



# United States Attorneys' Policies and Procedures

*Proposed  
Revision*  
**No. 3-8-312-001**

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*See Version History Log for prior versions.*

## LAPSE IN APPROPRIATIONS

<b>SCOPE:</b>	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.
<b>PURPOSE:</b>	To revise Section 5.B.1. on the Policy of Excepted Functions Funded by Sources Other than Annual Appropriated Funds.
<b>ORIGINATING OFFICE:</b>	Resource Management and Planning (RMP) Staff Office of the Chief Financial Officer, EOUSA
<b>CATEGORY:</b>	Resource & Financial Mgt.
<b>SUPERSEDES:</b>	Previous Section 5.B.1 of USAPP 3-8.312.001
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<b>APPROVED BY:</b>	Jonathan Pelletier, Chief Financial Officer, EOUSA

## 5. Policy

### 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.

The Office for Victims of Crime (OVC) provides no-year funding to EOUSA via reimbursable agreement. OVC is non-appropriated funding that comes from the Crime Victims Fund and depending upon the agreement terms may be considered a non-lapsed source of funding and the employees supported by it may be excepted.

Health Care Fraud (HCF) no-year (mandatory) and multi-year (discretionary) funding is provided to EOUSA via reimbursable agreement. HCF mandatory funding is non-appropriated funding made available via statute and therefore is a non-lapsed source of funding and the employees supported by it are excepted.

HCF discretionary is appropriated funding from the Labor-Health and Human Services (HHS) Appropriation. The determination of whether or not this funding is lapsed and the status of the employees supported by this funding (non-exceptioned or exceptioned) are dependent upon the availability of carry-over funding since it comes from a two-year account and the status of the Labor-HHS Appropriation.

Similarly, EOUSA's Office of Legal Education (OLE) receives no-year funding via reimbursable agreement 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 generally exceptioned 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.

There may be other agreements that fall within this category. EOUSA will notify offices of the status of FEW, OVC, HCF discretionary, and other agreements in this category in the event of a lapse in appropriations.

- 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 Assistant United States Attorney (AUSA) positions in certain USAOs. During a lapse, if the AFF has sufficient resources, the AFF-related activities and the AFF-funded AUSAs are exceptioned. 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 and (ii) the Organized Crime Drug Enforcement Task Forces (OCDETF) Program. OCDETF and other agreements are funded by trading partners operating off of annual appropriations and therefore a lapse in these annual appropriations leaves our trading partners without funding for their programs, preventing them from providing reimbursable funding to EOUSA for these agreements.