

## **Federal Election Commission Plan for Agency Operations in the Absence of the Fiscal Year 2012 Appropriation**

This plan is pursuant to the requirements defined by the Office of Management and Budget (OMB), Circular A-11, Section 124, “Agency Operations in the Absence of an Appropriation.”

### **I. Introduction**

Legal opinions issued by the Attorney General and the Justice Department’s Office of Legal Counsel since 1980 have made clear that the Anti-Deficiency Act, 31 U.S.C. § 1341, unambiguously prohibits Federal officials from incurring obligations in the absence of appropriations except in extremely limited circumstances.

Based on these opinions, it is clear that in the absence of appropriations for the new fiscal year the Federal Election Commission (FEC) may neither expend any additional funds nor incur any additional obligations except for those that:

\*Are implicitly authorized by some other law.

\*Are necessary to the prevention of imminent threats to human life or property, including the government’s property.

\*Are necessary to the orderly termination of agency operations in the absence of appropriations.

The Office of Personnel Management (OPM) defines a shutdown or “emergency furlough” as the placing of employees in a temporary non-duty, non-pay status due to the agency no longer having the necessary funds to operate.

This plan outlines the process and the guidance for actions to be taken by the FEC when Congress fails to enact regular appropriations, a continuing resolution, or a needed supplemental, resulting in an interruption of fund availability.

This section does not apply to specific appropriations action by the Congress to deny program funding.

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.

The FEC will be officially notified by the OMB in the event of a government shutdown.

## **II. Affected Employees**

All FEC employees are covered by the furlough action, including temporary employees, unless otherwise identified in Attachment A. As of December 3, 2011, the FEC has 346 employees on-board prior to any furlough actions. After all shutdown activities are completed, the FEC expects to have 340 employees furloughed. The only excepted employees will be the Commissioners, as required by law.

## **III. Preliminary Activities**

### **A. Annually, Even if No Shutdown Is Expected**

1. The Staff Director, in coordination with the Chief Financial Officer (CFO) and General Counsel (GC), will review and update this plan annually.
2. The Staff Director or his/her designee will notify NTEU if any changes to the plan affect the working conditions of bargaining unit employees and, if necessary, conduct bargaining over the impact and implementation of the changes.
3. The Staff Director, CFO and GC will identify and notify all persons holding positions necessary for continued operations as set forth in Attachment A.
4. The Staff Director will act as the FEC's Furlough Manager unless she/he decides to delegate this responsibility.

### **B. If a Shutdown Appears to Be Imminent**

1. Upon notification by OMB that the agency should review its shutdown plan, the FEC Furlough Manager, in coordination with the CFO and GC, will again review this plan.
2. If any changes to this plan are deemed necessary, they will be shared with OMB pursuant to OMB Circular A-11.
3. If any changes to this plan are deemed necessary, and the changes would affect the working conditions of bargaining unit employees, the Furlough Manager or his/her designee will notify NTEU and, if necessary and if practical given the time involved, will conduct bargaining over the impact and implementation of the changes.
4. Directors shall ensure that employees holding positions on Attachment A are reminded or notified that they hold such positions, and that they should begin preparations to carry out the functions for which they would be retained at work during a shutdown.
5. The Press Office and Information Division, in consultation with the Office of General Counsel (OGC), the Office of Compliance, and the Commission, will prepare

notifications for the public concerning Commission operating status and the effect of a shutdown on filing requirements for disclosure reports, Matters Under Review, administrative fines matters, and alternative dispute resolution matters. These notifications will be held ready for use in the event a shutdown actually occurs. Other divisions should make plans for directly contacting outside stakeholders to advise them of the shutdown pursuant to IV.A.6 below. Where necessary, outside stakeholders may be notified no earlier than two business days before the funding lapse.

