

**UNITED STATES DISTRICT AND BANKRUPTCY COURTS  
DISTRICT OF IDAHO**

**In Re:**

**CONTINUATION OF COURT  
OPERATIONS DURING LAPSE  
IN APPROPRIATIONS**

**General Order No. 338**

**Policy, Guidance and Statutory Authority**

In the event of a lapse in appropriations, the Judiciary normally has sufficient resources to continue operations for a brief period (approximately three (3) weeks) by using available fee and no-year balances to pay judges and court employees and maintain all operations. During this period, the Courts will continue to operate while attempting to conserve costs as much as possible by delaying or deferring expenses not critical to the performance of the Courts' Constitutional responsibilities.

After this initial period, if there has been no resolution to the monetary shortfall, the Courts will operate under the terms of the Anti-Deficiency Act, which allows "essential work" to continue during a lapse in appropriations. Among the definitions of "essential work" are powers exercised under the Constitution, which include activities to support the exercise of Article III judicial powers, specifically the resolution of cases. The *Guide for Judiciary Policy*, Volume 13, Chapter 2, (incorporated by reference herein) sets forth Guidelines for the Courts to determine what personnel are necessary for the continued provision of essential services, but leaves the actual decision for the retention of personnel to each Court.

**§ 220.30.10 – Continuation of Activities during a Lapse in Appropriations**

In the event that balances from fees and no-year appropriations are exhausted, a limited number of employees would be called upon to perform essential work, while all others would be furloughed until new funding is provided. Also, depending on the nature of each contract, the services of contractors would have to be similarly curtailed.

**"Essential Work" Defined**

- (a) Because the spirit of the Anti-Deficiency Act requires a very narrow interpretation regarding the performance of other functions by judicial branch personnel during a shutdown period, the only work considered essential and thus permissible includes:
  - (1) activities necessary to support the exercise of the Article III judicial power, i.e., the resolution of cases in which there is a constitutional or statutory grant of jurisdiction;

- (2) emergency activities necessary for the safety of human life and the protection of property; and
- (3) activities otherwise authorized by law, either expressly or by necessary implication, including:
  - (A) items guaranteed by the Constitution;
  - (B) activities funded with no-year appropriations (e.g., jury system, information technology resources);
  - (C) entitlement programs (e.g., Judicial Survivors Annuities System, which is partly funded by judges' salaries); and
  - (D) minimal activities needed for an orderly shutdown of other official functions.

According to the *Guide for Judiciary Policy*, this means that Article III and bankruptcy activities should continue, as should most activities of the Probation office. The Courts will exercise its discretion in determining which work is sufficiently related to the above activities to continue during a shutdown. All other activities should be deferred or suspended until funding is restored.

- (b) The Courts will continue to (1) hear and decide cases without interruption; (2) process all old and new cases; and (3) issue and enforce judgments, according to normal schedules and priorities. The Courts will continue to provide all essential case support with the services of judges, clerks, and others.

(1) Most proceedings and deadlines will occur as scheduled. In cases where an attorney from an Executive Branch agency is not working because of the shutdown, hearing and filing dates may be rescheduled.

- (c) Staff will only perform essential functions as set forth in this General Order. The Courts will furlough, i.e., placed in a temporary non-pay, non-duty status because of lack of funds, any employees who perform duties that are not authorized by this plan. Judiciary employees not performing essential activities will not be able to work, volunteer for the court unit, or take any annual or sick leave during a lapse in appropriations. If any employees are to be furloughed, they must first have sufficient opportunity to protect and secure Courts' property.
- (d) Employees performing essential functions will report to work in a non-pay status.

**Continuation of Article III Judge, Bankruptcy Judge, Magistrate Judge, Clerk of Court, Probation and Pretrial Services Activities** - U.S. Courts should continue to hear and decide cases without interruption. Thus, all cases including civil and criminal, old and new should be processed and argued, and judgments should be issued and enforced, according to normal schedules and priorities. All essential case supporting services from magistrate judges, clerks, probation officers and others will be provided.

