



United States Courts for the District of Montana Plan for Managing Operations During a Lapse in Appropriations

1. Introduction

Pursuant to the requirements set forth in the *Guide to Judiciary Policy*, Vol. 13, Ch. 2, § 230.50(c), the District of Montana adopts the following plan for managing court operations during a lapse in appropriations. A lapse in appropriations occurs when:

(a) neither an annual appropriation act nor a Continuing Resolution ("CR") is enacted before the beginning of a fiscal year, or

(b) a CR expires during the fiscal year and is not replaced by a new CR or a full-year appropriation.

As set forth here, the court will operate in two phases during a lapse in appropriations.

2. Phase I

Phase I of a lapse in appropriations is the period when balances from fees and no-year appropriations are available to fund judiciary operations. During Phase I, the court will defer incurring expenses that are not mission critical. See: § 230.50.10. During Phase I, the court will maintain normal operations with the following exceptions as recommended by the *Guide*:

a) Human Resources (HR): While some actions may be delayed or deferred (e.g., new hires and promotions) as not necessary to the performance of mission-critical responsibilities, any previously made offers of employment will be honored. For vacancies still in the recruitment stage, except those positions that are mission-critical, HR offices will delay making employment offers until appropriations are in place. Whether a position is mission-critical will be determined by the district executive.

b) Travel

i. Non-essential travel will be postponed. Essential travel includes:

- (A) case-related travel;
- (B) travel related to authorized judicial meetings;
- (C) other mission-critical activities, including travel between divisional offices and to conduct naturalization ceremonies;
- (D) travel to supervise defendants who have been released on conditions pending trial or sentencing; and

- (E) travel to supervise offenders under supervised release or parole, and to provide treatment services.
- (F) Travel for previously scheduled training may continue if class registration is non-refundable.
- (G) Travelers should book fully refundable transportation tickets.
- (H) Funds that have been obligated for travel that is cancelled or postponed, including individual and blanket travel authorizations, should be de-obligated immediately.

c) Procurement: New procurement actions will be awarded only for mission-critical requirements.

d) Facilities and Security

- i. The Clerk's Office will notify the General Services Administration (GSA) that the court will operate under Phase I. The Clerk's Office will contact the local building manager for information about the impact on building services and building projects.
- ii. The Clerk's Office will work closely with the United States Marshals Service and Federal Protective Service (FPS) staff on security issues. Deputy U.S. Marshals, court security officers, and the FPS will continue to provide the judiciary with the requisite level of security based on the level of activity at a particular facility.

e) Financial Matters

- i. The Clerk's Office will review unliquidated obligations (e.g., contracts, reimbursable work authorizations (RWAs), travel authorizations) and deobligate balances where appropriate. See: § 280.60.50 (Review of Outstanding Commitments and Unliquidated Obligations) and § 280.60.60 (Review of Prior Years' Unliquidated Obligations).
- ii. The Clerk's Office will continue to submit a monthly status-of-funds report.
- iii. Payments to CJA panel attorneys and CJA service providers may be delayed during Phase I if, immediately prior to the lapse in appropriations, CJA payments are subject to delay due to a shortfall in the Defender Services account.

3. Phase II

Phase II of a lapse in appropriations occurs when balances from fees and no-year appropriations are exhausted before Congress acts to fund judiciary operations, and the judiciary has no available funds to continue operations. During Phase II, the court will reduce operations to perform only "excepted activities" to avoid violations of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42. During this time, the District Executive will determine the excepted activities necessary to continue operations pursuant to the *Guide to Judiciary Policy*.

a) Definition: The *Guide to Judiciary Policy* Vol. 13, Ch. 2, § 230.50.20(b) defines "excepted activities" as:

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

b) Operations During Phase II: The district executive shall treat as excepted activity any process or function that is necessary to the exercise of the court's constitutional functions; that addresses emergency or potential emergent circumstances or protects public safety; that protects constitutional guarantees; that secures judiciary resources or property; or that provides necessary support services for judges and staff performing this excepted work.

