



United States Attorneys' Policies and Procedures

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LAPSE IN APPROPRIATIONS

- SCOPE:** These policies and procedures apply to the Executive Office for United States Attorneys (EOUSA) and all United States Attorneys' Offices (USAOs) and are intended solely for internal agency use.
- PURPOSE:** To establish policies and procedures to address a lapse in appropriations.
- ORIGINATING OFFICE:** Resource Management and Planning (RMP) Staff
Office of the Chief Financial Officer, EOUSA
- CATEGORY:** Resource & Financial Mgt.
- SUPERSEDES:** None
- ORIGINATOR:** Louisa McCarter-Dadzie, Assistant Director, Audit and Review Staff,
Resource Management and Planning (RMP) Staff
- APPROVED BY:** Paul W. Suddes, Chief Financial Officer, EOUSA
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Note: Key glossary terms may be italicized in the text for ease of reference.

1. Background

Over the years, lapses in federal appropriations have occurred on several occasions (see the chart below). Lapses in annual appropriations arise when Congress fails to timely enact regular appropriations, a continuing resolution (CR), or needed supplemental funding.

Prior to 1980, it was typical for federal agencies to continue to operate during a federal funding hiatus, since it was assumed that Congress did not intend for agencies to shut down while waiting for the enactment of annual appropriations or CRs. In 1980 and 1981, Attorney General Benjamin R. Civiletti issued two opinions that more strictly interpreted the Anti-Deficiency Act (ADA or “the Act”) in the context of a funding hiatus. The opinions stated that, with some exceptions, the head of an agency could avoid violating the ADA only by suspending the agency’s operations until the enactment of an appropriation or CR. In the absence of appropriations, exceptions would be allowed only when there is some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Consequently, since 1981, lapses in appropriations have resulted in significant disruptions to the operations of federal agencies, since many agency functions do not qualify under an exception and therefore must be ceased during a federal government shutdown.

Lapses In Appropriations Since Implementation of the Budget Act of 1974	
September 30 to October 11, 1976 (10 days)*	November 10 to November 14, 1983 (3 days)
September 30 to October 13, 1977 (12 days)*	September 30 to October 3, 1984 (2 days)
October 31 to November 9, 1977 (8 days)*	October 3 to October 5, 1984 (1 day)
November 30 to December 9, 1977 (8 days)*	October 16 to October 18, 1986 (1 day)
September 30 to October 18, 1978 (18 days)*	December 18 to December 20, 1987 (1 day)
September 30 to October 12, 1979 (11 days)*	October 5 to October 9, 1990 (3 days)
November 20 to November 23, 1981 (2 days)	November 13 to November 19, 1995 (5 days)
September 30 to October 2, 1982 (1 day)	December 15, 1995 to January 6, 1996 (21 days)
December 17 to December 21, 1982 (3 days)	September 30 to October 17, 2013 (16 days)
*Despite the lapse in appropriations, a government shutdown did not occur.	

2. Records Retention

Any federal records generated under this document are subject to the retention periods prescribed by the [General Records Schedule \(GRS\)](#) or [SF-115 Agency Records Schedule](#) governing such records. The USAO is the custodian of the records created or received in connection with the procedures described herein and these records shall be maintained and disposed of in accordance with [NARA General Records Schedule 1.1, Financial Management and Reporting Records](#).

3. Legal Citations

- [31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351, 1511-1519 \(Anti-Deficiency Act\)](#)

4. Related References

- [Congressional Research Service Report for Congress RL34680, Shutdown of the Federal Government: Causes, Processes and Effects, February 18, 2011](#)
- [Office of Management and Budget \(OMB\) Circular A-11, Section 124, Agency Operations in the Absence of Appropriations](#)
- [Office of Personnel Management \(OPM\) Guidance for Shutdown Furloughs, September, 2015](#)
- [Office of Legal Counsel Opinion: Government Operations in the Event of a Lapse in Appropriations, August 16, 1995](#)
- [Office of Legal Counsel Opinion: Continuation of Agency Activities during a Lapse in Both Authorization and Appropriation, September 17, 1982](#)
- [Office of Legal Counsel Opinion: Authority for the Continuance of Government Functions during a Temporary Lapse in Appropriations, January 16, 1981](#)
- [U.S. Department of Justice Budget and Program Execution Instructions, January, 2015](#)
- [Justice Management Division Lapse in Appropriation Reference Guidance, Last Updated September 22, 2015](#)
- [USAM 3-8.300, Phasing Down United States Attorney Operations During a Lapse in Appropriations](#)
- [USAM 3-8.311, Lapse in Appropriations – Notification](#)
- [USAM 3-8.312, Lapse in Appropriations – Excepted/Non-Excepted Personnel](#)
- [USAM 3-8.313, Lapse in Appropriations – Furloughs](#)
- [USAM 3-8.314, Travel During a Lapse in Appropriations](#)
- [USAM 3-8.315, Payment of Fees and Expenses of Witnesses During a Period of Lapsed Appropriations](#)
- [USAM 3-8.321, Legal Operations – Matters to be Continued During a Lapse in Appropriations](#)

