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# **Title 3**

## **Executive Office for United States Attorneys**

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*Part 1, Administrative  
Policy*

*Part 2, Financial Litigation*

U.S. ATTORNEY'S MANUAL 1988

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U.S. ATTORNEYS MANUAL 1988

*Part 1*  
*Administrative Policy*

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UNITED STATES ATTORNEYS' MANUAL

Part I: Administrative Policy

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3-1.000 ORGANIZATION/PRIOR APPROVALS

## 3-1.100 ORGANIZATION

3-1.110 Introduction

Title 3, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, replaces Title 10 in the *United States Attorneys' Manual*. It contains Executive Office policy and is designed to be used with Title 1 of this *Manual*, the *United States Attorneys' Administrative Procedures Handbook*, and the *Orientation Manual for United States Attorneys*.

Title 3 is divided into two parts: *Part I, Administrative Policy*, and *Part II, Financial Litigation*. Part I sets forth Executive Office policy on personnel matters, financial management, procurement, space and security, information management, attorney and nonattorney training, and equal opportunity matters. Part II sets forth policy on financial litigation including civil prejudgment debt collection activity and collection of criminal fines.

3-1.120 Responsibilities

The organizational units within the Executive Office for United States Attorneys are as follows:

A. Office of the Director:

The Director of the Executive Office for United States Attorneys provides executive assistance and supervision to the offices of the United States Attorneys, and to the Attorney General's Advisory Committee of United States Attorneys. The Director is assisted by a Deputy Director and Administrative Officer.

B. Office of Legal Education:

The Office of Legal Education administers three institutes: the Attorney General's Advocacy Institute, the Legal Education Institute, and the Legal Support Training unit. This Office is responsible for all attorney and nonattorney training.

C. Administrative Services:

Administrative Services serves as the organizational unit which provides support and guidance to the Executive Office and offices of the United States Attorneys on all administrative matters; such as, personnel, financial management, procurement and property management, space and security, and office evaluations.

D. Information Management:

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October 1, 1988

The Information Management staff is responsible for all office automation and litigation support for the Executive Office and the offices of the United States Attorneys.

E. Financial Litigation:

The Financial Litigation staff assists the offices of the United States Attorneys in financial litigation work. As such, this unit sets policy for the handling of claims referred by the various federal agencies for litigation and enforced collection; and, the collection of criminal fines, penalties, assessments, court costs and appearance bond forfeitures.

F. Counsel:

The staff of the office of the Counsel provides guidance to the Executive Office and to the United States Attorneys on matters such as conflicts of interest, asset forfeiture, destruction of drug evidence, nonattorney excepted service, the Department's firearms' policy, congressional inquiries, surveys and sensitive case reports. The Counsel oversees a Freedom of Information/Privacy Act Unit and publication of the *United States Attorneys' Manual* and *United States Attorneys' Bulletin*.

F. LECC/Victim Witness:

The LECC/Victim Witness staff provides guidance to the offices of the United States Attorneys in carrying out their LECC Victim Witness Programs, see USAM 1-11.000.

G. Equal Employment Opportunity (EEO):

The EEO staff ensures that equal opportunity in employment is provided to all employees of the Executive Office and offices of the United States Attorneys. This is accomplished through a continuing affirmative action program that will eliminate discrimination based on factors irrelevant to job performance. This office develops the plans, procedures and regulations necessary to carry out these programs.

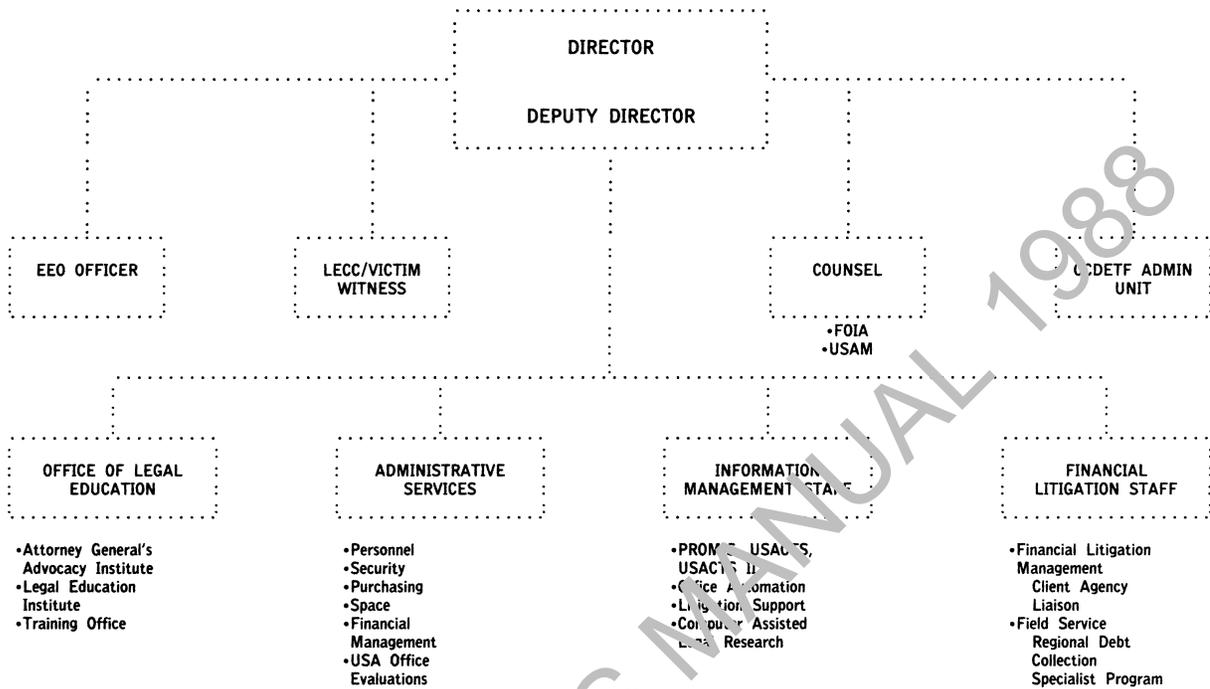
H. Organized Crime Drug Enforcement Task Force (OCDETF) Administrative Unit:

The OCDETF Administrative Unit provides administrative support to the Organized Crime Drug Enforcement Task Force.

See USAM 3-1.130 for EOUSA Organizational Chart.

3-1.130 Organizational Chart

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS



/s/Laurence S. McWhorter Dated: 9/11/88  
 Laurence S. McWhorter  
 Director

3-1.200 PRIOR APPROVALS

PRIOR APPROVAL REQUIREMENTS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
3-2.213	To appoint Special AUSAs.	Associate Attorney General	Written request and approval. EOUSA administers SAUSA Program.
3-2.250; .311	To hire Assistant U.S. Attorneys and law students.	Director, Office of Atty. Personnel Mgmt.	
3-2.250	To hire non-attorney support personnel GS-15 and below, (except law students.)	Director, EOUSA	Written Approval. Authority may be redelegated.
3-2.300	To detail Schedule C secretaries.	JMD through EOUSA Personnel Staff EOUSA	Written request including justification.
3-2.312	(1) To designate a supervisory position for pay purposes, or (2) any reorganization of paid attorney supervisory positions.	1) Director, EOUSA or designee, 2) Director, EOUSA	
3-2.316	To request temporary appointments and extensions.	Associate Director, Admin. Services, EOUSA	Written request.

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
3-2.330	To pay travel expenses for pre-employment interviews.	Director, EOUSA	Written request.
3-2.334	To establish a sabbatical program.	Director, EOUSA	
3-2.335(K)	Relocation expenses for new employees and transferring employees.	Director, EOUSA	Written request and response.
3-2.610	To change tour of duty for general staff of U.S. Attorney's office other than 9 a.m. to 5:30 p.m.	Director, EOUSA	
3-2.630	To request more than two weeks of leave by a United States Attorney.	Director, EOUSA	
3-2.732	To waive name and fingerprint request for employees assigned to non-sensitive positions and all students. (Reserved section in USAM.)	Securities Program Staff, JMD	Verbal approval confirmed in writing.
3-2.732	To access classified information (i.e. security clearance); and to access Sensitive Compartmented Information (SCI). (Reserved section in USAM.)	Securities Program Staff, JMD	
3-2.734	For an AUSA to lecture or teach when the use of non-public information is contemplated.	Deputy Attorney General	28 C.F.R. § 45.735-12; See USAM 1-4.330
3-2.735(C)	For a U.S. Attorney or AUSA to participate in outside cases, engage in outside employment, or the private practice of law.	Deputy Attorney General	28 C.F.R. §§ 45.735-9(c)(3), 45.735-6(b) and (d), or 45.735-9(e); See also 18 U.S.C. § 205; USAM 1-4.310
3-2.751	To issue written or oral reprimand, suspension, reduction in grade or pay, and furloughs for 30 days or less.	Associate Attorney General	Authority to reprimand has been redelegated to the Director, EOUSA
3-2.752	To remove an Assistant U.S. Attorney	Associate Attorney General	28 C.F.R. § 0.19(a)(1); Recommendation must be submitted through EOUSA. See USAM 1-5.100.
3-3.220	For a witness to testify in a foreign extradition proceeding who is not a U.S. government employee.	Assistant Attorney General, JMD	
3-3.231	To incur expenses to hire foreign counsel	Associate Director Admin. Services, EOUSA	
3-3.232	To obtain testimony of foreign national residing abroad.	Office of Int'l Affairs, Crim. Div., or Off. of Foreign Affairs, Civil Div.	Written request required.
3-3.520	Authorization to employ expert witness.	Special Authorization Unit, JMD	See USAM 1-14.750.
3-3.580	Administrative expenses in foreclosure proceeding: foreign travel;	EOUSA, Space Mgmt. and Pro-	

October 1, 1988

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	work study agreements; equipment purchases and rentals; transportation of property; and space acquisition, release and alteration.	Director, EOUSA	
3-3.630	Revocation of an existing or nomination of a new certifying officer.	Director, EOUSA	Written request, and response.
3-3.710	Relocation expenses; foreign travel; or actual subsistence in a non-designated high-rate area.	Director, EOUSA	Written request.
3-3.720	Payment of travel expenses for state and local officials in cases when there is no money in the state or local budget to pay for the travel.	Deputy Director, EOUSA	
3-3.730	All foreign travel for employees occupying Executive Schedule positions.	Deputy Attorney General	Written request and response.
3-3.740	Requests for first-class travel.	Director, EOUSA	Written request and response.
3-3.800	Requests for relocation expenses.	Director, EOUSA	Written request.
3-3.900	Request to hold asset forfeiture proceeds.	EOUSA	
3-3.1000	Departure from dist. office conference guidelines	Director, EOUSA	In writing.
3-4.120	To request paid advertisements (except for legal advertisements) to attract job applicants.	Assistant Attorney General, JMD	Written request and response.
3-4.221	To request printing.	Facilities Mgmt. and Support Services, EOUSA	DOJ-2
3-4.223	To request printing of official court instruments.	Pub. Mgmt. Unit, JMD and EOUSA	If the need is recurring, a DOJ-2 should be submitted to EOUSA requesting contractor.
3-4.253	To rent copier equipment.	JMD, Office Automation Staff	In emergency SF-44 may be used, after acquiring authorization from FMISS (not to exceed 90 days).
3-4.352	To use forfeited property for official use.	Facilities Mgmt., EOUSA	
3-4.390	To ship goods pertaining to specific litigation, or records to the Federal Archives or Records Center in excess of \$100.	Property Mgmt. Serv., JMD	Form OBD 186T.
3-5.141; .143	To acquire new space, release space, or relocate.	Asst. Director Facilities Mgmt., EOUSA, and GSA	Written request and approval. GSA makes final assignment memo
3-5.210	Request for parking space.	Facilities Mgmt., EOUSA and GSA	GSA may delegate authority to EOUSA.