6. The Administrative Services Manager will coordinate with the General Services Administration (GSA), the Federal Protective Service (FPS), and the building manager to determine all necessary arrangements for the physical security of the FEC headquarters building in the event of a funding lapse.
7. The next to last business day before funding is to lapse, the Furlough Manager will provide a notice to all employees via email that a funding lapse is possible. This message should, at a minimum:
  - a. Provide as much information as is known about the likelihood of a shutdown.
  - b. Inform all employees that, except as noted below, they are to report to work as scheduled on the first business day of the funding lapse for the purpose of conducting activities related to an orderly shutdown of Commission operations, and that employees scheduled to be absent from the worksite that day on training at local facilities should report to the office rather than attend the training.
  - c. Inform supervisors that they must physically report to work on the first business day of the funding lapse in order to monitor the work and record the amount of time that each of their employees performed on activities related to an orderly shutdown of Commission operations. Supervisors shall also report their own time spent on those activities. All work, unless otherwise stated in the plan, shall be completed no longer than four hours.
  - d. Inform employees that absent guidance to the contrary from OMB or OPM, nonsupervisory employees who are scheduled to telework on the first business day of the funding lapse, or who are approved for episodic telework, can complete their shutdown activities at their telework site with supervisory approval. Approval shall be granted only if (1) at the conclusion of the employee's last business day in the office, the employee has secured all agency property for which they are responsible as set forth in Section IV.A.3 below and (2) the employee's supervisor agrees that the employee's remaining shutdown tasks can be completed remotely. Supervisory employees must physically report to work on the first business day of the furlough.
  - e. Inform all employees that if the funding lapse is not resolved, and if they have not already been notified, that they will receive a furlough notice and be sent home on the first business day of the funding lapse.

- f. The Contracting Officer will be responsible for contacting all Contracting Officer's Technical Representatives (COTRs). Employees assigned as a COTR must immediately provide by return email to the Contracting Officer and their own supervisors: the most current status of the contract(s) for which they are responsible; the last identifiable deliverables, including dates and any other pertinent information regarding the status of the contract; and any outstanding or expected invoices for work already performed.
  - g. All employees will be responsible for updating their contact information in the FEC Emergency Contact Information database to ensure that their supervisor is able to notify them once the furlough period is over.
- 8. Once the message referred to in Section III.B.7 above is received, all supervisors will immediately forward to their applicable Senior Level manager by email a list of their direct reports who are expected to be absent on the first business day of the funding lapse due to preapproved annual or sick leave, leave without pay, or the occurrence of an alternative work schedule off day. Senior Level managers will collate this information and transmit it by email to the Director of Human Resources (with a cc to the Deputy Staff Director for Management and Administration). The OHR will then obtain home address information for these employees from the National Finance Center database and will then prepare hard copy furlough notices for these employees (see below) to be mailed if necessary.
  - 9. Once the message referred to in Section III.B.7 is received, all employees will be responsible for updating their contact information in the FEC Emergency Contact Information database to ensure that their supervisor is able to notify them once the furlough period is over. All supervisors will be responsible for accessing that information for their direct reports, or obtaining direct contact information for their direct reports, and securely maintaining that information in some format other than on FEC data systems so that they may use the information to notify their employees once the furlough period is over.
  - 10. For additional instructions regarding travel, please refer to Section V.C, "Effect of Furlough on Travel," of this document.

#### **IV. Activities on the First Day of a Funding Lapse**

##### **A. The First Half Day**

- 1. If the funding lapse is not resolved by 7 a.m. the first business day of the furlough, the Furlough Manager will send two additional email messages to all staff.

The first email message will inform staff that the lapse is not resolved, and that they are to work **ONLY on tasks related to the orderly termination of the agency as**

**described below.** The message must set forth these tasks specifically. The message should provide as much information as is known about the status of the legislative impasse. Further, it must state the date through which employees are to update their time and attendance information in WebTA, pursuant to IV.A.5 below. Time and attendance records shall be validated by employees and certified by the supervisors.

The second email message will be the furlough notice, as described in Section V below.

2. The Furlough Manager will contact OPM and the National Finance Center and the CFO will contact OMB and the Department of the Treasury immediately upon initiation of shutdown operations.
3. All employees will be responsible for securing agency property for which they have custody, securing all files and records in their possession – both paper and electronic – in the same manner as if they were to be on leave for several days. This particularly includes the duty to secure personally identifiable information (PII) and other sensitive information.
4. All employees must update their hours worked and leave taken in WebTA for a period through the date stated in the Furlough Manager’s 7 a.m. email message. Any time worked to complete the orderly shutdown will be reported upon resolution of the furlough. Supervisors are responsible for certifying time and attendance of their employees in WebTA for the current pay period.
5. All employees will be responsible for taking the necessary steps, under supervisory direction, to cancel meetings, hearings, and other previously arranged business, and appropriately notifying parties such as other Federal agencies, State governments, and private entities involved in agency matters of the cessation of normal business.
6. The Press Office and the Information Division will release, through the FEC web site and any other appropriate means, the information about operating status and filing requirements referred to in Section III.B.4 above, if this has not already been done.
7. The Administrative Services Manager will inform GSA, FPS and the building manager that the agency has initiated shutdown operations, and will coordinate the execution of any necessary actions determined according to III.B.6 above.
8. If an employee is on leave (annual, sick, military, etc.), leave without pay, a regularly scheduled Alternative Work Schedule off-day, or other extenuating circumstance, it is the responsibility of the employee’s supervisor to carry out any shutdown functions on behalf of the employee. Those employees shall be notified on their furlough status via certified mail.

