

**Questions for the Record from Mr. Ben Cline for Ms. Jeanne Bumpus Hearing on
Compliance with Committee Oversight
November 30, 2023**

Your testimony to the Subcommittee on November 30, 2023, revealed, as was the case on March 29, 2023, that you are not informed as to the status of the FTC’s response to Committee oversight. In particular, you are still unable to give any definitive information as to the status of document collection, document review, and production. You testified both on March 29, 2023, and November 30, 2023, that the Committee’s oversight of the FTC is a proper function of the Committee and that the FTC is committed to responding to Committee oversight. But under Chair Khan the FTC has been consistently slow-walking and stonewalling in response to this Committee. In November nearly two weeks prior to your testimony, the Committee notified the FTC that the Subcommittee would be seeking a granular status update, which you were unable to provide. Thus, for the record, please answer the following questions:

1. Did the FTC authorize you to testify on November 30, 2023?

Please see response to Question 1.a.

a. If so, did the FTC vote to authorize your testimony?

The Commission voted to approve the written statement I submitted for the record.

b. If yes, then please explain why you did not request the information, and why you were not provided the information, before coming to testify.

Much of the information the Committee requested about the Commission’s work and internal deliberations and the particular staff involved in them, including regarding congressional oversight, is nonpublic.

c. Did you convey to anyone at the FTC the Committee’s specific request for a status update? If so, who?

Yes, I shared the Committee’s request for a status update with staff at the Commission, including those who have previously corresponded with and have spoken to Committee staff about this.

d. Did the FTC assess your knowledge of the status of the FTC’s responses to the Committee’s oversight requests? If so, who at the FTC assessed your knowledge?

Staff at the Commission, including staff who have been working on responses to the Committee’s requests, are aware of the extent of my knowledge about the

status of the Committee's oversight request.

- e. **Did the FTC instruct you on how to testify with respect to Committee questions as to the status of any particular oversight requests? If so, who gave you this instruction?**

Generally, when FTC witnesses prepare to testify at congressional hearings, Commission staff will advise the witness with respect to what information is nonpublic and what information has previously been shared with the Committee.

- f. **Did you ever express to anyone at the FTC that you did not know the answers to the questions the Committee informed the FTC that members had interest in?**

Commission staff are aware of my role as a conduit and the limited extent of my involvement in and detailed knowledge of the large volume of oversight requests.

- i. **If not, why not?**

N/A

- ii. **If yes, then please explain why you were unable to provide answers at the hearing.**

Much of the information the Committee asked about is nonpublic.

- g. **Did anyone at the FTC refuse to provide you with updates as to the status of the FTC's responses to the Committee's oversight requests? If so, who?**

No.

2. **On November 30, 2023, you were asked to identify the custodians of material responsive to Committee requests but were unable to provide an answer, and testified that you would "take it back." Who at the FTC will you contact to inquire as to the identity of the custodians of materials responsive to Committee oversight requests? Please identify all the individuals you will contact.**

The identity of the custodians is nonpublic and implicates personal privacy interests. The Committee staff have been in regular contact with staff at the FTC who have been working to coordinate responses to the Committee's oversight requests, and these staffers at the agency are aware of the Committee's requests.

3. **Why did you appear before the Subcommittee unprepared to testify about the status of the FTC's response to the Committee's oversight related to the FTC's merger enforcement?**

I understand that the Subcommittee asked me to testify because I am the Director of the

Office of Congressional Relations, a capacity in which I have served for 17 years for Chairs of both parties. I testified as best I could given my limited role in the production of documents and the nonpublic nature of the information being requested.

- 4. Why did you appear before the Subcommittee unprepared to testify about the status of the FTC's response to the Committee's oversight related to the FTC's proposed non-compete rulemaking?**

Please see response to Question 3.

- 5. Who at the FTC did you meet with prior to testifying about the status of the FTC's responses?**

In general, in preparation for hearings, witnesses meet with FTC staff who are issue experts.

- a. When did you meet?**

The meetings occurred in the weeks prior to my testimony.

- b. For how long did you meet?**

The meetings lasted for about one hour.

- c. What did you discuss?**

When FTC witnesses prepare to testify at a congressional hearing, the preparations include discussion of anticipated questions and the witness's ability to answer questions while being mindful of the nonpublic nature of much of the FTC's work and deliberations.