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
C 3-7.320; .410	To request automated litigating support systems; and word processing equipment.	Associate Director, Information Mgmt.	
3-8.332	Training sponsored or coordinated by the EOUSA including the AGAI and LEI;  Training outside of the district or a contiguous district;  Office sponsored training which is subject to procurement procedures due to the cost of speakers and/or facilities; and  Training for which the total cost, including travel, is greater than \$1,500.	Director, Office of Legal Education, EOUSA	Attorney and Non-attorney
3-8.522	To reduce 80 hour supervisory training requirement based on prior skills and knowledge; and proposed Individual first level Supervisory Training Record.	Director, Office of Legal Education	

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U.S. Department of Justice

Executive Office for United States Attorneys  
ENVIRONMENT & NATURAL  
RESOURCES DIVISION

*Clark*

SEP 10 10 12 AM '93

Office of the Director

Washington, D.C. 20530

INDIAN RESOURCES  
SECTION

August 20, 1993

TO: Holders of United States Attorneys' Manual Title 3.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys  
*Anthony C. Moscato*  
Anthony C. Moscato  
Director

RE: Employment of the Secretary  
to the United States Attorney

- NOTE:
1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
  2. Distribute to holders of Title 3.
  3. Insert in front of USAM 3-2.213.

AFFECTS: USAM 3-2.213

PURPOSE: This Bluesheet announces a new policy concerning filling vacant Secretary to the United States Attorney positions.

\*\*\* NOTE: The following section  
is added to USAM 3.213. \*\*\*

F. Employment of the Secretary to the United States Attorney:

Vacant Secretary to the United States Attorney (SUSA) positions are to be filled through Schedule C excepted service appointments. The Schedule C appointing authority is designed for positions whose duties can be performed only by an individual who has a personal and confidential relationship with his/her supervisor who is a key employee of the agency. A Schedule C appointment can be effected more quickly and surely than a competitive service appointment, and a Schedule C appointee can be easily retained or involuntarily removed by an incoming United States Attorney even if the SUSA poses no conduct and/or performance problems.



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

April 21, 1995

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

  
Carol DiBattiste  
Director

RE: Assignment of Attorney Work to Paralegal Specialists

- NOTE: 1. This is issued pursuant to USAM 1-1.521 and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
2. Distribute to holders of Title 3.
3. Insert in front of USAM 3-2.213.

AFFECTS: USAM 3-2.213 C.

PURPOSE: This Bluesheet announces new policies governing the assignment of attorney work to Paralegal Specialists employed in United States Attorneys' offices (USAOs).

\*\*\* NOTE: The following section  
is added to USAM 3-2.213 C.\*\*\*

Assignment of Attorney Work to Paralegal Specialists:

USAO Paralegal Specialists who possess a professional law degree (LL.B., J.D., or LL.M.) and who have passed the Bar may be assigned attorney duties only if they are first converted to an Assistant United States Attorney (AUSA) appointment or a paid Special AUSA (SAUSA) appointment. In either case, the appointment will be officially documented in the personnel/payroll database. Uncompensated SAUSA appointments in these situations are not permitted.

### Compensation

Paralegal Specialists who are converted to either AUSA or SAUSA appointments will be compensated in accordance with the line AUSA paysetting guidelines published annually by the Director, Executive Office for United States Attorneys. No special paysetting rules apply to these situations.

### Performance Appraisal

AUSAs, and paid SAUSAs who are appointed for 90 or more days, are covered by the performance appraisal provisions of law and regulation, and are subject to the line AUSA performance appraisal cycle, January 1 to December 31.

U.S. ATTORNEYS MANUAL 1988



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

September 5, 1995

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

  
Carol DiBattiste  
Director

RE: Law Clerks

- NOTE: 1. This is issued pursuant to USAM 1-1.521 and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
2. Distribute to holders of Title 3.
3. Insert in front of USAM 3-2.213.

AFFECTS: USAM 3-2.213 B.

PURPOSE: This Bluesheet announces the Department's requirements concerning use of its Honors Program when effecting Law Clerk appointments.

\*\*\* NOTE: The following section is added to USAM 3-2.213 B.\*\*\*

Use of the Honors Program:

Law Clerk recruiting and appointments are to be accomplished via the Department's Honors Program. The Office of Attorney Personnel Management will entertain exceptions to this requirement only when the prospective appointee is already employed in the United States Attorney's Office.

3-2.000 PERSONNEL MANAGEMENT

## 3-2.100 INTRODUCTION

Title 10 has been reorganized as Title 3. Title 3-2, concerning personnel matters, is numbered in parallel with Federal Personnel Manual (FPM) Chapter numbers. This new numbering scheme should assist users in researching information more rapidly. Further, only policy and other interpretive information necessary to convey policy will be incorporated. 'Bluesheets' will continue to serve as the vehicle for policy changes. Sections for which no Executive Office for United States Attorneys (EOUSA) policy exists will be labeled '(Reserved),' until such time as policy is established. In any instance where EOUSA policy is not stated or where EOUSA policy may, in error, conflict with higher-level guidance, higher-level guidance will govern. Each district will obtain and maintain a full up-to-date copy of the United States Attorneys' Administrative Procedures Handbook; United States Attorneys' Manual (USAM), Title 3, Chapter 2; Department of Justice (DOJ) Orders; FPM, to include major FPM Supplements, Bulletins and Letters; and pertinent Office of Personnel Management classification and qualification standards.

All personnel management actions and programs, and the policies and procedures utilized to execute same, *must* be in accordance with 5 U.S.C., 5 C.F.R., F.P.M., Comptroller General decisions, DOJ Orders and this policy document. The United States Attorneys' Administrative Procedures Handbook will be consulted to determine correct EOUSA administrative procedures and instructions.

## 3-2.200 PERSONNEL

The authority to take final action in all matters pertaining to the employment, separation and general administration of all personnel of grade GS-15 and below, excluding attorneys and law students, in U.S. Attorneys' offices and the EOUSA, has been delegated to the Director of the Executive Office. (See 28 C.F.R. § 0.138). The Associate Attorney General has personnel authority over Assistant U.S. Attorneys. The Director, EOUSA, may delegate authority beyond that described in this chapter to individual U.S. Attorneys as he/she deems appropriate.

## 3-2.210 Basic Concepts and Definitions (General)

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 210  
5 C.F.R., Part 210

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

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## 3-2.211 Veterans' Preference

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 211  
5 C.F.R., Part 211.101

Additional references may be identified within the text of the resource(s) cited above.

Claims to veteran's preference must be verified by the servicing personnel specialist prior to appointment.

## 3-2.212 Competitive Service and Competitive Status

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 212  
5 C.F.R., Part 212

Additional references may be identified within the text of the resource(s) cited above.

All positions not identified as excepted service positions will be filled only after recruitment is conducted which reflects an effort to achieve affirmative action program goals and in accordance with the regulations in the Federal Personnel Manual.

## 3-2.213 Excepted Service

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 213  
5 C.F.R., Part 213

Additional references may be identified within the text of the resource(s) cited above.

A. Attorneys, Assistant United States Attorneys:

The attorney staffs of the Executive Office for the United States Attorneys (EOUSA) and the Offices of the United States Attorneys (OUSA) are excepted from the competitive service. The former are excepted pursuant to Office of Personnel Management (OPM) regulation (Schedule A, 5 C.F.R. § 213.3102) and are compensated in accordance with the General Schedule. The latter are excepted by statute and are compensated in accordance with an administratively determined pay system pursuant to 28 U.S.C. § 548.

United States Attorneys are authorized to recruit and screen applicants and to submit nominations of attorneys to serve as Assistant United States Attorneys. It is the policy of the Department of Justice to provide a quality opportunity for all attorneys who may wish to apply for positions in OUSA.

B. Law Clerks:

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### Appointing Authority

Law Clerk appointments are Excepted Service appointments not-to-exceed 14 months, effected pursuant to Schedule A, Section 213.3102 (e), confined to the employment of law school graduates who have not passed the bar.

### Classification and Funding

Law Clerk appointees are classified to the GS-904 series and are counted against either an authorized Assistant United States Attorney position or a Paralegal Specialist position, at the option of the United States Attorney. Any Law Clerk position counted against the latter category, however, will be funded at the average salary for a Paralegal Specialist position.

### Eligibility/Qualifications Requirements

Law Clerks may be appointed at the GS-9, GS-11 or GS-12 level, based on the following qualifications criteria:

GS-9: Appointees must have their first professional law degree (LL.B. or J.D.).

GS-11: Appointees must possess one of the following:

A. An LL.B. or J.D. degree plus one year of subsequent professional legal experience (i.e., experience typically performed by an attorney);

OR

B. An LL.B. or J.D. degree if the appointee's record reflects superior law student work or activities as demonstrated by one of the following:

1. Academic standing in the upper third of the law school graduating class; or
2. Work or achievement of significance of his/her law school's official law review; or
3. Special high-level honors for academic excellence in law school, such as election to the Order of the Coif; or
4. Winning of a moot court competition or membership on the moot court team which represents the law school in competition with other law schools; or
5. Full-time or continuous participation in a legal aid program as opposed to one-time, intermittent, or casual participation; or
6. Significant summer law office clerk experience; or
7. Other equivalent evidence of clearly superior achievement;

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July 1, 1992

OR

C. An LL.M. degree.

GS-12: Appointees must have an LL.B. or J.D. degree and one or more years of judicial law clerk experience.

The previous prohibition on the employment of candidates who have not yet taken the bar exam has been rescinded. Candidates may be hired before or after they have taken, but not after they have passed the exam.

Law Clerks may enter on duty prior to the completion of a background investigation as long as appropriate waiver procedures have been followed.

C. Special Assistant United States Attorneys:

The Attorney General may appoint attorneys to assist U.S. Attorneys pursuant to the authority given him/her in 28 U.S.C. § 543. EOUSA is the management office charged with administering the Special Assistant U.S. Attorney (SAUSA) program, hereinafter referred to as the "program," for the Department of Justice. SAUSA's are appointed by letter signed pursuant to the direction of the Associate Attorney General. Pursuant to Public Law 98-94, military attorneys with regular appointments (as well as reservists) in the Judge Advocate General Corps (JAGC) are authorized to accept appointments as SAUSA's.

Within EOUSA, the Director is assigned responsibility for the program while the administrative responsibility is assigned to the Personnel Staff.

The program consists of two definite types of appointments:

1. Without compensation (other than that which the appointee is receiving under his/her existing appointment):
2. With compensation:
  - a. Compensation at a daily rate based on 260 possible working days in any one given civil service work year.
  - b. Compensation based on a per annum salary.

Appointments of SAUSA's to assist in civil cases are routinely made upon request. However, agency attorneys (particularly those employed by regulatory agencies) are not normally authorized to appear before grand juries when assisting on criminal cases.

D. Summer Legal Intern Program (also known as Summer Student Assistant Program):

Each year, EOUSA conducts a Summer Law Intern Program for U.S. Attorneys' offices.

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1. Eligibility: To be eligible, the students must have (a) completed their second year of law school and be eligible to enter their final year of law school; or (b) be in their third year of law school, but not eligible for graduation until at least the end of the fall semester following employment.

