



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the
Executive Director

TO: Mark Weatherly
Deputy Associate Director for Housing, Treasury, and Commerce
Office of Management and Budget

FROM: Anthony Thompson
Executive Director 

DATE: January 2, 2014

SUBJECT: Request for Exception Apportionment Due to Extraordinary
Circumstances

The Commodity Futures Trading Commission (CFTC) hereby requests an exception apportionment of \$2.932 million above the amount automatically apportioned for the CFTC under the Continuing Appropriations Act, 2014 (P.L. 113-46). We make this request pursuant to the authority in Section 112 of the Continuing Appropriations Act, 2014, which provides that:

Amounts made available under section 101 for civilian personnel compensation and benefits in each department and agency may be apportioned up to the rate for operations necessary to avoid furloughs within such department or agency, consistent with the applicable appropriations Act for fiscal year 2013, except that such authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses.

This request is being submitted in an abundance of caution at this time due to a recently opened inquiry by the U.S. Government Accountability Office (GAO) into the availability of CFTC's transfer authority under the Continuing Appropriations Act, 2014.¹ While the CFTC believes that the agency retained transfer authority under the Continuing Appropriations Act, 2014, we are requesting that the exception apportionment be granted prior to January 7, 2014, in order to mitigate potential staff furloughs which may be required if GAO determines that the CFTC does not retain transfer authority under the Continuing Appropriations Act, 2014.

¹ On December 20, 2013, CFTC was formally notified that GAO received a congressional request for a legal opinion regarding whether transfer authority provided to CFTC in the Financial Services and General Government Appropriations Act, 2012, continues to be available to CFTC as it operates under the Continuing Appropriations Act, 2014.

CFTC carefully considered, but did not request, an exception apportionment under the Continuing Appropriations Act, 2014 earlier in FY 2014. In planning for FY 2014, CFTC determined that absent a budget increase the agency would likely need to furlough staff as a result of the impact of sequestration and a decrease in available carryover funds. At the end of FY 2013, the agency engaged in consultations with employee unions on the proposed furlough and on October 24, 2013 notified all staff that they may be furloughed not more than 14 days in FY 2014. CFTC informed staff that up to three furlough days would need to be served before January 15, 2014, and ultimately staff were required to serve two furlough days during this period. **CFTC implemented two furlough days, instead of requesting an exception apportionment,** to avoid putting the agency in undesirable financial position for the remainder of the fiscal year with the possibility of additional sequestration budget reductions. The availability of transfer authority under the Continuing Appropriations Act, 2014 also factored into the agency's decision not to request an exception apportionment. The agency also did not think it prudent to compress furlough days to fewer pay periods later in FY 2014 given the financial impact on employees, and did not wish to presume a budget increase which would offset any exception apportionment received under the Continuing Appropriations Act, 2014. However, the current inquiry into the CFTC's transfer authority raises the possibility of an agency-wide furlough of all staff for the period of January 7, 2014 through January 15, 2014, in addition to the 14 days of furlough previously noticed and has the potential to jeopardize the CFTC's ability to perform mission critical oversight, surveillance and regulation. Therefore, under the present circumstances, the CFTC believes it prudent and appropriate to request an exception apportionment.

On November 26, 2013, CFTC transferred \$2.932m from the Information Technology (IT) account to the Salaries and Expenses (S&E) account in order to continue the necessary and orderly operations of the CFTC, to minimize employee furloughs, and to avoid reductions-in-force during FY 2014. Even with the completed transfer of \$2.932m and exhaustive use of carryover balances, CFTC S&E resources under the Continuing Appropriations Act, 2014 are extremely constrained and the agency has taken all necessary and available actions to reduce or defer non-personnel related administrative expenses. For example, CFTC has deferred procurements, reduced lease costs, and significantly reduced staff travel and training as well as contractor support, funded by the S&E account. To reduce personnel costs, CFTC has already implemented agency-wide furloughs for two days, continued to severely restrict external hiring, and minimized usage of compensatory time, overtime, and holiday premium pay.