It is anticipated that the above functions would be completed no longer than four hours or a half-workday. Upon completion of shutdown activities of their program areas, the Senior Level managers will notify the Furlough Manager of the shutdown of their programs via email and ensure that the amount of time spent by their employees to perform agency's shutdown activities is recorded.

## **V. Furlough**

### **A. Notice**

Immediately after the message discussed in Section IV.A.1 above, the Furlough Manager will issue a "Furlough Decision Notice Due to Lapse of Appropriations" (5 C.F.R. Part 752). Notice by agency-wide email, with the return receipt function enabled to confirm receipt, will generally be sufficient. However, for those employees identified pursuant to Section III.B.8 above, OHR will mail the hard copy notices referred to in that part of this plan via certified mail.

This notice must at a minimum:

1. Inform recipients that unless they have been personally informed otherwise, they are in a furlough (non-pay, non-duty) status and must depart the premises, effective at a time to be stated in the email. The furlough of each nonsupervisory employee not otherwise notified will be effective as soon as their shutdown activities are completed and no longer than four hours after the beginning of their normal tour of duty. Supervisory employees' furloughs shall be effective at the same time their latest-departing employee's furlough is effective.
2. Inform recipients that the furlough is not expected to last in excess of 30 days.
3. Inform recipients that the furlough action is being taken because of a sudden emergency requiring immediate curtailment of the agency's activities, and that therefore, the customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 C.F.R. 752.404(d)(2).
4. Inform recipients, pursuant to 5 C.F.R. 752.404(b) (2), that if any employees of their same grade and job title are not furloughed, the reason is that those employees are required to complete orderly suspension of agency operations, will be performing functions essential to the protection of life or property, or will be performing functions the continuation of which is otherwise authorized by law.
5. Inform recipients of their rights to appeal the furlough to the Merit Systems Protection Board or, if they are bargaining unit employees, their right to grieve the furlough pursuant to the FEC-NTEU Labor Management Agreement.

6. Inform recipients that they are prohibited from performing voluntary services for the federal government and therefore, until specifically recalled to work, they are prohibited from performing any work functions while on furlough status, even on a voluntary basis.
7. Inform recipients that while the agency will make its best efforts to formally notify them when they are recalled to work, they are instructed to monitor developments in the news media. Absent contrary guidance from OMB or OPM, employees will be expected to report to work on the first business day after the President has signed legislation resolving the funding lapse or after Congress has overridden a Presidential veto of funding legislation.

## **B. Effect of Furlough on Leave**

All paid leave during a furlough is cancelled, because the necessity to furlough supersedes leave rights. The Anti-Deficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt on the part of the Government that is not authorized by the Act. Therefore, the FEC must cancel all paid leave during a furlough and employees must be either (1) at work performing excepted activities or (2) furloughed. Any employee who was on or scheduled for leave (annual or sick) will be put on non-pay status. Any leave that was not used due to the furlough will be restored to the employee's leave balance once the furlough period has ended. No advanced sick or annual leave is authorized for use during a furlough.

## **C. Effect of Furlough on Travel**

Unless the anticipated funding lapse is resolved, an employee cannot begin an official trip, even if it has been previously approved, at any time after 12 midnight on the first calendar day after the message referred to in Section III.B.7 is sent. Any authorization for such travel is to be considered automatically revoked.

If an employee is on travel for official business, and the first calendar day of the funding lapse does not fall on a weekend, he/she must immediately stop any work and return to his/her official duty station as promptly as possible in order to minimize any further funding obligation requirements. If the employee is subject to furlough, the employee's non-pay/non-duty status is effective upon the employee's arrival in the Washington, D.C area. The employee must contact his/her supervisor to receive additional guidance.