5. Policy

A. Lapse in Appropriations

The ADA, as construed by the Attorney General, provides that, in the absence of an appropriation, no obligation can be incurred, except for the protection of life and property, the orderly suspension of operations, or as otherwise authorized by law. During a lapse in appropriations, the Act ([31 U.S.C. § 1342](#)) also restricts the acceptance of volunteer services, unless such services are directly related to protecting human life or property.

When a lapse of appropriations occurs, offices must move quickly to suspend operations, except for those activities that are necessary for the safety of human life or the protection of property. According to [USAM 3-8.321](#), all litigation and investigations essential to the

protection of life and property will continue during a lapse in appropriations. Criminal matters should continue without interruption as activities essential to the safety of human life and the protection of property. Civil litigation will be curtailed or postponed during a lapse, to the extent that the courts will permit such an approach without harm to the interests of the United States. If such an approach is not possible, civil litigation will continue without interruption as an activity essential to the protection of property.

Each potential lapse in appropriations is different. Therefore, specific procedures for the orderly shutdown of operations and the furlough of “non-excepted” personnel will be communicated to offices in the days leading up to a potential lapse. This United States Attorneys’ Policies and Procedures (USAPP) provides general guidance on how operations and personnel are affected during a lapse in annual appropriations, so that managers and employees can determine what activities are permitted and what activities are prohibited.

In general, OMB, the Department, and other federal agencies use the term “excepted” to: (1) describe those functions that must continue during a federal funding hiatus; and, (2) refer to those employees who will be required to perform “excepted” functions during the hiatus. Some federal agencies and offices use different terminology, including “exempt” and “essential.” To avoid confusion, this guidance will only use “excepted” to refer to those functions that must be performed and to those employees who must work during a lapse. Please note that OPM uses the term “emergency employees” to refer to the subset of “excepted” employees who are required to work under the emergency exception, which relates to the protection of human life and property (see section B(4) below).

B. Excepted Functions

If the Department of Justice is faced with a lapse in annual appropriations, only the following categories of excepted functions will continue during the lapse.

1. Functions Funded by Sources Other than Annual Appropriated Funds

Some functions are supported by fee revenues or by multi-year, no-year, or revolving funds (when the revolving fund has not lapsed), and, if those accounts have sufficient carry-over balances, they are not affected by a lapse of annual appropriations. Offices may continue to incur obligations from such non-lapsed funding sources.

- a. **Fee-Funded Activities:** Fee-funded activities such as those supported by the 3% Fund are not appropriated annually, so these activities, and the employees supported by the 3% Fund, are generally excepted during a lapse in appropriations. Any exceptions to this general rule will be communicated by EOUSA prior to a lapse in appropriations.

- b. No-Year Funding: The Fees and Expenses of Witnesses (FEW) Appropriation consists of no-year funding, a portion of which the Justice Management Division (JMD) provides to EOUSA in the form of a suballotment each fiscal year. In turn, EOUSA provides FEW allocations to each USAO. If the FEW account has sufficient resources, JMD should be able to provide a suballotment during a lapse in appropriations and each USAO should receive a FEW allocation from EOUSA. In addition, [USAM 3-8.315](#) specifically authorizes the use of witnesses and allows obligations to be incurred for witness expenditures in support of excepted legal activities.

- c. Revolving Funds: The Asset Forfeiture Fund (AFF) is a revolving fund that receives the proceeds of forfeiture, a portion of which JMD's Asset Forfeiture Management Staff provides to EOUSA each fiscal year to support specific elements of the forfeiture program. In turn, EOUSA provides AFF allocations to USAOs to support asset forfeiture case-related expenses and asset forfeiture training and printing expenses. In addition, the AFF is used to support Forfeiture Support Associates contractors as well as 46 Assistant United States Attorney (AUSA) positions in certain USAOs. During a lapse, if the AFF has sufficient resources, the AFF-related activities and the 46 AFF-funded AUSAs are excepted. Any exceptions to this general rule will be communicated by EOUSA prior to a lapse in appropriations.