- d. Did you discuss the questions you knew would likely arise at the hearing on November 30?**

Please see response to Question 5.c.

- 6. If information on the status of responses to a particular request is being withheld from you, who has decided this information should be withheld from you?**

I am not aware of any information being withheld from me.

- 7. Were you told why you would not be given the information you asked for?**

Please see response to Question 6.

- 8. With respect to the House Judiciary Committee's pending requests: do you have regular meetings with FTC staff about these requests?**

I attend a weekly meeting where pending congressional requests from various committees, including oversight requests, may be discussed.

9. If so, who attends these meetings?

The meetings are attended by some of the staff who work to support the FTC's responses to congressional requests, including oversight requests.

10. If such meetings occur, how often do they occur?

Once a week.

11. If such meetings occur, what is their typical duration?

30 minutes.

12. What other means, such as email or other communication, do you rely on to gain status updates?

These meetings are my primary means of receiving and providing status updates.

**Questions for the Record from Mr. Nathaniel Moran for Ms. Jeanne Bumpus
Hearing on Compliance with Committee Oversight
November 30, 2023**

The FTC’s production of responsive information related to the Committee’s inquiry about merger enforcement under Chair Khan has been limited and uninformative. The Commission’s failure to win when litigating merger challenges, as well as repeated reports and evidence of poor internal management and waste of resources, elevates the importance of oversight to inform Congress’s potential legislative reforms concerning merger enforcement. The lack of substantive production calls into doubt whether the FTC is taking the Committee’s oversight seriously and giving it the attention it deserves. Accordingly, please respond to the following questions:

- 1. The FTC confirmed receipt of the Committee’s April 5, 2023, letter regarding the FTC’s approach to mergers. Were FTC staff told to preserve potentially responsive documents and communications pursuant to the Committee’s April 5, 2023, request?**

Yes.

Regarding the Commission’s success in challenging mergers, in her November 2023 letter to Committee Members who wrote about concerns, Chair Khan provided a full picture of the FTC’s accomplishments during her tenure. Since sending that letter, the FTC has successfully challenged additional mergers. To date, during Chair Khan’s time at the Commission, the FTC has challenged 40 mergers, with 21 mergers abandoned following FTC investigations or complaints, 16 consent orders reached, and 2 litigations ongoing.

- a. If so, when were FTC staff informed to preserve potentially responsive documents and communications?**

Staff were advised of the request and their preservation responsibilities shortly after the request was received.

- 2. How much time did the FTC permit staff to search for and collect documents and communications responsive to the Committee’s April 5, 2023, requests?**

To my knowledge, FTC staff were not given a specific time limit for collecting documents and communications responsive to the Committee’s April 5, 2023, requests.

- 3. Identify by name and title the person or persons responsible for supervising the gathering and review of documents and communications responsive to the Committee’s April 5, 2023, requests.**

As the FTC has previously explained, the FTC takes a whole of agency approach when responding to congressional requests. In general, custodians collect and forward documents to a central repository, after which they and other staff coordinate to review and produce responses to the congressional requests.

- 4. List the dates of all communications related to the collection of documents sent by the person(s) supervising the gathering of documents and information responsive to the Committee's April 5, 2023, requests.**

In general, the FTC endeavors to identify relevant staff and asks them to identify whether additional staff might have potentially responsive documents. Any additional staff who are identified are told to collect and forward potentially responsive documents to a central repository.

- 5. Describe the process and rationale by which documents and communications were collected by the individuals identified as having responsive materials, in response to the Committee's April 5, 2023, requests.**

Please see responses to Questions 3 and 4.

- 6. Describe the process and rationale by which documents and communications responsive to the Committee's April 5, 2023, requests were reviewed prior to transmission to the Committee.**

Generally, redactions are made to documents and communications in order to protect law enforcement and deliberative interests of the Commission, as well as personal privacy interests.

- 7. Provide the number of individuals who participated in the review of documents and communications responsive to the Committee's April 5, 2023, requests prior to transmission to the Committee.**

Please know that the review is ongoing.

- 8. Describe the process and rationale by which redactions have been made to documents and communications responsive to the Committee's April 5, 2023, requests.**

Please see response to Question 6.

