



October 3, 2013

MEMORANDUM FOR: All FEMA Employees

FROM:

Brad J. Kieserman  
Chief Counsel

Edward H. Johnson //s//  
Chief Financial Officer

David Robinson //s//  
Associate Administrator for Mission Support

SUBJECT: What Work am I Allowed to Do During a Lapse in Annual Appropriations?

The lapse in appropriations that occurred at 11:59 pm Monday, September 30, 2013 shut down large portions of the federal government normally funded by annual appropriations. FEMA furloughed nearly 4,000 FEMA employees paid from one of FEMA's four annual appropriations. Consequently, only 14 percent of FEMA employees paid out of annual appropriations remain at work along with other employees funded by one of the nine FEMA appropriations that have not yet expired. The lapse and furlough left many employees asking, "What work am I allowed to do?"

The "can do" culture of our emergency management mission drives us to improvise, adapt, and overcome challenges. In the current situation, which is not "business as usual," the law is clear: "can do" means you can only do a narrow range of "exempted" activities, otherwise you may be breaking the law. So, to ensure all FEMA employees comply with the law, we're providing you with these ten "guiding principles" to help you decide what work to do (and not to do) during the current lapse.

1. **If you're furloughed, don't work.** If you're furloughed, DO NOT CONDUCT ANY GOVERNMENT BUSINESS. No exceptions. If you're furloughed, then you are "non-exempt" and may only passively monitor your government-issued mobile devices so that you can receive and respond to emergency recall notifications, but you cannot reply to email on government-issued devices (other than recall notifications). You must not be in your workplace or doing any government work remotely, unless officially recalled to duty. If we recall you, then you will receive an official notification through your work email and the Emergency Notification System (ENS). If FEMA recalls you to perform exempt functions, the Agency may furlough you again once the need for those functions passes or diminishes. In addition, if you are furloughed and then deploy or return to work without being recalled, your supervisor will tell you to return home and you will continue in a non-pay status.
2. **Safety of life and property is job one and often "job only."** If a lapsing appropriation funds your salary (Fund Codes 90, 77, SL, and EM) and FEMA has exempted you, then your main work during the lapse is that which directly involves the safety of human life or the protection of

## What Work am I Allowed to Do During a Lapse in Annual Appropriations?

property. That means doing work where there is a reasonable likelihood that delay in the performance of the function in question would compromise, in some significant degree, the safety of human life or the protection of property.

- A. For FEMA, “safety of human life or the protection of property” includes the delivery of Individual Assistance and many Emergency Protective Measures. Most of our “normal” day-to-day work does NOT fall into this category.
  - B. If we face a significant Stafford Act emergency or major disaster, or the immediate threat of one, then we will recall furloughed employees as necessary and appropriate to ensure we can deliver the Federal government’s response, as the law requires.
  - C. In the event of a no-notice incident or threat, the Administrator has directed the Regional Administrators to recall furloughed employees necessary for the response immediately. Headquarters will handle recall documentation as soon as the situation permits.
  - D. Existing Joint Field Offices will continue operating and in a manner consistent with this guidance. FEMA will not establish or staff any new Joint Field Offices during the lapse in appropriations unless required to perform or support the performance of Emergency Protective Measures or Individual Assistance functions tied to the safety of life and protection of property.
3. **Shut down does NOT mean work around.** If there’s an action, approval, or decision that requires a furloughed employee to complete, then the action stops there—don’t circumvent the process, create a “work around,” or compensate to do or complete non-exempt work. Instead, stop doing that work, for now.
4. **Shut down means many things won’t be done.**
- A. If a lapsing appropriation funds your salary (Fund Codes 90, 77, SL, and EM) and you’re exempted, then you’re at work to carry out exempted activities—not to do everything you were doing before the lapse on September 30, 2013.
  - B. “Exempted activities” mostly means work directly involving the safety of human life or the protection of property (see principle #2 above). It also means:
    - Adjusting and paying flood insurance claims, which unlike nearly every other FEMA program, is a mandatory activity.
    - Certain work supporting Continuity of Operations and Continuity of Government, which are tied to the constitutional duties of the President.
    - Work that’s absolutely necessary to perform a statutorily exempted function—for instance, the contracting necessary to support the life safety exemption is, itself, exempt, while the contracting work to buy desks for your office space is not.