- d. Status of Functions Supported by Certain Reimbursable Agreements: A lapse in the Department's annual appropriation will force a cessation of activities under the following budgets: (i) Direct; (ii) Organized Crime Drug Enforcement Task Forces (OCDETF) Program; (iii) Discretionary Health Care Fraud (HCF); and (iv) Office for Victims of Crime (OVC). Even though the OCDETF, Discretionary HCF and OVC budgets are funded by reimbursable agreements (and OVC funding comes from the Crime Victims Fund, a revolving fund that does not rely on annual appropriations), Direct resources must be available to cover expenses under these programs initially, since reimbursement by the trading partner occurs only after expenditures have been incurred. Since a lapse in the Department's annual appropriation results in zero funding for the Direct budget, expenses under these reimbursable programs cannot be incurred and activities must cease, unless another exception below applies. Additionally, a lapse in annual appropriations also leaves our OCDETF and Discretionary HCF trading partners without funding for their programs, preventing them from providing reimbursable funding to EOUSA for these accounts.

The Mandatory HCF Program operates differently. Employees in positions funded by the Mandatory HCF account are excepted during a lapse in appropriations, even

though these resources are provided under a reimbursable agreement with the Department of Health and Human Services (HHS). By statute (i.e., the [Health Insurance Portability and Accountability Act of 1996](#)), these resources must be automatically appropriated each year from the Medicare Hospital Insurance Trust Fund to support health care fraud investigations and prosecutions.

Similarly, EOUSA's Office of Legal Education (OLE) receives funding from HHS to operate the Medicaid Integrity Institute (MII) at the National Advocacy Center in Columbia, South Carolina. OLE employees who are funded under the MII reimbursable agreement with HHS are excepted during a lapse in appropriations. By statute (i.e., [42 U.S.C. § 1396u-6](#)), these resources must be automatically appropriated each year to carry out HHS' Medicaid Integrity Program.

Since funding for the Mandatory HCF Program and the MII flows from sources that are not dependent upon annual appropriations and the funding transfers are authorized by statute, the Department is able to incur obligations against both sources of funding during a lapse in annual appropriations.

2. Functions Authorized by Law to Continue during a Lapse in Appropriations

Functions authorized by law to proceed during a lapse in appropriations include those functions for which express statutory authority to incur obligations in advance of appropriations has been granted. In general, this category does not apply to functions carried out by EOUSA or the USAOs, except when the court rejects a request for stay in civil litigation and issues an order that the litigation must proceed.

3. Functions Implied by Law as Necessary to Continue Even without Funding

Pursuant to a determination by the Department's Office of Legal Counsel, functions authorized by law to proceed during a lapse in appropriations also include "those functions for which such authority arises by necessary implication." For legal activities that continue under the exception discussed in section B(4) below, the continuation of a certain amount of administrative support may necessarily be implied, such as the continuation of information technology support, without which the emergency activities could not continue.

Presidentially-appointed, Senate-confirmed United States Attorneys (PAS USAs) are not subject to furlough and are entitled to compensation during a lapse based solely on their status as PAS USAs. This entitlement means that the Department is authorized by law to incur obligations for their pay. These appointees may perform normal duties during a lapse, although they will probably not receive pay until an appropriation or CR is enacted. However, Schedule C employees and non-career Senior Executive

Service employees are subject to furlough, unless they are designated as excepted employees under another exception (such as the exception noted under section B(4)).

4. Functions Necessary for the Safety of Human Life or the Protection of Property

To qualify under the exception for the protection of human life or property, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by the delay in the performance of the function in question. Specifically, the risk should be real, not hypothetical or speculative. Administrative, research, or other support functions related to an excepted activity should also continue, but only to the extent that they are essential to maintain the effectiveness of the excepted functions that are engaged in the protection of life or property and only at minimum levels. [USAM 3-8.321](#) makes clear that all litigation and investigations essential to the protection of life and property will continue during a lapse in appropriations. See section 5(A) for more information.

Most Financial Litigation Unit activities, such as civil debt collection activities, are not considered excepted activities during a lapse in appropriations. However, criminal debt collection activities can be treated as excepted under this section because criminal monetary penalties are an essential part of the criminal sentence, the enforcement of which is a continuation of the underlying criminal judgment. At judgment, a lien in favor of the government arises and attaches to all of a defendant's property interests. To be effective against third parties, the lien must be recorded. Failure to promptly file a lien may adversely affect the rights of the United States and the rights of victims of crime by significantly increasing the potential for defendants to liquidate, hide, transfer, or otherwise place the property beyond the reach of the United States. Delays may also risk loss of priority, if third party liens are recorded or considered in the absence of the United States' lien. Consequently, prompt action is essential to maximize recoveries and protect the United States' property interests.

5. Functions Necessary to the Discharge of the President's Constitutional Duties and Powers

In general, these functions do not apply to EOUSA or the USAOs.

