

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
AND
THE NATIONAL COUNCIL OF EEOC LOCALS NO. 216, AFGE
CONCERNING FURLOUGH OF EEOC EMPLOYEES DUE TO THE AGENCY'S
IMPLEMENTATION OF THE AMERICAN TAXPAYER RELIEF ACT OF 2012
(THE SEQUESTER)**

The purpose of this Memorandum of Understanding (MOU or Agreement) is to implement steps and actions which will minimize or eliminate the adverse effects on bargaining unit employees during the Agency's implementation of the Sequester.

Accordingly, the Parties herein have agreed to cooperate to the maximum extent feasible in adapting Agency actions and reducing the impact of the budget cuts. This Agreement represents appropriate arrangements under 5 U.S.C. §7106(b)(3) for bargaining unit employees adversely affected by the budget cuts.

1. To the extent that it is practicable and not prohibited by law, and without interfering with the accomplishment of the Agency's mission, the Agency will resort to furloughs only after all other means of managing the sequester. The union will be informed of the means utilized or rejected and the union will be given the opportunity to discuss this with the Agency, in order to recommend actions that were not considered or argue why a particular action should be utilized. Should additional funds be made available to the Agency, management will make every effort to apply the additional funds to reduce the number of required furlough hours.

2. The Agency herein incorporates by reference the Office of Personnel Management's Guidance for Information on Furlough issued on December 2012 and any subsequent guidance also issued by OPM found at:
<http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Administrative-Furlough>

3. The Agency has determined that each full-time employee will be furloughed for 68 hours during the furlough period.

A. All term and temporary employees shall be subject to furlough hours.

B. Part-time employees shall have their furlough hours pro-rated based on the number of scheduled part-time work hours relative to a full-time work schedule of 80 hours in a biweekly pay period to achieve the same percentage pay reduction for both full-time and part-time employees. For example, a part-time work schedule of 64 hours per biweekly pay period would equate to 64/80 of a full-time work schedule, or 80 percent. This percent could then be multiplied by the number of hours that a full-time employee is furloughed to derive the appropriate number of furlough hours for the part-time employee. Thus, if a full-time employee were required to be furloughed for 40 hours, a part-time employee with a 64-hour biweekly tour could be furloughed for 32 hours (40 x .80 = 32).

C. During Phase I of the furlough, as described in Number C. i of this Agreement, managers are to give every consideration to employees who may wish to voluntarily change their work schedule to take additional Leave Without Pay (LWOP) hours that will be above the required 40 furlough hours provided for during Phase I in this MOU. The voluntary arrangements shall not be counted towards the furlough hours but will factor into additional budget savings and may reduce the additional furlough hours for all employees. The Agency shall include the usage of all voluntary additional LWOP hours taken in its assessment of savings that will determine the number of additional hours up to 28 needed for phase II, per paragraph 4 of this agreement.

4. A. All Proposed Furlough notices will be issued on Friday, March 22, 2013, to all bargaining unit employees and pursuant to 5 CFR 752. As indicated at **5 U.S.C. 7513 and 5 CFR 752.404**, the notice will provide:

- i. The employee will receive at least 30 days advance written notice of the action. The notice must include the specific reasons for the proposed action and inform the employee of the right to review all material that is relied on by the Agency to support the reason stated in the notice.
- ii. The employee may answer the proposal orally and in writing. The employee will be given a reasonable amount of time to review the material (at least seven days) to prepare the response.
- iii. The notice provided to the employee must detail the employee's right to appeal the furlough to the Merit Systems Protection Board (MSPB), pursuant to its regulations. If appealing to MSPB an employee may be represented by an attorney or any other personal representative.
- iv. As an alternative to filing an MSPB appeal, bargaining unit employees may file a grievance under the parties negotiated grievance procedure.
- v. The impact of accumulation of furlough hours on within grade increases and accrual of leave.

B. The Office of Human Resources (OHR) has established a mailbox (Furlough2013) to be used by OHR and employees to facilitate communications to employees on their specific furlough notice.

- i. The notice will include an acknowledgement signature page for employees to sign and return to the Supervisor or District Resources Manager [DRM/Administrative Officer (AO)] for the office, who will, in turn, forward the notices to OHR. For employees on long term annual, sick or LWOP, the employee shall be notified by certified mail to their address of record.
- ii. District Directors and Headquarters Directors will also certify that all employees in their offices have received the notice. The notice will also include coding instructions for EEOC's time and attendance system. Each full-time employee will be furloughed for 68 hours beginning April 22, 2013 (Pay Period 10) through September 6, 2013

(Pay Period 19.) Part-time employees will serve furlough hours in accordance with No.3B. above.

