

United States District Court



District of Maine

PLAN FOR THE CONTINUATION OF OPERATIONS DURING A SHUTDOWN

November 7, 2023

I. Introduction

The Federal Judiciary is currently operating under a continuing budget resolution that will expire on November 18, 2023. As of November 7, 2023, neither a continuing resolution nor an appropriations bill has been enacted to fund the federal government beyond November 18. Anticipating a possible lapse in appropriations thereafter, the U.S. District Court for the District of Maine adopts this Plan for Continuation of Operations during a Shutdown (the “Shutdown Plan”) in accordance with the principles and guidance of the Anti-Deficiency Act, [31 U.S.C.A. §§ 1341-42](#) and the Administrative Office’s [Guide to Judiciary Policy](#) (“the Guide”), Volume 13, Chapter 2, sections 230.50 through 230.50.40. The Shutdown Plan will take effect on November 18, 2023, if the U.S. Congress does not act to fund the Government before then.

II. Phase 1

Phase 1 of the Shutdown Plan begins on November 18, 2023, and will last for as long as the Judiciary has funds on hand to pay for its operations after a lapse in

appropriations.¹ During Phase 1, the Court will continue to conduct hearings, hold jury trials, process Criminal Justice Act (CJA) vouchers, pay employees, and undertake all normal operations using funds held by the Federal Judiciary. There will be no modifications to the Court's operations during Phase 1.

III. Phase 2

Phase 2 of the Shutdown Plan will begin once the Judiciary exhausts its funds from available fees and other balances. To avoid a violation of the Anti-Deficiency Act, the Court is required to adopt a formal shutdown plan limiting court operations during Phase 2 to "excepted activities," defined in the Guide, [Volume 13, Chapter 2, § 230.50.20\(b\)](#), as:

- a. Activities necessary to the exercise of the judiciary's constitutional functions (i.e., resolution of cases in which there is a constitutional or statutory grant of jurisdiction);
- b. Activities addressing emergency circumstances, such that the suspense of the function would threaten the safety of human life or the protection of property; and
- c. Activities otherwise authorized by law, either expressly or by necessary implication, including:
 - i. Constitutional guarantees (e.g., the right to counsel under the Sixth Amendment);
 - ii. Operating entitlement programs (e.g., Judiciary Survivors Annuities System); and
 - iii. Executing activities needed for an orderly shutdown of other official functions.

While the Court has discretion to determine which activities are "excepted," federal law requires that the Court limit the number of staff and contract obligations to those necessary to maintain excepted activities only. The Court must furlough any employee who is not performing

¹ Funds on hand include fees collected by the Court as well as "no-year appropriations," which are "[a]ppropriations that remain available for incurring obligations for an indefinite period or until expended." Admin. Off. of the U.S. Courts, Guide to Judiciary Pol'y, Vol. 13, Ch. 1, § 110.40.

excepted activities. The Court has established the following categories of excepted, partially excepted, and non-excepted activities:

A. Case Management

The management of cases is an excepted activity. The Court will continue to hear and decide civil and criminal cases, including conducting conferences, hearings, jury trials, and non-jury trials. Apart from pre-existing mandates, such as the requirements of the Speedy Trial Act, no distinctions or priorities will be drawn between criminal and civil cases. An exception may arise if the Department of Justice instructs U.S. Attorneys to limit their appearances to those cases essential to the protection of life or property. The judges will give careful consideration to requests for continuances or other motions necessitated by phase-down activities in other governmental agencies. New cases, both civil and criminal, will be accepted and processed in the usual manner.

B. Federal Defender and Criminal Justice Act (CJA) Panel Attorneys

The Federal Public Defender's Office will continue to provide defense services during a shutdown as needed. Functions not related to excepted activities may not be performed during Phase 2. See the Guide, [Vol. 13, Ch. 2, § 230.50.30\(i\)\(2\)](#).

Payments to Criminal Justice Act (CJA) panel attorneys, experts, and service providers will be suspended during Phase 2. During this temporary suspension, judges will continue to appoint CJA panel attorneys for eligible defendants and authorize experts and other services as the Court deems appropriate. The Court will continue to accept CJA panel attorney vouchers during Phase 2 but will not review or approve payments. The Court will resume reviewing and paying CJA vouchers when appropriated funds become available.