- i. **Review of Staffing:** The district executive shall, on a weekly basis, designate for furlough status any staff not needed to carry out the excepted activities listed above. Furlough designations shall be entered in HRMIS. As the court units of this district are, as of the signing of this plan, collectively operating at 77 percent of full staffing formula requirements, it will not likely be possible to complete and support excepted activities without all such staff.
- ii. **Contractual Services:** The district executive shall limit contractual services to those needed to perform excepted activities. Examples of those contract services are:
 - A. Contract court reporters;
 - B. Contract court interpreters; and
 - C. IT contract services to maintain operations;
- iii. **Probation and Pretrial Services:** Pretrial and postconviction supervision will continue, as will the preparation of bond reports and pre-sentence investigation reports as required by the court calendar. Any support services necessary for the continuation of these excepted activities will also continue.
- iv. **Court Hearings:** Case-related conferences, hearings, jury and non-jury trials, and appellate arguments will continue to be conducted, and the court will accept new cases for filing. Ceremonial proceedings such as naturalization ceremonies will not be held.
- v. **Jurors:** The court will continue to summon jurors and administer the jury system as well as provide all necessary services to both petit and grand juries. Jurors will not be paid until Congress enacts legislation to fund judiciary operations. *Guide*, Vol. 13, Ch. 2 § 230.50.40 (d)(1)(A)(i)-(iii) (Certification and Disbursement of JIFMS Payments)).
- vi. **CJA Functions:** The court will continue to appoint CJA panel attorneys as authorized by 18 U.S.C. § 3006A for eligible persons, and authorize expert and other services, as appropriate.

- A. The Court will continue to accept CJA vouchers submitted by panel attorneys, experts, service providers, and court reporters, including those for any other eligible CJA expenses. CJA vouchers will not be processed for disbursement unless they meet a payment exception.
 - B. Once funding is available, the submitted vouchers will be reviewed and approved as appropriate for payment consistent with procedures. CJA vouchers will not be reduced based on the status of the judiciary's appropriations or because of a shutdown.
 - C. The Federal Defender Program staff and CJA court-appointed counsel will continue to provide defense services during a shutdown as needed.
- vii.** Leave:
 - A. Any furloughed employees may not be charged leave, except where an employee is on extended leave without pay before the shutdown furlough (e.g., a one-year period of leave without pay for military duty).
 - B. An employee who is on extended leave without pay before the shutdown furlough will generally remain in that status during the shutdown. If the employee is scheduled to return from leave without pay during the furlough period, the employee should be placed in a furlough status at the end of the leave without pay period (unless the employee is deemed excepted).
 - C. Furloughed employees (i.e., not performing excepted activities) are not permitted to work or volunteer to perform non-excepted activities for the judiciary during the Phase II shutdown.
 - D. Employees performing excepted activities may request leave. Any leave requests should be assessed and approved according to the District of Montana Employee Manual and the *Guide*, Vol. 12, Ch. 9 (Leave and Attendance).
- viii.** Salary: Employees will not receive regular salary payments. Once Congress enacts an appropriation ending the appropriations lapse, all employees (whether furloughed or excepted) will be paid for all hours in a pay status or on furlough at the earliest date possible. See 31 U.S.C. § 1341(c)(2).
- ix.** Procurement and Interagency Agreements:
 - A. Contracts Funded Before Phase II: Performance under any fully funded contract may continue during Phase II, regardless of the nature of the contract activity.
 - B. New Procurement Actions: Contracts, task orders, interagency agreements, contract options, and incrementally funded contracts must be deferred unless they are required to perform an excepted activity, and then only to the minimum extent necessary to perform that excepted activity.
- x.** Facilities and Security
 - A. The Clerk's Office will notify the General Services Administration (GSA) that the court will operate under Phase II. The Clerk's Office will contact the local building manager for information about the impact on building services and building projects.
 - B. The Clerk's Office will work closely with the United States Marshals Service and Federal Protective Service (FPS) staff on security issues. Deputy U.S. Marshals,

court security officers, and the FPS will continue to provide the judiciary with the requisite level of security based on the level of activity at a particular facility.

