

District of Columbia Courts' Shutdown Plan

Updated November 30, 2021

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	.5
Total number of agency employees expected to be on board before implementation of the plan:	1,196
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations:	0
Necessary to perform activities expressly authorized by law:	69
Necessary to perform activities necessarily implied by law:	745.5
Necessary to the discharge of the President's constitutional duties and powers:	0
Necessary to protect life and property:	124
Brief summary of significant agency activities that will continue during a lapse:	
<p>The operations of the District of Columbia Courts will be limited to those functions necessary and essential to continue the resolution of cases without interruption. The Courts will continue case resolution activities in all divisions and Family Court of the Superior Court, and appeals in the Court of Appeals. All essential case supporting services from magistrate judges, clerks, court reporters, and others will be continued. Juvenile probation services provided by the Social Services Division will continue to ensure public safety and the protection of property.</p>	
Brief summary of significant agency activities that will cease during a lapse:	
<p>The issuing of marriage licenses and performing marriage ceremonies will cease during the lapse.</p>	

A. BACKGROUND

If there is a lapse in appropriations for the District of Columbia Courts, the Antideficiency Act will limit the D.C. Courts during the lapse of funding to those operations that are financed from a source other than annual appropriations, or are authorized by law, emergencies involving the safety of human life or the protection of property, or necessary to an orderly shutdown of the Courts' functions. 31 U.S.C. §§ 1341, 1342. All employees not falling under those Antideficiency Act exceptions ("non-excepted" employees) will be furloughed; that is, placed on temporary non-pay status and non-duty status because of lack of funds. The District of Columbia Courts' Plan of operation in the event of the absence of appropriations is set out below.

In general, the plan provides that the operations of the District of Columbia Courts will be limited to those functions necessary and essential to continue the resolution of cases without interruption. This includes cases from all divisions and the Family Court of the Superior Court, and appeals to the Court of Appeals. Thus, all essential case supporting services from magistrate judges, clerks, court reporters, and others will be continued. Juvenile probation services provided by the Family Court's Social Services Division will continue to ensure public safety and the protection of property. Contracts for other services and supplies that must be obligated from current annual appropriations and which support case resolution activity or are necessary to ensure the safety of persons or the protection of property will also continue to be obligated. Opinion of the Department of Justice Office of Legal Counsel on Government Operations in the Event of a Lapse in Appropriations, 1995 O.L.C. LEXIS 57, August 16, 1995. This includes contract obligations for court security officers and cleaning services.

The authority for the continuance of these operations in the absence of appropriations is based on statutory provisions enacted by Congress. Judges of the Court of Appeals and the Superior Court are appointed by the President and their compensation is set at the rate prescribed for judges of the United States courts of appeal and district courts, respectively. D.C. Code §§ 1-204.33(a), 11-703(b) and -904(b) (chief judges are entitled to an additional \$500 per year); 19 Op. O.L.C. 301 (1995). The judges have been vested with the judicial power of the District of Columbia established pursuant to Article I of the United States Constitution. D.C. Code § 11-101(2). This authority to exercise judicial power implicitly requires that it continue to be exercised notwithstanding a lapse in appropriations. See 5 Op. O.L.C. 1, 7-8 (1981). With this authority to continue to exercise the judicial power of the District of Columbia, the authority to provide the necessary and essential support functions must also be inferred. 5 Op. O.L.C. at 22-23.

Furthermore, the Constitution guarantees the rights to presentment or indictment by a grand jury, a speedy trial, effective assistance of counsel, and confrontation of witnesses in criminal cases, and trial of criminal and civil cases by jury. *Marcus v. United States*, 476 A.2d 1134 (D.C. 1984); *Ferguson v. United States*, 977 A.2d 993, 999 (D.C. 2009); *Day v. United States*, 682 A.2d 1125, 1129 (D.C. 1996); *King v. Berindoague*, 928 A.2d 693 (D.C. 2007); see *Armster v. United States District Court*, 792 F.2d 1423 (9th Cir. 1986) (holding that the suspension of the civil jury trial system for any significant period of time for lack of funds was

unconstitutional); Principles of Federal Appropriations Law, at 6-152 (3rd Ed. 2004). Grand and petit jurors and witnesses are entitled to compensation pursuant to Congressional enactments. D.C. Code § 11-1912, 15-714. These constitutional and statutory mandates require the uninterrupted administration of judicial power and case resolution activity.

