

**Federal Election Commission Plan for  
Agency Operations in the Absence of the Fiscal Year 2026 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.”

<b>Lapse Plan Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>1 days</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>249 FTEs</i>
<b>Total number of employees to be retained under the plan for each of the following categories:</b>	
Compensation is financed by a resource other than annual appropriations:	<i>0 FTEs</i>
Necessary to perform activities expressly authorized by law:	<i>2 FTEs</i>
Necessary to perform activities necessarily implied by law:	<i>7 FTEs</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>0 FTEs</i>
Necessary to protect life and property:	<i>19 FTEs</i>
<b>Brief summary of significant agency activities that will continue during a lapse:</b>	
Website will remain online but not updated. Electronic filing of campaign finance reports will continue; however, no user assistance available. Protection against imminent threats to Commission property, principally in electronic form. Management, legal, financial and HR functions related to continuation of permissible operations during furlough. Assistance to Office of the Solicitor General, U.S. Department of Justice, on Commission cases pending in U.S. Supreme Court. Ethics advice to employees considering outside employment during furlough.	
<b>Brief summary of significant agency activities that will cease during a lapse:</b>	
Virtually all core agency functions, including: review of campaign finance disclosure reports; enforcement of Federal Election Campaign Act; rendering of advisory opinions; rulemaking; all non-Supreme Court litigation (unless specifically ordered by court). Release of enforcement files to public record. Processing of Freedom of Information Act requests. All management, legal, HR, financial and IT functions <i>not</i> related to continuation of permissible operations during furlough. Assistance to campaign and political committee treasurers and members of the public regarding application of campaign finance laws.	

## 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. The government's property includes electronically stored data.
- Are necessary to the orderly termination of agency operations in the absence of appropriations.
- Are necessary incident to execution of one of the President's specified powers under Article II of the Constitution.
- Are funded by a multi-year, a "no-year" (i.e., remaining available until expended), or a permanent appropriation.

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.

The FEC will closely monitor the progress of Congressional efforts to resolve any potential funding impasse. Based on that monitoring, FEC management may determine not to send, or to alter the timing of, the message referred to in part III.G of this plan, or may determine to inform employees that some or all of the activities described in part IV of this plan are not likely to be necessary, if Congress has made substantial progress towards a resolution.

## **II. Affected Employees**

All FEC employees are covered by the furlough action, including temporary employees, unless otherwise identified in the Appendix. As of January 12, 2026, the FEC has 249 employees on-board prior to any furlough actions. After all shutdown activities are completed, the FEC expects to have 221 employees furloughed.

## **III. Preliminary Activities**

- A. Thirty days prior to a lapse in funding, the Shutdown Team will convene.
- B. Prior to a lapse in appropriations or upon notification by OMB that the agency should review its shutdown plan, the Shutdown Team<sup>1</sup> will review this plan.
- C. If any changes to this plan are deemed necessary, they will be shared with OMB pursuant to OMB Circular A-11.
- D. If any changes to this plan are deemed necessary, and the changes would affect the working conditions of bargaining unit employees, the Staff Director 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.
- E. The Staff Director, the General Counsel, and the Chief Financial Officer shall ensure that their subordinate employees holding positions listed in the Appendix, Part II, 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 on duty during a shutdown.
- F. The FEC Shutdown Team, 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

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<sup>1</sup> The FEC Shutdown Team consists of the Staff Director, General Counsel, Chief Financial Officer, Deputy Staff Director for Management & Administration, Deputy General Counsel for Administration, Assistant General Counsel for Administrative Law, Director of Human Resources, Director of Congressional Affairs, Director of Budget, Director of Procurement, Deputy CIOs, Special Counsel to the General Counsel, Performance Manager, Management & Program Analyst to the Staff Director, and anyone added for specific reasons as necessary.

the event a shutdown actually occurs. Other divisions should make plans for directly contacting outside stakeholders to advise them of the shutdown.