### **§ 220.30.15 Article III Judges and Their Staffs**

- (a) Under the Constitution, Article III judges are entitled to their salary and will continue to work regardless of any lapse in appropriations. The judiciary must seek authorization from the Secretary of the Treasury to issue salary payments to Article III judges during a government shutdown.
- (b) Each judge may employ staff, such as law clerks and secretaries, and utilize court reporters, who are not part of the judge's staff, which in the court's opinion are essential to the resolution of cases. Generally, any staff needed to perform regular case-resolution activity will be on a non-pay status and must perform their duties as usual.

### **§ 220.30.20 Bankruptcy Judges and Their Staffs**

- (a) These courts, as "units" of the district courts, should continue those operations that may be considered part of the exercise of the judicial power of the United States or which preserve life or property.
- (b) Bankruptcy judges' salaries are fixed by statute ([28 U.S.C. § 153](#)); hence, they may not be furloughed without pay and should continue to work during an appropriations lapse. The judiciary must request the Secretary of the Treasury to authorize bankruptcy judges' salaries during a government shutdown. If not authorized, bankruptcy judges' salaries would be paid retroactively upon the enactment of the judiciary's appropriations act.
- (c) The court may determine the degree to which bankruptcy judges' staff is needed to continue the performance of essential functions.
- (d) Each bankruptcy judge should, to the extent practical, hear arguments and issue orders and judgments only in adversary proceedings, other controversies, or where essential to protect property.

### **§ 220.30.25 Magistrate Judges and Their Staffs**

- (a) Magistrate judges may not be furloughed without pay since their salaries are fixed by statute ([28 U.S.C. § 634](#)) and therefore should continue to work during an appropriation lapse. The judiciary must request the Secretary of the Treasury to authorize magistrate judges' salaries during a government shutdown. If not authorized, magistrate judges' salaries would be paid retroactively upon the enactment of the judiciary's appropriations act.
- (b) The court may determine the degree to which magistrate judges' staff is needed to continue the performance of essential functions. Staff whose services are not essential, as defined in [§ 220.30.10\(a\)](#) should be furloughed. All routine judicial activities performed by magistrate judges, from the conduct of preliminary hearings to the exercise of delegated trial authority, will continue.

### **§ 220.30.30 Clerks of Court and Their Staffs**

- (a) The courts may determine what portion of the Clerk's Office staff is needed to support the courts in case-resolution activity, including the proper and timely

processing of all filings, motions, orders, emergency applications, and other litigation documents. Fees and costs will continue to be collected and deposited into the Treasury. New cases, including both civil and criminal, will be accepted and processed in the normal manner. Clerks and their staffs will continue regular administration of the jury system and provide all necessary services to both petit and grand juries, including payment of jurors in accordance with pre-existing procedures.

- (b) Clerk's Office functions that are not related to essential activities are not to be performed.

**§ 220.30.35 and 220.30.40 Probation & Pretrial Services Offices**

- (a) Most activities of Probation offices should continue. If delayed, certain activities would pose a threat to the safety of human life and protection of property. Thus, supervision of potentially dangerous offenders should be maintained and needed treatment services should be provided. Even in non-emergency situations, however, a Probation office should continue to handle new cases or maintain existing cases, as necessary, to assist the courts in implementing their orders and judgments.
- (b) Each Probation office may determine the number of Probation staff necessary to maintain service to the courts in support of essential functions.
- (c) As with Clerk's Offices, functions not related to the exercise of essential activities should be suspended.

**Suspension of all Non-Essential Activities**

If a funding lapse occurs, all travel not involving court proceedings or directly connected with "essential" activity will be deferred. There will be no acquisition or procurement of new equipment or non-essential supplies. There will be no hiring of additional personnel. All meetings and conferences will be postponed. All training of court personnel will be postponed and all ancillary projects will be suspended with the exception of mission-critical training required by the A.O. for Probation Officers or Clerk's Office staff.