2. Application Procedure: Applicants for the program are generated by the Department's nationwide announcement to schools and through a nationwide announcement published by the Office of Personnel Management in a "Summer Jobs" bulletin. The filing deadline for these positions may vary. The filing deadline is the date before which no selections can be made and after which the applicant may not be accepted. Each office will establish a filing deadline based on local needs.

3. Selection Procedure: Since the Summer Law Intern summer employment program is highly competitive, employing offices must assure that applicants are selected from those deemed "best qualified." Therefore, offices must establish selection and rating criteria in accordance with merit practices and procedures, that will determine the "best qualified" competitors. Rating criteria may include assessment of such factors as the students' law school record, prior legal experience or academic awards of achievements.

Written documentation of selection procedures, including a copy of the rating criteria used and the applications received, must be maintained by the employing office for two years from date of selection.

4. Affirmative Action: Each district must take affirmative action to recruit men and women of all racial and ethnic backgrounds. Approval will not be given in the absence of clear evidence of affirmative action efforts.

5. Appointment Limitations: Summer Law Intern appointees receive 700-hour appointments as Paralegal Specialists, GS-950-07/01 and only may be brought on at any time after May 13 and must be terminated by September 30.

6. Daughters and Sons Restrictions: Offices may not appoint the daughters and sons of their own personnel unless they qualify under provisions of 5 C.F.R., Part 338.

E. Legal Intern Program:

Legal Interns are also known as "JJ's." "JJ" is the alpha designator of the paragraph in 5 C.F.R., Part 213, that provides the authority for the Legal Intern Program.

1. Salaries: Legal interns are hired as Paralegal Specialists, GS-950-5 (if they are first or second year law students) or GS-950-7 (if they are third year law students).

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July 1, 1992

2. Appointment Limitations: Appointments will be made in accordance with FPM Chapter 213, Appendix J. However, regardless of entrance-on-duty date, all Legal Intern Paralegal Specialists must have a not-to-exceed date of the September 30 (or sooner) following appointment. This will allow funds monitoring in consonance with fiscal year.

3. Overtime: The employing office will authorize overtime only in emergency or occasional, special circumstances.

4. Daughters and Sons Restrictions: Offices may not appoint the daughters and sons of their own personnel unless they qualify under provisions of 5 C.F.R., Part 338.

5. Performance Appraisal: Legal interns who are appointed for four months or longer are covered by the performance appraisal system.

### 3-2.230 Organization of the Government for Personnel Management

Other reference(s): DOJ Order(s) 1273.1D  
FPM Chapter(s) 230  
5 C.F.R., Part 230

Additional references may be identified within the text of the resource(s) cited above.

When feasible, participation and attendance is encouraged at personnel related committees and meetings of the Office of Personnel Management Interagency Advisory Group, Federal Executive Boards, field personnel councils and advisory groups established under the leadership of regional directors of the Office of Personnel Management.

### 3-2.250 Personnel Management in Agencies

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 250  
5 C.F.R., Part 250

Additional references may be identified within the text of the resource(s) cited above.

#### A. Personnel Management in the Executive Office for United States Attorneys and the Offices of the United States Attorneys:

Pursuant to 28 C.F.R. § 0.19, personnel authority for Assistant U.S. Attorneys and other attorneys GS-15 and below is delegated to the Director, Office of Attorney Personnel Management (OAPM). In accordance with this delegated authority, the Executive Office for United States Attorneys and the Offices of United States Attorneys will adhere to and comply with all personnel actions, policies and procedures relative to attorneys, established or approved by the Office of Attorney Personnel Management.

Personnel authority for non-attorney positions grade GS-15 and below, exclusive of positions incumbered by law students, is delegated to the

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July 1, 1992

Director, Executive Office for United States Attorneys which in turn is delegated through the Associate Director, Administrative Services to the Assistant Director, Personnel Staff. It is the Executive Office for United States Attorneys' policy to accomplish the most efficient and effective mix of centralized/decentralized services which will satisfy mission requirements while ensuring the integrity of all statutory and regulatory requirements of the federal personnel system.

Offices of the United States Attorneys with delegated personnel authority will establish and define their individual personnel objectives. Accompanying the delegation to the districts is the proviso, which accompanies the Department's delegation from the Office of Personnel Management, that the standards, requirements and instructions issued by the Office of Personnel Management will be satisfied when the delegated authority is exercised.

Just as the Office of Personnel Management may suspend or withdraw authority it has delegated to the agency, the Executive Office may suspend or withdraw authority it has delegated if it is determined that "requirements have not been followed or that the action is in the interest of the service for other reasons."

The Personnel Staff will establish and define the major objectives governing personnel management for the Executive Office for United States Attorneys and all districts (U.S. Attorney's offices) that have not been delegated personnel authority.

All personnel actions processed by the Executive Office for United States Attorneys and the Offices of the United States Attorneys will be processed in accordance with guidelines set forth in the Federal Personnel Manual; Department of Justice (DOJ) Orders; *United States Attorneys' Manual (USAM)*, Title 3-2.000; and relevant Personnel Management Staff Issuances/Administrative Procedures Handbook Issuances.

### 3-2.251 Intramanagement Communications and Consultation

Other reference(s): DOJ Order(s) 1251.1  
FPM Chapter(s) 251  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.252 Professional or Other Associations

Other reference(s): DOJ Order(s) 1251.1  
FPM Chapter(s) 252  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.271 Developing Policies, Procedures, Programs and Standards

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 271  
FPM Supplements 271-1 and 271-2  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

The development and promulgation of policy, procedures, programs and standards for the Executive Office for United States Attorneys and the Offices of the United States Attorneys will be in accordance with the laws, Executive Orders, rules and regulations governing the personnel process.

### 3-2.273 Personnel Management Evaluation

Other reference(s): DOJ Order(s) 1273.1D  
FPM Chapter(s) 253 and 250  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

In accordance with the policy set forth in DOJ Order 1273.1D, to the extent funds are available, personnel management evaluations will be conducted on a two-year cycle for districts with delegated personnel authority. The purpose of these evaluations is to assess and analyze the effectiveness of the personnel management program in each of the districts individually; assist in identification and resolution of personnel management problems; assess compliance with governing laws, regulations and policies; and analyze the overall organizational effectiveness of the personnel management program of the bureau. Recommendations on methods to resolve any problems identified during the review will be rendered by an evaluation team charged with the responsibility for conducting the review.

Approval for conducting an on-site visit will be obtained from the Associate Director, Administrative Services, via the Assistant Director, Personnel Staff (PS). An evaluation schedule will be prepared at the beginning of each fiscal year and a copy provided to the Department.

### 3-2.274 Corrective Actions

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 274  
5 C.F.R., None

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July 1, 1992

Additional references may be identified within the text of the resource(s) cited above.

Offices of the United States Attorney which have been delegated personnel authority are responsible for correction of personnel errors for their serviced area. Any district that does not follow all requirements to correctly process personnel actions is subject to withdrawal or suspension of its personnel delegation in accordance with USAM 3-2.250 and FPM Chapter 250.

### 3-2.290 Reserved

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 290 (Reserved)  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.291 Personnel Reports

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 291  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

When the Executive Office for United States Attorneys requires input from U.S. Attorneys' offices for the completion of a report, the input will normally be requested in writing. In instances of annual or semiannual reports, and on occasions when adequate turnaround time is provided, written notices will be sent out in advance to insure timely input and subsequent timely submission of reports. In instances when a report is required with a short suspense, requests for input will be made by telephone or teletype to allow maximum time to respond to the request.

### 3-2.292 Personnel Data Standardization

Other reference(s): DOJ Order(s) 1290.2  
FPM Chapter(s) 292, FPM Supplement 292-1,  
DJ Appendix 1  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

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July 1, 1992

## 3-2.293 Personnel Records and Files

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 293, FPM Supplement 293-31  
5 C.F.R., Part 293

Additional references may be identified within the text of the resource(s) cited above.

Official personnel documents for attorneys will be maintained by the Office of Attorney Personnel Management. Official personnel documents for non-attorneys will be maintained by the Personnel Staff, Executive Office for United States Attorneys or the appropriate servicing personnel office district. The Executive Office for United States Attorneys recognizes the need for non-delegated districts to maintain operating or working folders, due to the unavailability of Official Personnel Folders. Districts that choose to establish and/or maintain unofficial folders must be aware that the Office of Personnel Management discourages this practice; districts also must comply with provisions of FPM Chapter 293, subchapter 8.

## 3-2.294 Availability of Official Information

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 294  
5 C.F.R., Part 294  
28 C.F.R., Part 15.8

Additional references may be identified within the text of the resource(s) cited above.

Requests for disclosure of personnel information will be forwarded to the Personnel Staff, Executive Office for United States Attorneys.

The Office of Attorney Personnel Management has physical custody of all official attorney personnel records. The Executive Office for United States Attorneys, Personnel Staff, maintains official personnel documents for all districts without a full delegation of personnel authority. Servicing personnel office districts, with a full delegation of authority, will maintain official personnel records for their serviced, non-attorney employees.

## 3-2.295 Personnel Forms and Documents

Other reference(s): DOJ Order(s) 2610.1  
FPM Chapter(s) 295  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

Identification Documents

All offices are to use the forms and documents designated in the United States Attorneys' Manual and the United States Attorneys' Administrative

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July 1, 1992

Procedures Handbook unless procedural instructions grant exceptions for certain delegated districts.

### 3-2.296 Processing Personnel Actions

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 296, FPM Supplement 296-33  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

All material issued to provide guidance or resolve issues of concerns relative to the processing of personnel actions of any kind will be addressed and disseminated as items for the United States Attorneys' Administrative Procedures Handbook. Until such time as the manual is completed and ready for utilization, such administrative/procedural matters will be addressed via the Personnel Management Staff Issuances (PMSI) system.

Effective dates of personnel actions will be set in accordance with the above-cited references.

### 3-2.297 Protection of Privacy and Personnel Records

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 297  
5 C.F.R., Part 297

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.298 Federal Workforce Information Systems

Other reference(s): DOJ Order(s) 1298.1  
FPM Chapter(s) 298, FPM Supplements 298.1 and 298.2  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.300 Employment (General)

Other reference(s): DOJ Order(s) 1300.4  
FPM Chapter(s) 300  
5 C.F.R., Part 300

Additional references may be identified within the text of the resource(s) cited above.

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July 1, 1992



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

May 15, 1995

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Carol DiBattiste*  
Carol DiBattiste  
Director

RE: Filling Vacant Secretary to the  
United States Attorney positions

- NOTE: 1. This is issued pursuant to USAM 1-1.521 and EXPIRES  
unless reissued or incorporated pursuant to USAM  
1-1.521.
2. Distribute to holders of Title 3.
3. Insert in front of USAM 3-2.300.

AFFECTS: USAM 3-2.300 F.

PURPOSE: This Bluesheet announces new policies governing  
the staffing of vacant Secretary to the United States  
Attorney positions.

\*\*\* NOTE: Section F. of USAM 3-2.300 is  
replaced by the following guidance (other  
sections of 3-2.300 remain unchanged). \*\*\*

F. Filling Vacant Secretary to the United States  
Attorney positions:

To allow incoming United States Attorneys to create a  
vacancy in the position of Secretary to the United States  
Attorney (SUSA) and facilitate the placement of a confidential  
assistant of their choosing, all vacant SUSA positions are  
to be filled by term appointment or temporary promotion. Term  
appointment is a nonstatus appointment in the competitive service  
for a specified period exceeding one year but not more than four

years. Temporary promotion is an assignment of a current employee to a higher-grade position (with attendant salary increase) for a temporary period not to exceed five years.