Finally, as recognized in the August 16, 1995 Department of Justice opinion, 19 Op. O.L.C. 57 (1995 Opinion), the exception for “emergencies involving the safety of human life or the protection of property” in 31 U.S.C. 1342 applies “to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.” The cessation of the administration of justice in criminal, civil and family cases would present more of an emergency than some of the activities recognized as excepted in the 1995 Opinion (*e.g.*, the patrolling of the country’s borders, supervision of the stock markets). 1995 Opinion at 2-3. The continuation of operations necessary and essential to the resolution of cases is also authorized under the Antideficiency Act exception for the acceptance of voluntary services or employment of personal services for emergencies involving the safety of human life or the protection of property. 31 U.S.C. § 1342. Aside from the constitutional requirements, the suspension of criminal, juvenile and neglect operations of the Court would imminently threaten the safety of human life, and the suspension of all civil proceedings would pose an imminent threat to the protection of property under the “emergency” exception. The “emergency” exception for protecting life and property also extends to employees processing claims from the Crime Victims Compensation Fund, which are no-year funds and may be expended in the event of a lapse of appropriations. D.C. Code § 4-515(a) (2012 Repl.).

In providing appointed counsel pursuant to an indigent defendant’s right to representation, the Court is authorized to pay such appointed counsel notwithstanding a lack of appropriated funds. The Comptroller General of the United States has recognized that these mandatory obligations, like those for representation in neglect and guardianship cases, must continue to be incurred, with payment to be subject to the availability of a funding source to liquidate them. Decisions of the Comptroller General, B-283599, September 15, 1999; B-284566, April 3, 2000.

To the extent that funds are available in the D.C. Courts’ Defender Services appropriation account, Pub. L. 112-74 (2011), they are no-year funds that may be expended regardless of a lapse in annual appropriations. 5 Op. O.L.C. 1 (1981); OMB Memorandum, *Agency Operations in the Absence of Appropriations*, November 17, 1981. Activities funded by the capital improvements appropriation in the Courts’ FY 2021 Federal Payment, which does not expire until September 30, 2021, may continue until those funds are depleted. Furthermore, employees performing the administrative activities required to disburse valid obligations (*i.e.*, obligations properly entered before the lapse in appropriation or obligations of multi-year or no year funds) to contractors or grantees are “excepted” pursuant to OMB’s revised Guidance on Making Payments to Contractors and Grantees During a Lapse in Appropriations 2019, which was issued by email on January 22, 2019.

Several changes were made to the plan since the Courts last shutdown plan dated August 1, 2019. These changes were intended to clarify certain activities not related to case processing

that may continue under the “emergency” exception or the “necessarily implied” exception to the Antideficiency Act. Also, the total number of FTEs was updated.

B. SHUTDOWN PLAN POINT OF CONTACT

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C. SHUTDOWN TIME PERIOD

For a lapse in appropriations not exceeding five business days, it is estimated that the shutdown of non-essential operations and staffing can be completed in 4 hours.

D. SHUTDOWN PLANS

The operations of the District of Columbia Courts will be limited to those functions necessary and essential to continue the resolution of cases without interruption. The Courts will continue case resolution activities in all divisions and Family Court of the Superior Court, and appeals in the Court of Appeals. All essential case supporting services from magistrate judges, clerks, court reporters, and others will be continued. Juvenile probation services provided by the Social Services Division will continue to ensure public safety and the protection of property.

Designation of Excepted Personnel. The following positions are designated excepted under the categories listed below.

1. Employees necessary to perform activities expressly authorized by law:

Judicial Officers (69 FTEs excepted, 69 Total FTEs)

All D.C. Court chief judges, associate judges, and magistrate judges are considered excepted personnel because they exercise the judicial power of the District of Columbia Courts established pursuant to Article I of the United States Constitution. D.C. Code §§ 11-101(2); -703, -904 and -1732. Seven senior judges are essential to trial case resolution in such matters as criminal misdemeanors and judge-in-chambers, and three senior judges are assigned to hear appellate cases during the relevant time period. D.C. Code § 11- 1504.

