Why are federal employee furloughs being threatened?

The origins go back to mid-2011 when political leaders were faced with the need to raise the federal debt ceiling. As part of a law raising the limit, deficit reduction of $1.2 trillion over 10 years was ordered. However, special bipartisan committee on that issue disbanded late in 2011 when it reached its deadline without reaching an agreement. Under the debt ceiling law, that meant automatic cuts called "sequestration" would begin with calendar year 2013, also spread out over a decade, to achieve the same amount of deficit reduction.

Many "mandatory" spending programs are exempt, including payments from federal retirement, Social Security and other benefits programs, as well as some "discretionary" programs. However, even where a program is shielded, the administrative expenses to operate it — including the funds to pay federal employees working in it — are subject to sequestration.

A law enacted just as those cuts averaging about 10 percent were set to hit in early January 2013 delayed the sequester until March 1 by ordering certain savings and revenues elsewhere, but in the meantime leaders could not reach an agreement either on a long-term way to replace the sequester or on another delay.

In expectation of the sequester, almost all agencies plan to – or already have started to – cut back on expenses such as conferences, travel, training, office equipment and other overhead-type expenses. Similarly, many are cutting spending on employees by targeting incentive payments, eliminating overtime, imposing hiring freezes, and laying off temporary employees. Other steps include deferring maintenance and cutting purchases of information technology, other equipment, and even office supplies.

However, because employee salaries are such a big part of their administrative expenses, agencies have warned about the potential for putting employees on furloughs. Thus, while a sequester cannot reduce an employee's annual salary rate, it can effectively cut their pay by forcing them onto unpaid leave.

Where are the greatest threats to employees?

Along with taking other cost-saving steps as described above, it would be up to agencies to decide how they needed to achieve the rest of the needed savings under sequestration. That includes whether furloughs will be needed at all, and if so, for how many days.

Where furloughs are ordered, the number of days will vary among agencies, and even among components within agencies, depending on how their budgets are structured. Some operations are especially labor-intensive. Others use contractors for a large portion of their work (and spending on contracts also would be reduced; the impact on contractor employees would vary from company to company).

Scheduling is another issue. The savings must be achieved by the end of the fiscal year, September 30, meaning that the furloughs wouldn't hit all at once. Agencies generally are planning to spread out the days in order to minimize the disruption in their work flow. Spreading out the days also leaves open the possibility that Washington will reach some budgetary agreement after sequestration begins which would spare employees from at least some of the loss of income.

The Defense Department has been the most specific, planning to furlough the vast majority of its civilian employees for one day a week for 22 weeks, from mid-April through September. The Transportation department similarly has said it would need to furlough nearly every Federal Aviation Administration employee—including air traffic controllers and aviation safety inspectors—one day a week through September.

The Department of Homeland Security has said it expects 14 furlough days in one of its large components, Customs and Border Protection, as well as unspecified furloughs of airport security screeners, Secret Service agents and other law enforcement personnel.

Several other agencies similarly have said they expect to furlough employees but have not said for how long. These include Education, Interior and Treasury, for example.

Many other agencies have been silent on furloughs in specific but have described cutbacks in services from which it can be assumed that full staff would not be available.

In contrast, the Government Accountability Office—an arm of Congress but also subject to sequester and that operates like an executive branch agency in most ways—has said it expects to avoid furloughs entirely. Others, including the Social Security Administration, are holding out that hope but are making no promises.

Also, the Office of Management and Budget has determined that under a series of prior laws, one entire agency is exempt from sequestration: the Department of Veterans Affairs.

Who would be furloughed?

In general, agencies have said that furloughs would hit nearly all employees. However, there are some exceptions required by law.

For example, political appointees who are confirmed by the Senate are not subject to being furloughed because a furlough is a form of unpaid leave and they are not subject to federal leave policies. Some of them have said they would turn back to the government a proportional part of their salaries in a show of solidarity.

Second, employees working in operations not funded through the Treasury are exempt. The largest is the U.S. Postal Service, which gets its revenue from postage and merchandise sales. Also exempt would be employees working in "non-appropriated fund" functions that also are self-funding. Most of those work in Defense Department operations such as officers' clubs and other morale, recreation and welfare services, but there are smaller numbers of similar functions at some other agencies. In addition, foreign nationals who work for the U.S. government, again mostly for the Defense Department, are exempt.

Agencies have not said much about how they will use their discretion to make exceptions for other positions. Several parts of the Defense Department again have been the most forthcoming, and their decisions may prove to be typical for other agencies.

