

FTC Will Continue Accepting Premerger Notification Filings in the Event of a Government Shutdown

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Today, the Federal Trade Commission released a plan for dealing with a government shutdown that would occur if Congress fails to enact appropriations by a midnight deadline. A shutdown looked likely as budget talks appeared to have broken down early Friday morning.

As part of the FTC's plan, the Commission's Premerger Notification Office would remain open with very limited staff to accept new filings under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act). The Commission said that it has coordinated with the Department of Justice on how they will handle the HSR filings. The Justice Department Antitrust Division's Premerger Notification Unit will also remain open with limited staff to accept filings.

According to the FTC plan, the Commission will continue certain HSR investigations during the pendency of a shutdown. These investigations would be undertaken "to the extent the circumstances of a reported merger or acquisition indicate that a failure by the government to challenge the transaction before it is consummated will result in a substantial impairment of the government's ability to secure effective relief at a later time."

Elsewhere in the FTC's Bureau of Competition, all non-merger investigations would be suspended during the pendency of a shutdown, the Commission said. As to litigated matters, staff may need to continue working in order to meet upcoming deadlines and protect the Commission's interests in the litigation pending court action on motions for stays, according to the agency.

The FTC estimates that it would require up to 88 employees to staff excepted competition matters during a shutdown. That number would include staff to accept and review of HSR filings, as well as the Bureau of Competition Director and three front office supervisors.

Consumer Protection Matters

In the event of a shutdown, the Commission intends to seek continuances in all Bureau of Consumer Protection (BCP) cases in which preliminary relief has been obtained. Attorneys in those cases, or where there is no plan to seek preliminary relief, will notify opposing parties and courts of the government shutdown and request suspensions of dates for hearings and filings, according to the Commission. The Commission intends not to pursue the vast bulk of its consumer protection investigations, it was noted.

The Commission estimates that it may need to except up to 120 employees from the furlough to meet upcoming deadlines and protect the Commission's interests in consumer protection cases. The BCP Director and three front office employees will be excepted from furlough to supervise the work. Currently BCP staff is actively litigating approximately 65-75 cases in federal district courts throughout the country and one or two cases in administrative litigation, according to the agency.

Because Presidential appointees are excepted from furlough as a result of a shutdown, the Commission's Chairman and its Commissioners can continue to work. The FTC's plan also excepts from furlough the Bureau of Economics Director, the FTC General Counsel, the Executive Director, and other high-level personnel, as well as lawyers, economists and support staff necessary to continue law enforcement actions.