C. The furlough covering dates April 22, 2013, to September 6, 2013, will be implemented in two Phases.

i. Phase I - April 22, 2013 to June 28, 2013

During Phase I, all full-time employees will be expected to take 40 furlough hours that will commence April 22, 2013 (pay-period 10) through June 28, 2013. Part-time employees will serve furlough hours in accordance with No. 3 b. above. Employees may select any day Monday through Friday. These hours must be approved by management who will consider such work exigencies as office coverage and workload. See "Scheduling During the Furlough" below for scheduling hours.

*The Agency will have a **Reassessment Period from July 1-July 12, 2013** when the Office of the Chief Financial Officer (OCFO) will assess the savings that were incurred during Phase I as well as the Agency's current budget level. Also, during this period the OCFO will provide the Union with a briefing on this subject matter, including the impact and spending plan for any additional funding received, before any notice is sent to bargaining unit employees.*

ii. Phase II - July 15, 2013 to September 6, 2013

At the conclusion of the reassessment period, employees shall be notified if any of the 28 remaining furlough hours need to be taken. The Office of Human Resources (OHR) will notify employees through mailbox (Furlough2013). Employees will work with their supervisors to determine how the remaining furlough hours will be taken. If the Agency determines that more than 28 furlough hours will be needed, they will issue a new Furlough Notice pursuant to 5 CFR 752.

5. All employee furloughs will be for a given number of hours rather than days, so that employees subject to furlough are treated equitably regardless of whether they are on compressed work schedules. All schedules must be approved by their supervisor.

6. The public shall be notified of any changes in office hours by public posting and/or telephone messages, concerning the modification of hours that are open to the public. This information will also be provided to office employees.

Scheduling During Furloughs

7. Neither alternative work schedules nor telework will be terminated or suspended *solely* because the Agency's budget has been reduced by sequestration. No employee shall be required to change his/her current work/telecommuting schedule absent good cause. The employee's current schedule or request to change schedule shall be honored unless management determines that mission, office coverage and workload requires otherwise, in which case management will make every reasonable attempt to work out a schedule which is suitable to the employee's needs and will not cause an additional financial hardship. Should an employee's request be denied, the employee shall be provided specific written reasons for the denial.

- A. Employees working an approved Alternate Work Schedule (AWS) may elect to change to a 5 day, 8 hour per day schedule for the duration of the furlough and may return to the AWS schedule at the beginning of the next pay period.
- B. All bargaining unit employees shall be allowed the right to request a specific schedule for his/her furlough hours. No employee will be required to take more furlough hours per week than is included in the employees approved alternate work schedule (9 or 10 hours).
- C. All bargaining unit employees shall have the right to determine whether to schedule his/her furlough hours in continuous blocks of hours/times or in discontinuous blocks of hours/times. Employees who opt to take continuous blocks of time shall not be reimbursed if the furlough is discontinued, absent specific funding legislation.
- D. Employees will be allowed to take the furlough hours on any day of their choice. Employees taking furloughs on a given day will be credited with the number of furlough hours taken. For example, 10 hours, 9 hours, 8 hours, 4 hours, etc.
- E. Should there be a conflict in requests for furlough hours/schedules within a work group (legal, enforcement, ADR of any other such team or unit), the employees will try to resolve the conflict themselves. If no resolution is reached, then the employee(s) in the work group with the highest grades and service computation dates shall be granted the requested furlough hours/schedules, consistent with paragraph 7, above.
- F. Approved schedules, including furlough hours, shall be entered into Quicktime by the employee or in the employee's absence, their timekeeper.
- G. For payroll purposes, all involuntary furlough hours will be coded as "103."
- H. Should the furlough be cancelled, employees, who have scheduled consecutive furlough hours, will be given the option to convert remaining furlough hours to other appropriate leave status, rather than immediately reporting back to duty.

I. Requests for overtime, credit time and compensatory time during the furlough period will be handled in accordance with the Collective Bargaining Agreement (CBA), OPM guidance and government-wide rules and regulations.

8. Employees who have a reasonable accommodation will not have their accommodation altered as a result of the furlough. However, these employees will not be exempt from taking their required number of furlough hours.

9. Call-in and Return to Work: Employees who are in a furlough status will not be subject to orders or other work-related instructions. Additionally, furloughed employees shall not volunteer their services on days during which the employee is serving furlough hours.