- G.** 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.
- H.** One-to-two pay periods prior to a lapse, the OCFO will send timekeeping guidance to all staff and follow-up as the lapse nears.
- I.** Not later than the third business day before funding is to lapse, the Staff Director will provide a notice to all employees via email that a funding lapse is possible. This message should, at a minimum:
  - 1.** Provide information about the likelihood of a shutdown, to the extent information is known.
  - 2.** Inform all employees that, except as noted below, they should carefully monitor news media accounts of the government's operating status and should not report to work or offsite or online training, or engage in telework, in the event of a shutdown.
  - 3.** Inform all employees that if the funding lapse is not resolved, they will receive a furlough notice the morning of the first business day of the shutdown.
  - 4.** Inform all employees that if they wish to receive updates of important information from FEC management via personal email during the furlough, they should ensure they have provided their personal email addresses to the Management and Program Analyst in the immediate office of the Staff Director. See part III.J below.
  - 5.** Encourage all employees who are certain that, within 30 days of the anticipated furlough, they will have a "qualifying life event" that permits an out-of-season change to FEHBP (health insurance) coverage, to immediately submit the change to FEHBP for processing.
  - 6.** Remind all employees that those who are furloughed during a lapse in funding are prohibited from using their agency-provided transit subsidy ("TRANServe") benefits during a government shutdown.<sup>2</sup>

#### **J. Contracts**

- 1.** Between 30 and 45 days prior to a potential lapse of appropriations, the Staff Director, CFO, CO, key CORs, and the Acting General Counsel or her designee

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<sup>2</sup> On the last business day before funding is to lapse, the Office of Human Resources (OHR) will also send a standalone email reminder to all employees regarding the prohibition on furloughed employees using TRANServe benefits during a government shutdown.

will hold a pre-shutdown meeting to identify those contracts that are necessary to continuation of the agency's excepted functions during the shutdown and/or to the fastest possible resumption of normal operations after the shutdown. For each such contract, the meeting will determine if the contract needs to be awarded, renewed or extended, and, of these, which contracts *can* be awarded, renewed or extended prior to the potential lapse within the bounds of appropriations law and available funding.

2. At the conclusion of the meeting described above, OCFO and the relevant business owners shall undertake, as a highest priority item, all work necessary to award, renew or extend the identified contracts.
3. One week prior to a potential lapse of appropriations, the Contracting Officer (CO) will contact all Contracting Officer's Representatives (CORs). Employees assigned as a COR must immediately provide by return email to the Contracting Officer and their own supervisors: the most current status of the contracts 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.
4. Using the information provided by the CORs to the CO, all FEC contracts shall be divided into the following four groups:
  - a. Contracts previously identified pursuant to paragraph III.I.1 as necessary to continuation of the agency's excepted functions during shutdown and/or to the fastest possible resumption of normal operations after the shutdown. Notices shall be prepared for these contractors directing them to continue work during the shutdown.
  - b. Contracts for which funds have already been obligated and for which the agency receives some benefit from continued performance during the shutdown, but which are not necessary for continuation of excepted functions. Notices shall be prepared for these contractors indicating that they may continue to work during the shutdown up until the point at which they need to communicate with a furloughed FEC employee, at which point they should suspend performance.
  - c. Contracts for which funds have already been obligated, but for which the agency receives no benefit from continued performance during the shutdown. (Example: IT support for the Office of Compliance and the Office of General Counsel's Enforcement Division.) Suspend work notices shall be prepared for these contractors.
  - d. Contracts for which funds have not yet been obligated for continued performance during the shutdown, and which are not necessary for

continuation of excepted functions. Suspend work notices shall be prepared for these contractors.

5. Copies of each notice prepared pursuant to part III.I.4. shall be provided to the Staff Director.
6. OCFO shall endeavor to pay as many pending invoices as practicable prior to the funding lapse.

**K.** All employees are responsible for ensuring up-to-date personal contact information (preferably an email address) has been provided to their supervisors. During a shutdown, FEC employees may receive periodic updates from the Staff Director or his/her designee on their personal email accounts. Updates will also be posted on the FEC website. See part III.H.4 above.

