

**Shutdown of Federal Trade Commission Operations
Upon Failure of the Congress to Enact Appropriations
February 12, 2019**

Background

This is the plan of the Federal Trade Commission (FTC or Commission) for dealing with a circumstance in which the Congress fails to enact regular appropriations, a continuing resolution, or needed supplements with a consequent interruption of fund availability. The plan is consistent with OMB Memorandum M-18-05 *Planning for Agency Operations during a Potential Lapse in Appropriations* (January 18, 2018); OMB Circular No. A-11 (2018); OMB Bulletin M-95-18 transmitting 8/16/95 Department of Justice opinion, (August 22, 1995); OMB Memorandum M-13-22, *Planning for Agency Operations in the Absences of Appropriations* (September 17, 2013); OMB Memorandum *Agency Operations in the Absence of Appropriations*, (October 5, 1990); OMB Bulletin No. 80-14, Supplement No. 1, *Agency Operations in the Absence of Appropriations*, (August 20, 1982); OMB Memorandum, *Agency Operations in the Absence of Appropriations*, (November 17, 1981); and OMB Bulletin 80-14, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*, (August 28, 1980).

Summary of Plan

In the absence of appropriations, federal agencies may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. Federal agencies may incur obligations as necessary to protect life or property and for the orderly termination of the agency's functions, but funds may not be disbursed. If the agency determines it is necessary to close the FTC's operations because of a lack of necessary funding, the agency will only continue the following categories of activities:

1. Those functions that have a continuing source of funding;
2. Those functions that are necessary to prevent an imminent and significant threat to the safety of human life or the protection of property;
3. Those functions for which authority to continue during an appropriations lapse arises by necessary implication, including those involved in the orderly shutdown of operations and those in support of excepted activities; and
4. Those functions for which there is express authorization by law to continue during a lapse in funding.

All Commission employees shall be furloughed except when performing any of these enumerated functions and activities. Because Commissioners are Presidentially appointed, Senate-confirmed Officers of the United States who are paid an annual salary that is not dependent on the hours or days they work, they are excepted from furlough because of a shutdown. Accordingly, the Commission's Chairman and its Commissioners may continue to work, but will not be paid until funds have been appropriated. 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 data bases 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 Chairman 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 annual 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 that they be 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 events scheduled, 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

An Executive Committee consisting of the agency's Executive Director, the Chairman's Chief of Staff, the General Counsel, and his Principal Deputy, and the Directors or Deputy Directors of the Bureaus will meet each day to make recommendations to the Chairman regarding which excepted employees may be furloughed or whether employees must be excepted from furlough and called to work to meet the demands of law enforcement actions to protect against immediate harm to life or government property interests or protect the Commission's excepted personnel, property and IT infrastructure. *See* discussion immediately below.

Although the Commission will not know for certain how many employees will be required to be excepted from furlough until a shutdown is announced, what is certain is that the Commission will only do that which it must do to effectuate the shutdown, to

protect the Commission's excepted personnel, property, and data, and to conduct essential law enforcement activities that are mandated by law and required to protect against an imminent threat to life or property. The Commission will except from furlough only those lawyers, economists, and support staff necessary to perform the excepted functions and activities enumerated above. After the initial half-day period estimated as necessary to effect an orderly shutdown, at any given time the number of employees that could be excepted from furlough and required to report for duty might exceed 5% of the total number of Commission employees on-board at the beginning of the lapse in appropriated funding. However, depending on the number and character of the cases pending at the time of the shutdown, whether courts will grant stays of pending actions during the shutdown, and the need to handle Hart-Scott-Rodino Antitrust Improvements Act (HSR) filings described in detail below, the number of excepted employees will vary on a daily basis. 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 average number of HSR filings per week and 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 consumers and promoting competition.

The Bureau of Competition (BC): On the competition side, the agency engages principally in the following activities: 1) accepting premerger notification reports under the HSR; 2) reviewing premerger reports and conducting investigations to determine whether to challenge reported transactions under the antitrust laws; 3) litigating, either judicially or administratively, cases that challenge mergers or acquisitions; and 4) 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 on board and the estimate of those employees who would be excepted).

As to item 1) above, the Commission has coordinated with the Department of Justice (DOJ) on how they will handle the agencies' joint statutorily-mandated responsibility to accept HSR filings. (See Table 3 for estimated HSR filings). The Commission's Premerger Notification Office (PNO) will be open under modified conditions. The PNO will have a limited number of staff on duty to accept new filings and to organize those filings, but will not respond to questions or requests for information or advice. In addition, to minimize the intervals between excepted PNO functions, the hours of operation may be reduced. If operating hours are reduced, the hours of operation will be posted on the FTC's website.

