



Federal Permitting Improvement Steering Council
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FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

Operations in the Absence of Appropriations

Updated September 2025

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>0.5 days</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>23 employees</i>
Total number of agency employees expected to be furloughed under the plan (unduplicated count)	<i>0 employees¹</i>
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	<i>23 employees</i>
Necessary to perform activities expressly authorized by law:	<i>0 employees</i>
Necessary to perform activities necessarily implied by law:	<i>0 employees</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>0 employees</i>
Necessary to protect life and property:	<i>0 employees</i>
Brief summary of significant agency activities that will continue during a lapse:	
In the event of a lapse of annual appropriations, the Permitting Council will continue to fulfill its statutory obligations utilizing the Environmental Review Improvement Fund (ERIF), 42 U.S.C. 4370m-8(d)(2), into which Congress has appropriated funds that can be utilized through 2031. Such activities will include:	

¹ Current agency resources are sufficient to fund at least one year of personnel expenses.

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- Managing permitting timetables and Federal Permitting Dashboard entries for “covered” and “transparency” infrastructure projects subject to Title 41 of the Fixing America’s Surface Transportation Act (FAST-41). 42 U.S.C. 4370m *et seq.*
- Preparation and timely submission of reports to Congress mandated by FAST-41.
- Engagement with project sponsors with respect to FAST-41 covered and transparency projects.
- Preparation of recommended performance schedules and best practices for FAST-41 covered projects.
- To the extent possible given the effect of the funding lapse on the 15 other members of the Permitting Council, continue activities that leverage the role of the Permitting Council as a Federal center for permitting excellence.
- Management and oversight of funding initiatives and interagency agreements where funding is already obligated.

Brief summary of significant agency activities that will cease during a lapse:

The Permitting Council is composed of the Executive Director, the Deputy Secretary “or equivalent” from 13 Federal Agencies and the Director of the Office of Management and Budget (OMB) and the Chair of the Council on Environmental Quality. Comprehensive administration of the FAST-41 statute requires significant involvement of the Federal agencies responsible for the environmental review and authorization for FAST-41 covered and transparency projects. While the Executive Director and her staff could continue operations at full capacity because our compensation is financed by funds other than specific-year appropriations, the activities of the Executive Director and staff may be affected or curtailed based on how any lapse affects the operations of these other agencies/entities. Impacts may include:

- Pausing permitting timetables for projects affected by other agencies’ lapse in appropriations.
- Delayed completion dates for establishing best practices for permitting FAST-41 projects and recommended performance schedules for FAST-41 projects, given that agency participation/input is required for those processes.
- Pursuing common efforts that leverage the Permitting Council as a Federal center for permitting excellence.
- Convening Permitting Council meetings.
- Undertaking actions that require Permitting Council vote/approval.

OVERVIEW

1. Purpose. To update the Permitting Council's plan and procedures for:
 - a. Continuing operations using available balances available in the Environmental Review Improvement Fund, which comprises no-year, multi-year, and annual funding during a lapse in appropriations and
 - b. Upon exhaustion of all available balances, (1) continuing only those functions excepted from shutdown and activities related to the safety of human life or the protection of property and (2) initiating orderly shutdown of those activities not included under (1).
2. Background.
 - a. Under the Anti-deficiency Act, agencies may not obligate the U.S. Government in advance of appropriations unless this is otherwise authorized by law (31 U.S.C. 1341), except for emergencies involving the safety of human life or the protection of property (31 U.S.C. 1342 and 1515(b)(1)(B)). This is supported by opinions from the United States Attorney General and the Office of Legal Counsel of the U.S. Department of Justice (DOJ).
 - b. In the absence of appropriations, Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.
 - c. To ensure compliance with these directives, Office of Management and Budget (OMB) Circular No. A-11, Section 124, "Agency Operations in the Absence of Appropriations", requires all Agency heads to develop and maintain plans for an orderly shutdown in the event of the absence of appropriations.
 - d. The Deputy Executive Director, in consultation with the Director of Strategic Operations And Permitting Improvement, is responsible for maintaining and updating this plan; coordinating activities to ensure proper implementation of this policy; and reporting plans and activities to the Executive Director and to OMB. The Deputy Executive Director will work with OMB to resolve funding questions and concerns in the absence of appropriations.
3. Implementing Action. All Permitting Council units will follow procedures in the plan. The plan goes into effect only when directed by the Executive Director.

OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

1. Funds Control in the Absence of Appropriations. If there is an absence of funding in the ERIF, the following authorities and directives will govern operations. They reflect laws and regulations enacted by Congress, OMB, the Office of Personnel Management (OPM), and other authorities.
 - a. Under the Anti-deficiency Act, it is a felony to obligate the U.S. Government in advance of appropriations unless this is otherwise authorized by law (31 U.S.C. 1341), except for emergencies involving the safety of human life or the protection of property (31 U.S.C. 1342 and 1515(b)(1)(B)).
 - b. Within these guidelines, the Executive Director may determine which additional activities of the agency can operate during a lapse. This plan uses the term “exempt” to describe activities and operations the Executive Director determines are not subject to or affected by a lapse in annual appropriations.
 - c. Usually, activities and employees directly supported in full by permanent or no-year appropriations and revolving funds are exempted from furlough requirements to execute the agency's mission, if funds are available for obligation in the account.
 - d. Reimbursable personnel or services may or may not be affected, depending on the status of the ordering components' funding sources. Personnel authorized to work may assist with “mission critical,” furlough-exempt activities only to the extent that failing to do so would prevent accomplishing the agency’s core mission or cause serious harm to the mission.
 - e. For non-exempt activities, obligations may be incurred only for suspending normal agency operations. Once appropriations are no longer available, it is illegal for non-exempt employees to do regular work. It also violates the Anti-deficiency Act to accept voluntary services of employees for non-excepted activities (31 U.S.C. 1342).
 - f. Although obligations are incurred for exempt activities and for shutting down operations, expenditures cannot be made against lapsed funding; new funding must be secured or appropriations enacted to liquidate the obligations. Obligations incurred against exempt accounts not affected by the lapse may be liquidated.
 - g. “Exempt” is not the same as “essential.” Employees may be essential for conducting regular operations and may even be required to report to work during hazardous weather conditions, but they are not necessarily exempt from Anti-Deficiency Act requirements or OMB guidance when those regular operations cease under a funding lapse. To be designated as exempted, personnel must be performing the specific functions allowed by law and defined in this plan.
2. General Framework. The following is the general framework for responding to a temporary funding lapse upon exhaustion of all available balances. Although "temporary" is defined as 30 consecutive days or less for adverse employee actions, in this part it means only the relatively short period required for Congress to provide funds. If a lapse is extended or an activity is terminated, additional instructions will be issued by the Deputy Executive Director.

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- a. Unless notified otherwise, all employees should report to work, on the first business day of a temporary lapse. Once all employees have completed shutdown operations, personnel are released from duty, except for those required for exempted functions.
 - i. The Executive Director will identify the employees who are to perform exempted functions and compile a list of names on an annual basis. The list will be kept current and maintained on the agency's internal shared drive.
- b. Released non-exempted employees are placed in non-duty, non-pay status by use of furlough under the adverse plan procedures in title 5 CFR part 752.
 - i. All employees will be provided with written notice of their status as exempted or non-exempted employees. If there is no time for written notice, oral notice is acceptable (5 CFR 752.404 (d)(2)), with later written notice to confirm the action. All personnel actions will be documented. This notice will include when the employee is expected to return to work, if that date is known.
 - ii. When applicable, labor unions will be notified before implementing furloughs.
 - iii. Furloughed career Senior Executive Service (SES) employees are entitled to the procedures in 5 CFR part 359, subpart H.
- c. Employees who perform exempted activities must report, either virtually or in person for duty as directed. During a funding lapse, they are still in a paid status, but are working for delayed pay; they are not rendering gratuitous services and must report to work.
- d. Non-exempted employees will report for duty, either virtually or in person as directed on the first business day after the lapse in appropriations. They will be provided notice of furlough and additional instructions and will be released from duty no later than 12 p.m. that day. Once released, non-exempted employees should monitor the media to determine when the lapse is over and when they should return to duty.
- e. During a lapse in appropriations, annual or sick leave may not be used by employees in place of furlough and all previously requested leave is automatically canceled, unless otherwise authorized by law.
 - i. Canceled or interrupted annual or sick leave is not forfeited, but can be used later.
- f. Persons on official travel when funds lapse are handled on a case-by-case basis.
 - i. Travelers performing exempted functions, or supported by funds not affected by the lapse, remain on duty.
 - ii. Non-exempted employees are placed on furlough. Although some obligations for travel costs may have been incurred before a funding lapse, the employees must be recalled to their duty station. Decisions will be made on a case-by-case basis as determined by the Director of Operations to incur obligations necessary for orderly cessation of functions.

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- g. Goods and services may not be purchased under lapsed appropriations except when required to support exempted activities or when purchased with funds that are exempt from a lapse in appropriations.
 - i. New contracts may not be awarded except in support of exempted activities or when using an exempt funding source. Contract options for additional quantities or to extend the term of the contract may not be exercised unless it is determined that the additional goods or services are needed to continue or support exempted activities or if the options may be exercised without an obligation of funds or if funded by an exempt funding source. Contracting personnel should consult with the Contracting Officer's Representative or the Associate Director of Administration before making a final decision not to exercise an option when this could expose the Government to financial liability or other damages.
 - ii. Contracting personnel should consult with the Contracting Officer's Representative or the Director of Strategic Operations and Permitting Improvement to identify and utilize appropriate class deviations in order to award contracts for the purpose of protecting human life or property. Guidance will be provided detailing instructions on the continuation of contract operations during the shutdown.
 - iii. If a contract is fully obligated before the lapse in appropriations and the goods or services are still required, the contract is in full force and effect, and no additional actions are required. However, if the contract is for recurring services, contracting personnel must verify whether the goods and services are needed at the same levels during a shutdown of Government operations and may, if applicable, issue a stop work order or termination for convenience (full or partial).
- h. The Deputy Executive Director, with assistance from the Director of Strategic Operations and Permitting Improvement, will notify released employees when to return to duty. The recall system will be used when the lapse is over or when other circumstances require changed instructions.