#### **IV. Activities on the Business Day Before a Possible Funding Lapse**

- A. All employees must update their hours worked and leave taken in GovTA, for a period through the last day prior to the potential furlough.
- B. 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.
- C. The Office of Human Resources will ensure all employees are provided information regarding the eligibility and application procedures for furloughed employees for unemployment compensation. This message must also advise employees that any unemployment compensation received will have to be paid back once the furlough ends.
- D. 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. In order to avoid insect and rodent infestations during the shutdown, all employees are responsible for ensuring that all food and beverages are removed from their offices or workstations.

#### **V. Activities on the First Day of the Funding Lapse**

- A. **Notice to Furloughed Employees.** At 7 a.m. on the first business day of the funding lapse, the Staff Director will issue a “Furlough Decision Notice Due to Lapse of Appropriations” (5 C.F.R. Part 752). Notice by agency-wide email will be sufficient. Staff receiving their notice by email must respond to the email acknowledging that they have received and read it.

This notice must at a minimum:

1. Inform recipients that, unless they have been notified otherwise, they are in a furlough (non-pay, non-duty) status effective upon the completion of their duties related to the orderly shutdown of the agency, and at that time must engage in no further work, including telework, until recalled to duty; and that recipients who are on site at 1050 First Street, N.E. must depart the premises at the time their 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. This portion of the message shall be typographically emphasized (bold, all caps, underlined, color highlighting, etc). It shall note that any employee performing unauthorized voluntary work during the furlough may be subject to disciplinary or adverse action upon resumption of normal operations, as well as to prosecution for criminal violation of the Antideficiency Act if the violation is found to be willful. It will also reassure employees that they will not be subject to repercussions for failure to meet deadlines or production goals set prior to the shutdown that, because of the shutdown, can no longer reasonably be met.
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, OPM or the Staff Director, employees will be expected to resume 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.

8. Inform recipients that they are not to attempt to access the FEC building during the furlough without the prior approval of the Furlough Manager (Staff Director).

For employees not listed on the attached Appendix, Part II, the completion of shutdown functions entails only completing any activities listed in Section IV above, and receiving, reading, and replying to the furlough notice.

Furlough notices will be sent to employees through their FEC email accounts. In the event that a second furlough notice is required, it will be sent to personal email addresses from the emergency contact list. Employees will be instructed to receive their furlough notices remotely by logging into their FEC email accounts using VPN, an FEC-provided mobile device, or Outlook (Cloud), at the hour when their normal tour of duty begins. Employees who cannot receive their furlough notices remotely will coordinate with their supervisors to receive the notice.

Employees with remaining on-site shutdown functions must report to the work site the first day of the furlough – **regardless of whether it is a scheduled telework day or not** – to complete those functions and receive their furlough notice, unless alternative arrangements have been made. Any such employees must depart the premises immediately upon receiving their furlough notice and completing shutdown functions. There is no entitlement to a half day's work, or pay, on the first day of a furlough.

- B.** The CFO will contact OMB immediately upon initiation of shutdown operations.
- C.** The Administrative Services Manager or her designee 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.F above.
- D.** The Litigation Division of 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.
- E.** The Office of the Chief Financial Officer (OCFO) will perform the fiscal and accounting tasks required to maintain accountability and report obligations and expenditures of all funds. It is anticipated that the amount of time necessary for this function may be up to a full business day. Employees carrying out this function will be furloughed once the excepted functions are completed.
- F.** The Contracting Officer (or designee) will disseminate the notices to contractors described in part III.I.4 above. The amount of time necessary for the Contracting Officer to issue these notices may be more than one business day depending on when the funding lapse

begins. The Contracting Officer may be recalled to work, on either a full-time or intermittent basis, if necessary.