As to item 2) above, the HSR establishes a statutory time limit in which the Commission or the Department of Justice 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 ever challenging the transaction, the nature of the available relief changes dramatically once a merger or acquisition is consummated. To the extent that 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, the Commission will continue HSR investigations during the pendency of a shutdown.

As to items 3) and 4) above, non-merger investigations will be suspended during the pendency of a shutdown, except as necessary to prevent statute of limitations from precluding monetary remedies available to the Commission. As to litigated matters, in cases in which preliminary relief has already been obtained or where there has been no plan to seek preliminary relief, Commission attorneys will notify opposing parties and courts of the government shutdown, and request suspensions of dates for trials, hearings and filings, or similar relief to preserve the government's claim. 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 an extension 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 at a later date. Thus, if a court denies such a request and orders a case to continue, 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.

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 because they are necessary to protect life and property. A small number of employees would also be excepted from the furlough because they are engaged in activities that are necessarily implied by law. In this regard, the HSR requires parties to notify the Commission and the Department of Justice before they may consummate certain proposed mergers and acquisitions. The HSR form must be delivered to, and date stamped by, the agencies. Once those documents are delivered to the Commission, they must be reviewed and processed – and where appropriate, investigated – within a statutory deadline to determine whether the US Government has a cognizable interest in challenging the transaction before it is consummated.

The Bureau of Consumer Protection (BCP): On the consumer protection side, the Commission works to protect consumers from deceptive (and often fraudulent) and unfair practices in the marketplace. The Commission frequently file cases in

federal district courts seeking preliminary and permanent injunctive relief to immediately halt illegal acts and practices in or affecting commerce and seeking equitable monetary relief to provide redress to injured consumers and disgorge ill-gotten gains to the U.S. Treasury. The Commission also files actions in federal court seeking civil penalties for violations of rules and orders. Emergency relief is frequently needed for these cases to stop such harmful deceptive acts and to prevent the dissipation of assets or the continuation of harm that would prejudice the government's property interest in the claim if it were unable to secure an asset freeze or TRO.

At any given time, attorneys from BCP, which includes staff in Headquarters and in the eight Regional Offices, are actively litigating numerous cases in federal district courts throughout the country and administrative courts in Washington, DC. (*See Table 3* for an estimate of BCP's active federal court and administrative litigations). As with the cases in BC's docket, BCP cases vary tremendously in terms of where they are in the lifecycle of litigation, from cases where complaints and requests for preliminary relief have just been filed or are about to be filed, to cases that are approaching significant deadlines, such as discovery cut-offs, summary judgment deadlines or trial on the merits. The complexities of cases vary, but the typical case is staffed by two to four BCP attorneys and one investigator or paralegal, as well as outside experts as needed. One or more agency economists may also assist in assembling the evidence for trial and sometimes providing expert testimony at trial. Each supervisor in the litigating Divisions and Regions manages several active BCP litigations, and for every case that continues during a shutdown, it is essential that a supervisor who is familiar with that matter remain in order to provide continuing guidance and feedback for litigating staff.

In assessing which BCP matters will be pursued during a shutdown, BCP, in consultation with the General Counsel, will carefully review every consumer protection matter (including investigations that are nearing completion), focusing on the cases where there is the highest threat of immediate harm and on cases where the harm is ongoing.

For those cases already in litigation, but are in a stage of litigation such that there is not a reasonable likelihood that the safety of life or the protection of property would be compromised in some significant degree absent immediate action, the staff handling those cases will be furloughed. In the event there becomes 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 call back the minimum number of staff necessary to take such action.

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 an extension 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 at a later date. Thus, if a court denies such a request and orders a case to continue, 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, 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 up to three front office employees 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 on-going 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 at a later date.

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 Principal Deputy, the Deputy General Counsel for Legal Counsel as needed, and up to one other attorney at any given time would be excepted from furlough to support excepted law enforcement personnel who would be working and to work with the Chairman and the Executive Director to manage the agency during the shutdown or otherwise give legal advice relating to the shutdown.

For those cases already in litigation being handled by the OGC, including appellate litigation, the agency 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 an extension 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 at a later date. Thus, if a court denies such a request and orders a case to continue, 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. As many as two or three additional attorneys, at any given time, from the OGC might be excepted from furlough to handle such matters or any emergency appeals that might need to be filed. In addition, the Deputy General Counsel for Litigation will be excepted as needed to provide continuing guidance and feedback for litigating staff.