Based on current projections, CFTC will begin to obligate the transferred funds on January 7, 2014, for staff salaries and benefits. The requested exception apportionment would allow CFTC to continue ongoing operations without additional staff furloughs and without obligating or expending any of the \$2.932m transferred under the Continuing Appropriations Act, 2014 and currently under review by GAO. Without the exception apportionment CFTC may need to consider agency-wide furloughs of all staff for the period of January 7, 2014 through January 15, 2014, which we view as a very undesirable option that will jeopardize the CFTC's ability to continue the necessary and orderly operations of the agency.

In addition, it appears that CFTC may receive a full-year FY 2014 appropriation on or about January 15, 2014. The requested exception apportionment provides time for the GAO decision and the FY 2014 full-year appropriation to be resolved without additional staff furloughs.

In summary, we are requesting an exception apportionment in order to avoid uncertainty about additional unanticipated agency-wide furloughs and as a prudent and necessary step to ensure continuity of CFTC operations. Due to the extraordinary circumstances and the GAO inquiry into the availability of transfer authority under the Continuing Appropriations Act, 2014, the CFTC respectfully requests that OMB approve an exception apportionment prior to January 7, 2014.

Thank you for your consideration of, and assistance with this request. If you have any questions regarding this request, I would be pleased to discuss them with you.

SF 132 APPORTIONMENT AND REAPPORTIONMENT SCHEDULE

FY 2014 Apportionment
Funds provided by Public Law 113-46

Treasury Agency	FY1	FY2	Treasury Account	Line No	Line Split	Bureau/ Account Title / Cat B Stub / Line Split	Previous Approved	Prev Footnote	Agency Request	Agency Footnote	OMB Action	OMB Footnote	Memo Obligations
						Commodity Futures Trading Commission Account: Commodity Futures Trading Commission (339-00-1400) TAFS: 95-1400 2014/2015							
95	2014	2015	1400	IterNo	2	Last Approved Apportionment: 2013-11-19							
95	2014	2015	1400	RptCat	NO	Reporting Categories							
95	2014	2015	1400	AdjAut	NO	Adjustment Authority provided							
95	2014	2015	1400			Budgetary resources							
95	2014	2015	1400	1100		BA: Disc: Appropriation	142,415,892		142,415,892		142,415,892		
95	2014	2015	1400	1121		BA: Disc: Appropriations transferred from other Accounts	2,932,000	A1	2,932,000		2,932,000		
95	2014	2015	1400	1134		BA: Appropriation Excluded from Obligation	-100,659,552		-97,727,552		-97,727,552		
95	2014	2015	1400	1740		BA: Disc: Spending auth:Antic colls, reimbs, other	250,000		250,000		250,000		
95	2014	2015	1400	1920		Total budgetary resources avail (disc. and mand.)	44,938,340		47,870,340		47,870,340		
95	2014	2015	1400			Application of Budgetary Resources							
95	2014	2015	1400	6001		Category A -- 1st Quarter							
95	2014	2015	1400	6002		Category A -- 2nd Quarter							
95	2014	2015	1400	6003		Category A -- 3rd Quarter							
95	2014	2015	1400	6004		Category A -- 4th Quarter							
95	2014	2015	1400	6011		Category B - Salaries & Expenses	44,938,340		47,870,340		47,870,340		
95	2014	2015	1400	6190		Total budgetary resources available	44,938,340	A1	47,870,340		47,870,340		

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CFTC Approval: _____ 11/2/2014
 Budget Officer Date
 _____ 11/2/2014
 Chief Financial Officer Date
 _____ 11/2/2014
 Executive Director Date

FY 2014 Apportionment
Previously Approved Footnotes

Footnotes for Apportioned Amounts

A1 Of the \$44,938,340 apportioned, \$2,932,000 is contingent upon the completion of the regular notification procedures of the Committees on Appropriations pursuant to Sec. 730 of Public Law 112-55 that continues (as a term and condition) under Public Law 113-46.

95- 1400 2014 \ 2015

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