A *term appointment* is to be effected whenever a selectee for a vacant SUSA position is *not* a current, permanent, competitive service employee of the United States Attorney's office. A *temporary promotion* is to be effected whenever a selectee for a vacant SUSA position is a current, permanent, competitive service employee of the United States Attorney's office.

U.S. ATTORNEYS MANUAL 1988

A. Personnel:

The authority to take final action in all matters pertaining to the employment, separation and general administration of all personnel except attorneys of grade GS-15 and below in U.S. Attorneys' offices and the Executive Office for U.S. Attorneys has been delegated to the Director of the Executive Office. See 28 C.F.R. § 0.138. The Associate Attorney General has personnel authority over Assistant U.S. Attorneys. The Executive Office may delegate authority beyond that described in this chapter to individual U.S. Attorneys as it deems appropriate.

All recruitment will be conducted in accordance with the provisions of the Federal Personnel Manual and with an affirmative effort to achieve the goal of providing an equal opportunity for employment to as many interested, qualified applicants as possible.

B. Employee Orientation:

The Executive Office for U.S. Attorneys and the Offices of the U.S. Attorneys will provide for a well-planned, organized and systematic program which will orient new employees to the mission of their office and to their individual jobs.

1. Purpose

The purpose of the orientation program is to assist new employees in adjusting readily to their jobs and work environment and in becoming familiar with the functions of the Executive Office for U.S. Attorneys, the Offices of the U.S. Attorneys, and the organizational unit to which they are assigned. An orientation interview should be conducted as soon as or immediately after an employee enters on duty.

2. Responsibilities

a. The Director of the Executive Office for U.S. Attorneys is responsible for providing overall policy direction, leadership, and "visibility" to the orientation program. The Director is also responsible for assuring effective implementation of the orientation program.

b. Administrative officers and first-level supervisors are responsible for conducting job orientation for new employees assigned to them and for keeping employees informed of information which affects them.

c. The Personnel Staff, Executive Office for United States Attorneys is responsible for:

(1) The general intent of the orientation program;

(2) Keeping Offices of the U.S. Attorneys fully abreast of changing personnel policies and practices which may affect employees, by means of memoranda, letters, teletypes, and training sessions; and

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July 1, 1992



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

October 23, 1992

TO: Holders of United States Attorneys' Manual Title 3.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

 Laurence S. McWhorter  
Director

RE: Appointment Limitations

- NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
2. Distribute to holders of Title 3.
3. Insert in front of USAM 3-2.308.

AFFECTS: USAM 3-2.308 C.3., D.2. and F.5.

PURPOSE: This Bluesheet formalizes current policy on appointment limitations for Cooperative Education and Stay-in-School Program employees.

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\*\*\* NOTE: Sections C.3., D.2., and F.5. of USAM 3-2.308 are replaced by the following guidance. Other sections of 3-2.308 remain unchanged. \*\*\*

C. Cooperative Education for High School Students:

3. Appointment Limitations: These continuous, full or part-time appointments will be made in accordance with FPM Chapter 308. In accordance with Executive Office for United States Attorneys policy, cooperative education appointments must end on the last day of a full pay period.

D. Cooperative Education for Associate Degree Students:

2. Appointment Limitations: In accordance with Executive Office for United States Attorneys policy, cooperative education appointments must end on the last day of a full pay period.

F. Stay-in-School Program:

5. Appointment Limitations: Appointments will be made in accordance with FPM Chapter 308. In accordance with Executive Office for United States Attorneys policy, Stay-in-School appointments must end on the last day of a full pay period.

U.S. ATTORNEYS MANUAL 1988



U.S. Department of Justice

Executive Office for United States Attorneys

ENVIRONMENT & NATURAL  
RESOURCES DIVISION

MAR 23 11 13 AM '94

Washington, D.C. 20530

February 28, 1994

TO: Holders of United States Attorneys' Manual Title 3

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Anthony C. Moscato*  
Anthony C. Moscato  
Director

RE: Stay-In-School Program

- NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
2. Distribute to holders of Title 3.
3. Insert in front of USAM 3-2.308.

AFFECTS: USAM 3-2.308, F.3.

PURPOSE: This Bluesheet formalizes current policy on Stay-In-School students placed on academic probation, or who request to remain working while "sitting out" or maintaining a less than full-time schedule a semester/quarter/unit from school.

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This Bluesheet formalizes the policy on continuation of employment of students in the Executive Office for United States Attorneys/United States Attorneys' offices (EOUSA/USAOs) who have been placed on academic probation or who take a semester/quarter/unit off.

EOUSA and USAOs are advised that if a student is placed on academic probation, he/she may continue to work during this period as long as the employing office and the school approve. At the end of the term of the probation, however, if the student has not been returned to "acceptable school standing,"<sup>1</sup> his/her appointment must be terminated.

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<sup>1</sup>OPM has advised us that each individual school makes this determination, and therefore, a statement to this effect is to be obtained from the employee's school and submitted to the office that maintains the employee's Official Personnel Folder.

Students are not, as a rule, permitted to "sit out" or maintain a less than full-time schedule for any semester/quarter/unit of school, and continue working for EOUSA/USAOs. Under extreme circumstances, an exception may be made but must be requested/approved through the EOUSA and Justice Management Division from the Office of Personnel Management.

U. S. ATTORNEYS MANUAL 1988



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

September 5, 1995

TO: Holders of United States Attorneys' Manual, Title 3.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

  
Carol DiBattiste  
Director

RE: Student Educational Employment Program (SEEP)

- NOTE:
1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
  2. Distribute to holders of Title 3.
  3. Insert in front of USAM 3-2.308.

AFFECTS: USAM 3-2.308 B. through 3-2.308 D.11.

PURPOSE: This bluesheet announces policies for employing students under the Student Educational Employment Program, a newly-established program which replaces 13 appointing authorities including the "jj" legal intern, cooperative education, stay-in-school and Summer Aid authorities. The two components of the SEEP are the Student Temporary Employment Program and the Student Career Experience Program.

\*\*\* NOTE: All sections of 3-2.308 "Youth and Student Employment Programs" are abolished, except section 3-2.308 A. "Volunteer Student Employment." \*\*\*

B. Miscellaneous:

1. Definition of Student: Individuals hired in the Executive Office for United States Attorneys (EOUSA) and United States Attorneys' offices (USAOs) under either component of the SEEP must be enrolled or accepted for enrollment in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. Individuals must be taking at least a half-time academic, vocational or technical course load leading to a degree, diploma, or certificate. Half-time is defined by the school in which the student is enrolled.

A student who needs to complete less than the equivalent of half an academic, vocational or technical course load in the class enrollment period immediately prior to graduating meets the definition of student under both components of the SEEP.

2. Work Schedules: Students appointed under either component of the SEEP may work full-time or part-time any time during the year. There is no limitation on the number of hours per week a student may work (subject to the availability of FTEs); however, the district, in consultation with the school, is responsible for ensuring that students' work schedules do not interfere with their academic schedules. The district, the educational institution and the student should agree with the work schedule. Districts must check periodically with the educational institution to monitor students' academic progress. If a student falls behind in his/her studies, the district must discuss with the school the possibility of decreasing the student's work schedule or totally terminating his/her employment.

3. Financial Need: There is no requirement for students to meet any specific economic or income criteria to be eligible for employment under either component of the SEEP. However, Servicing Personnel Offices may use Department of Health and Human Services' poverty guidelines to establish financial need criteria for districts choosing to use financial need as the basis for selecting students under one or both components of the SEEP.

4. Qualification Standards: Students must meet the Office of Personnel Management (OPM) Qualification Standards for the positions to which they are appointed under either component of the SEEP. Servicing Personnel Offices will waive any OPM test requirement for students appointed under the Student Career Experience Program.

5. Grade and Pay: There is no limitation on the grade level (subject to the availability of payroll allocations) at which students may be hired under either component of the SEEP. Students must be paid the appropriate General Schedule (GS) rate of pay for the grade level of the position occupied, including any applicable locality pay authorized for the area in which the position is located. This change DOES NOT affect the Office of Attorney Personnel Management policy which limits law students appointments to the GS-5 and 7 grade levels.

6. Employment of Minors: Servicing Personnel Offices are responsible for ensuring that students hired under either component of the SEEP meet federal, state or local laws and standards governing the employment of minors.

7. Citizenship: As with all other positions in EOUSA and USAOs, students employed under either component of the SEEP must be United States citizens or owe permanent allegiance to the United States.<sup>1</sup>

8. Employment of Relatives: Districts must not place any student in a position that reports directly or indirectly to a relative or in any position where the relative can influence or control the student's appointment, employment, promotion or advancement within the agency.

9. Payment for Training: Subject to the availability of funds, districts may pay training expenses for students appointed under either component of the SEEP in accordance with Title 5, Code of Federal Regulations, Part 410.

C. Student Temporary Employment Program:

1. Appointment: This component of the SEEP provides an opportunity for students to earn a salary while continuing their education. Servicing Personnel Offices may appoint students under this program for a period not to exceed one year or less regardless of the academic program pursued. Appointments may be extended in up to one-year increments as long as the employee continues to meet the definition of student. Students do not acquire eligibility for noncompetitive conversion to a career or career conditional appointment.

2. Position Occupied: Students employed under this program are not required to perform duties that relate to their academic studies or career goals. Students must meet the OPM qualification requirements for the position occupied. Servicing Personnel Offices may reassign or promote qualified students to a new temporary position by way of conversion to a new appointment using the original appointing authority. Reassignments or promotions made effective prior to the end of the appointment must maintain the original not-to-exceed date.

3. Position Classification: Positions filled under this program shall be classified in accordance with the criteria in the appropriate classification standard for GS positions.

4. Performance Appraisal: Students who are appointed for 90 days or longer must be provided a performance work plan within 30 days after they enter on duty. The work plan must include elements and standards appropriate for the position to which the

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<sup>1</sup> Natives of American Samoa are the only group that owes permanent allegiance to the United States.

student is appointed. Students must be informed that their performance will be assessed against the work plan at the mid-year review and at the end of the rating cycle; and that their final rating will be used in the decision to terminate their employment or retain them on the rolls.

5. Benefits: Students hired under this program are eligible for sick and annual leave, and after one year of continuous service, they are eligible to enroll in the health benefits program. They are NOT eligible for life insurance, retirement, or to participate in the Thrift Saving Plan (TSP) program.

6. Conversion: Students hired under this program may be noncompetitively converted to the "Student Career Experience Program" provided they meet the requirements of that program and the district has an appropriate position available.

D. Student Career Experience Program:

1. Agreement by All Parties: Districts choosing to hire students under the Student Career Experience Program must develop a written agreement between all parties involved; i.e., the district, the educational institution, and the student. At a minimum, the agreement shall include: (1) nature of work assignment; (2) schedule of work assignment and class attendance; (3) evaluation procedures; and, (4) requirements for continuation and successful completion of the program.

2. Appointment: Students hired under this program are given a permanent appointment (i.e., without limitation) in the Excepted Service under Tenure Group II.

3. Position Occupied: Students receive academic credit for work performed under this program; therefore, they must be appointed to positions which relate to their academic studies/career goals. Under no circumstance may a student, under this program, be reassigned or promoted to a non-career/academic related position. Students are eligible for career ladder promotions within their career related position.