6. Functions Necessary for the Orderly Cessation of Non-Excepted Activities

EOUSA and the USAOs may obligate funds at the beginning of a period of lapsed appropriations to bring about the orderly cessation of non-excepted activities, which the Office of Management and Budget has determined should take no more than four hours in general. During this time, non-excepted activities must be wholly devoted to deactivating the non-excepted functions, if deactivation requires work to be done

(most functions do not require work to be deactivated). Upon completion of deactivation activities, employees so engaged must be furloughed, unless another exception applies.

C. Non-Excepted Functions

Non-excepted functions are all other activities that cannot be classified as excepted functions. Employees in positions performing non-excepted functions must be furloughed immediately upon a lapse in appropriations or, if cessation activities are necessary, generally no later than four hours after the start of their tour of duty on the first work day of the lapse in appropriations.

D. Excepted Employees Versus Non-Excepted Employees

1. Excepted Employees: Excepted employees are formally designated by their supervisors to perform functions or activities that are excepted. Excepted employees will continue to work during a lapse in appropriations, but, in general, excepted employees should only work on excepted activities, including providing support to excepted functions and activities. For short periods of time, and in very limited circumstances, an excepted employee may be able to perform non-excepted work. See question B10 of [JMD's Lapse in Appropriations Reference Guide](#), dated September 22, 2015. Excepted employees who work during a lapse will not be paid during the lapse. However, excepted employees will be paid later when Congress passes, and the President signs, a new appropriation or CR. See section C of [JMD's Lapse in Appropriations Reference Guide](#). Employees who are funded from other than lapsed appropriations must also wait to be paid until after the lapse concludes, since many of the personnel needed to process payroll transactions will be furloughed.
2. Non-Excepted Employees: Non-excepted employees perform functions that are not excepted from a government shutdown. Thus, non-excepted employees are subject to furlough and are not permitted to work during a lapse ([USAM 3-8.313](#)). Please note that non-excepted employees may not voluntarily perform work during a furlough. Employees on furlough during a lapse will only be retroactively paid if there is an Act of Congress authorizing such payments. Furloughed employees must recognize that there is no guarantee that they will receive pay for the period they are furloughed from work. See section C of [JMD's Lapse in Appropriations Reference Guide](#).

E. Designating Excepted Employees

EOUSA and the USAOs must designate in advance (before any potential furlough) those employees who will perform excepted functions during a lapse in appropriations. EOUSA will initiate a data call in the days leading up to an anticipated lapse to collect information

from each USAO that confirms the employees designated as excepted. The data call will clarify how EOUSA and USAOs should categorize excepted employees. In addition, EOUSA will provide guidance on how employees should be advised of their designation and how non-excepted employees should be notified of furlough, along with other pertinent information about pay and benefits, among other things ([USAM 3-8.311](#)).

1. Detailees: The activities and funding of employees on detail to other Department components and to other Federal Government entities must be reviewed to determine whether detailed employees will be designated excepted or non-excepted based upon the functions performed on the detail and the source and type of funding. In making such a determination, the office where the detailee is working (i.e., the hosting office) usually decides if the detailee is performing an excepted function, and, if so, informs the employing office that the detailee is excepted. The detailee is then counted against the employing office's (USAO's or EOUSA's) excepted personnel totals for the period of the lapse in appropriations. For employees detailed to EOUSA or the USAOs from other Department components or other federal entities, the hosting office (EOUSA or USAO) should contact the employing office to discuss the detailee's status.
2. Changing an Employee's Status During the Lapse: Supervisors may change the status of their employees as needs change during the lapse ([USAM 3-8.312](#)), but employees may not change their own status without supervisory approval. EOUSA and USAOs must keep track of changes and the reasoning for making the changes. Supervisors should use their judgment when making these decisions, consistent with more specific guidance that might be available at the time, but supervisors and managers may not consider financial hardship as a factor in these decisions.
3. Employees Designated as Excepted Only to Perform Shutdown Activities: It is the Department's preference that an employee not be required to work during a lapse in appropriations for the sole purpose of performing shutdown activities at the beginning of a lapse, unless that employee's involvement is critically necessary. For most non-excepted activities, there are little or no deactivation activities necessary to ensure an orderly shutdown. For this reason, it is preferred that offices address deactivation activities using employees who have been designated as excepted for other reasons. If an employee must be designated as excepted solely to perform shutdown activities, that employee must be categorized as excepted on the data call and furloughed after the shutdown activities have been accomplished.

6. Recommended Actions in Anticipation of a Lapse in Appropriations

A. Fiscal Management

Since payments will not be made during a lapse in appropriations (except for payments made using centrally-billed or individually-billed government purchase cards by excepted employees in support of excepted functions), offices should ensure that payments that can legally be made prior to an anticipated lapse are processed for payment before the lapse. In other words, if payment requirements have been satisfied before the lapse (e.g., goods and services have been received and accepted, a proper invoice has been received and certified for payment), such payments should be processed before the lapse, if possible. Otherwise, payment processing will be delayed until an appropriation or CR is enacted.