**Court Structure, Unique Circumstances and Rationale**

The District of Idaho is one of only five (5) consolidated District and Bankruptcy courts in the nation. This means that wherever possible, Clerk's Office employees perform both operational and administrative duties for both court units. In addition, the District of Idaho also has a shared administrative services structure in which the Clerk's Office and Probation Office share such functions which include, but are not limited to: administration, budget, finance, procurement, internal controls, and human resources. Employees working within the shared administrative services areas support the work of three (3) court units.

Furthermore, the District of Idaho serves the entire state with only two (2) authorized District judges, one (1) senior District judge, two (2) Magistrate judges, and two (2) authorized

Bankruptcy judges. This situation is further complicated by the vast geographic distances, which separate the three (3) places holding court. Therefore, because of the above-described consolidated and shared services court structure, these factors necessitate that the majority of courts' staff perform a multitude of job functions and tasks simultaneously.

### **Court Analysis and Determination**

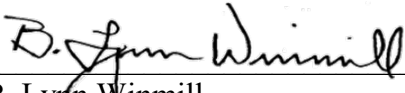
After conducting an in-depth and comprehensive review and analysis of the current courts employees, the Courts have concluded that presently there is no employee whose sole job function falls outside of the accepted criteria used in making the determination that a particular individual is "essential" in performing the Courts' Constitutional responsibilities.

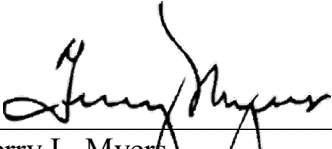
The Probation Office for the District of Idaho has compiled a comprehensive Shutdown Plan, attached hereto, which is incorporated by reference and made part of this Order. Based on the facts, assertions, assessment and conclusions contained in that Shutdown Plan, the Courts also deem that all employees of the Probation Office are considered "essential" in performing the Courts' Constitutional responsibilities.

THEREFORE, IT IS HEREBY ORDERED THAT because of the unique circumstances that exist in the District of Idaho, the Courts in the exercise of its discretion, after a fair and honest assessment of all available guidelines and criteria, has determined that each member of the District of Idaho Court staff, including all chambers staff, all Clerk's Office staff, and all Probation Office staff, regardless of divisional location, are hereby deemed as "essential" for the duration of any lapse in Congressional appropriations or continued operations under the terms of the Anti-Deficiency Act.

IT IS FURTHER ORDERED THAT the Courts suspend all activities not authorized in this General Order. These activities may include, but are not limited to the following: (1) hiring employees and related pay actions; (2) purchasing equipment, supplies, and contractual services; (3) entering into new contractual obligations; (4) performing non-essential administrative tasks; (5) compiling non-essential statistics; (6) non-mission critical training; and (7) non-essential travel.

DATED this 24<sup>th</sup> day of December, 2018.

  
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B. Lynn Winmill  
Chief District Judge

  
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Terry L. Myers  
Chief Bankruptcy Judge

# ATTACHMENT A

## District of Idaho Probation Shutdown Plan

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Pursuant to Volume 13, Chapter 2, § 220.30 of the Guide to Judiciary Policy and any relevant Director's memorandums detailing operational parameters and relevant dates, this court adopts the following plan for operating during a Judiciary shutdown. (A Judiciary shutdown occurs after all funding derived from fees and no-year appropriations has been exhausted and a continuing resolution or appropriations bill is not enacted.)