4. Position Classification: Positions under this program must be classified as student trainee in the \_99 Series for the appropriate occupational group.

5. Performance Appraisal: Districts must provide students with a performance work plan within 30 days after they enter on duty. The work plan must be explained to students and they must be informed that their performance will be assessed against the work plan at the end of the first work period. Students must also be informed that the rating will be a key ingredient in the decision to terminate their employment or retain them for another work period. Students who are retained will be appraised near the end of each period of work. The results of each appraisal

will be provided to the student, the educational institution, and the Servicing Personnel Office will retain a copy in the employee's performance file. The final appraisal will include the district's recommendation regarding the student's noncompetitive conversion to a career or career conditional appointment.

6. Eligibility for Noncompetitive Conversion: Students are eligible to be noncompetitively converted to a career or career conditional appointment within 120 days after completing their academic studies provided they: (1) satisfactorily completed the academic program pursued (i.e., received a diploma, certificate or degree); (2) completed at least 640 hours of career-related work before completion of (or concurrently with) the course requirements; (3) were recommended for conversion by the employing office in the final appraisal assessment; and, (4) meet OPM qualification requirements for the targeted position to which they will be appointed. The conversion must be to an occupation related to the student's academic training and career-related work experience. Students may be noncompetitively converted to a position anywhere within the agency or to a related position in any other agency within the Federal Government.

7. Benefits: Students hired under this program are eligible for the same benefits as any other Federal employee appointed to a permanent position (i.e., leave, retirement, health and life insurance, TSP, within grade increases, etc.).

8. Travel and Transportation: Subject to the availability of funds, districts may pay for expenses for traveling between duty station and school.

(3) Providing guidelines and assisting the administrative officers and supervisors in the implementation of a well-planned and organized program.

d. The administrative officer, administrative assistant, or personnelist, according to the particular functional organization of the individual office, will instruct the new employee in the responsibilities and functions of the office as well as the relationship of the employee's work to that of his/her co-workers.

e. The first-level supervisor should develop a plan for introducing new employees to their jobs and work environment.

C. Reemployed Annuitants:

It is the policy of the Department of Justice not to routinely retain retired employees in continuing positions, but to reemploy those annuitants whose special skills or expertise are required for the completion of short-term assignments or special projects. However, it may be appropriate to retain an annuitant by reemployment in his/her prior position for a brief period to facilitate the selection and orientation of a replacement.

D. Details:

Requests to detail secretaries serving under "Schedule C" appointments, regardless of the length of the detail, must be submitted to the Executive Office's Personnel Staff, in order that the approval of the Justice Management Division (JMD) can be obtained prior to the start of the detail. The detail cannot begin until JMD has given its approval. The request must be accompanied by justification which states why it is necessary to detail the "Schedule C" employee.

3-2.301 Overseas Employment

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 301  
5 C.F.R., Part 301

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

3-2.302 Employment in the Excepted Service

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 302  
5 C.F.R., Part 302

Additional references may be identified within the text of the resource(s) cited above.

The Executive Office for United States Attorneys (EOUSA) and the Offices of the United States Attorneys will provide an equal opportunity for

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employment to all excepted service employees and applicants for employment without regard to sex, race, color, national origin, religion, physical or mental handicap, or age.

### Recruitment

United States Attorneys are authorized to recruit and screen applications for Assistant United States Attorney positions. Nominations for appointments are to be submitted to the Director, EOUSA. Pursuant to 28 C.F.R. § 0.19, the Director, Office of Attorney Personnel Management, has final approval authority over attorney personnel actions.

#### 3-2.304 Employment of Individual Experts and Consultants

Other reference(s): DOJ Order(s) 1304.2A, 1304.3A  
FPM Chapter(s) 304  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

#### 3-2.305 Employment Under the Executive Assignment System

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 305, FPM Supplement 305-1  
5 C.F.R., Part 305

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

#### 3-2.306 Selective Placement Programs

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) None  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

#### 3-2.307 Veterans Readjustment Appointments

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 307  
5 C.F.R., Part 307

Additional references may be identified within the text of the resource(s) cited above.

The one-year continuous civilian service requirement under FPM basic Chapter 410, Subchapter 5-5b, for training through non-governmental fa-

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cilities, will be waived for veterans readjustment appointments made in the Executive Office for United States Attorneys and the Offices of the United States Attorneys.

A written training or education plan must be developed for employees placed on a veterans readjustment appointment and forwarded to the servicing personnel office for approval and placement in the Official Personnel Folder at the time of appointment.

Progress reviews for employees on veterans readjustment appointments will be held, at a minimum, every six months beginning six months after the initial appointment.

### 3-2.308 Youth and Student Employment Programs

Other references: DOJ Order 1308.1  
FPM Chapter 308  
5 C.F.R., Part 308

Additional references may be identified within the text of the resource(s) cited above.

#### A. Volunteer Student Employment:

The Civil Service Reform Act of 1978 provides authority for accepting services from students without providing monetary compensation. This authority is to supplement, but not replace, employment programs in which students are paid. No other volunteer programs are authorized in Executive Office for United States Attorneys (EOUSA) or any U.S. Attorney's office.

1. Enrollment Requirements: There is a statutory requirement that student volunteers be enrolled not less than half-time in their educational institution. Employing offices must ascertain that this requirement is met. In all cases, the employing office will procure written certification attesting to that fact from the student's school.

2. Agreements: Written agreements, developed between a responsible school official and the employing office, must be prepared in accordance with and containing all elements outlined in FPM Chapter 308 and DOJ Order 1308.1. The head of the employing office, or his/her designee, is delegated authority to execute student volunteer service agreements.

3. Work Assignments: Volunteer student service is not to be used to displace any employee or to staff a position which is a normal part of the agency's workforce. Volunteers must be given only those assignments which will further their educational objectives and care must be taken not to give volunteers normal work performed by the office (such as legal files maintenance or preparation of briefs).

4. Service Limitations/Requirements: Student volunteers who work on a full-time or substantially full-time basis are subject to the service limitations/conditions specified in DOJ Order 1308.1.

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Student volunteer service is limited to a total time of 18 months to avoid a situation developing that will imply that volunteer service will insure a job in the future.

Selection of student volunteer program participants will be in conformance with applicable Federal, state or local laws regarding the employment of minors.

5. Service Documentation: Documentation of student volunteer service on the SF-50 will be in accordance with the provisions of DOJ Order 1988.1. In addition, the volunteer's total service rendered, in hours or days, must be documented on the termination SF-50.

All student volunteers will be assigned to a standard position description number established by the Personnel Operations Branch.

If the employing office desires to maintain SF-7 service record cards on student volunteers, the cards must be annotated to show that periods of service were not Federal employment.

6. Travel and Subsistence: Students employed under this authority may not be provided travel, subsistence expenses or other reimbursements. (CG Decision B201528, dated May 11, 1981).

7. General: Information must be made available to student volunteers regarding procedures for locating and qualifying for career appointments.

Student volunteer programs information will be included in appropriate public information/relations activities ('e.g., 'Job Fairs') in which EOUSA/OUSA's participate.

8. Citizenship Requirement: Student volunteer program participation is administratively restricted to U.S. citizens.

9. Program Evaluation and Reports: Each office employing student volunteers is responsible for monitoring the program, and its operation will be reviewed during the personnel management evaluation conducted by EOUSA.

B. Cooperative Education for Baccalaureate Students:

1. Working Agreements: Employing offices must execute a written working agreement with the host college. The office head or his/her designee is authorized to execute the agreement which must be in conformance with the model agreement published by the Office of Personnel Management. The agreement must include the specific requirements for non-competitive conversion and a copy must be given to the student at time of entrance on duty (EOD). A copy of the agreement must be forwarded, with the student's EOD paperwork, to the servicing personnel office who will assure that the agreements are in line with DOJ policy, unless the agreement has been 'pre-approved' by the EOUSA. The student's orientation briefing must

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also emphasize that cooperative education does not *commit* the office or the student to employment after graduation).

2. Work Schedules: Work schedules will be designed in accordance with provisions of FPM Chapter 308. Employing offices must check periodically with the educational institution to monitor the student's academic progress. If a student falls behind in his/her studies, the employing office must either adjust the student's hours downward or terminate the part-time work schedule totally.

3. Position Classification: The student trainee series for the appropriate occupational group will be used for the trainee position, as described in FPM Chapter 308. If an appropriate student trainee series does not exist, employing offices will use the General Student-Trainee Series, GS-099.

4. Qualification Standards: Employing offices will apply the General Student-Trainee Series, GS-099 qualifications standard to all positions in the cooperative education program, *regardless* of the classification series of the positions.

5. Performance Appraisal: At the time of EOD, the student must be provided with a performance work plan that includes the six elements outlined in FPM Chapter 308. In addition to those elements, the work plan must include at least five specific skills, knowledges or abilities critical to the *target* career job. The work plan must be explained to the student and he/she must be informed that performance will be assessed against the work plan at the end of his/her first work period. The student must also be informed that the rating will be a key ingredient in the decision to retain or release the student for another work period. Retained students will be appraised each time they near the end of subsequent work periods. The results of all appraisal sessions will be provided to the student, the college coordinator and will be made a part of the student's Official Personnel Folder. The student's final performance appraisal will include the employing office's recommendation regarding the student's noncompetitive conversion to a career conditional appointment.

6. Promotions: Employing offices must discuss with students, preferably upon EOD or during presentation of the performance work plan, the requirements for promotion. Failure to meet any of those requirements must be addressed, at a minimum, during the student's performance appraisal sessions, but may be addressed at any juncture of the student's employment.

7. Payment for Training: Employing offices are authorized to pay expenses for a cooperative education student when conditions in FPM Chapter 410 (regarding training in non-government facilities) are met. See FPM Chapter 308 for guidelines to be used when making the decision to fund study costs.

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8. Entry into Competitive Positions: Employing offices are charged with the responsibility for informing students that upon their completion of the program they are also eligible to seek entry-level career-conditional appointments through the competitive process (as well as being eligible for non-competitive conversion). See FPM Chapter 308 for additional information.

9. Public Affairs: Cooperative education programs information will be included in appropriate public information/relations activities (e.g., "Job Fairs") in which EOUSA/USAO's participate.

10. Program Evaluation: Each office employing cooperative education students is responsible for monitoring the program, and its operation will be reviewed during the personnel management evaluation done by EOUSA.

C. Cooperative Education for High School Students:

1. Citizenship: These positions are administratively restricted to U.S. citizens or those who owe permanent allegiance to the U.S.

2. Working Agreements: Written working agreements with the school will contain, at a minimum, the information outlined in FPM Chapter 308. Office heads or their designees are authorized to approve and maintain such agreements.

3. Appointment Limitations: These continuous, full or part-time appointments will be made in accordance with FPM Chapter 308. However, regardless of EOD date, all high school cooperative students appointments must have a not-to-exceed date of September 30 (or sooner) following appointment. This will allow monitoring of program funding in consonance with the fiscal year.

4. Work Periods and Overtime: Each employing office will determine students work periods, in cooperation with the school, in accordance with the requirements in FPM Chapter 308.

Employing offices will further insure that a student's work or his/her work and classroom attendance combined does not exceed 40 hours a week. Overtime will be authorized by offices only in emergency or special circumstances.

5. Program Evaluation and Reports: Each office employing high school cooperative education students is responsible for monitoring the program, and its operation will be reviewed during the personnel management evaluation conducted by EOUSA. Offices must also keep statistics on cooperative student participation in order to respond to queries EOUSA may receive.