B. Staffing

1. Details: All details should be reviewed to ensure that details do not begin or end during an anticipated period of lapsed appropriations. To be conservative, offices should assume that a lapse will last for two weeks. Any details beginning or ending during that two-week period should be modified to ensure that details do not begin or end during the anticipated lapse.
2. New Employees: Aside from new employees who will be brought on board to perform excepted functions, employees should not be scheduled to start during a pay period in which a lapse in appropriations is anticipated.

C. Travel

Prior to an anticipated lapse in appropriations, offices should evaluate all official travel scheduled to occur in the two-week period beginning on the date a lapse in appropriations is anticipated to occur.

1. To the extent that the planned travel will be conducted by an excepted employee to perform an excepted activity, the travel may continue (also see section 7(G)).
2. If the planned travel and the traveler are excepted by reason of being funded by other than annual appropriations, the travel may continue, but travel authorizing officials should be prudent and cancel or delay the trip, if possible (also see section 7(G)).
3. To the extent the planned travel is to be performed by a non-excepted employee and/or for a non-excepted activity, offices should consider canceling such travel, since travel for non-excepted functions may not occur if the Department's funding has lapsed (apart from the travel necessary to return a non-excepted employee home). In making determinations about when to cancel such travel, offices should consider whether

canceling travel early would save the Department fines and penalties that might accrue if offices wait until a later date to cancel the travel.

Since travel vouchers and SF-1164 Claims for Reimbursement will not be processed during a lapse in appropriations (and employees will not be paid for travel expenses until an appropriation or CR is enacted), offices and travelers should work together to expedite the processing of travel vouchers prior to the start of an anticipated lapse (but only for travel that has concluded prior to the lapse). For example, if an employee returns from official travel on September 29 and a lapse is anticipated for October 1, the employee should attempt to prepare and submit the voucher on the 29th or the 30th, and the office should attempt to review, approve and pay the voucher on the 30th, if possible. It may be prudent to authorize overtime to ensure that all travel vouchers for travel completed prior to the anticipated lapse can be processed for payment before the first day of the lapse.

7. Administrative Considerations During a Lapse in Appropriations

A. Contracting

1. Continued Performance for Existing Contracts: There is often confusion about whether to allow contracts for non-excepted work to continue when those contracts were obligated prior to the lapse in appropriations. In those situations, contracts for non-excepted work, funded in prior fiscal years or from sources that have not lapsed, may continue as long as the work is not dependent upon federal employee supervision or new funding. This issue is treated in more detail in section K of [JMD's Lapse in Appropriations Reference Guide](#) (see question six).
2. Contract Administration: In general, routine operational and administrative activities relating to contract, grant or cooperative agreement administration (including payment processing) cannot continue when there is a lapse in appropriations. However, there are exceptions, such as when contracts or cooperative agreements address excepted activities. See section K of [JMD's Lapse in Appropriations Reference Guide](#) for more information.

B. Fiscal Management (Obligations & Payments)

1. Obligations: To the extent financial obligations must be incurred during a lapse in annual appropriations to support excepted activities (or activities that are funded from sources that have not lapsed), the obligations must be approved and documented according to fiscal requirements. All offices must retain the proper documentation and observe the necessary internal controls (including proper separation of duties) when conducting financial operations during a federal funding hiatus.

While funding can be certified available for those sources of funding that have not lapsed (i.e., the FEW appropriation and the mandatory HCF account), funding cannot be certified available under the lapsed appropriation (i.e., the Direct budget) or under certain reimbursable funding sources (i.e., OCDEF, OVC, and the Discretionary HCF). Moreover, to be able to certify the availability of funding, offices must have received an allocation from EOUSA in order to do so. When funding cannot be certified available but obligations must be incurred, offices should include the following statement in lieu of the funding certification: “These goods and/or services are required to support excepted activities during a lapse in appropriations; funding cannot be certified available due to a lapse in appropriations.” The actual funding certification must be deferred until an appropriation or CR is enacted later.

During the lapse, obligations should not be recorded in the financial management system, irrespective of whether funding is available or not, unless specific guidance from JMD or EOUSA at the time of the lapse advises otherwise. Therefore, it is recommended that the documentation for obligations incurred for excepted functions be consolidated in one location and held until the obligations can be recorded in the financial management system after a CR or annual appropriation is enacted. See the travel section below for information on travel obligations.