- G.** The Office of Human Resources (OHR) will ensure any HR actions necessary to shut down the agency are completed, including the delivery of hard copy furlough notices to employees who are unable or unwilling to receive their furlough notices by email or other arrangements. 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.
- H.** The Administrative Services Manager (or designee) will be responsible for notifying all appropriate Federal and non-Federal parties who have roles relating to the physical security of the FEC building that the agency is shut down. The Administrative Services Manager or their delegate shall also remain on site throughout the completion of all other activities on the first day of the shutdown in order to be available to resolve building issues that arise while those activities are being completed.
- I.** OCIO will post on the website the previously prepared information about operating status and filing requirements in the event of a furlough.
- J.** The Administrative Services Division will notify the United States Postal Service and other delivery services that the FEC will be closed and unable to accept mail. All mail will be held offsite and delivered upon the agency reopening. The notice to the public referred to in part III.E will encourage members of the public who cannot wait until the end of the shutdown to send us hard copy documents to use a service that has tracking capability and should note that private services are likely to return any mail or packages to the sender if the shutdown lasts more than five days.

## **VI. Effects of the Furlough**

- A. Effect of Furlough on Pay, and on Leave Accrual.** The FEC will not process payroll for days covered by the funding lapse. Pursuant to the Government Employees Fair Treatment Act, Pub. L. 116-1, back pay for the period of any funding lapse, including the accrual of leave and restoration of leave that was scheduled but cancelled during the furlough, will be accomplished as rapidly as possible following the end of the funding lapse.
- B. Effect of Furlough on Alternative Work Schedules**  
Alternative Work Schedules, including Compressed Work Schedules and Flexible Work Schedules, are not available to employees during a furlough. All Excepted and Intermittent employees will change their schedule to eight (8) hour workdays, with no off-days, for the duration of the furlough. Excepted or Intermittent employees who must work on a holiday during the shutdown will be entitled to holiday premium pay upon reopening.

**C. Effect of Furlough on Scheduled Leave.** For furloughed employees, all previously scheduled paid leave during a furlough is cancelled, because the necessity to furlough supersedes leave rights. This includes annual leave, sick leave, paid parental leave, disabled veterans leave, court leave, military leave, bone marrow/organ donation leave, or compensatory time off, including religious compensatory time off. 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 previously scheduled paid leave for furloughed employees. Pursuant to the Government Employees Fair Treatment Act and OPM guidance thereunder, employees who are on duty full-time performing excepted activities but who must be absent from duty for personal reasons during a portion of the funding lapse may choose between using previously accrued leave (in which case they will incur a charge to leave) or going on furlough status during their absence and being recalled to duty at the end of their absence (in which case they will incur no charge to leave). Those who choose to go on furlough status with a subsequent recall to duty shall receive a furlough notice that documents their choice, states the period of time for which they are to be furloughed, and provides the same information described in parts V.A.3 through V.A.5 above.

**D. Effect of Furlough on Scheduled Non-Pay Statuses.** A furloughed employee is not entitled to retroactive pay for furlough periods if the employee had been previously scheduled (i.e., scheduled before the lapse) to be in a nonpay status during those periods. For example, an employee may have scheduled leave without pay (LWOP) for an extended period or be in a suspension status (i.e., pay suspended based on an adverse action). In effect, those already-in-place periods of nonpay status override the furlough status. The “standard rate of pay” for such previously scheduled periods of nonpay status is zero. In addition, an employee who was directed to perform excepted work during a lapse in appropriations but failed to report to duty could have been placed in absent-without-leave (AWOL) status for missed work hours. For such an employee, the “standard rate of pay” for AWOL hours is also zero.

**E. Effect of Furlough on Training.** Employees scheduled for any offsite or online training by third-party providers that is paid for by the Commission must be advised that they will be placed on furlough for the duration of the lapse in appropriations. Such employees must stop participation in the training and notify the Contracting Officer and [TrainingRequest@fec.gov](mailto:TrainingRequest@fec.gov). Employees scheduled for offsite training outside the Washington, D.C. metropolitan area must also follow the procedures outlined in part VI.J. below (“Effect of Furlough on Official Travel”).

**F. Effect of Furlough on Details to Other Agencies.** Employees on details to other agencies may continue to work if their function at the other agency will continue during the shutdown. Otherwise, they are on furlough and must check their FEC email on the first day of the shutdown for their furlough notice.