- 9. Describe the process and rationale by which documents and communications otherwise responsive to the Committee's April 5, 2023, requests have been determined to contain privileged information and subsequently withheld from the Committee. Please describe the number of documents and communications withheld from the Committee to date.**

Please see response to Question 6.

- 10. Provide details about the types of privilege, if any, that the FTC is asserting over documents being withheld from the Committee pursuant to the Committee's April 5, 2023, requests.**

Please know that the review is ongoing.

- 11. List by name the custodians who were identified by the FTC as potentially having "documents and communications referring or relating to the decision to withdraw the Trump Administration's 2020 vertical merger guidelines," request number 4 from the Committee's April 5, 2023, list of requests.**

Although the information you are requesting is nonpublic and implicates personal privacy interests, please know that in general the FTC endeavors to identify relevant staff and asks them to identify other staff who might have responsive material.

- 12. List by name the custodians who were identified by the FTC as potentially having "documents and communications, including any on personal devices and any communications with the Executive Office of the President or CFPB Director Rohit Chopra, relating to the FTC's policy concerning early terminations," request number 7 from the Committee's April 5, 2023, list of requests.**

Please see response to Question 11. With regard to personal devices, the Commission prohibits, for all employees, the use of non-agency devices or accounts for official Commission business.

- 13. List the number of documents and communications that have been collected, broken out by custodian, pursuant to the Committee's April 5, 2023, requests that have not been transmitted to the Committee.**

Although the information you are requesting is nonpublic, please know that the review is ongoing.

- 14. List the number of pages corresponding with each of the above identified documents which have not been transmitted to the Committee.**

Please see response to Question 13.

**Questions for the Record from Ms. Laurel Lee for Ms. Jeanne Bumpus Hearing
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On January 5, 2023, the FTC proposed an unfair methods of competition rulemaking to effectively ban nearly all employer-employee non-compete agreements in the United States. The Committee has sought information on the FTC’s proposed rulemaking since February 14, 2023, and very little meaningful information has been produced. The Committee has learned that the FTC heavily relied on a staffer from the CFPB to lead and supervise the drafting of the rule, which raised more questions and concerns about the manner in which this effort was undertaken at the FTC.

After Chair Khan testified before the Committee on the Judiciary on July 13, 2023, I asked several questions about the FTC’s efforts in this rulemaking, as well as the relationship between the FTC and CFPB in this rulemaking. Chair Khan’s responses failed to explain the way this effort was undertaken and evaluated at the FTC and its legality, other than declaring that she “believes” she has authority to pursue it.¹

Notwithstanding subsequent productions to the Committee – which mostly contained already publicly available information or blank pages of schedulers, and very little substantive material – the FTC still has not complied with the Committee’s requests after nearly 10 months. Accordingly, please provide responses to the following:

- 1) The FTC confirmed receipt of the Committee’s February 14, 2023, letter regarding the FTC’s notice of proposed rulemaking about non-compete agreements. Were FTC staff told to preserve potentially responsive documents pursuant to the Committee’s February 14, 2023, requests?**

Yes. As indicated in the FTC’s March 7, 2023, letter in response to Chairman Jordan’s February 14, 2023, letter, the Commission took “steps to preserve documents relevant to the Committee’s requests, including identifying appropriate custodians and issuing a preservation notice to the custodians.”

- a. If so, when were FTC staff told to preserve potentially responsive documents and communications?**

Staff were advised of the request and their preservation responsibilities shortly after the request was received.

¹ See Lina M. Khan, QFR Responses, 17 (Aug. 21, 2023), identified as having responsive documents and communications, in response to the Committee’s February 14, 2023, requests.

- 2) **How much time did the FTC give staff to search for and collect documents and communications responsive to the Committee's February 14, 2023, requests?**

To my knowledge, FTC staff were not given a specific time limit for collecting documents and communications responsive to the Committee's February 14, 2023, requests.

- 3) **Identify the person or persons responsible for supervising the gathering of documents and communications responsive to the Committee's February 14, 2023, requests. Please identify the person or persons by name and title.**

As the FTC has previously explained, the FTC takes a whole of agency approach when responding to congressional requests. In general, custodians collect and forward documents to a central repository, after which they and other staff coordinate to review and produce responses to the congressional requests.