2. Payments: Even though funding may be available for payments, the employees who process payments are not excepted and the Department does not consider payment processing to be an excepted function. Therefore, payments (e.g., salary payments, Treasury check and electronic funding transfer (EFT) payments to vendors, travel expense payments to travelers, etc.) cannot be made until an appropriation or CR is enacted. This includes payments to fact witnesses and expert witnesses. For certain vendor obligations, our inability to make payments may result in interest penalties, which would also need to be paid when an appropriation or CR is enacted.

For filing fees that must be paid in advance to clerks’ offices to support excepted functions, USAOs should continue to rely on existing Simplifile delivery orders to cover filing fees, if clerks’ offices participate in Simplifile. If a clerk’s office does not participate, the USAO should attempt to arrange for the fee to be invoiced and paid in arrears. As a last resort, if a particular clerk’s office accepts credit card payments for filing fees, a USAO may use the government purchase card to pay filing fees in support of excepted activities, if necessary. This practice is only permitted during a lapse in appropriations. Since the vendor is a state or local governmental entity, an advance payment may be made for these fees. The state or local statute that requires advance payment should be cited in the payment documentation.

Purchase cards, travel cards, and fleet cards may be used to make purchases in support of excepted functions by excepted employees. Purchase Card Program coordinators should consider reducing spending limits for non-excepted employees to one dollar for the duration of the furlough as an internal control to prevent inappropriate spending.

C. Information Technology

1. Excepted Employees: All excepted employees may continue to use government-furnished communication devices (e.g., smartphones, laptops, desktop computers, iPads, etc.) during a lapse in appropriations.
2. Non-Excepted Employees: Non-excepted employees must not use their government-furnished communication devices (e.g., smartphones, laptops, desktop computers, iPads, etc.) or any other equipment provided by the Department during a lapse, except in the following limited circumstances:
 - a. Non-excepted employees may briefly check their electronic mail remotely every few days during a lapse in appropriations in order to determine their status, receive furlough notices, and/or update an out-of-office message. Employees will be considered excepted for these brief periods (which when taken together should amount to no more than 15 minutes). Employees must manually track their time.
 - b. Non-excepted AUSAs with active cases may check their incoming electronic mail once per day for electronic court notices and forward notices to an appropriate excepted AUSA. This activity should typically take no longer than 15 minutes per day. AUSAs, who are otherwise non-excepted, will be considered excepted during the time they are performing this activity and they must manually track their time.

Although employees under 2(a) and 2(b) above will be considered excepted for the brief periods of time in which they check electronic mail, these employees should not be categorized as excepted employees on the data call.

D. Reporting for Work and Arranging for Absences

1. Excepted Employees Funded by Other Than Annual Appropriations: Employees who are excepted because their positions are funded by other than annual appropriations (and who have confirmed their excepted status with management) should report to work according to their normal work schedule and may take paid leave during a furlough.
2. All Other Excepted Employees: All other excepted employees must report for work during a lapse in appropriations according to their normal work schedule, unless an employee's supervisor has adjusted his or her work schedule during the lapse to better

address work requirements. However, any previously approved paid leave, which would have occurred during the period of the lapse, is canceled.

An excepted employee who refuses to report for work after being ordered to do so will be considered absent without leave and may be subject to disciplinary action for not reporting to work. During a lapse in appropriations, all employees must be either: (i) at work performing excepted activities (excepted employees); or, (ii) in a furlough status (non-excepted employees), unless funded by other than annual appropriations; or, (iii) on leave without pay (LWOP) (non-excepted employees) in the limited circumstances discussed in the following section.

If an excepted employee is unable to report for work during a furlough and the supervisor approves the absence, the supervisor must change the status of the excepted employee to non-excepted and furlough the employee to allow the employee to be “absent” from work. When an employee is not working or performing excepted activities in compliance with the ADA and not authorized to continue on LWOP, he or she must be furloughed and the furlough must be documented by a furlough notice.

3. Non-Excepted Employees: Non-excepted employees must be furloughed and may not use paid leave during a lapse in appropriations. In general, non-excepted employees scheduled to be on LWOP during the entire period of the lapse in appropriations may stay on LWOP. However, if the employee will return from LWOP to a paid status during the lapse in appropriations, the employee must be furloughed upon their return from LWOP. Please see question four of section F of the [Office of Personnel Management’s \(OPM’s\) Guidance for Shutdown Furloughs](#).

Further, the use of donated leave during a lapse in appropriations is canceled and employees authorized to use donated leave must revert to LWOP during the furlough. Upon enactment of an appropriation or CR, employees in this situation are usually given the opportunity to substitute donated leave for the periods of LWOP that occurred during the lapse in appropriations. However, OPM may adjust entitlements and procedures based upon the law Congress enacts to allow retroactive salary payments to non-excepted employees.

Lastly, please remember that non-excepted employees may not perform voluntary work during a lapse in appropriations.

