

Update: How a Potential Government Shutdown Will Impact US HSR Filings and Merger Enforcement

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In a [previous alert](#), we explained how the FTC and DOJ plan to address merger enforcement in the event of a potential government shutdown. Since then, the FTC has updated its contingency plan (the “Shutdown Plan”) in January 2024 (see [here](#)).¹ Based on this new Shutdown Plan, the implications of a potential shutdown would be quite significant for parties looking to engage in M&A activity that falls within the Hart-Scott-Rodino (“HSR”) reporting requirements. These changes are summarized below.

Key Takeaways

1. Unlike the previous Shutdown Plan issued by the FTC, in the event of a shutdown and lapse of three weeks’ worth of leftover funds from FY2023’s budget:
 - a. The FTC will **halt the acceptance** of HSR filings.
 - b. The FTC’s Premerger Notification Office (“PNO”) **will not** operate. The PNO will also not respond to questions or requests for information.
 - c. Pre-filed HSRs or HSRs filed with the DOJ may be investigated by the FTC in exceptional circumstances, but the agency is likely to issue broad Second Requests to secure its rights and remedies.
 - d. The FTC will suspend any non-merger investigations, except when the statute of limitations will be implicated for securing monetary remedies.
2. The agencies’ ability to conduct its affairs would also be significantly impacted in the following ways:
 - a. Up to approximately 50% of personnel at the FTC’s Bureau of Competition and 40% of personnel at the DOJ Antitrust Division may be furloughed. This would likely slow the pace of merger investigations.

¹ The DOJ has not revised its position since September 2023 (see [here](#)). The DOJ shutdown plan is silent as to the acceptance of HSR filings.

- b. In litigated matters, the agencies may seek extensions of any trial dates, hearings or filing deadlines. However, if relief is not granted, the agencies will continue to litigate matters as scheduled.
- c. The FTC will extend the deadline of any Civil Investigative Demand. The DOJ may take a similar approach but has not stated so publicly.

Potential Impact on Duration of Merger Investigations

By indicating that HSR filings will not be accepted during the pendency of any government shutdown, the FTC's Shutdown Plan substantially deviates from any prior contingency plan it has released in recent memory. For example, the FTC's prior contingency plan, [released in July 28, 2023](#), indicated that the US antitrust agencies would continue to accept HSR filings in the event of a government shutdown because of their "statutorily-mandated responsibility to accept HSR filings." FTC's Director of the Office of Public Affairs, Douglas Farrar, [commented](#) on this changed posture as "do[ing] right by our staff."

Impact on Potential Filers

Parties should continue to monitor developments in Congress. In the event that a long-term funding agreement is not reached, companies may want to include provisions in their purchase agreements to account for an inability to submit HSR filings due to a shutdown.

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