**G. Effect of Furlough on Employee Benefits**

### **1. Federal Employees' Health Benefits (FEHB) Plan**

Pursuant to direction from OPM, the health coverage of all employees covered by an FEHB Plan 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. Federal Employees' Dental and Vision Insurance Program (FEDVIP)**

FEDVIP dental and vision insurance program coverage will continue during the lapse in appropriations. If the lapse period is less than three consecutive pay periods, employees' premiums will accumulate and be withheld later when the lapse ends. However, if employees do not receive pay for three or more consecutive pay periods, BENEFEDS will begin to bill employees directly for their premium payments. To ensure continued coverage, employees should pay those bills on a timely basis.

### **3. Leave Accrual**

As a result of the Government Employees Fair Treatment Act (Public Law 116-1), employees will accrue leave during the furlough period as if it were a regular pay period.

### **4. 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.

## **H. Effect of Furlough on Pending New Hires**

The "entry on duty" date of any individuals who have a scheduled start date of FEC employment during the shutdown will be changed to a date as soon as practicable after the end of the funding lapse. The Staff Director or his/her designee will contact new employees to notify them of the funding lapse.

## **I. Effect of Furlough on Separating Employees**

Employees scheduled to separate from the agency during the furlough, either through retirement or resignation, shall be recalled to work on their last day(s) on agency payroll to comply with Records Act requirements and to perform check-out functions. OHR and Administrative staff may be recalled to perform separation activities.

#### **J. Effect of Furlough on Official 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 the furlough is effective. Any authorization for such travel is automatically revoked.

If an employee is on travel for official business on the first day of the funding lapse, he/she must immediately stop any work and return to Washington as promptly as possible in order to minimize any further funding obligation requirements. If the employee is subject to furlough, the employee's furlough is effective upon the employee's arrival in the Washington area, rather than at midnight of the day of the funding lapse.

If an employee must travel on official business outside of normal working hours for the purpose of returning immediately to Washington, the employee will be eligible for compensatory time per statute and regulation.

### **VII. Activities and Responsibilities During the Furlough**

#### **A. Staff Director.** The Staff Director shall:

1. Remain on duty, as Furlough Manager, throughout the furlough.
2. Be authorized to recall to duty any employees necessary to meet unanticipated contingencies.
3. Initiate resumption of operations (see below) upon the enactment of legislation ending the funding lapse.
4. Receive and take appropriate action on all communications from OMB during the funding lapse.

#### **B. OCFO:**

1. Tracks all obligations incurred in maintaining excepted activities and terminating agency operations.
2. Suspends acquisition and assistance awards pending validation of program award decisions.
3. Facilitates the de-obligation of funds for unused appropriation through contract modifications to maximize funds availability for excepted activities, if appropriate.
4. Provides that measures are in place to guard against accidental obligations or payments that would violate the Anti-Deficiency Act or would otherwise be improper payments, including notifying FEC's payroll processor that no further actions should be processed until resumption of agency operations.

5. Monitors guidance from the agency's payroll provider and resolves issues arising therefrom.
6. Per guidance from OMB in September 2021, **may** take steps to ensure the payment of invoices received after the funding lapse in cases where funds were obligated prior to the funding lapse.
7. Oversees that new obligations of funds are as necessary **only** to enable the agency to continue to carry out excepted functions as set forth in this plan. Such new obligations may not be paid until after the funding lapse is resolved.
8. Upon information that restoration of funding is imminent, takes all actions necessary to ensure payment of back pay and accrual of leave at the earliest possible time, consistent with the Government Employees Fair Treatment Act (Pub. L. 116-1).

**C. OGC:**

1. Assists the Commission, the Staff Director, the CFO and the IG in identifying both the excepted 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. The General Counsel, the Deputy General Counsel for Administration, the Special Counsel to the General Counsel, and the Assistant General Counsel for Administrative Law shall be retained on duty and not furloughed in order to perform these functions.
2. The General Counsel is authorized to recall to work such Litigation Division personnel as may be necessary solely to file any additional notices to courts (see section V.D. above) that may become necessary during the furlough, to engage in the normal conduct of litigation in cases where the court so orders notwithstanding the furlough, or to provide assistance (if requested) to the Office of the Solicitor General in Supreme Court cases in which the Commission is a party. Upon the completion of these tasks, any recalled personnel shall be returned to a furlough status.