E. Staffing

USAOs and EOUSA staffs should delay the enter-on-duty date for new employees who are scheduled to start during a lapse in appropriations. See section D of [JMD’s Lapse in Appropriations Reference Guide](#). However, there are two exceptions:

1. Funded Activities: To the extent that the funding to pay the new employees has not lapsed, and the necessary funding is otherwise available to pay the employees and support the on-boarding process, the new employees may begin work (although, like everyone else, they will not receive pay until a CR or appropriation is enacted).
2. Excepted Activities: Where the new employees are funded by an appropriation that has lapsed, new employees may be brought on board and begin work specifically to perform excepted activities, the delay of which would compromise the safety of human life or the protection of property. A duly authorized employee must be available to swear in the new employees. The paperwork necessary to bring the employees on board may be processed by excepted human resources personnel. However, as a general rule, the on-boarding process is not an excepted function. Offices that bring on board new employees to perform excepted activities should conduct only the minimal on-boarding procedures deemed reasonably necessary until funding is restored.

F. Training

During a lapse in appropriations, training of employees, even excepted employees, must be canceled or delayed, unless immediate training is necessary to protect human life or property. See section H of [JMD's Lapse in Appropriations Reference Guide](#). Training of state and local officers should be canceled during a lapse in appropriations, with the exception of training conducted by OLE's Medicaid Integrity Institute, which receives funding from accounts managed by the Department of Health and Human Services (see section 5(B)(1)(d) above), provided funding is available in those accounts.

G. Travel

1. Excepted Employees: Official travel is permitted for excepted employees during a lapse in appropriations on a case-by-case basis, (i) if such travel is necessary to carry out an excepted function; or, (ii) if funding for such travel is available in spite of the lapse (e.g., funding is available from a source that has not lapsed); or, (iii) if the travel falls within one of the other excepted categories.

While PAS USAs are excepted from furlough because of how their salaries are paid, their expenses are not subject to the same exception. Consequently, PAS USAs may only travel during a lapse if the travel falls under one of the other excepted categories outside of section 5(B)(3), such as travel to protect human life or property or if the funding source for the travel remains available despite the lapse.

During a lapse, when planning excepted travel that requires an advance written authorization to travel (as opposed to excepted travel conducted under local travel

procedures, which require advance verbal authorization to travel), employees should continue to arrange travel using the online booking engine and generate a travel authorization in the Internet-based travel management system. When the traveler releases the authorization electronically, it will be routed to the Fund Certifier, who will request the review and approval of the Approving Officer (i.e., travel authorizing official). The Fund Certifier will not approve the authorization in the travel system, but will instead hold the authorization in his or her queue for action later when a CR or appropriation is enacted. If the Approving Officer authorizes the travel (by noting approved on the printed authorization and including his or her signature and date), the Fund Certifier will notify the traveler by e-mail that the travel is approved, provide a PDF copy of the approved travel authorization, and, depending upon the situation, note one of the following statements regarding funding in the e-mail to the traveler:

- i. If funding is available from a source that has not lapsed, include the following statement: “You are authorized to travel in conformance with the attached travel authorization. Funding is hereby certified available.” This email must be included as an attachment to the authorization in the travel system.
- ii. If funding is not available, include the following statement: “Funding cannot be certified available at this time. However, travel is essential to carry out an excepted function during a lapse in appropriations and must be undertaken in accordance with the attached travel authorization. Funding will be authorized retroactively when a CR or appropriation is enacted.” This email must be included as an attachment to the authorization in the travel system.

When performing official travel during a lapse, excepted employees may use their government travel cards. In accordance with their cardholder agreement, employees remain obligated to pay their government travel card accounts on time regardless of whether they have been reimbursed for their travel. Once an appropriation or CR is enacted by Congress, travel vouchers will be processed for payment and employees will receive reimbursement for travel expenses. See section G of [JMD’s Lapse in Appropriations Reference Guide](#).

2. Non-Excepted Employees: Official travel for non-excepted employees is not permitted during a lapse in appropriations. However, if a non-excepted employee is on short-term travel when the lapse in appropriations begins, management should request that the employee arrange to return to the permanent duty station immediately ([USAM 3-8.314](#)). The travel to return home can be considered necessary for the orderly shutdown of operations and the employee can be considered excepted for this purpose alone. Upon arrival home, the employee must be furloughed.

The decision to continue or halt extended temporary duty travel should be made on a case-by-case basis, considering the cost and the anticipated period of the furlough.

3. Travel Vouchers: The [Federal Travel Regulations](#) and the Department’s travel policies and procedures must be observed during a lapse in appropriations. However, travel voucher processing is not an excepted function and travel vouchers will not be processed for payment during the lapse.