In addition, some small number, up to two at any given time, of the OGC employees may be excepted from the furlough to help Commission witnesses prepare should Congress schedule any hearings involving Commission staff during the shutdown.

An Agency Ethics Official will be excepted on a limited basis for the following functions: 1) provide ethics advice to Commissioners and employees who are performing excepted functions; 2) providing ethics advice to employees who are furloughed to ensure they do not engage in any activity that would violate federal ethics laws that would adversely affect their ability to work if called back to perform excepted functions; and 3) meet any deadlines required by law. Such functions are necessarily implied to allow Commissioners and staff to perform excepted functions. Excepted ethics functions do not include responding to requests by former employees seeking clearance under Commission Rule 4.1 before participating in FTC matters that were pending or directly resulted from matters that were pending during their FTC tenure, as those functions do not protect life or property from imminent harm.

(See Table 1 for the total number of OCG employees on board and for the estimated number of OGC employees excepted from furlough and Table 3 for the number of active litigations on OGC's docket).

Office of the Executive Director (OED): OED includes the Executive Director's front office, the Office of the Chief Information Officer, the Financial Management Office, the Human Capital Management Office, and the Office of the Chief Administrative Services Officer. OED's excepted staff would be those necessary to protect the lives of those excepted Commission employees who will remain at work and to protect the Commission's property, including its IT and physical infrastructure and data. In addition to the Executive Director and two of his staff, who will be excepted from furlough to oversee agency operations during the shutdown, the Commission

estimates that OED employees from its constituent offices may be excepted from furlough to engage in the below described activities. The continuation of certain of these functions is authorized in order to protect life and property. (*See Table 1* for the total number of OED employees on board and for the estimated number of OED employees excepted from furlough).

Office of the Chief Information Officer (OCIO): The agency anticipates that several OCIO employees will be exempted from furlough to continue to work to ensure the integrity and security of the agency's IT infrastructure and its availability for use by exempt employees pursuing excepted and essential law enforcement actions during the shutdown. These individuals will manage IT contract support that is funded and may continue to operate during some period of, or the entire, 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 excepted 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 excepted from furlough and required to continue to work to manage the agency's budget, finance, contracting, and travel support functions in support of the work of the exempt employees staffing continued law enforcement actions. During this time and in preparation of a return to normal operations, exempted financial management and acquisitions staff will evaluate steps to resume all paused contracts, evaluate fund and resource availability, and ensure timely payment of all vendors and ongoing contracts.

Office of the Chief Administrative Services Officer (OCASO): The Commission anticipates that several employees may be excepted from furlough to secure the Commission's two buildings in Washington, DC, provide support services for excepted employees (including securing court reporters for depositions for law enforcement matters not stayed), and ensure the security of the personnel working at those locations.

Human Capital Management Office (HCMO): The Commission anticipates that several HCMO employees may be excepted from furlough to provide continuing human resources support for the excepted agency law enforcement personnel.

Other Staff and Functions:

The Chairman, the Chief of Staff, and the Commissioners will be excepted from furlough. Attorney and economic advisors supporting individual Commissioners will be furloughed unless, in consultation with the Office of General Counsel, it is determined an advisor is necessary to support the Commissioner to perform excepted functions as enumerated above.

The Consumer Response Center operated by the Commission collects key information from, and provides key information to, consumers and law enforcement

authorities, handling tens of thousands of inquiries and complaints weekly. Complaint information collected by the Commission is entered into a secure online database within the Commission's Consumer Sentinel Network, which the agency shares with law enforcement organizations throughout the U.S., as well as Canada, and Australia. The agency also maintains the Do Not Call Registry to protect consumers from receiving unwanted commercial telemarketing calls, and for the last ten years has maintained the Spam Database to which consumers and businesses can forward unsolicited commercial email or spam that serves as the basis for the Commission's CAN-SPAM Act enforcement program. In the event of a shutdown, the Consumer Response Center will suspend operations and staff will be unavailable to respond to complaints, inquiries, or requests for information. DoNotCall.gov and all other web-based complaint intake portals, such as the Complaint Assistant, IdentityTheft.gov, and e-consumer, will suspend operations. The Consumer Sentinel Network will remain available to law enforcement organizations on a limited basis as a "necessarily implied" function in support of activities protecting life and property from imminent threat. Authorized users will be able to conduct inquiries and searches of existing data, but no new data or law enforcement registrations will be entered into the system until the agency reopens._

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 (Acting) 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 to the extent necessary, will inform the public and FTC employees of the Commission's operating status and excepted functions, as appropriate, through the FTC website FTC.gov. The agency also will use FTC's Emergency Notification System (ENS) and internal email to contact employees regarding change in status. Due to the fact that excepted activities may move on and off the excepted list, FTC staff may check 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. Content on the agency website will remain accessible to the public operating, but will not be updated except on a very limited basis as necessary to support excepted functions and activities.