10. An employee who has had their annual or sick leave approved prior to the issuance of the proposed furlough notice will not have their leave revoked if they can demonstrate that they incurred pre-paid travel or related expenses associated with the leave prior to the issuance of the proposed furlough notice. No other pre-approved leave will be revoked without the supervisor first engaging the employee in a conversation and then providing the employee with a written explanation for the recession and a specific date when the leave can be rescheduled.

11. Any employee that is scheduled to be on Leave Without Pay (LWOP) during the Equal Employment Opportunity Commission's furlough period may designate any hours of Leave Without Pay as furlough time off in order to meet the employee's furlough requirement.

12. An employee may take LWOP under the Family and Medical Leave Act (FMLA) during the Equal Employment Opportunity Commission's designated furlough period. The employee shall have the right to designate any hours of LWOP under the Family and Medical Act (FMLA) as furlough time off in order to meet the employee's furlough requirement.

13. During the furlough period, any FMLA LWOP scheduled to be taken instead of a furlough day off will not count toward the employee's 12-week FMLA entitlement. An employee who takes LWOP under FMLA instead of furlough hours off may not later substitute paid leave for the hours of LWOP.

14. In order to be paid for holidays during the Equal Employment Opportunity Commission's designated furlough period, an employee must be in a pay status on either the last workday before a holiday or the first workday following a holiday. If an employee is on furlough the last workday before a holiday and the first workday after a holiday they will not be paid for the holiday. EEOC may not require employees to take a furlough day on a Federal Holiday.

15. Employees may be eligible for unemployment compensation while on furlough if they meet state requirements. The state law in which the employee's last official duty station in Federal civilian service is located will be the state law that determines the

employee's eligibility for unemployment insurance. A link to the information developed by the U.S. Department of Labor on unemployment insurance for Federal employees will be placed on inSite under the FURLOUGH tab.

16. Eligible EEOC employees will continue to receive the Transit Subsidy, in accordance with existing Agency policy and procedures.

17. The Parties agree to be flexible when granting extensions for the filing of and responding to grievances, including invoking arbitration, until such time as the Parties return from furlough. Neither party will oppose the other party's request for an extension on matters pending before the offices of EEO, MSPB or FLRA. Both Parties understand that the final decision rests with the offices of EEO, MSPB, and FLRA.

18. The Agency's code of ethics and guidance on outside employment will be placed on inSite before April 22, 2013. Employees needing to secure outside employment during the furlough period shall submit requests to their Ethic's officer (usually the District Director). A link to the guidance is available on the inSite under the FURLOUGH tab.

19. **Performance-related Actions:** During the Agency's implementation of the Sequester, employees and their supervisors shall meet, as appropriate, to adjust work assignments that are impacted by the furlough.

a. Personnel actions tied to performance such as, PIPs, WIGs or career ladder promotions shall be implemented in accordance with government-wide rules and regulations.

b. Employees shall not be adversely impacted in their performance evaluations or otherwise, based *solely* on the age of cases or assignments, changes to work deadlines or failing to meet office goals as a result of the furlough.

20. Either party wishing to alter any terms of this agreement, shall properly notify the other party so that bargaining will take place as appropriate.

21. Any dispute concerning the provisions of this agreement shall be resolved through the negotiated grievance procedure or other appropriate third party for proceeding.

22. Copies of this Agreement shall be distributed to all employees via e-mail no later than Friday, March 22, 2013.

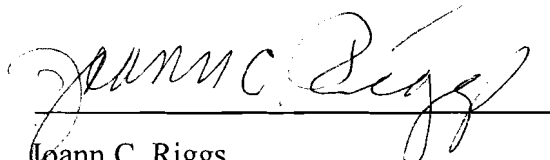
23. A copy of this MOU shall be posted on inSite and shall remain there until such time as the Agency receives funding for FY 13.

24. **Term of this Agreement.**

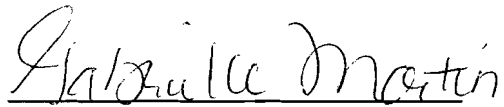
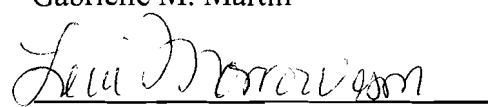
This Agreement will become effective on 21 May and will end on 6 Sept. 2013.

Signed this 21st of March 2013.

BY THE AGENCY:


Joann C. Riggs

BY THE UNION:


Gabrielle M. Martin

Levi Morrow