6. Performance Appraisal: At the time of EOD, the student must be provided with a performance work plan that includes the seven elements outlined in FPM Chapter 308. The work plan must be explained to the student

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and he/she should be informed that performance will be assessed against the work plan at the end of his/her first work period. The student must also be informed that the rating will be a key ingredient in the decision to retain or release the student for another work period. Retained students will be appraised each time they near the end of subsequent work periods. The results of all appraisal sessions will be provided to the student, the school coordinator and will be made a part of the student's Official Personnel Folder.

D. Cooperative Education for Associate Degree Students:

1. Citizenship: Schedule A appointments under this authority are administratively restricted to U.S. citizens or those who owe permanent allegiance to the United States.

2. Appointment Limitations: Students who are employed under Schedule A appointments, regardless of EOD date, must have a not-to-exceed date of September 30 (or sooner) following appointment. This will allow monitoring in consonance with the fiscal year.

3. Working Agreements: Written working agreements with the school will contain, at a minimum, the information outlined in FPM Chapter 308. The office head of the employing office or his/her designee is authorized to approve and maintain such agreements. Students must be given a copy of the working agreement, since it will specify the requirements for non-competitive conversion.

4. Work Schedules: Work schedules will be arranged between the school and the employing office in accordance with the provisions of FPM Chapter 308. Employing offices must assure that the student is not carrying a full course load while working full time. Employing offices must check periodically with the educational institution to monitor the student's academic progress. If a student should fall behind in his/her studies, the employing office must either adjust the student's hours downward or terminate the part-time work schedule totally.

5. Promotions: Employing offices will decide if students should be promoted to GS-3 when they are eligible (after one year of study). The criteria for promotion is the same as with any other position; the student's performance appraisal must justify and accompany the promotion.

6. Overtime: The employing office will authorize overtime only in special or emergency circumstances.

7. Performance Appraisal: At the time of EOD, the student must be provided with a performance work plan that includes the seven items outlined in FPM Chapter 308. The work plan must be explained to the student and he/she should be informed that performance will be assessed against the work plan at the end of his/her first work period. The student must also be

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informed that the rating will be a key ingredient in the decision to retain or release the student for another work period. Retained students will be appraised each time they near the end of subsequent work periods. The results of all appraisal sessions will be provided to the student, the school coordinator and will be made a part of the student's Official Personnel Folder.

8. Entry into Competitive Positions: Employing offices are charged with the responsibility for informing students as to their eligibility to compete, through OPM examination, for placement after graduation into positions for which they qualify.

9. Public Affairs: Cooperative education programs information will be included in appropriate public information/relations activities (e.g., "Job Fairs") in which EOUSA/OUSA's participate.

10. Program Evaluation: Each office employing cooperative education students is responsible for monitoring the program, and its operation will be reviewed during the personnel management evaluation done by EOUSA.

E. Cooperative Education Programs for Graduate Students:

1. Eligibility: Employing offices are responsible for obtaining verification, from an appropriate school official, that a student meets the "outstanding scholar" provision of an OPM announcement (if applicable and claimed by student). In occupations which do not require a written test, employing offices must assure and document in the employee's records, that qualifications requirements are met.

2. Recruitment: The head of the office or his/her designee will make selections from school referrals after assuring that referrals were based solely on merit factors.

3. Working Agreements: Employing offices must execute a written working agreement with the host college. The office head or his/her designee is authorized to execute the agreement which must specify the number of hours and periods of work and study. Employing offices must also ensure that the agreement includes a delineation of the school's responsibilities as outlined in FPM Chapter 308, and that the agreement clearly describes requirements for the student's non-competitive conversion. A copy of the agreement must be given to the student at time of EOD.

4. Appointment Limitations: Employing offices, in concert with the school, will determine the length of the student's appointment, ensuring that adequate time is provided for the student to complete the requirements for his/her graduate degree.

5. Performance Appraisal: At the time of EOD, the student must be provided with a performance work plan that not only will measure competency in the student's position, but will evaluate the student's demonstrated

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potential for non-competitive conversion following graduation. The student must receive periodic progress reviews (at a minimum, every six months). If the employing office decides to terminate a student for unacceptable performance, both the student and the school coordinator will be informed at once, and both parties will be provided a copy of the progress review/performance appraisal upon which the termination decision was made.

F. Stay-in-School Program (Formerly Youth Opportunity Campaign):

1. Citizenship: Stay-in-School positions are administratively restricted to U.S. citizens. As with all other positions in EOUSA/OUSAs, non-citizens may not be employed.

2. Determining Financial Needs: The employing office is responsible for determining that the student applicant, upon appointment or reappointment, meets the economic needs criteria published annually in the FPM Chapter 308. This certification will be made a part of the student's Official Personnel Folder.

3. Student Status Verification: Employing offices are responsible for procuring, at time of appointment or reappointment, school certification that the student applicant is enrolled in school (or has been accepted for enrollment) on a substantially full time basis (as defined in FPM Chapter 308). If a student is preparing for a GED High School Equivalency certificate, and only needs a few courses to finish high school, the employing office will obtain certification from the training institution that the student is taking the maximum number of courses/hours required for the GED.

4. Qualifications Determination: Students' qualifications for positions/grades will be assessed by comparison with the applicable, competitive qualifications standard in OPM Qualifications Handbook X-118. Students' qualifications will be evaluated based upon their formal training, past work history and abilities to perform assignments.

5. Appointment Limitations: Appointments will be made in accordance with FPM Chapter 309. However, regardless of entrance-on-duty date, all Stay-in-School Program appointments must have a not-to-exceed (NTE) date of September 30 (or sooner) following appointment. This will allow monitoring of program funding in consonance with the fiscal year.

6. Pay: By authority designated in 28 C.F.R., Subpart X, the pay for Stay-in-Schoolers is administratively set at the General Schedule rate which reflects the duties assigned and level of performance. For example, a Stay-in-Schooler assigned GS-2 level work, and who is performing at that level, will be paid the salary equivalent to a GS-2/1. Further, the statutory authority for cost-of-living allowances (COLA's) in non-foreign areas, title 5 U.S.C. § 5941 and the statutory authority for special salary rates, title 5 U.S.C. § 5303 apply to employees who occupy positions under

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statutory pay systems, as defined in title 5 U.S.C. § 5301. Stay-in-Schoolers, because they are in pay plans GW and YW, are not subject to the statutory pay systems and are therefore ineligible for COLA's and special salary rates. It is the policy of EOUSA that, consistent with deficit reduction efforts, Stay-in-Schoolers' pay will not be administratively set to include the equivalent of any applicable COLA or special salary rate, absent any unusual recruitment or retention problems. Offices may request an exception to this policy by writing to the Associate Director, Administrative Services.

7. Work Assignments: Students paid at the Federal minimum wage rate are assigned to unclassified positions requiring no specific knowledge or skills. Therefore, work that requires 40 words per minute typing ability will not be assigned to students occupying minimum wage positions.

8. Overtime: During vacation periods, when students are working on a full-time basis, overtime will be authorized by the employing office only in emergency or occasional, special circumstances. If the office's workload requires scheduling of work beyond the regular hours of the student, the office will select additional students, consistent with allocation, rather than regularly authorize overtime.

9. Promotion Eligibility: Employing offices are responsible for periodically (at a minimum, upon reappointment) reviewing students' abilities to perform assignments at the next higher level and at the expected level of competence demonstrated by regular employees.

10. Performance Appraisal: Stay-in-Schoolers who are appointed for a period of four months or longer are covered by the performance appraisal system.

11. Discharges/Terminations: When a Stay-in-Schooler is discharged for performance-related reasons, the employing office will prepare documentation which includes all facts leading to the discharge. However, before a student is discharged due to poor performance, he/she must be given an opportunity to improve his/her performance. The same improvement opportunity should be offered to students with minor conduct problems.

### 3-2.309 Posting Enrollees of Federal Grant Programs

Other reference(s): DOJ Order(s) None  
 FPM Chapter(s) 309  
 5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

#### College Work Study Program (CWSP)

1. Work Assignments: The CWSP is an excellent way to augment the staffing of offices at a low cost and with no charge against personnel alloca-

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tions. The students may perform a variety of duties depending upon their qualifications. Students need not be in law or pre-law curriculum; their assignments do not have to relate to their course of study.

2. Who to Contact: At most colleges and universities, the financial aid officer is responsible for administering the CWSP. In some cases, consortiums of off-campus groups such as the Urban League administer the CWSP for a group of schools. They are responsible for determining student eligibility, negotiating a contract with the office, and referring qualified students for consideration. During the school year, offices are generally limited to schools within their commuting area. However, more distant schools can be contacted to supply students for the summer.

3. The Contract: A contract setting out the agreement to hire CWSP students is to be signed by the employing office and by a representative of the school. A copy of each contract must be maintained by the employing office.

4. Status of Students: CWSP students must be advised that their employment in the office does not qualify as federal employment under OPM regulations.

5. Hours Worked: CWSP students may work up to 20 hours per week during the school year and 40 hours per week during vacation periods. The actual number of hours to be worked is established in the contract and is frequently less than maximum. It is based on the needs of the office, the availability of funds, and the student's academic program. The students must be paid for all hours worked and may not be paid for hours beyond those approved under the program.

6. Salaries: The salaries of CWSP students are set by the college in consultation with the office. Students cannot be paid less than the minimum wage. There is no maximum hourly rate; however, salaries should be reasonable based on local conditions and the availability of funds.

7. Employing Office's Salary Contributions: Normally, an employing office pays 20 percent of the student's salary. If a college asks for a higher reimbursement rate, the office is authorized to agree to pay up to 40 percent of the student's salary. Offices usually will not reimburse the college for the costs of state workers' compensation, since CWSP students are covered by Federal Workers' compensation. Offices are authorized to agree to reimburse the school for the employee's Social Security contributions. Offices should not agree to pay the administrative costs of the program to the school.

8. Use of Other Work-Study Programs: In addition to CWSP, there are a variety of state, local and privately-financed work-study programs. Although these programs may be equally worthy, they cannot be used by EOU-

SA/OUSAs. Due to appropriations restrictions, only federally funded programs are eligible.

### 3-2.310 Employment of Relatives

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 310  
5 C.F.R. Part 310

Additional references may be identified within the text of the resource(s) cited above.

#### Nepotism

Section 3110 of Title 5 restricts the employment of relatives on a temporary or permanent basis in the same agency.

Specifically, any person who has authority to appoint or promote, or to recommend the appointment or promotion of employees supervised by him/her, may not advocate a relative's appointment, promotion, or advancement anywhere in the Department of Justice. While this does not mean that relatives cannot work in the same office, care should be taken to ensure that the provisions described in the FPM are met. Districts without delegated personnel authority must advise the Personnel Staff, Executive Office for U.S. Attorneys, whenever relatives are employed or are about to be employed by the same office. Districts with delegated personnel authority will exercise care and take every precaution necessary to ensure that provisions described in the FPM are met.

### 3-2.311 The Power of Appointment and Removal

Other reference(s): DOJ Order(s) 1330.1B  
FPM Chapter(s) 311  
5 C.F.R. None

Additional references may be identified within the text of the resource(s) cited above.

