

OPM regulations provide for emergency adverse action furloughs without advance written notice of action. 5 C.F.R. § 752.404(d)(2). However, as soon as a lapse in appropriated funding is deemed likely, the Executive Director or his designee will notify Commission employees of the lack of necessary appropriations and the forthcoming furloughs.

Once appropriations have been restored, employees will be notified to return to work. Employees will be directed to view the Office of Personnel Management (OPM) and FTC websites to learn when funds have been appropriated, and to return to work on their next regular duty day. If employees have problems returning to work on the day specified, flexibilities available to supervisors include telework, adjustments to regular work schedule, or the use of annual leave, compensatory time off, or credit hours.

Estimated Time to Complete Shutdown

Most of the activities associated with the orderly shutdown of the agency's operations, including securing the agency's IT infrastructure and its records and notifying employees of the furlough, should take no longer than a half-day. It may, however, take another half-day, or more, of work by a substantial number of agency lawyers and support staff to properly address the agency's law enforcement docket for the competition, consumer protection, and other matters pending in litigation. These activities will include notifying the courts and parties involved in certain agency matters of the cessation of normal business and negotiating suspensions of those actions; securing massive files and databases containing PII and confidential, proprietary business information; and cancelling meetings, workshops, conferences, and hearings. In any event, furloughs will be issued on a rolling basis as soon as each employee completes his or her shutdown activities.

Immediately upon learning of an absence of appropriations, the Chair or the Executive Director will notify all bureau, regional, and office heads. These individuals, in turn, will notify their staffs orally or by email. Those employees in a travel status, including those overseas on short- and long-term assignments, will be contacted and instructed, as appropriate, either to stay where they are (although in a furloughed status) or to return to their duty stations at the earliest practicable opportunity. The Human Capital Management Office (HCMO) will prepare, for the appropriate signature, a notice to all staff informing them of a furlough in accordance with applicable law and OPM guidance. Employees on approved leave will be notified that all leave is cancelled for the duration of the shutdown and that they are expected to perform any necessary orderly shutdown activities (including receipt of a furlough notice) on the first workday the employee is scheduled to work after the lapse commences. These notices will be distributed via email. Excepted employees in HCMO and the Financial Management Office (FMO) will process personnel and pay records in connection with furlough actions at the earliest practicable opportunity. If appropriate, HCMO will notify the National Archives and Records Administration to arrange for orderly transfer of custody of the personnel records to the National Personnel Record Center (Civilian Records), for caretaking and protection of the records. HCMO will notify Union representatives of the furloughs and engage in impact and implementation bargaining as appropriate.

Employees responsible for law enforcement matters in litigation will, in the cases where there is no immediate risk to life or property, notify opposing parties and the courts of the government shutdown and attempt to negotiate suspensions of dates for hearings and filings. In connection with its merger and consumer protection enforcement work, as well as its economic research functions, the agency maintains huge databases and vast volumes of paper records that contain confidential information, including PII and company proprietary information. Agency employees responsible for those cases and research, along with those charged with maintaining the agency's records and files, will perform necessary tasks to secure and

protect this confidential information. If the suspension is prolonged, this work will require that all case and investigation files be reviewed and secured in an appropriate fashion, such as documenting the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled once funds have been appropriated.

As part of its mission, the Commission serves the public interest by conducting research, preparing reports, and conducting advocacy. This work is conducted by holding workshops, seminars, conferences, and hearings to exchange and gather information on significant competition and consumer protection related issues. Employees responsible for scheduled events, here and abroad, will cancel those events affected by the lapse in appropriated funding and notify the public and other parties to those meetings and hearings. Staff will inform the parties that, if possible, the meetings and hearings will be rescheduled once funds have been appropriated.

Employees responsible for the agency's IT infrastructure will take action to ensure that IT assets are properly secured to protect the agency's infrastructure and data.

Execution of the Plan

Prior to taking any of the actions detailed in the FTC's shutdown plan, if a potential lapse in appropriations is imminent, the agency will determine whether it will continue operations past a lapse. The FTC will decide whether it will continue operations past a lapse in appropriations using a risk-based analysis, which will include an assessment of the impacts on FTC staff and contractors; external facts and circumstances surrounding the potential lapse; legal requirements (e.g., the Anti-Deficiency Act); guidance from OMB, OPM, etc.; the availability of funds that may be legally used during a lapse in appropriations (e.g., any prior year de-obligated balances that might be available); the costs of agency operations; risks to the agency's mission and operations; and any other relevant information that might be available. Whatever decision the agency makes will be subject to reassessment and modification should new information become available, or circumstances change. Importantly, the FTC will provide timely communications to staff regarding the agency's decisions and plans prior to, during, and after a lapse. The remainder of the information contained in this plan relates to the steps that the FTC will take to effectuate an orderly