Point-of-Contact:	
<u>POC Name / Email:</u>	RMP Budget Analyst
<u>Title / Staff:</u>	Budget Analyst / RMP
<u>Phone:</u>	(202) 252-5600

Addenda:

- Version History Log
- Categories of Topics
- Glossary of Terms

VERSION HISTORY LOG

U.S. Attorney Policies and Procedures are regularly reviewed for accuracy. This Version History Log records the date and summary of each change, including its SharePoint version number:

Ver- sion	Date of Action	Point-of-Contact (Name / Staff)	Summary of Action / Changes
1.0	5/13/16	Bernschein/RMP	This USAPP was created to provide guidance to EOUSA and the USAOs on the impact of a lapse in appropriations on mission activities.
2.0			
3.0			
4.0			
5.0			
6.0			
7.0			
8.0			
9.0			
10.0			

CATEGORIES OF USAPP TOPICS

Organization & Planning	Facilities & Property Support
Standards of Conduct	Security & Emergency Mgt.
Legal/Ethics Guidance	Records & Information Mgt.
AGAC / U.S. Attorneys	Information Technology
AUSAs / SAUSAs	FOIA/Privacy
Oversight (EARS/OIG/OPR)	Witnesses & Consultants
Human Resources Management	Financial Litigation Unit
Equal Employment Opportunity	Victim/Witness
Training	Civil Litigation
Travel	Civil Rights
Resource & Financial Mgt.	Criminal
Procurement & Acquisitions	Appeals
Media / Public Communications	Bankruptcy

GLOSSARY OF TERMS

ORGANIZATIONAL UNITS

<i>Term</i>	Organization
<i>OMB</i>	Office of Management and Budget
<i>DOJ / Department</i>	Department of Justice
<i>JMD</i>	Justice Management Division
<i>EOUSA</i>	Executive Office for United States Attorneys
<i>Office / District</i>	EOUSA and USAO locations
<i>USAO</i>	United States Attorney's Office

DEFINITIONS

<i>Term</i>	Definition
<i>Appropriation Act</i>	A statute, under the jurisdiction of the House and Senate Committees on Appropriations, that generally provides legal authority for federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriation act fulfills the requirement of Article I, section 9 of the Constitution, which provides that “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The three major types of appropriation acts are regular, supplemental, and continuing. Regular appropriation acts are all appropriation acts that are not supplemental or continuing. Currently, 13 regular appropriation acts are considered annually. From time to time, supplemental appropriation acts are also enacted. When action on regular appropriation bills is not completed before the beginning of the fiscal year, a continuing resolution or bill may be enacted to provide funding for the affected agencies for the full year, up to a specified date, or until their regular appropriations are enacted.

<p><i>Appropriations</i></p>	<p>Authority given to federal agencies to incur obligations and to make payments from the Treasury for specified purposes. An appropriation act, the most common means of providing budget authority, usually follows the enactment of authorizing legislation, but in some cases the authorizing legislation itself provides the budget authority. Appropriations do not represent cash actually set aside in Treasury for purposes specified in the appropriation act; they represent amounts that agencies may obligate during the period of time specified in the respective appropriation acts.</p>
<p><i>Continuing Resolution</i></p>	<p>Legislation that may be enacted to provide budget authority for federal agencies and/or specific activities to continue in operation when the Congress and the President have not completed action on appropriations by the beginning of the fiscal year. Until regular appropriations are enacted, continuing appropriations may take their place. Continuing appropriations usually are passed in the legislative form of joint resolutions. A continuing resolution may be enacted for the full year, up to a specified date, or until regular appropriations are enacted. A continuing resolution usually specifies a maximum rate at which the obligations may be incurred based on levels specified in the resolution (usually in relation to the prior fiscal year). The resolution may state that obligations may not exceed the current rate or must be the lower of the amounts provided in the appropriations bills passed in the House or Senate. If enacted to cover the entire fiscal year, the resolution will usually specify amounts provided for each appropriation account.</p>
<p><i>Duration of Appropriations</i> <i>(i.e., Duration of Budget Authority)</i></p>	<p><u>One-Year (Annual) Authority</u>: Budget authority which is available for obligation only during a specific fiscal year and which expires, if not obligated, at the end of that time. It is also known as “fiscal year” or “annual” budget authority. <u>Multiple-Year Authority</u>: Budget authority which is available for a specified period of time in excess of one fiscal year. This authority generally takes the form of 2-year, 3-year, etc., availability but may cover periods that do not coincide with the start or end of a fiscal year. For example, the authority may be available from July 1 of one year through September 30 of the following fiscal year, a period of 15 months. <u>No-Year Authority</u>: Budget authority that remains available for obligation for an indefinite period of time, usually until the objectives for which the authority was made available are attained.</p>