#### A. Authority to Hire:

The appointing authority for Assistant United States Attorneys, and attorneys and law students GS-15 and below, has been delegated to the Director of the Office of Attorney Personnel Management. The Director, Executive Office for United States Attorneys, has delegated appointing authority for non-attorneys, with the exception of law students, and has re-delegated same, through the Associate Director for Administrative Services, to the Assistant Director, Personnel Staff for districts that do not have delegated personnel authority. No commitment shall be made to an applicant prior to the receipt of approval from the appropriate appointing authority.

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**B. Oath of Office:**

All employees are required to execute an oath of office (SF-61, Appointment Affidavit) upon appointment. See 5 U.S.C. §§ 2903, 3331. The head of the Executive Office is authorized to administer personally and to delegate authority to administer the oath of office. United States Attorneys and the Assistant Director, Personnel Staff are delegated such authority by the Director. Any redelegation of this authority must be in writing.

No employee can be paid until the servicing personnel office receives a properly-executed SF-61.

**3-2.312 Position Management**

Other reference(s): DOJ Order(s) 1511.6  
FPM Chapter(s) 312, 511  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

**A. Definition:**

Position management is the process through which all work is organized and assigned among positions in a manner which will serve mission needs effectively and economically. This includes achieving a proper balance between skills availability, position ceilings, funds limitations, sound human resource utilization, efficiency and economy, mission requirements, and matters of public policy.

**B. Purpose:**

This establishes guidance for the uniform development, implementation and administration of the effective position management programs throughout the Executive Office for United States Attorneys (EOUSA) and the Offices of the United States Attorneys (OUSAs).

**C. Applicability and Scope:**

1. The provisions herein apply to the EOUSA and all OUSAs.
2. The provisions encompass all positions paid on the basis of the General Schedule (GS) and Administratively Determined (AD) pay plans.

**D. Policy:**

1. It is the policy of the EOUSA and OUSAs that all positions and organizations be structured in such a manner as to provide the maximum attainable efficiency and economy in the use of human resources in support of the mission of the organization. Attainment of these objectives is imperative to ensure that resources needed in accomplishing the mission of

the DOJ are not dissipated by the costs resulting from poorly structured organizations, position structure and assignment of work.

2. Inherent in this policy is the firm commitment to make certain that positions paid on the basis of the GS are properly classified in accordance with 5 U.S.C. § 5105. Classification decisions will be made consistent with published standards and federal classification principles and policies.

3. Position management must be carried out in a manner which ensures compatibility with other programs such as affirmative action employment, merit staffing, and career development.

4. The EOUSA and all districts shall establish effective position management programs specifically tailored to their particular functions based on allocated full-time permanent (FTP) positions and full-time equivalent (FTE) workyears but containing the core requirements described below.

E. Program Elements:

1. Responsibility for structuring positions, functions, and organizations is assigned to the Director, EOUSA, and each USA. Subordinate line managers and supervisors shall be explicitly charged with carrying out this responsibility in a manner which optimizes economy, productivity and organizational effectiveness.

2. The Director, EOUSA, and each USA will appoint a Position Management Officer (PMO) to assist and advise managers in carrying out their responsibilities. The PMO should be a key official with direct access to the Director, EOUSA, or the USA as appropriate, and have an understanding of personnel, budget, management analysis and line programs of the organization.

3. Responsibilities of the PMO include the following:

a. Coordinating all elements of the position management program, including control systems, technical staff work, reviews and reports;

b. Ensuring that the program structure, operations and results are officially documented;

c. Establishing a mechanism for resolving disagreements over position management issues (e.g., structuring and approval of positions and organizations);

d. Keeping the Director, EOUSA, or USA informed on specific position management matters, and on the overall strength of the program;

e. Ensuring the results of position management reviews are documented in accordance with instructions issued by the EOUSA.

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f. Ensuring that actions taken under the position management control system to approve or disapprove positions or organizations are officially documented for review; and

g. Ensuring that supervisors and managers with significant position management responsibilities (i.e., supervisors who have a total of 20 or more attorney and/or non-attorney subordinates reporting to them either directly or through subordinate supervisors) receive necessary assistance and are evaluated annually for position management effectiveness. This requirement applies to both attorney and non-attorney supervisory personnel.

h. Developing annual action plans for position management assessment and timely implementation of required corrective actions.

i. Maintenance of current organization charts which display the hierarchical framework, i.e., all positions within an organizational entity and which depict functional and supervisory/employee relationships.

4. Actual operation of the position management control system may be carried out unilaterally by the PMO or by a committee appointed by the Director, EOUSA, or the USA.

F. Program Guidelines:

1. Approved FTP positions and FTE workyear ceilings in each employment category, i.e., Assistant U.S. Attorneys (AUSAs), paralegal and support for both direct and Drug Task Force are not to be exceeded except with an approved exception. Requests for exceptions to ceilings should be directed to the Associate Director for Administrative Services.

2. Staffing levels within the EOUSA and each district should not be based on peak workload. Temporary, intermittent, seasonal or on-call employees should be used for peak periods.

3. Career ladders for GS positions will be established and maintained as a matter of record by the servicing personnel office for the EOUSA and each district. A career ladder is a series of developmental positions of increasing difficulty in the same line of work, through which an employee may progress noncompetitively to the target full performance level (FPL) position. The FPL is that grade level to which each employee in an established career ladder may be promoted. The nature of the organization, the work performed, and the way it is structured all affect the determination of the FPL. Career ladders should be planned so that there is a logical entrance level and career pattern for progression to more skilled and higher-graded duties as employees gain the ability to assume greater responsibility.

a. For mixed-grade GS positions, every effort should be made to keep the highest-grade duties predominant, i.e., occupying a majority of the employee's time. The Office of Personnel Management allows higher-grade duties, which occupy less than a majority of the time, to determine the grade of the position only in very unusual situations where several criteria are met. (See "Introduction to Classification Standards" Section VII, pp. 5-6; "Digest of Significant Classification Decisions" Volume 1 numbers 1 and 3 and Classification Principles and Policies pp. 45-46.)

b. Duties of a higher grade than the classified full performance level should be concentrated in the smallest possible number of positions.

c. Duties of lower grade than the grade of a position should be removed from the position to the extent practical and assigned to lower-graded positions.

d. "Special assistant" functions should be assigned to existing line organization positions rather than consolidated in additional staff-level positions. Avoid creating new staffs and organizations.

4. The number and levels of supervision of both attorney and non-attorney staffs should be kept to a minimum, i.e., first-level supervisory positions should encompass the broadest possible span of control consistent with reasonable control of the workload of the organization and second-level supervisory positions should supervise the largest possible number of subordinate organizations consistent with mission accomplishment. Full-time deputy positions should ordinarily be created only when there is a large span of control, substantial external interface demands, or the expectation of frequent and lengthy absences of the supervisor in situations likely to require major decisions and such responsibilities cannot be assigned on a part-time or rotating basis to other personnel.

a. Supervisory GS positions are to be classified in accordance with guidance in the OPM Supervisory Grade-Evaluation Guide or other applicable OPM classification guides specific to the occupation.

b. Supervisory positions for AUSAs are controlled by the Director, EOUSA, or designee. Normally, a USA is permitted to designate up to one-sixth of his/her permanently allocated AUSA positions as paid supervisors. Other factors, including organizational structure and number and complexity of cases, etc., will be taken into account when determining the number of supervisors authorized for a district.

AUSA positions established as paid supervisory positions generally fall into three categories;

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(1) Positions which have district-wide functional and administrative responsibilities but are not necessarily responsible for the direct supervision of five or more AUSAs. Incumbents of these positions assist the USA in the overall operation of the district and are typically titled First Assistant, Chief Assistant, or Executive Assistant;

(2) Positions which have direct technical and administrative responsibility for five or more AUSAs. These "line" supervisory positions are typically titled Chief or Deputy Chief of a legal division; or

(3) Positions which have district-wide functional responsibility. For example, an AUSA who is a subject area expert and responsible for the technical review of all other AUSAs' work in that area but does not exercise administrative supervision over the AUSAs. Rather the AUSAs receive administrative supervision from another supervisory AUSA such as a Chief of the Criminal or Civil Division.

USAs may wish to establish paid supervisory positions having the characteristics of any of these categories. USAs should refrain, however, from requesting that more than one-sixth of the district's permanently allocated attorney staff be designated as paid supervisors.

Requests for the establishment of paid supervisory positions should be sent to the Director, EOUSA. Justification for the request must be included.

During the first year of appointment under 28 U.S.C. § 541, a U.S. Attorney should review the district's paid supervisory attorney structure and recommend any modifications thought necessary. New Presidential appointees may have a reasonable amount of time, normally not to exceed twelve months from the date of appointment, to make changes in the supervisory attorney structure without having to reduce the salaries of his or her predecessor's incumbents.

5. No personnel action, except for details to unclassified positions, will be effected to put a GS employee into a position prior to the date of the classification action.

6. Action to fill a position may be initiated as soon as it is known that a position will be vacated and so long as a current position description (PD) exists, if applicable. However, actual entry on duty normally is not to occur until a vacancy exists.

a. Before any formal recruitment action begins for GS positions, however, the full performance level (FPL) position must be classified in accordance with delegated authority and based on applicable position classification standards. The requirement to establish the FPL is

necessary to ensure that the potential for future promotion be made known to all potential applicants.

b. When an individual is appointed to a position at a grade below the FPL, the appointment is made with the expectation that the employee will eventually learn the full range of duties to enable him/her to perform the higher graded duties. However, employees are not *entitled* to promotion at any given time and management must ensure that each employee, in fact, is capable of performance at the higher grade level and sufficient work at the higher grade exists before promotion.

7. A position may not be classified at the same grade as:

a. The supervisor over the position; or

b. Any position under its supervision, without approval of the Justice Management Division, in accordance with DOJ Order 1511.6. Request for such approval should be forwarded through the EOUSA, Security and Personnel Staff, with appropriate justification.

8. The preparation of the PD is a responsibility of management. PDs are required for all positions paid on the basis of the GS (e.g., GM, GS, GW) and are necessary for purposes in addition to classification, e.g., recruitment, placement, training, and performance evaluation. Therefore, PDs must be factually correct and must be kept current. If a PD meets these objectives, it is of little consequence who writes it. Employee participation is encouraged. Supervisory review for adequacy of information clarity and accuracy is mandatory.

9. All of the following types of PDs may be established provided care is taken to assure that each type of description is used only for positions which it accurately describes:

a. Individualized/one-of-a-kind;

b. Standard; and

c. Identical-additional.

To ensure accuracy, the immediate supervisor must certify the Position Description Coversheet (OF-8) in block 23 for each employee assigned to each type of description.

10. Projected positions, designed around new duties and responsibilities which have not been previously performed, may be established within the following requirements:

a. Projected positions should not be occupied more than six months in advance of the date duties and responsibilities are expected to materialize.

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b. In order to verify that projected duties and responsibilities have materialized, projected positions must be desk audited within six months after they are occupied.

c. Projected positions in which major duties and responsibilities have not materialized within six months after incumbency shall be classified to the grade derivable from redescription. If the grade is lower, the action shall be treated as a classification error.

#### 11. PD numbers

a. GS position numbers will be assigned by the servicing personnel office in accordance with DOJ Order 1500.1F and any variation authorized by the EOUSA.

b. AUSAs are paid according to an AD pay plan and, therefore, do not have PDs. The EOUSA, however, maintains records indicating which attorneys handle specialized functional areas, such as criminal or civil matters, or those who have supervisory responsibilities. Therefore, AUSAs are assigned PD numbers established by the EOUSA which identify the type of work performed by the attorney.