2. Employees necessary to perform activities necessarily implied by law:

Magistrate Judges (24 FTEs excepted, 24 Total FTEs)

All magistrate judges are considered excepted personnel.

Judicial Staff (181 FTEs excepted, 181 Total FTEs)

All judicial secretaries and law clerks are considered excepted personnel because their services are necessary to the exercise of judicial power by judicial officers.

Court of Appeals Staff (32 FTEs excepted, 41 Total FTEs)

- 1 Clerk of the Court
- 1 Deputy Clerk of the Court
- 1 Calendar Clerk
- 1 Clerk's Office Administrative Staff
- 1 Opinion Clerk (Case Manager)
- 1 Senior Staff Attorney
- 6 Staff Attorneys
- 1 Law Clerk, Legal Staff
- 1 Case Manager (Legal)
- 1 Supervisory Case Manager
- 4 Case Managers
- 1 Deputy Case Manager
- 1 Director of Administration
- 1 Public Office Director
- 1 Courtroom Support Supervisor
- 4 Public Office Deputy Case Administrators
- 3 Courtroom Clerks
- 1 Media Case Coordinator
- 1 Mediation Coordinator

Executive Office (6.5 FTEs excepted, 14 Total FTEs)

- 1 Executive Officer
- 1 Deputy Executive Officer
- 1 Government Affairs Manager
- 1 Administrative Assistant
- 1 Chief Security Officer
- 0.5 Director of Press and Public Relations (1/2 time)
- 1 Access Control Manager

Clerk of Superior Court (3 FTEs excepted, 8 Total FTEs)

- 1 Clerk of the Court
- 1 Senior Operations Manager
- 1 Administrative Assistant

Office of the Auditor Master (6 FTEs excepted, 6 Total FTEs)

- 1 Auditor-Master
- 1 Deputy Auditor-Master
- 2 Attorney Advisor
- 1 Accountant
- 1 Administrative Assistant (Auditor Master)

Administrative Services Division (10 FTEs excepted, 42 Total FTEs)

- 1 Director or Deputy
- 1 Contract Specialist
- 1 Office Clerk
- 3 Mail Center Staff
- 2 Information Center Staff
- 1 Lead Supply Inventory Technician
- 1 Supply Inventory Clerk

Budget and Finance Division (9 FTEs excepted, 33 Total FTEs)

- 1 Chief Financial Officer
- 1 Deputy Chief Financial Officer
- 1 Branch Chief Reporting and Controls
- 1 Reconciliation Specialist
- 1 Defender Services Branch Chief
- 1 Accountant
- 1 Accounting Technician
- 1 Financial Operations Branch Chief
- 1 Budget Branch Chief

Capital Projects & Facilities Management Division (9 FTEs excepted, 18 Total FTEs)

- 1 Director or Deputy
- 1 Building Operations Manager or Supervisory Engineer
- 1 Building Maintenance Electrician
- 1 Master Plumber
- 3 Building Maintenance Mechanics
- 1 Facility Repair Worker
- 1 Project Manager Facilities

Center for Education and Training (0 FTEs excepted, 7 Total FTEs)

Civil Division (75 FTEs excepted, 93 Total FTEs)

- 1 Director or Deputy Director
- 1 Administrative Assistant
- 2 Attorney Advisors
- 1 Branch Chief or Branch Supervisor, Civil Actions
- 1 Case Processing or Quality Assurance Supervisor, Civil Actions
- 1 Accounting Technician
- 9 Deputy Clerks, Civil Actions
- 1 Branch Chief, Courtroom Support
- 3 Courtroom Operations Supervisors, Courtroom Support
- 25 Courtroom Clerks, Courtroom Support
- 1 Branch Chief or Branch Supervisor, Small Claims
- 1 Case Processing or Quality Assurance Supervisor, Small Claims