**D. OCIO:** The Office of the Chief Information Officer (OCIO) will perform the tasks required to guard against imminent threats to Commission property in electronic form and will continue to perform this task throughout the shutdown. OCIO employees necessary for this function are listed on the Appendix, Part II and shall not be furloughed.

**E. Administrative Services:** After the first day of the lapse, the Administrative Services Manager will be on intermittent duty for the remainder of the furlough. During this time, the Administrative Services Manager shall be notified by Kastle Systems of, and shall respond appropriately to, all reports of physical entry into FEC facilities. The Administrative Services Manager or Deputy Staff Director for Management and Administration shall physically inspect the physical security of FEC facilities not less than once per pay period during the shutdown.

**F. Functions that may or may not occur during a lapse, depending on the specific situation:**

1. The Deputy Ethics Officer may be recalled to work on an intermittent basis to carry out functions related to the review of financial information provided by a potential nominee to the Commission, or any other necessary functions related to a nomination or potential nomination. This is permissible as an incident to the President's power of nomination under Article II of the Constitution. The Deputy Ethics Officer may also be recalled to work on an intermittent basis to provide guidance to agency employees with respect to outside employment. For purposes of this paragraph, "outside employment" has the same meaning as in 5 CFR § 4701.102. This specifically includes, among other things, pro bono activities conducted by OGC attorneys. The recall of the Deputy Ethics Officer to provide outside employment guidance is permissible consistent with guidance provided by the Office of Management and Budget.
2. If a lapse occurs during the calendar year in which a presidential election occurs or the calendar year immediately preceding the presidential election year, or in the year immediately following the presidential election year if it is still possible for candidates to submit matching fund submissions, the Staff Director and the General Counsel shall jointly determine the number and identity of Audit Division and OGC employees necessary, if any, to carry out functions during the lapse related to the eligibility and entitlement of presidential candidates to public funding. This is permissible as implicitly authorized by the permanent, indefinite appropriation of funds to the Presidential Election Campaign Fund at 26 U.S.C. § 9006(a).
3. If, prior to the lapse, the Commission has approved the participation of any Commission employee as a grand jury or trial witness in a criminal investigation or trial, the Staff Director may recall the employee to work for purposes of testifying and preparing to testify, and may also recall such additional employees as necessary to assist the employee in preparation to testify. If the testimony is to be given in a location other than the Washington metropolitan area, the provisions of paragraph VI.H above shall not apply, and the employee may undertake official travel to the location of the testimony. However, if travel authorization and/or arrangements are being made by the Commission rather than the Department of Justice, the employee should ensure that the authorization and arrangements are complete prior to the furlough. All of the above is permissible consistent with the determination of the Department of Justice that all criminal law enforcement activities, including criminal litigation, may continue during an appropriations lapse as essential for the safety of human life and the protection of property.
4. The Director of Human Resources and such OHR staff as may be necessary may be recalled to work on an intermittent basis to respond to background check inquiries from the White House, the FBI, or other Federal agencies regarding any Commissioner or former Commissioner, or any current or former Commission

employee, who is under consideration for a Presidential appointment to any position in the government. This is permissible as an incident to the President's power of nomination under Article II of the Constitution.