of the lapse in appropriated funding. However, depending on the number and character of the cases pending at the time of the shutdown and whether courts will grant stays of pending actions during the shutdown, the number of excepted employees will vary daily. Should the number of excepted employees exceed 5% of the number of employees on-board at the beginning of the lapse in appropriated funding, the Commission's shutdown activities are justified in the Section entitled *Excepted Work That Will Continue During Shutdown*. See attached Tables 1-3: Table 1 – The total number of Commission employees on board at the beginning of the lapse in appropriated funding and the estimated number of excepted employees for each bureau and office; Table 2 – Excepted Employees by Category; and Table 3 – The number of active cases/matters on bureau and office dockets.

Excepted Work That Will Continue During Shutdown

The Commission is first and foremost a civil law enforcement agency, with two core goals: protecting the public from unfair methods of competition and from unfair or deceptive practices.

The Bureau of Competition (BC): On the competition side, the agency engages principally in the following activities: 1) reviewing premerger filings and conducting investigations to determine whether to challenge transactions under the antitrust laws; 2) litigating, either judicially or administratively, cases that challenge mergers or acquisitions; and 3) investigating and challenging, either judicially or administratively, anticompetitive practices that do not involve mergers or acquisitions. (See Table 1 for the number of BC employees onboard and the estimate of those employees who would be excepted.)

As to item 1) above, the HSR merger notification process establishes a statutory time limit in which the Commission or the U.S. Department of Justice (DOJ) may challenge a transaction before it is consummated. Although a failure by either agency to initiate a challenge within the statutory period does not preclude the agencies from subsequently challenging the transaction, the nature of the available relief typically changes dramatically once a merger or acquisition is consummated. To the extent that the circumstances of a reported merger or acquisition indicate that a fa

On average, it takes anywhere from three BC attorneys, one to two economists, and two administrative and technical support personnel to staff a case at the initial phase. It typically takes 15+ attorneys, two to three economists, plus five to six administrative and technical support personnel to handle each case when in litigation. The Commission's estimates for the number of staff required to support exempted competition matters depends on the status and nature of the cases in the docket at the time of shutdown. (*See* Table 3 for an estimate of active matters on BC's dockets.) All the BC employees who would be excepted from furlough during a shutdown would be exempt

For those cases already in litigation and there is a reasonable likelihood that the safety of life, or the protection of property (including the Commission's ability to obtain the monetary relief it is seeking) would be compromised in some significant degree absent immediate action, the Commission will notify opposing parties and courts of the government shutdown, and request suspensions of dates for hearings and filings. Pending court action on such motions for stay, staff may need to continue working in order to meet upcoming deadlines and protect the Commission's interests in the litigation. Should a court deny a Commission request for stays or extensions due to the shutdown, the Commission's failure to continue to pursue its claims or defenses in the litigation would be a substantial impairment of the government's legal interests and foreclose its ability to vindicate its position later. Thus, if a court denies such a request, the Commission will comply with the court's order to prevent the risk of immediate and substantial harm to the agency's claims for relief. The Commission will limit its litigation staffing to the minimum level needed to comply with the court's order and to protect life and property.

For those cases where the Commission has sought, but the court has not yet granted, a preliminary injunction, or where only a temporary restraining order is in place, staff will continue to work until the court rules on the Commission's motion for preliminary injunction. Doing so protects the Commission's ability to protect against imminent harm to property interests and to protect against substantial impairment of the government's legal interests. Once the court has ruled on the Commission's motion for a preliminary injunction, the staff will file a motion for a stay.

Pending BCP investigations will be suspended during the pendency of a shutdown, except as necessary to prevent statute of limitations from precluding the Commission's ability to obtain monetary relief or as necessary to immediately seek a temporary restraining order to prevent ongoing substantial monetary harm to consumers.

The total number of BCP employees excepted from furlough depends on the status and nature of the cases in the docket at the time of shutdown. The Director of BCP and one front office employee may be excepted from furlough to supervise this work. (*See* Table 1 for the total number of BCP employees on board and the estimated number of employees excepted from furlough and Table 3 for the total number of active BCP federal court and administrative litigations).