10 Deputy Clerks, Small Claims
1 Branch Chief or Branch Supervisor, Landlord and Tenant
1 Case Processing Supervisor or Quality Assurance Supervisor, Landlord and Tenant
1 Quality Control Specialist, Landlord and Tenant
1 Interview and Judgment Officer, Landlord and Tenant
13 Deputy Clerks, Landlord and Tenant
1 Sr. Program Analyst, Program Analyst, or Assistant Program Analyst (appeals case processing)

Court Reporting and Recording Division (42 FTEs excepted, 43 Total FTEs)

1 Director or Deputy Director
1 Supervisory Court Reporter
1 Supervisor, Customer Service
1 Branch Supervisor
26 Court Reporters
3 Case Managers
1 Administrative Staff
1 Lead Official Court Transcriber
2 Official Transcribers
4 Transcript Records Clerk
1 Proofreader

Criminal Division (80 FTEs excepted, 106 Total FTEs)

1 Director or Deputy Director
1 Attorney Advisor
1 Program Analyst
1 Branch Chief, Courtroom Support
32 Courtroom Clerks
1 Branch Chief, Special Proceedings
2 Accounting Technicians, Special Proceedings
5 Deputy Clerks, Special Proceedings
2 Deputy Clerks, Special Proceedings Branch (Warrant Office)
9 Deputy Clerks, Case Management
1 Branch Chief, Quality Assurance
11 Calendar Coordinators, Quality Assurance
3 Deputy Clerks, Quality Assurance
6 Courtroom Clerks, Intake/Arraignment Court
1 Administrative Assistant
2 Deputy Clerks, Community Court
1 Mental Health Community Coordinator

Domestic Violence Division (27 FTEs excepted, 27 Total FTEs)

All domestic violence staff are considered excepted personnel.

Family Court Operations Division (114 FTEs excepted, 146 Total FTEs)

1 Director or Deputy
1 Administrative Assistant

1 Supervisory Attorney – Legal Branch
 1 Branch Chief or Branch Supervisor, Central Intake Center
 1 Section Supervisor, Central Intake Center
 1 Case Coordinator, Central Intake Center
 10 Deputy Clerks, Central Intake Center
 1 Branch Chief or Branch Supervisor, Juvenile/Neglect
 1 Section Supervisor, Juvenile/Neglect
 8 Deputy Clerks, Juvenile/Neglect
 2 Deputy Clerks, Counsel for Child Abuse and Neglect Program
 1 Branch Chief or Branch Supervisor, Domestic Relations Branch
 1 Section Supervisor, Domestic Relations Branch
 7 Deputy Clerks, Domestic Relations Branch
 1 Adoption Supervisor, Domestic Relations Branch
 1 Custody Assessor Supervisor, Domestic Relations Branch
 1 Custody Assessor, Domestic Relations Branch
 1 Custody Assessor Investigator, Domestic Relations Branch
 1 Branch Chief or Branch Supervisor, Parentage and Support
 1 Section Supervisor, Paternity and Support
 8 Deputy Clerks, Paternity and Support
 1 Lead Finance Clerk, Paternity and Support
 1 Branch Chief, Mental Health and Habilitation
 3 Deputy Clerks, Mental Health and Habilitation
 1 Branch Chief or Supervisor, Courtroom Support
 1 Branch Chief, Courtroom Support
 1 Branch Supervisor, Courtroom Support
 1 Deputy Clerk, Courtroom Support
 6 Calendar Coordinators
 36 Courtroom Clerks
 1 Branch Chief, Self Help Center
 3 Facilitators, Self-Help Center
 1 Deputy Clerk, Self-Help Center
 1 Quality Control Supervisor
 2 Attorney Negotiators
 3 Deputy Clerks, Call Center
 1 Management and Program Analyst – to prepare and submit the 2019 Family Court Annual Report to the President and Congress as required by the Family Court Act

Human Resources Division (6 FTEs excepted, 21 Total FTEs)

1 Director or Deputy Director
 1 Human Resources Information System (HRIS) Manager
 1 Benefits Officer
 1 Payroll Compensation Officer
 2 Human Resources Specialists

Information Technology Division (35 FTEs excepted, 68 Total FTEs)