**Declaration of Policy.** The policy of the United States Probation Office for the District of Idaho is that essential judicial branch activities will continue. The activities set forth in this plan are essential, and the employees who perform these duties are deemed essential. Guidance for operations of Probation Offices is located at Volume 13, Chapter 2, § 220.30.35, which provides that:

- a. The court may determine the number of probation office staff necessary to maintain service to the courts in support of the exercise of the judicial power of the United States. Most activity of the probation offices will continue.
- b. If delayed, certain activities would pose a threat to the safety of human life and the protection of property. Thus, supervision of potentially dangerous probationers and parolees should be maintained and needed treatment services should be provided. Even in non-emergency situations, however, a probation office should continue to handle new cases or maintain existing cases, as necessary, to assist the courts in implementing their orders and judgments.
- c. As with clerks' offices, functions not related to the exercise of judicial power, such as gathering statistics, will be suspended. Before suspending such activities, an orderly phase-down will be undertaken.

**Declaration of Mission.** The mission of the United States Probation Office is directed by U.S.C. 18 § 3603, which, among many tasks, directs probation officers to instruct persons placed on supervision as to the conditions set by the sentencing court, keep informed as to the conduct and condition of the probationer and report same to the Court, keep a record of their work, aid and assist the Attorney General of the United States, report defaulting probationers and supervised releases within time limits, and maintain supervision of conditionally released releases. The Probation Office is also directed by U.S.C. 18 § 3154 which requires designated officers to gather information on behalf of a judicial request to aid in the setting of bail or identifying suitable conditions of release of defendants appearing before the Court. Officers are also charged with supervising those persons released under those conditions and assist them in securing any necessary medical, employment, or social services.

District of Idaho  
**Probation Shutdown Plan**

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**Declaration of Essential Personnel.** It is the declaration of the Probation Office for the District of Idaho that the following personnel are essential:

- 1) Judicial employees appointed under U.S.C. 18 § 3602;
- 2) Judicial employees whose primary employment benchmark consists of supporting those employees appointed under (1);
- 3) Judicial employees whose primary employment benchmark consists of maintaining the necessary technology infrastructure utilized in meeting the statutory requirements of U.S.C. 18 § 3603 and U.S.C. 18 § 3154;
- 4) Judicial employees whose primary employment benchmark consists of processing payment vouchers and purchase orders related to the allowable and necessary procurements.

**Non-Essential Services During An Appropriations Lapse.** Once an appropriations lapse has been declared or notification has been received, expenditures under the following budget object codes (BOC) will be suspended unless otherwise authorized by law:

- 1) 2125 – Training Travel (except to the degree necessary to maintain required certifications or qualification necessary to conduct essential functions);
- 2) 2602 – Award Expenses;
- 3) 3130 – Firearms and Safety/Protective Equipment (unless necessary to replace/repair existing equipment;
- 4) All technology purchases under Fund 51140X (unless necessary to replace/repair existing equipment or maintain existing services and infrastructure;
- 5) All remaining BOC's not specifically authorized by law, except for necessary supply spending to sustain or maintain essential functions.

**Essential Services During An Appropriations Lapse:** The following BOC categories will be maintained, reduced, or suspended according to Attachment A:

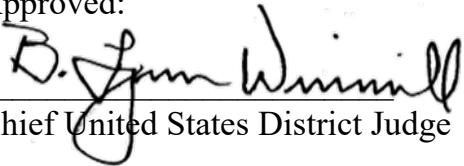
- 1) 2526 – Drug Dependent Services
- 2) 2527 and 2527T – Contract Social Services (PSA)
- 3) 2530 – Mental Health Treatment Services
- 4) 2536 – Electronic Monitoring
- 5) 2548 – Sex Offender Treatment and Monitoring
- 6) 2580 – Defendant/Offender Support Services

District of Idaho  
**Probation Shutdown Plan**

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**Payroll and Temporary Duty Travel:** Payroll compensation to essential personnel will continue during any appropriations lapse pending sufficient funds or unless otherwise directed by the Administrative Office for the United States Courts. Payments under BOC 2120 (TDY Travel) will continue to be processed for travel-related expenses incurred by essential employees conducted in support of the mission of United States Probation.

Approved:

  
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Chief United States District Judge

Approved:

  
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Chief United States Probation Officer