SES position, without time limitation, that is made in coordination with the White House in which the executive serves at the pleasure of the Appointing Authority. Noncareer appointees may be furloughed under agency designated procedures and do not have appeal rights to MSPB.

- C. Limited Term and Limited Emergency Appointments. These are time limited appointments used to fill General SES positions authorized by OPM. Limited appointees may be furloughed under agency designated procedures and do not have appeal rights to MSPB.

10.3 Policy

It is the Department's intent to implement a furlough in the career SES only when: immediate cost savings are imperative, a reduction in force is neither necessary nor warranted, circumstances indicate that the affected executives can be recalled at the end of the furlough, and that the furlough will last less than one year.

10.4 Competition for Furlough

Furloughs lasting 30 consecutive calendar days or fewer (or 22 non-consecutive work days or fewer) may be conducted without competitive procedures. Appointing Authorities/OU Heads, through the Director for Human Resources Management, recommend to the CFO/ASA which career SES appointees will be affected by furloughs of less than 30 days. Recommendations for selections should be made for sound management reasons.

Furloughs which last more than 30 consecutive calendar days, or more than 22 work days if the furlough does not cover consecutive calendar days, must be conducted under the competitive procedures established for reduction-in-force (RIF) in the SES. The competitive procedures are used to identify which executives will be furloughed.

10.5 Length of Furlough

A furlough may not last more than one year. Reduction-in-force procedures may need to be implemented when curtailment of work or lack of funds is expected to last for more than one year.

10.6 Responsibilities

A. Departmental Executive Resources Board (DERB)

1. Approve SES furlough plans.
2. Approve implementation of a furlough in the SES.

B. Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA)

Pursuant to Departmental Organization Order 10-5 and Departmental Administrative Order 202-250, the CFO/ASA is responsible for the following:

1. Approve which executives will be furloughed based on recommendations from Appointing Authorities/OU Heads.

C. Director for Human Resources Management

The Director for Human Resources Management is responsible for the following:

1. Developing and implementing Agency procedures for furlough in the SES consistent with appropriate laws and Office of Personnel Management (OPM) regulations.
2. Reviewing plans to conduct a furlough in the SES and providing advice, recommendations, and technical support for implementation of the furlough process.
3. Coordinating the issuance of appropriate notices and other required SES furlough documentation with executive managers and Appointing Authorities.
4. Ensuring the actions taken under SES furlough procedures are in compliance with regulatory requirements.

D. Appointing Authorities/Operating Unit (OU) Heads

Appointing Authorities/OU Heads are responsible for:

1. Ensuring that, prior to issuing any type of communication to the workforce or the public involving bureau furlough planning, preparation or implementation actions or activities, a copy of the draft communication will be sent to the Director for Human Resources Management for review and approval.

2. Through the Director for Human Resources Management, requesting DERB approval for a planned furlough within their organizations. Requests must be supported by a furlough plan. (See Section 10.7)

E. Office of General Counsel

Staff from the office of General Counsel (OGC) will provide advice, guidance and legal clearance of any planned Furlough guidance or Furlough policy. OGC staff will also provide legal counsel to OHRM and CFO/ASA on issues that arise throughout the Furlough process, and shall serve on any established Furlough team.

10.7 Implementing a Furlough in the SES

The DERB has the responsibility to approve the implementation of a furlough in the SES. The DERB will make the decision to implement an emergency furlough and will direct the Department's Office of Human Resources Management to manage the emergency furlough procedures Department-wide.

Through the Director for Human Resources Management, Appointing Authorities/OU Heads will request DERB approval to conduct a planned furlough within their organizations. Such requests must be supported by a furlough plan, which includes:

- A. the reasons for the proposed furlough, a rationale supporting why a furlough is the best mechanism to resolve the situation, and an accounting of the savings to be accrued;
- B. the organizational units to be involved;
- C. the names, position titles, and ES pay rates of the career SES appointees proposed for furlough;
- D. the length of the proposed furlough;
- E. the beginning and ending dates of the proposed furlough; and
- F. a draft notice to executives who would be affected by the proposed furlough.

10.8 Notice

Career SES appointees identified for furlough will receive a written advance notice at least 30 calendar days prior to the effective date of the start of the furlough. In the case of a planned furlough, the advance notice will be provided by the appropriate Appointing Authority/OU Head. In the case of an emergency furlough, the notice will be provided by the Director for Human Resources Management acting on behalf of the DERB.

The 30-day notice period may be shortened or waived in the event of unforeseen circumstances, such as sudden emergencies requiring immediate curtailment of activities, or when furlough of employees is necessary to avoid violation of the Anti-Deficiency Act. If the notice period is shortened or waived, the agency must include the reason in the notice.

The written advance notice will include:

- A. the reason for the furlough action;
- B. the expected duration and the effective dates of the furlough;
- C. the basis for selecting the appointee for furlough when some, but not all SES appointees in the organizational unit are being furloughed;
- D. the reason if the notice period is fewer than 30 days;
- E. the place where the executive may inspect the regulations and the records pertinent to the action;
- F. the appointee's appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent; and
- G. if the appointee is service a probationary period, the effect (if any) on the duration of the probationary period.

10.9 Appeal Rights to Merit System Protection Board (MSPB)

A career SES appointee who has been furloughed and who believes that the provisions of this policy have not been correctly applied may appeal to the MSPB under provisions of the Board's regulations.

The furlough of noncareer and limited appointees, and reemployed annuitants is not appealable to MSPB.

10.10 Requirements for Noncareer and Limited Term Appointees and Reemployed Annuitants

The Department may furlough an SES noncareer or limited term appointee, or a reemployed annuitant holding a career appointment. Recommendations for selection for furloughs will be made by the Appointing Authorities and approved by the DERB. The appointee should be given a written notice, delivered at least one day prior to the beginning of the furlough, and it should indicate the reasons for, the duration of, and the effective dates of the furlough.

10.11 Records

Bureau servicing Human Resources Offices will maintain copies of all regulations and records pertinent to an SES furlough in their organizations.

The Department's Office of Human Resources Management will maintain all records relating to SES furlough actions for at least 2 years from the effective dates of the actions.