1 Customer Service Manager
 4 Customer Service Technician - to support courtrooms and chambers

- 1 Service Desk Supervisor - to support Tier 1 operations
- 1 Customer Service Technicians - Tier I to print summons and notices and to respond to service request calls
- 1 System Administrator - to back-up mission critical file systems that support case processing
- 1 System Administrator - to support VDI
- 1 IJIS Project Manager - to support the case management and document management systems
- 3 Database Administrator - to maintain all mission-critical production systems
- 1 Oracle Database Administrator – to support day-to-day data back-up and to conduct performance tuning and troubleshooting
- 1 Server Storage Manager - to support VDI, Servers and Storage
- 1 Applications Development Manager - to troubleshoot and maintain mission critical applications
- 1/2 Senior Associate Director (Chief Operating Officer)
- 1/2 Senior Associate Director (Chief Technology Officer)
- 3 Central Recording Technicians (includes one additional technician) - to ensure that court proceedings are recorded
- 1 Business Intelligence Specialist - to support Business Intelligence
- 2 Business Analyst - to support the case management system
- 1 Courtroom Technology Branch Chief - to manage the courtroom technology requirements
- 2 Audio Technicians - to administer day-to-day courtroom technology setup and repair
- 2 Multimedia Specialist - to handle high tech courtrooms, training (attorneys), video conferencing and support issues
- 1 Security Officer (Branch Manager) - to troubleshoot all security issues
- 1 Security Administrator - to troubleshoot all security issues
- 1 Network Telecom Manager - to troubleshoot all network issues
- 1 Network Administrator - to troubleshoot all network issues
- 2 Telecom Specialist - to support telecommunications
- 1 Chief Information Officer

Multi-Door Dispute Resolution Division (20 FTEs excepted, 28 Total FTEs)

- 1 Director or Deputy Director
- 1 Civil Branch Chief or 1 Civil Program Officer (alternating days)
- 4 Case Managers (Civil ADR)
- 1 Program Officer for Landlord Tenant Mediations
- 1 Program Officer for Small Claims Mediations
- 1 Family Branch Chief
- 1 Family Program Manager
- 1 Program Officer for Family Mediations
- 1 Case Manager for Child Protection
- 1 Client Services Coordinator or Administrative Assistant
- 3 Family Staff Mediators
- 3 Family Case Managers
- 1 Program Officer, Community Information and Referral Program

Office of the General Counsel (2 FTE excepted, 4 Total FTEs)

- 1 General Counsel - to address legal issues with respect to the shutdown of operations

1 Associate General Counsel

Probate Division/Register of Wills (44 FTEs excepted, 52 Total FTEs)

1 Register of Wills or Deputy Register of Wills
1 Administrative Assistant, Office of the Director
1 Program Analyst, Office of the Director
1 Small Estate Supervisor or 1 Small Estate Specialist
1 Small Estate Specialist
1 Paralegal Specialist, Probate Self-Help Center
1 Deputy Clerk, Probate Self-Help Center
1 Legal Branch Manager
2 Assistant Deputy Register of Wills
1 Branch Chief, Probate Operations Branch
1 Supervisor, Quality Assurance Office
3 Probate Case Managers, Probate Operations Branch
6 Courtroom Clerks, Probate Operations Branch
9 Deputy Clerks, Probate Operations Branch
1 Deputy Clerk, Probate Systems Office
1 Branch Manager, Auditing and Appraisal Branch
1 Supervisory Auditor
7 Auditors
1 Deputy Program Manager, Guardianship Assistance Program
3 Social Work Case Managers, Guardianship Assistance Program

Special Operations Division (20 FTEs excepted, 25 Total FTEs)

1 Director
1 Administrative Assistant
1 Tax Officer
1 Tax Assistant
1 Juror Officer
1 Juror Office Supervisor
1 Grand Jury Specialist
8 Deputy Clerks, Jurors' Office
1 Coordinator, Court Interpreting Services
1 Spanish Language Interpreter
1 American Sign Language Interpreter
1 Deputy Clerks, Court Interpreting Services
1 Program Officer, Court Interpreting Services

Strategic Management Division (0 FTEs excepted, 11 Total FTEs)

Tax Division (FTEs included above in Special Operations Division)

All tax matters will proceed as scheduled; there are two personnel considered excepted personnel.

