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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: David J. Apol
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SUBJECT: Ethics Laws and Regulations Continue to Apply to Federal Government
Employees during Furlough Periods

In the event of a lapse in appropriations, agencies may have to furlough employees until additional funding is provided. To prepare for such a possibility, the Office of Government Ethics (OGE) recommends that agencies remind their employees that they remain employees of the Federal Government during furlough periods. Therefore, employees must continue to comply with all of the ethics laws and regulations, including the criminal conflict of interest laws at 18 U.S.C. §§ 203, 205, 207, 208, and 209, the Standards of Ethical Conduct for Employees of the Executive Branch, and any agency-specific supplemental standards of ethical conduct. It is particularly important for employees to understand that ethics provisions regarding outside activities, including any agency-specific prohibitions or prior approval requirements, will continue to apply to them while they are in a furlough status.¹ These also include outside earned income limitations for certain political appointees.

We also note that some employees are subject to the public financial disclosure periodic transaction reporting (OGE Form 278-T) requirements of the Ethics in Government Act (EIGA). Although there is no authority in the EIGA to suspend the filing requirement, a designated agency ethics official (DAEO) has authority to grant an extension, including to an employee who is unable to file a periodic transaction report during a furlough. Under the circumstances of the furlough, the extension may be granted retroactively and may be up to 90 days. A DAEO may also waive the \$200 late filing fee in “extraordinary circumstances,” 5 C.F.R. § 2634.704(b). An agency DAEO would be acting within his or her discretion in determining that a furlough that prevented timely filing would be an “extraordinary circumstance.”

¹ OGE previously issued guidance for employees in a furlough status in 2013 in OGE legal advisories LA-13-11 and LA-13-02, and in June 2004 in OGE Informal Advisory Letter 04x6. In addition, the Office of Personnel Management has posted guidance on shutdown furloughs on its website at <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.



While we hope that a lapse in appropriations may be avoided before the deadline, prudent management requires that ethics officials remind Federal employees of the ethics laws and regulations that govern their Federal Government employment. If you have any questions, please do not hesitate to contact your OGE Desk Officer.