If the first calendar day of the funding lapse falls on a weekend, any employee in travel status over that weekend must make arrangements to return to Washington by the earliest practicable means once the funding lapse begins. Such employees shall not yet be considered furloughed, and shall report to work at their permanent duty station at the beginning of the first day of the funding lapse.

If an employee must travel on official business outside of normal working hours for the purpose of complying with the furlough guidance, the employee will be eligible for compensatory time per statute and regulation.

#### **D. Effect of Furlough on Local Training**

Employees absent from the worksite in connection with training at local facilities must be advised that they will be placed on furlough for the duration of the funding hiatus. Such employees must stop attendance, and notify the Contracting Officer to determine if the class can be rescheduled at a later date after the resolution of the furlough.

#### **E. Effect of Furlough on Details**

Employees on non-reimbursable details to other agencies shall be furloughed in the same manner as other employees. If such employees have been issued FEC personal data devices, and/or have access to their FEC email accounts, they may be notified of their furlough by email. If such employees do not have access to their FEC email accounts, supervisors must include these employees in the list provided to the OHR pursuant to Section III.B.8 above. Upon receipt of a furlough notice, such employees are responsible for notifying the appropriate officials of the agency to which they are detailed that they have been furloughed by the FEC, and that they must stop work.

#### **F. Effect of Furlough on Employee Benefits**

##### **1. Federal Employees' Health Benefits Plan**

Pursuant to direction from OPM, the health coverage of all employees shall continue. The employer's portion of the premium will continue to be paid by the government. However, employees shall be personally liable for their share of premiums. Because an employee's share of premiums cannot be deducted from the employee's paycheck when the employee is in a non-pay status, each employee shall incur a debt to the Government equal to the amount of the employee's share of premiums for each pay period in which no deductions are made. Once returned to a pay status, the delinquent amount will be automatically deducted from the bi-weekly gross pay, in addition to other authorized deductions, until the debt is liquidated.

##### **2. Leave Accrual**

No leave will be earned or credited for any pay period during which an employee is in a non-pay status for the full pay period. If furloughed employees are returned to duty for a partial pay period following a pay period in which they were in a non-pay status for the entire pay period, leave accrual will be pro-rated based on the number of days in a pay status.

### 3. Retirement and Life Insurance

For most employees' retirement and life insurance benefits remain unaffected by the furlough period. However, OHR will follow OPM guidance for employees who are on a leave without pay (LWOP) status before the furlough.

OHR is also responsible for notifying the National Finance Center of the furlough actions on employees receiving military retired or retainer pay.

## **VI. Activities That May Take Longer Than The First Half Day**

### 1. The Furlough Manager shall:

- a. Remain on duty to engage in the oversight of all shutdown- related activities until they are completed.
  - b. Be considered furloughed at the completion of those activities.
  - c. Be directed to leave his or her phone charged and on, so that he or she may be contacted in the event of an emergency described in d) below.
  - d. Be authorized to receive messages about and to act **ONLY** on unanticipated contingencies related to protection against imminent threats to life and property, including electronic records or data. In the event the Furlough Manager must receive messages about, or act on, any such contingency, he or she is deemed recalled to work as of the time the message is received, and is deemed once again furloughed as of the time the contingency no longer exists.
  - e. Be authorized to recall to duty any employees necessary to meet such contingencies.
  - f. Initiate resumption of operations (see Section VII below) immediately upon the signing by the President of legislation ending the funding lapse.
2. The Litigation Division of the OGC will ensure that notices are filed with appropriate courts in which the Commission has pending litigation matters informing the courts that Commission employees have been furloughed and that the agency is closed for the duration of the funding lapse. The amount of time necessary for this function may vary depending on the Commission's litigation docket at the time of the lapse but is not anticipated to take longer than the close of business on the first business day following the funding lapse. Employees carrying out this function will be furloughed upon its completion.
3. The Office of the Chief Financial Officer (OCFO) will perform the fiscal and accounting tasks required to maintain accountability and reporting obligations and expenditures of all funds. It is anticipated that the amount of time necessary for this function is a full business day. Employees carrying out this function will be furloughed once the excepted functions are completed (see Attachment A).
4. The Contracting Officer will notify all vendors, except those performing functions related to protection of life or property, or functions necessary to orderly termination of

Commission activities of a stop work status. Contractors working on projects for which funds have already been obligated may continue work until such time as it is necessary for them to communicate with a Commission employee in order to fulfill the contract, and must then stop work. The amount of time necessary for the Contracting Officer to perform this function may be more than one business day depending on when the funding lapse begins. The contracting officer will be furloughed upon completion of this function.