3. Employees necessary to protect life and property:

Family Court Social Services Division (117 FTEs excepted, 117 Total FTEs)

All probation staff are considered excepted to supervise juveniles on probation and provide services to juveniles under the Court's jurisdiction.

Crime Victims Compensation Program (7 FTEs excepted, 12 Total FTEs)

- 1 Program Director
- 1 CVC Accounting Officer
- 2 Victim Advocates/Claims Examiners
- 3 Legal Claims Examiners or Assistant Legal Claims Examiners

4. Employees whose compensation is financed by a resource other than annual appropriations:

Crime Victims Compensation Program (0 FTEs excepted, 1 Total FTEs)

E. NUMBER OF PERSONNEL PRIOR TO THE APPROPRIATION LAPSE

The District of Columbia Courts have 1,196 FTEs currently on board (including the ten senior judges).

F. PERSONNEL RETAINED UNDER THE SHUTDOWN PLAN

Nine hundred thirty eight and one half (938.5) personnel are to be retained under the plan during a lapse in appropriations of less than five days. They fall into the following categories:

- 1. 69 employees are necessary to perform activities expressly authorized by law;
- 2. 745.5 employees are necessary to perform activities necessarily implied by law;
- 3. 124 employees are necessary to protect life and property.

G. PERSONNEL FURLOUGHED

The District of Columbia Courts plan to furlough 257.5 FTEs after the appropriation lapse (1,196 Total – 938.5 Excepted = 257.5 furloughed).

H. APPROVAL OF RETAINED STAFF

Prior to the appropriations lapse, the Executive Officer or designee shall approve the retained staff. The information will be communicated to the division directors who will verify correct titles with Human Resources personnel listings at least 72 hours prior to the date of the potential lapse and provide this information to the affected personnel.

I. NOTIFICATION TO PERSONNEL/CONTRACTORS

I. Notice of change in level of court operations.

(a) In the event of a lapse in appropriations, the Executive Officer, or a designee of the Executive Officer, will provide notice of and information regarding the implementation of the D.C. Courts Plan for Operations in Absence of Appropriations (Plan) as follows:

(1) Notice of implementation of the Plan will be provided to employees, contractors, local media, and the public through use of the D.C. Courts Internet web site, intranet site, telephone information line, D.C. Courts Alert System, and local media contacts.

(2) A written furlough notice will be delivered to each employee who is not listed as excepted as indicated in Section D above. The notice will be in the format set out in Appendix A.

(3) Written notice will be sent to contractors advising them of the termination or suspension of specific contract activity not authorized in the absence of appropriations.

(4) Notice of implementation of the Plan will be provided to partner agencies, including the Pretrial Services Agency, the United States Attorney's Office, the Public Defender Service, the Court Services and Offender Supervisor Agency, and the United States Marshals Service, by e-mail or the automated notification system.

(b) Notice of a change in the level of operations or of the resumption of full operations will be given by the methods provided in (a)(1) – (4) of this section.

II. Termination of non-essential operations.

(a) Upon implementation of the Plan, employees who have been sent a written furlough notice will be placed on non-pay, non-duty status.

(b) Contract actions and payments not authorized in the absence of appropriations will be stopped.

(c) Designated staff in affected divisions will take other actions necessary to postpone or terminate non-essential operations.

III. Change in level of operations in the event of a lapse in appropriations of more than five days.

In the event that a lapse in appropriations exceeds five days the Executive Officer with both Chief Judges will reassess the minimum needs for staffing and supplies in support of case resolution activity. Significant case backlogs or other adverse effects on case resolution resulting

from reduced operating levels may warrant placing additional employees in excepted status, and resuming essential contracts.

IV. Resumption of full operations.

Upon the availability of appropriations to resume operations, notice thereof will be given by the methods provided in (a)(1) – (4) of Section I above.

J. SHUTDOWN DAY

Non-excepted personnel will be provided written furlough notices either through electronic means or by hand delivery by 9:00 a.m. at their duty stations on the employee's first regular work day following notice of an appropriations lapse (i.e. employees on compressed work schedules do not report on their regularly scheduled day off). Non-excepted employees who are able to perform necessary shutdown activities remotely may choose to receive their furlough notice by electronic means (through their work or personal email accounts) rather than at their duty stations.