- 4) **List the dates of all communications related to the collection of documents sent by the person(s) supervising the gathering of responsive documents and communications responsive to the Committee's February 14, 2023, requests.**

In general, the FTC endeavors to identify relevant staff and asks them to identify whether additional staff might have potentially responsive documents. Any additional staff who are identified are told to collect and forward potentially responsive documents to a central repository.

- 5) **Describe the process by which documents were collected by the individuals identified as having responsive documents and communications, in response to the Committee's February 14, 2023, requests.**

Please see responses to Questions 3 and 4.

- 6) **Describe the process by which documents responsive to the Committee's February 14, 2023, requests were reviewed prior to transmission to the Committee.**

Generally, redactions are made to documents and communications in order to protect law enforcement and deliberative interests of the Commission, as well as personal privacy interests.

- 7) **How many individuals participated in the review of documents responsive to the Committee's February 14, 2023, requests prior to transmission to the Committee?**

Please know that the review is ongoing.

- 8) **Describe the process and rationale by which redactions have been made to documents responsive to the Committee’s February 14, 2023, requests.**

Please see response to Question 6.

- 9) **Describe the process and rationale by which documents otherwise responsive to the Committee’s February 14, 2023, requests have been determined to contain privileged information and subsequently withheld from the Committee.**

Please see response to Question 6.

- 10) **Please detail the types of privilege the FTC is asserting to justify documents being withheld from the Committee pursuant to the Committee’s February 14, 2023, requests.**

Please know that the review is ongoing.

- 11) **When will the Committee receive a privilege log relative to documents and communications the FTC has withheld to date? Please explain why a privilege log has not been provided to the Committee to date.**

Please know that the review is ongoing.

- 12) **List by name the custodians who were identified by the FTC as potentially having “documents and communications referring or relating to the conclusion that the FTC has the legal authority to engage in this rulemaking, including any description of how to reconcile this rulemaking with the Supreme Court’s decision in *West Virginia v. EPA*,” request number 1 from the Committee’s February 14, 2023, list of requests.**

Although the information you are requesting is nonpublic and implicates personal privacy interests, please know in general the FTC endeavors to identify relevant staff and as described above, asks them to identify other staff who might have responsive material. For more information regarding identified custodians, please see the FTC’s letter to the Committee dated March 7, 2023.

- 13) **List by name the custodians who were identified by the FTC as potentially having “documents and communications referring or relating to any analysis of the FTC’s litigation risk associated with this rulemaking,” request number 2 from the Committee’s February 14, 2023, list of requests.**

Please see response to Question 12.

- 14) **List by name the custodians who were identified by the FTC as potentially having “documents and communications referring or relating to the FTC’s economic analysis associated with this rulemaking, including the rule’s costs and any decisions about how much or how little weight the FTC should give any study, source, or other piece of evidence,” pursuant to request number 3 from the Committee’s February 14, 2023, list of requests.**

Please see response to Question 12.

- 15) **List by name the custodians who were identified by the FTC as potentially having “communications between the FTC and any outside parties referring or relating to this rulemaking, including, but not limited to, the Executive Office of the President,” request number 4 from the Committee’s February 14, 2023, list of requests.**

Please see response to Question 12.

- 16) **List the number of documents that have been collected, broken out by custodian, pursuant to the Committee’s February 14, 2023, requests 1-4, and have not been transmitted to the Committee.**

Although the information you are requesting is nonpublic, please know that the review is ongoing.

- 17) **List the number of pages corresponding with each of the above identified documents which have not been transmitted to the Committee.**

Please see response to Question 16.

- 18) **Has the FTC completed its search of the Chair’s and all other FTC senior leaders’ files and electronic devices regarding responsive communications with anyone at the CFPB or other outside parties regarding the non-compete rulemaking?**

Yes.

- a. **If not, why not?**

N/A

- b. **If so, what volume of communications have been gathered?**

Although the information you are requesting is nonpublic, please know that the review is ongoing.

c. Why have you not produced all such communications to the Committee?

The Commission is still reviewing and producing documents.

d. What is the reason for withholding such documents?

Please see response to Question 18.c.

e. What are the dates of such communications?

Although the information you are requesting is nonpublic, please know that the review is ongoing.