## What Work am I Allowed to Do During a Lapse in Annual Appropriations?

- C. Here are some activities that are **almost never exempt** for employees funded by a lapsed appropriation unless directly related to the immediate safety of life and property:
- Participating in meetings with stakeholders;
  - Testifying before Congress;
  - Supporting or responding to any form of audit or investigation;
  - Responding to routine queries from the media, the public, or legislative bodies;
  - Planning;
  - Training (giving it, attending it, arranging it)—although completion of mandatory training for brief intervals is permissible (see #7 below);
  - Approving and paying non-disaster invoices;
  - Exercises.
5. **If your funding source hasn't lapsed, then do what you did until you can't.** If a non-lapsing appropriation funds your salary (ask your manager if you're not sure but the DRF is one non-lapsing appropriation), AND you were doing the work before the lapse on September 30, 2013, then, in most cases, you may keep doing the same work (subject to the availability of funds)—that is, unless and until 1) the work requires non-local travel (see principle #8); or 2) there's a furloughed employee required to complete an action, at which point the action stops there and you stop doing that work, for now, in most cases.
6. **Do your job, not anyone else's.** If you're an exempted supervisor responsible for supervising people and work across lapsed and unlapsed fund codes, then you're likely to get questions about what work people can do. Don't ask exempted employees to perform, or assist others in performing, non-exempted activities. In addition, don't ask employees whose salaries are funded by one appropriation to do work or activities funded by a different appropriation. For example, COREs, who are paid from Fund 6 (the DRF), should not be giving or supporting flood-mapping engagement with stakeholders, which is paid for from Fund 44. If you don't have the properly funded staff on board to do the work and can't get them, then don't do the work (again, that's what "shut down" means). See principle #7 for how to handle intermittent non-exempt work.
7. **You can do limited non-exempt work for brief intervals, but don't make a habit of it.** If you're paid from a lapsed appropriation and find that you're conducting exempted activities intermittently throughout the course of the day, then you may remain at work and perform non-exempted functions during short intervals. **Remember:** FEMA has a duty to minimize the number of employees who are performing exempted functions only intermittently, so we may have to furlough you if there's not enough exempt work.
8. **NO travel unless necessary for the protection of life or property.** Regardless of your funding source, do not travel (other than local travel) unless directly necessary for the safety of human life or protection of property AND there is no alternative means of carrying out the activity. If you do travel for this purpose, then limit the duration and scope of travel to that absolutely necessary for mission accomplishment.

## What Work am I Allowed to Do During a Lapse in Annual Appropriations?

- A. Cancel all new deployments requiring travel unless required to perform or support the performance of Emergency Protective Measures or Individual Assistance functions tied to the safety of life and protection of property.
  - B. If you were deployed and on a rotation at the time of the lapse, then you will be authorized to return to your disaster worksite.
  - C. If you're scheduled for rotation, that rotation will be cancelled until after the travel ban is lifted.
  - D. Demobilization travel to ensure that Reservists will not be assigned to a single temporary work location away from their respective homes for greater than 50 consecutive weeks (which may cause travel reimbursement payments to be included in an employee's income for tax purposes) remains authorized.
  - E. If you believe you have a compelling operational need to travel, then your management chain may submit a request to the FEMA Chief of Staff through the FEMA Crisis Action Team—only the Chief of Staff may approve non-life/property safety travel until further notice. The DHS Secretary must approve any international travel.
9. **PA & HMGP grant awards are suspended.** We have suspended the approval of grants for Public Assistance Categories A and B **for \$1 million or more**, all Public Assistance Categories C-G, and all Hazard Mitigation. The lapse in appropriations required FEMA to furlough the permanent full time employees necessary to process and approve such grants, and the exemptions for any remaining employees does not cover work unrelated to immediate life/property safety. Fund 6 employees may continue preparing and processing grants for these programs, including grants valued at less than \$1 million, however all such processing shall cease at the point at which an otherwise furloughed or Fund 90 employee is required to continue or complete the process.
10. **DFA and IA continues.** We will continue with all Direct Federal Assistance Mission Assignments and most Individual Assistance activities because these are typically necessary to protect the lives and property of disaster survivors.

These are guiding principles. You should apply them with common sense in your day-to-day work during this lapse of annual appropriations. Situations will arise that we haven't considered yet, or that may require further interpretation of the law and these principles. When that happens, discuss the issue with your supervisor and your servicing legal advisor. If they need to elevate the issue, then they will.

This is a challenging and often frustrating experience. If you need help deciding what work to perform and not to perform, please coordinate with your supervisor and servicing legal advisor.