Furloughed staff will be requested to perform the necessary shutdown activities, including entering time and attendance for the period prior to the lapse, and return home. It is estimated that the shutdown activities will take no longer than four hours and furloughed staff will leave as soon as shutdown activities are completed.

K. CONTRACTORS

In accordance with the District of Columbia Courts' Procurement Policies and Procedures, stop-work orders will be issued by the Administrative Services Division's Contract and Procurement Branch to all affected contractors on the first business day following appropriation lapse. The Contracting Officer or designated staff will: 1) compile a list of all current contractors, 2) determine those contractors with funding and purpose necessary to continue work in an appropriation lapse, and 3) determine those contractors who will receive stop-work orders. The Contracting Officer will work closely with the Contracting Officer Technical Representatives during this process. Contractors funded by prior-year appropriations, no-year appropriations, non-appropriated funds, or current year appropriated funds properly incurred prior to appropriation lapse may continue to perform services according to the contract terms and conditions. Contract administration, including payments to these contractors for services or goods provided during the shutdown period, may continue throughout the shutdown period only if such services are necessarily implied because of the lawful continuation of other funded or excepted activities (e.g., case processing), if the failure to provide those services during the shutdown period would result in an imminent threat to life or property, or would prevent or significantly damage the execution of a congressionally authorized and funded function. Contractors funded by current year appropriated funds properly incurred post-appropriation lapse may work under the contract terms; however, payment will not be provided to the contractors until an appropriation is enacted.

L. FY 2022 OBLIGATIONS AND PAYMENTS AFTER APPROPRIATION LAPSE

The Courts will limit new obligations to “excepted services or goods”. Excepted services or goods are those needed for: 1) conducting orderly shutdown of agency operations, 2) the protection of life and property, or 3) activities expressly authorized or necessarily implied by law. The Courts will issue payments to employees during the shutdown period for work performed prior to the appropriation lapse. The Courts cannot issue payments to retained employees for work performed after appropriation lapse, including work performed by retained and furloughed employees on the shutdown day, until appropriations are enacted. The Courts will continue to issue payments to contractors funded by prior-year, no-year, non-appropriated, or current year appropriated obligations properly incurred prior to appropriation lapse only if such services are necessarily implied because of the lawful continuation of other funded or excepted activities (e.g., case processing), if the failure to provide those services during the shutdown period would result in an imminent threat to life or property, or would prevent or significantly damage the execution of a congressionally authorized and funded function. The Courts cannot issue payments to contractors for obligations incurred post-appropriation lapse.

Appendix A

FURLOUGH NOTIFICATION

To: [Employee]

From: Ms. Pamela Hunter, Acting Director, Human Resources Division

Subject: Furlough notice due to lapse of appropriations

In the absence of either a FY 2022 appropriation or a continuing resolution, no further financial obligations may be incurred by the D.C. Courts, except for those related to the orderly suspension of D.C. Courts' operations or performance of excepted activities as defined in guidance provided in Office of Management and Budget Circular A-11, § 124. Because you are not engaged in one of the excepted functions, you are being placed in a furlough status effective upon completion of activities you are required to perform for orderly shutdown of operations. This furlough, e.g., nonpay, nonwork status, is not expected to exceed 30 days. You should listen to public broadcasts and when you hear that a continuing resolution or a FY 2022 appropriation has been signed by the President, you will be expected to return to work on your next regular duty day. The D.C. Courts will use our emergency notification system (emergency telephone calls; posting on website www.dccourts.gov; and DC Courts Alert System) to advise as well.

This action is being taken because of a sudden emergency requiring curtailment of the D.C. Courts' activities; therefore, no advance notification is possible. Employees who are being retained as excepted are required for the orderly suspension of operations or they are performing one of the excepted activities defined in the OMB guidance.

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until a continuing resolution or a FY 2022 appropriation has been signed by the President. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Career service employees who have completed a probationary period, excepted service employees, CES appointees and CEMS appointees, may appeal this action by submitting a written appeal to the Executive Officer within 30 calendar days after the effective date of the furlough. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. The filing of an appeal will not stay the imposition of the furlough.