- C. Current and ongoing construction projects that have already been funded may continue.
- D. New RWAs and modifications to RWAs may only be issued for work necessary to perform excepted activities, including RWAs for overtime utilities. The amount obligated on a RWA or modification must be limited to amounts necessary to perform the minimal level of work for an excepted activity.

- xi.** Financial Matters: Certification and Disbursement of JIFMS Payments. Most payment processes, including approving, certifying, and disbursing, do not qualify as excepted activities. Exceptions exist for situations where payments relate to activities necessary for the exercise of the judiciary's constitutional functions or are otherwise authorized by law. These exceptions include the issuance of payments for:

- A. registry;
- B. restitution; and
- C. entitlement programs for which an appropriation provides funding (e.g., Judicial Officers Retirement Fund).

All other payments not qualifying as excepted activity, including payments to liquidate obligations made before Phase II or for performance of excepted activity during Phase II, will be delayed until an appropriation is in place. These include the issuance of payments to:

- A. CJA panel attorneys;
- B. CJA-related service providers;
- C. grand and petit jurors for attendance fees and routine travel-related allowances;
- D. contract court reporters and interpreters;
- E. commercial vendors for goods and services procured;
- F. unclaimed fund payees; and
- G. judiciary personnel for travel-related or miscellaneous reimbursements.

- xii.** Receipting and Depositing: Staff will continue to receipt and deposit funds collected for filing fees and registry deposits as authorized by court order and consistent with the court's shutdown plan. The Clerk's Office will complete the month-end reconciliation process, including preparation of the monthly AO 274, AO 274S and AO 183 reports. While the submission of a status of funds report to the AO is not required during Phase II, staff will prepare this report and provide it to the district executive for approval.

- xiii.** Travel: Staff and judges may travel only to perform excepted activities (e.g., case-related travel and travel for pretrial or postconviction supervision). Staff performing excepted activities may use government travel cards — centrally billed accounts as well as individually billed accounts — to charge travel-related expenditures while on official travel. Travel reimbursements will be delayed until Congress enacts legislation funding judiciary operations. All travelers must be informed of this delay. *Guide* Vol. 13, Ch.2, § 230.50.40(d)(1)(A)(iii) (Certification and Disbursement of JIFMS Payments).

- xiv.** Mail Processing: Staff will continue processing incoming mail and accepting packages from couriers, which may include case filings, filing fees, and property in need of safeguarding.

- xv.** Internal Controls: During a lapse in appropriations, the potential for errors under modified operations can increase. Therefore, the Clerk's Office will not curtail or discontinue any internal controls. Should additional internal control procedures be needed, they will be documented (e.g., memorandum to the file or email to relevant staff).
- xvi.** Information Technology: IT systems necessary to perform excepted activities will continue to operate uninterrupted (e.g., CM/ECF, eVoucher, JIFMS, HRMIS, email). Help desk, supervisors, system and network administrators, and programmers must work to keep all systems and courtrooms operational.
- xvii.** Training: Law enforcement safety and firearms training will continue during Phase II. All other training will be discontinued.
- xviii.** Chambers Staff: Each judge is the appointing officer for his or her law clerks and judicial assistants. In light of the substantial work required for case-related conferences, hearings and trials, and as new cases are still being accepted, judges are likely to need chambers staff to remain working actively. Any judge that determines staff is not excepted shall notify the district executive in writing.
- xix.** Interns/Externs: Interns and externs do not perform excepted work and will be furloughed during any lapse of funding in Phase II.

The district executive shall review this plan on an annual basis. Such review shall be documented, and the plan modified as necessary.

Adopted this 30th day of September, 2025.



Brian Morris
Chief United States District Judge



Benjamin P. Hursh
Chief United States Bankruptcy Judge