5. The Office of Human Resources (OHR) will ensure any HR actions necessary to shut down the agency are completed. The amount of time necessary for this function is estimated to be no more than a full business day. The OHR personnel necessary to this function will be furloughed upon its completion. Currently, per guidance from the OPM, it is anticipated that all furlough actions to be processed through the National Finance Center will be retroactively conducted at the end of the furlough.
6. The Office of the Chief Information Officer (OCIO) will perform the tasks required to maintain functionality and security of Commission information systems during the period that the other shutdown-related functions described in this Plan are being conducted, as well as any subsequent tasks identified by the FEC Furlough Manager. Upon the conclusion of all of these tasks by client offices, OCIO staff will shut down all Commission information systems, except that the Commission web site shall remain on, but static. It is anticipated that the amount of time necessary for these support and system shutdown functions will not exceed one and one half business days. The Furlough Manager, at his/her discretion, may direct the incurring of obligations for minimal overtime pay to non-FLSA exempt members of the OCIO staff carrying out these functions if necessary to complete the functions within one calendar day, but only if the Furlough Manager determines that the cost of the overtime will be less than the cost and risk of continuing to operate the systems overnight and into the next business day. Employees carrying out these functions will be furloughed once the excepted functions are completed (see Attachment A).
7. The Administrative Services Director will be responsible for notifying all appropriate Federal and non-Federal parties of the agency shutdown to ensure the physical security requirements of the facility during the shutdown. The Administrative Services manager or their delegate shall also remain on site throughout the completion of all other shutdown activities in order to be available to resolve building issues that arise while those activities are being completed. Upon the completion of all other shutdown activities, the Administrative Services Director or their designee will be furloughed.
8. The General Counsel, the Associate General Counsel for General Law and Advice and the Assistant General Counsel for Administrative Law shall remain on site throughout the completion of all shutdown activities to advise the Furlough Manager on the legal authority to engage in specific activities during the shutdown process. Upon the completion of all other shutdown activities, these employees will be furloughed.

## **VII. Resumption of Operations**

Upon the end of the furlough, employees are expected to report to work the next business day, unless otherwise authorized by the FEC Furlough Manager. Employees will be notified via the operation of the phone tree system contained in the Continuity of Operations Plan, beginning with calls by the Furlough Manager to Commissioners, other Directors, and to their own direct reports. Employees are also responsible for monitoring the media regarding updates to the government's funding status.

## **VIII. Responsibilities of Component Offices to Complete Shutdown Activities**

### **Responsibilities of the OSD:**

Publishes pre-furlough and furlough notices.

Provides a furlough plan.

Notifies appropriate bargaining agents of any proposed shutdown due to a lack of funds as soon as feasible after the decision has been made and prior to delivery of furlough notices to employees.

Notifies employees of any rights and benefits they will have while they are in furlough status.

Negotiates, when and where practicable, the impact and implementation of the shutdown of operations in accordance with FEC policy and the Federal Labor Management Relations statute (5 U.S.C., Chapter 71). The decision to shut down operations due to a lack of funds is not negotiable; therefore, negotiations will not preempt that decision.

### **Responsibilities of the OCFO:**

Establishes special accounts to accumulate all obligations incurred in maintaining essential activities and terminating agency operations.

Suspends acquisition and assistance awards pending validation of program award decisions.

Facilitates the de-obligation of funds for unused appropriation through contract modifications to maximize funds availability for essential activities, if appropriate.

### **Responsibilities of the OGC:**

Assists the Commission and Directors in identifying both the essential functions performed by the FEC and the emergency personnel required to perform these functions to ensure compliance with OMB guidance and opinions of the Attorney General.

## **IX. Relation to OMB Guidance**

To the extent any provision of this plan is inconsistent with written guidance from the OMB regarding the specific times of furlough or the scope of permissibly exempt activities, the OMB guidance shall govern.