C. Clerk of Court Operations

1. **Excepted Activities:** The Court deems the following as excepted activities:

- a. Case Administration,
 - b. Information Technology Systems Administration, and
 - c. Judicial & Case Administration Oversight. Positions include the Clerk of Court Operations, Chief Deputy Clerk, IT Director, Operations Manager, and the Portland Deputy-In-Charge.
2. **Partially Excepted Activities.** The Court deems the following activities as partially excepted and, therefore, shall be performed at a reduced level during Phase 2 solely to support the excepted activities outlined above:
- a. Human Resource Management,
 - b. Court Reporting Services,
 - c. Processing of CJA vouchers that meet a payment exception,
 - d. Financial Management,
 - e. CM/ECF Administration,
 - f. Procurement, and
 - g. Facilities Management.
3. **Non-excepted Activities.** The Court deems the following activities as non-excepted and, therefore, shall not be performed during Phase 2:
- a. Hiring employees and related pay actions,
 - b. Promotions,
 - c. Non-essential facility improvements,
 - d. Routine non-urgent information technology improvements,
 - e. Purchasing new equipment, supplies, and contractual services other than as required to support excepted activities,
 - f. Negotiating and approving new contractual obligations,
 - g. Performing non-essential administrative tasks,
 - h. Reporting non-essential statistics,

- i. Training,
- j. Civic outreach activities,
- k. Internships,
- l. Travel, other than case-related travel, and
- m. Committee activities, e.g., District of Maine's Local Rules Committee and Criminal Law Committee.

D. Judges and Their Staffs

The work of judges and their staff is an excepted activity. All judges will continue to work full-time. Each judge may employ staff, such as law clerks and judicial assistants, which this District finds essential to the resolution of cases. Although most judges will employ their full complement of supporting personnel to perform constitutionally-mandated duties, staff will not be employed or assigned to work on ancillary projects, such as preparing materials for an article or speech or performing non-essential administrative tasks.

E. Staffing, Excepted and Furloughed Status in the Clerk's Office

The Anti-Deficiency Act requires that operations performed during a shutdown are determined based on a person's job activities and not a person's job title. The Court anticipates that employees will be placed in a combination of excepted or furloughed status depending on the needs of the Court. Employees trained in multiple functions who have expertise outside the scope of their defined position may be called upon to perform excepted activities.

Employees will be placed in furlough status when they are not required to perform excepted activities at any given time. The Government Employees Fair Treatment Act of 2019 provides that all employees, regardless of their status as furloughed or excepted, will be paid as soon as possible after a lapse in appropriations is over. Furloughed employees will not be allowed to work, enter federal court buildings other than to attend public hearings in their

capacity as private citizens, or use Court equipment, and they may not volunteer to work. The Clerk of Court may recall furloughed employees to perform excepted activities.

The Guide, Chapter 13, Volume 2, § 230.50.20, gives the Court discretion to determine what constitutes an excepted activity. The Court will assess which activities are fully excepted and which employees are needed to perform those activities on an ongoing basis. Staff will not perform functions unrelated to the excepted activities outlined in this Shutdown Plan. Some activities considered partially excepted or non-excepted may become excepted depending on exigent circumstances.

The Clerk of Court, in consultation with the Chief Judge, will determine the limited number of employees needed to perform excepted activities within 24 hours of an anticipated lapse in appropriations based on the Court's schedules and caseload. All employees needed to perform excepted activities will be required to report to work. Employees who are not required to work will be furloughed. The Clerk of Court may move employees on and off excepted work assignments based on circumstances and the length of the appropriations lapse.

F. Leave

When a lapse in appropriations occurs, all paid time off must be canceled. If an employee designated to perform excepted duties cannot work because of previously approved leave, the employee may, in the Clerk of Court's discretion, be placed in furlough status. The decision to place an employee in furloughed status due to their unavailability to work is discretionary and depends on the Clerk of Court's need for employees to perform excepted activities.

G. Wind-Down by Furloughed Employees

On the first day of Phase 2, employees subject to furloughs as directed by the Clerk of Court shall report to work to wind down any pending activities, which is expected to take a

half-day of work to complete. All employees on pre-approved work travel assignment shall return to their normal duty station.

H. New Obligations

The Court may not incur any new obligations unless essential to carry out the excepted activities described in the Guide, Volume 13, Chapter 2, § 230.50.10(b).

Dated: November 7, 2023

/s/ Jon D. Levy
CHIEF U.S. DISTRICT JUDGE