For example, the Navy will exempt employees crucial to the safety of life or property, although "only to extent needed to prevent unacceptable risk or catastrophic gaps in the safety and protection of life or property." The Navy also will exempt employees assigned to combat zones.

When will furloughs happen?

The furloughs could not begin until after a 30-day notice to employees, meaning early April at the soonest. Only a few agencies have been specific. The Defense Department expects to issue its notices around March 15 and furlough nearly all employees (with the exceptions as described above) starting the third week of April. The Department of Homeland Security also plans to issue furlough notices at Customs and Border Protection around March 15 although it hasn't announced a starting date (or any exceptions).

Other agencies could follow the lead of those two big departments, especially those that would need to furlough employees for a similar number of days.

Policies could vary widely. The Environmental Protection Agency, for example, expects to close the entire agency for one day each to create four-day weekends around Memorial Day, Independence Day and Labor Day, while giving employees the choice of when to take three additional days.

The furlough process actually starts with notification to Congress 45 days in advance, which agencies began in late February. At the same time, federal employee unions were notified, which triggered a bargaining obligation, in workplaces where there are bargaining units. About threefifths of federal employees are in such units; although only a portion of them are actual dues-paying members, unions must to act on the behalf of all members of a unit.

Bargaining rights are limited to “impact and implementation.” That is, unions can’t bargain over whether a furlough will have to be conducted but could negotiate over the timing. Negotiable details could include how days are spaced out, whether employees would get to choose which days to take off, and if that option is available, whether some employees would have priority in choosing, according to seniority or some other standard.

Unions also can negotiate over issues such as how the work will be redistributed when some employees are away, and adjusting expectations of productivity in light of the reduction in working days.

Bargaining sometimes hits an impasse over issues including what is negotiable, or the specifics of a subject that the parties agree is negotiable. Such disputes typically take a lengthy period to resolve with third-party bodies such as the Federal Labor Relations Authority.

Exactly what would happen if an impasse occurs is unclear. Given the budgetary mandate, the agency might decide to proceed on its intended course and accept the risk that it will be ruled to have violated labor law. It’s also unclear what would happen if such a violation is found. This is largely unexplored territory.

What happens if I get a furlough notice?

After receiving the 30-day advance notice of a furlough, an employee has at least a week to answer orally and in writing, including any documents in support of his or her answer. The employee may be represented by an attorney or other representative. The agency then must provide a written response with the specific reasons for its action and allow the employee review the material it relied on to support the reasons for its action.

An employee has the right to appeal the agency’s action to the Merit Systems Protection Board alleging that the action is a prohibited personnel practice. Common grounds for such complaints include alleged retaliation, discrimination, favoritism or similar violations of federal personnel law. An employee in a bargaining unit alternatively may file a grievance.

If the furlough happens, key implications include:

- the employee’s salary is reduced on a proportionate basis for the pertinent pay periods;
- for employees under the Federal Employees Retirement System, the government automatic 1 percent of salary contribution is also reduced proportionately;

- employees investing in the TSP on a dollar basis continue to have the same amount invested, so long as their salary is sufficient;
- for employees making investments on a percentage of salary basis investments are reduced proportionately, as are government matching contributions for FERS employees;
- an agency may not accept the voluntary services of an employee;
- the employee's health and other insurance coverage continue—certain special policies apply if the employee's salary is in sufficient to pay the premiums;
- an employee may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time;
- an employee who already was scheduled to be on leave without pay (for example, for parental leave) on a furlough day may designate any hours and/or days of LWOP as furlough time off in order to meet the agency's furlough requirement;
- if training previously had been scheduled for a furlough day, the employee may not attend the scheduled training;
- while on furlough, an individual remains an employee of the government—working elsewhere on a furlough day may be possible but ethical restrictions on outside employment would continue to apply; and
- because furloughed employees are not separated from service, they are not entitled to severance pay—they may be entitled to unemployment compensation, under state laws which vary.

And a Final Word

One other consideration is that another type of furlough also is threatened, which actually could occur before sequester-related furloughs. A temporary government spending bill expires March 27 and political leaders will have to replace it. That could come in several forms, including a simple extension of the prior policies for the remainder of the fiscal year, through September.

However, if no such agreement is reached, agency spending authority would lapse, forcing a partial government shutdown. That would be ordered immediately, with no notice period required.

In a shutdown-type furlough, employees whose jobs are determined to be "emergency" in nature would have to continue reporting for work. While they would not be paid for the meantime, in past similar situations they have been paid retroactively, once new budget authority is approved.

The rest of the workforce, some 800,000 employees, would be told to stay home and the job implications described above would apply to them. In the past, such employees have been paid later as if they had worked, but there is no guarantee.