The Bureau of Economics (BE): As noted above, BE supports pending BC and BCP litigation. BE staff might be excepted from furlough to support ongoing litigations or critical pre-merger investigations if the courts do not grant requested extensions, which also includes the Director of BE and a limited number of front office employees to supervise the work. (*See* Table 1 for the total number of BE employees on board and the estimated number of employees exempted from furlough). Should a court deny a Commission request for an extension due to the shutdown, the Commission's failure to continue to pursue its claims or defenses in the litigation will be a substantial impairment of the government's legal interests and may foreclose its ability to vindicate its position later.

Office of General Counsel (OGC): The Office of General Counsel's major functions are representing the Commission in court and providing legal counsel to the Commission, the operating bureaus, and other offices. In the event of a lapse in appropriated funding, the General Counsel, his or her Principal Deputy or other designee, the Deputy General Counsel for Legal Counsel as needed, and up to seven other attorneys at any given time would be excepted from furlough to support excepted law enforcement personnel who would be working and to work with the Chair and the Executive Director to manage the agency during the shutdown or otherwise give legal advice relating to the shutdown.

enforcement actions during the shutdown. These individuals will manage funded IT contract support and may continue to operate during some period or entirety of the shutdown. In the absence of such contract support, they will provide direct support of the agency's intranet, collaboration, and internal communication sites; provide continuous monitoring of FTC systems; and otherwise support exempted employees' IT needs. When notice of the agency's return to normal operations is announced, exempted IT staff will coordinate the safe restoration of any IT systems that may have been affected by the lapse in appropriated funding.

Financial Management Office (FMO): The agency anticipates that several FMO employees may be exempted from furlough and required to continue to work to manage the agency's budget, finance, contracting,

Ancillary support services not previously identified will be maintained only to the extent necessary to support excepted operations. These ancillary functions, which may include very limited legislative affairs and other congressional support activities, and public affairs activities, may be conducted only to the extent the activities are necessarily implied to perform an excepted function. The Secretary to the Commission may also be excepted on a limited basis to perform responsibilities necessarily implied to support excepted activities.

Notification to the Public and Staff – The Executive Director, with the assistance of the Office of Public Affairs, will inform the public and FTC employees of the Commission’s operating status and excepted functions, as appropriate, through FTC.gov. The agency also will use FTC’s Emergency Notification System (ENS) and internal email to contact employees regarding change in status. Since excepted activities may move on and off the excepted list, FTC staff may access their email through agency-issued electronic devices on a limited basis to check for communications regarding the shutdown and whether they are being called back to perform an excepted activity but may not perform non-excepted work. The agency website will remain accessible to the public but will not be updated except on a very limited basis to support excepted functions and activities.

The Work that Will Not Be Done During the Shutdown

The Commission’s Premerger Notification Office (PNO) will be closed during the shutdown, and the Commission will not receive, accept, or process premerger notification filings under HSR, or respond to questions or requests for information or advice from outside parties.

The Commission will not process FOIA requests. It does not anticipate engaging in rulemaking; dealing with ethics issues not identified above or, unless required to do so by reason of a court not continuing litigation deadlines, defending EEO or other suits against the agency; engaging in economic research; pursuing its ongoing studies;

to permit continued performance during a shutdown period and calling home those employees would incur substantial unnecessary costs.

The Commission will stay all administrative litigation proceedings under Part 3 of the Commission's Rules of Practice and all deadlines will be extended by the number of days the agency is closed due to a lapse in appropriated funding. Similarly, all response dates for Civil Investigative Demands and subpoenas will be extended by the number of days the agency is closed due to a lapse in appropriated funding unless there is a Commission order to the contrary. This stay of administrative litigation would also apply to all appeals taken before a Commission administrative law judge or before the Commission itself under the Horseracing Integrity and Safety Act.

The agency will not undertake records management functions beyond those necessary to shut down. Nor will it process personnel actions, update policies and procedures, conduct internal controls reviews and audits, engage in labor management negotiations, provide training, work on new database applications, test new applications, work on IT initiatives, or undertake other than emergency building

Table 1: FY2023 Federal Trade Commission Contingency Plan

FTC Bureaus and Offices with Excepted Personnel			
Bureau / Office	Authorized FTE	Excepted Total (Max)	Excepted Percentage (Max)
Bureau of Consumer Protection	459	69	15%
Bureau of Competition	416	208	50%
Bureau of Economics	120	11	9%
Office of General Counsel	56	15	27%
Office of the Executive Director	164	77	47%
Chair, Chief of Staff, and the Commissioners	37	15	40%
Other Offices	136	12	9%
<i>Commission Wide (all Bureaus & Offices)</i>	1388	407	29%