The Work that Will Not Be Done During the Shutdown

During the shutdown, 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 on-going studies; issuing reports and guides; attending or conducting

workshops, roundtables, hearings or conferences; or making its views known through letters or comments to other agencies. Similarly, no staff in its Regional Offices will be available to answer inquiries from the public or do any other work that does not directly support the protection of life and property. The Commission will not work on intergovernmental task forces of which it is a part, provide testimony or engage in consumer protection education and outreach. The Commission will not pursue the vast bulk of its competition and consumer protection investigations and prosecutions.

The Commission will not engage in multilateral competition fora to promote convergence of sound competition policy choices or participate in bilateral negotiations and consultations to promote and support competition or consumer protection enforcement coordination with international partners. The Commission will not participate in the International Competition Network in which it has a leadership role, the Organization for Economic Cooperation, the United Nations Conference on Trade and Development, the International Competition Enforcement Network, or the Asia-Pacific Economic Cooperation Forum with respect to competition or consumer protection policy or enforcement issues. The Commission will not participate in or help lead the London Action Plan, a global network of industry representatives and law enforcement agencies from more than 20 countries that works together to fight spam, phishing, and other online threats. Nor will the Commission coordinate with Canada on cross border fraud. It will call home those employees who are providing technical assistance to new and emerging foreign competition and consumer protection agencies except those employees who are providing long-term technical assistance under an existing USAID award that has adequate previously-obligated funding 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 proceeding 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.

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 maintenance and support. Additionally, while the agency's website, www.ftc.gov, will be available, it will not be updated.

* * *

In sum, upon the agency's determination that it is necessary to close the FTC's operations because of a lack of necessary funding, the Commission will promptly commence an orderly shutdown during which it will review its cases in litigation and will attempt to secure stays or extensions. Where it is unable to obtain such relief, staff will be excepted from furlough to litigate those cases. In addition, the Commission will except from furlough only those lawyers, economists, and support staff necessary to

continue pre-merger investigations with statutory deadlines and law enforcement litigation in order to protect the government's interest in the legal positions it had advanced or where there would be a significant, immediate harm to life or property if such action were not continued or taken. Finally, only such support staff as are necessary to support the activities of and to protect the excepted law enforcement personnel, the Commission's physical and IT infrastructure and data will be excepted from furlough.

Table 1: FY 2019 Federal Trade Commission Contingency Plan

FTC Bureaus and Offices with Excepted Personnel			
Bureau / Office	Authorized FTE	Excepted Total	Excepted Percentage
Bureau of Consumer Protection	426	50 - 70	12% - 16%
Bureau of Competition	305	80 - 120	26% - 39%
Bureau of Economics	107	30 - 40	28% - 37%
Office of General Counsel	50	7 - 11	14% - 22%
Office of the Executive Director	133	30 - 56	23% - 42%
Chairman, Chief of Staff, and the Commissioners	40	6 - 15	15% - 38%
Other Offices	79	3 - 10	4% - 13%
<i>Commission Wide (all Bureaus & Offices)</i>	1140	236 - 378	21% - 33%

Table 2: FY 2019 Federal Trade Commission Shutdown Plan Excepted Employees by Category

Categories	Employees Excepted from Furlough
Category 1	0
Category 2	0
Category 3	≤ 10
Category 4	0
Category 5	262

Category 1 = Employees whose compensation is financed by a resource other than annual appropriations.

Category 2 = Employees necessary to perform activities expressly authorized by law.

Category 3 = Employees necessary to perform activities necessarily implied by law (including presidentially appointed, Senate-confirmed employees and the Director of the SMART Office in OJP).

Category 4 = Employees necessary to the discharge of the President's constitutional duties and powers.

Category 5 = Employees necessary to protect life and property.

Table 3: FY 2019 Federal Trade Commission Additional Statistics

Categories	Total
Average number of HSR transactions reported per week	40 - 45
Bureau of Competition's docket of active matters	190 - 220
Bureau of Consumer Protection cases being litigated in federal district courts	60 - 70
Bureau of Consumer Protection's administrative litigations	0
Office of General Counsel active litigations	6