5. OHR staff may be recalled to process Form 931s (Request for Wage and Separation Information) or other requests from state unemployment offices, or to assist employees with other unemployment compensation-related issues.
6. OHR staff may be recalled to work on an intermittent basis as necessary to process FEHB or FEGLI transactions pursuant to 5 U.S.C. §§ 8702(d) and 8905.
7. The Inspector General, or her designee, may check the OIG Hotline once daily. If they determine a complaint may require immediate action, they must first inform the Furlough Manager, who will formally recall them to work. After being formally recalled, they must immediately consult with their counsel to determine whether the work would be excepted during a lapse. If requested, OIG will provide an appropriately redacted copy of OIG counsel's analysis to the Acting General Counsel. If it is determined that the proposed work is not excepted during a lapse, the IG and/or her designee(s) will be returned to furlough status.
8. Volunteer externs may continue to work. However, the provisions of 5 U.S.C. § 3111 (exempting unpaid externs from the Antideficiency Act under certain circumstances) must be strictly complied with. In addition, externs cannot perform work that would normally be performed by furloughed staff.
9. In cases in which an employee is required to perform an excepted function intermittently throughout the course of the day, and the intervals in between are too short to enable the employee to be furloughed and then recalled in time to perform the function, the employee may remain at work, and may perform minimal non-excepted work during these intervals. This applies to entirely excepted employees at all times. It also applies to intermittent employees who expect to resume the task for which they were recalled to work within the same work day. Employees, whether excepted or intermittent, may **not** perform non-excepted work if there is excepted work for them to do.

## **VIII. Additional Considerations**

- A. **Intermittent employees.** Certain employees on the Appendix, Part II, or other employees recalled to work during a shutdown to meet unexpected contingencies, may be designated as "intermittent employees." "Intermittent employees" are those whose services are required for excepted purposes during a shutdown, but on less than a full-time basis. Intermittent employees shall receive furlough notices that 1) notify them of their status as intermittent employees, 2) explain what duties they are expected to perform while on duty during a funding lapse, 3) explain that they are to be considered in a furlough status while not performing their excepted duties, and 4) provides the information described in parts V.A.3 through V.A.5 above.

**B. Building access; telework by excepted and intermittent employees.** FEC facilities at 1050 First Street, N.E. are CLOSED during a shutdown. After the first day of a furlough, entry into the building by any FEC employee or contractor other than a Commissioner, the Staff Director, or the Administrative Services Manager shall require the express prior approval of the Staff Director, as Furlough Manager. Entry without such approval shall be subject to administrative or disciplinary action upon the conclusion of the furlough. Those employees excepted from the furlough on either a full-time or intermittent basis, or who are recalled to duty during the furlough, will be expected to continue to telework unless the Staff Director specifically approves on-site work.

**C. Daily conference calls.** The Staff Director, Chief Financial Officer, Deputy Staff Director for Management and Administration or designee, and at least one out of the General Counsel, the Deputy General Counsel for Administration, the Assistant General Counsel for Administrative Law, and the Special Counsel to the General Counsel, and Deputy CIOs shall hold a virtual meeting each business day during the lapse to discuss developments relevant to the management of agency operations during the lapse. The Staff Director will ensure relevant staff are on any scheduled calls with OPM, OMB, and NFC. The Staff Director may designate other excepted or intermittent personnel to participate in a particular daily call as necessary.

## **IX. Resumption of Operations**

Upon the end of the furlough, employees are expected to resume work the next business day, unless otherwise authorized by the Staff Director. Employees will be notified via personal email and by the placement of a message on the FEC web site. Employees will be notified with reopening instructions via personal email from the Staff Director or his designee. Employees that do not have a personal email on file in the emergency contact database will be contacted by a supervisor. Employees are responsible for monitoring the media regarding updates to the government's funding status.

## **X. 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.

**Federal Election Commission Interim Plan for Agency Operations  
in the Absence of an Appropriation – Appendix**

**I. Commissioners**

Commissioners, like all Presidential appointees subject to Senate confirmation, are not subject to the time and attendance procedures of Federal personnel law. Therefore, their continued work during a funding lapse creates no new financial obligation for the government to pay them, and they are exempt from furlough. However, their pay will be processed in arrears once the furlough is over. Commissioners who choose to work during the furlough may not take any actions, singly or collectively, that would have the effect of creating any financial obligation on the part of the government.

These considerations apply to Commissioners only. Commissioners' personal and shared staff members are subject to furlough due to lapsed appropriations.