#### G. Control Systems:

The EOUSA and each district shall establish and implement a position management control system to systematically detect and correct problems such as excessive layering, improper job design, outmoded work methods, excessive use of deputies, organizational duplication, overlap and improperly classified positions.

1. The control system shall be administered by the PMO and at a minimum shall provide for review of positions and organizations under the following circumstances in terms of the criteria outlined in paragraph 2:

- a. Vacant positions;
- b. Reorganizations;
- c. Newly created organizations;
- d. Newly created positions; and
- e. Restructured positions leading to upgrade above the previous full-performance level.

Please note that before any reorganization of non-attorney personnel is undertaken, early consultation with the servicing personnel office is encouraged to ensure that the reorganization will not have any unanticipated consequence on present or future personnel. Any reorganization of paid attorney supervisory positions must receive prior approval of the Director, EOUSA.

2. Review and establishment is to be conditioned on the following factors:

- a. Initial or continued need for the position from the district perspective;
- b. Feasibility of establishing a position or converting it to part-time;
- c. Availability of FTP positions and FTE workyears;
- d. Availability of funds, if applicable;
- e. Feasibility of sharing resources with other agencies or contracting out in accordance with the provision of OMB Circular A-76;
- f. Validity of the need under official established DOJ requirements;
- g. Extent to which the organization or position conforms with the position management guidelines cited above;
- h. Classification and position management advice provided by the servicing personnel office.

3. Decisions to establish or decisions not to establish positions and organizations must be documented by the PMO and retained for a period of three years.

4. The Personnel Staff, EOUSA, is available to provide assistance in resolving position management problems and to recommend alternatives.

#### H. Periodic Assessments:

The EOUSA and OUSAs are required to systematically conduct, on a regular basis, self-evaluation of the effectiveness of their position management program in terms of position management indicators contained in the Department's Plan. Additional normative indicators may be imposed by the EOUSA or within a district. Portions of periodic reviews may qualify as partial fulfillment of annual maintenance review required by DOJ Order 15119. Results of each review are to be officially documented and retained for three years from date of review for examination by Personnel Management Evaluation or administrative reviews conducted by Evaluation and Review Staff teams.

#### I. Plans and Reports:

1. Findings of instances of ineffective position management must be documented by the PMO and corrective action plans developed to remedy them in a timely manner.

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2. The EOUSA and OUSAs are responsible for submitting an annual position management action plan to the Assistant Attorney General for Administration (AAG/A) by October 31 of each year and a report summarizing actions under the program for the preceding year.

As the form and content of the report will be provided by the AAG/A each year, feeder information from district offices will be requested by the Personnel Staff, EOUSA on an annual basis.

### 3-2.315 Career and Career-Conditional Employment

Other reference(s): DOJ Order(s) 1315.1  
FPM Chapter(s) 315  
5 C.F.R., Part 315

Additional references may be identified within the text of the resource(s) cited above.

#### A. Trial Period for New Employees:

Assistant U.S. Attorneys and other excepted employees who are appointed to other than temporary positions limited to one year or less, are required to serve a trial period unless they move from a like, Federal position without a break in service and have completed a previous trial period.

Districts are to consult the Personnel Staff, Executive Office for United States Attorneys for advice and assistance before taking an adverse action against a probationary employee.

#### B. Probationary Period for Supervisors and Managers:

Assistant U.S. Attorney, supervisory and managerial positions are not subject to a supervisory/managerial probationary period.

Support, supervisory and managerial positions are subject to a supervisory/managerial probationary period. The Personnel Staff, Executive Office for United States Attorneys is to be consulted for guidance in dealing with any deficiencies in performance which occur during the probationary period.

### 3-2.316 Temporary Employment

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 316  
5 C.F.R., Part 316

Additional references may be identified within the text of the resource(s) cited above.

#### Temporary Employment (Non-Attorney)

Each fiscal year, the Executive Office authorizes temporary, non-attorney workyear allocations to allow the accomplishment of any unforeseen

clerical or paralegal workloads. Requests for additional allocations must be justified and submitted, in writing, to the attention of the Associate Director for Administrative Services, Executive Office for United States Attorneys.

Districts must obtain the approval of the Personnel Staff, Executive Office for United States Attorneys, prior to effecting temporary appointments and extensions thereof.

### 3-2.330 Recruitment, Selection, and Placement (General)

Other reference(s): DOJ Order(s) 1330.1B  
FPM Chapter(s) 330, 332 (Appendix A)  
FPM Supplement 330  
5 C.F.R., Part 330

Additional references may be identified within the text of the resource(s) cited above.

#### Non-Attorney Recruitment and Hiring

##### Paid Pre-Employment Interviews

The Executive Office for United States Attorneys has been delegated the authority to pay for pre-employment interviews at grades GS-10 through GS-13 for unique positions.

The Director, Executive Office for United States Attorneys has sole responsibility to approve the payment of travel expenses for pre-employment interviews.

#### 1. Limitations:

This authority may not be used in the following situations:

- a. To pay travel or subsistence expenses for the purpose of interesting or persuading prospective employees to accept government positions;
- b. To pay for pre-employment interviews for the purpose of defraying the cost of travel to a designated place to enter on duty as a government employee (3 Comp Gen 373);
- c. To advance travel funds for pre-employment interviews; and
- d. For entry-level positions, except in rare cases, e.g., Research Chemist at the Ph.D level.

#### 2. Position Coverage:

In order to use this authority, the duties of the position must be so unique that an interview is necessary for a final determination of the applicant's qualifications. The determination "unique" is based on the

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position's complexity and whether it is one of a kind not simply within the organization, but within the government.

### 3. Applicant Eligibility:

Travel expenses may be paid for pre-employment interviews for candidates certified on OPM certificates or for non-competitive candidates, e.g., by transfer or reinstatement. However, the authority is to be used primarily for applicants outside the federal service. The number of competitive candidates interviewed for any one position shall not exceed five. Travel expenses will be paid for a reasonable number (3-5) of top-ranking non-competitive candidates. Applicants should be interviewed only when they are within reach and eligible for appointment. If candidates for both competitive and non-competitive appointment are considered concurrently, it is recommended that the total number of candidates not exceed five.

#### 3-2.331 Organization for Recruitment and Examining

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 331  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

Manpower planning will be conducted in terms of how long- and short-range goals may be accomplished through recruitment, training and job redesign.

#### 3-2.332 Recruitment and Selection through Competitive Examination

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 332, 308  
5 C.F.R., Part 332

Additional references may be identified within the text of the resource(s) cited above.

#### A. Office of Personnel Management Certification and Objections to Eligibles:

Districts that do not have delegated personnel authority will make no commitment to an applicant prior to completion of the certification process and approval by the Personnel Staff, Executive Office for United States Attorneys (EOUSA).

Districts that do not have delegated personnel authority will submit all Statement of Reason for Passing Over a Preference Eligible (SF-62) forms to be reviewed by the Personnel Staff, prior to submission to the Office of Personnel Management.

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All applicants who express an interest in a vacancy should be sent a courtesy rejection letter after the appointment has been approved. Districts that do not have delegated personnel authority must obtain approval of the Personnel Staff to make appointments.

B. Summer Employment Program for Needy Youth (Summer Aids):

1. Citizenship: Summer Aid positions are administratively restricted to U.S. citizens. As with all other positions in EOUSA/OUSAs, non-citizens may not be employed.

2. Work Assignments: Since summer aids are paid at the Federal minimum wage rate, they are assigned to unclassified positions requiring no specific knowledges or skills. Therefore, work that requires typing ability of 40 words or more per minute will not be assigned to summer aids.

3. Overtime: The employing office will authorize overtime only in emergency or occasional, special circumstances. If the office's workload requires scheduling of work beyond the regular hours of the student, the office will select additional students, consistent with allocation, rather than regularly authorize overtime.

4. Training: On-the-job training is the crux of the training effort, in most offices, for summer aids. However, if other training activities are offered, they must be designed to accomplish the goals outlined in FPM Chapter 332, Appendix J.

5. Pay: The statutory authority for cost-of-living allowances (COLA's) in non-foreign areas, 5 U.S.C. § 5941, applies to employees who occupy positions under statutory pay systems, as defined in 5 U.S.C. § 5301. Summer Aids, because they are in pay plan "YV," are not subject to the statutory pay systems and are therefore ineligible for COLA's. It is the policy of EOUSA that, consistent with deficit reduction efforts, Summer Aids' pay will not be administratively set to include the equivalent of any applicable COLA, absent any unusual recruitment or retention problem. Offices may request an exception to this policy by writing to the Associate Director, Administrative Services.

3-2.333 Recruitment and Selection for Temporary and Term Appointment Outside the Register

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 333  
5 C.F.R., Part 333

Additional references may be identified within the text of the resource(s) cited above.

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## 3-2.334 Temporary Assignment Under Intergovernmental Personnel Act

Other Reference(s): DOJ Order(s) 1334.1  
FPM Chapter(s) 334  
5 C.F.R., Part 334

Additional references may be identified within the text of the resource(s) cited above.

Sabbatical Program

Subject to case-by-case approval by the Director, Executive Office for U.S. Attorneys, U.S. Attorneys are authorized to establish sabbatical programs with law schools. Assistant U.S. Attorneys may spend no more than one full year teaching at a law school and a professor from that law school may spend a similar period of time working in the Office of the U.S. Attorney. This program will give selected Assistants a break from their routine, an opportunity to "recharge their batteries," and a chance to do some in-depth research in their areas of interest.

This program has been established under the provisions of the Intergovernmental Personnel Act of 1970 (5 C.F.R. § 334), which permits exchanges with state or local governments and institutions of higher learning. In every case, a formal agreement must be entered into between the school and the Director, Executive Office, and the employee must agree to the assignment. Optional Form 69, is used to document the agreement.

To be eligible, an Assistant U.S. Attorney will normally have at least five years experience with the Office of the United States Attorney and have expressed the intent to remain with the office for at least two years after completion of the sabbatical. Of course, the law school must agree to the specific Assistant as well as the courses to be taught.

Professors selected for this program will be appointed as Special Assistant U.S. Attorneys. They must be interested in trial work, meet any local bar membership requirements, and successfully complete a full-field background investigation. The professors must agree that information gained during their year with the Department will be kept confidential and that any articles written about their assignments must be cleared through the Department of Justice.

Cross Designation of Federal Prosecutors as State and Local Prosecutors

Assistant U.S. Attorneys may be appointed as special state or local prosecutors by the Director, Office of Attorney Personnel Management, Department of Justice, pursuant to the Intergovernmental Personnel Act of 1970 (5 U.S.C. §§ 3371-3376) and the appropriate state and local government code. Under the Intergovernmental Personnel Act, assignments are authorized upon the request from or with the concurrence of a state or local government, and with the consent of the employee concerned. See 5 U.S.C. § 3372(a). The period of assignment under the Act may not exceed two years.

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An Assistant U.S. Attorney assigned as a state or local prosecutor is deemed, during the assignment, to be either: 1) on detail to a regular work assignment; or 2) on leave without pay.

### 3-2.335 Promotion and Internal Placement

Other reference(s): DOJ Order(s) 1335.1B  
FPM Chapter(s) 300, 335  
5 C.F.R., Part 335

Additional references may be identified within the text of the resource(s) cited above.

A. Policy: It is the policy of the Executive Office for United States Attorneys (OUSA) to utilize employee skills and potential to the fullest in filling vacancies and to select, assign, and promote employees solely on the basis of job-related criteria and without regard to race, color, creed, age, national origin, sex, nondisqualifying handicaps, politics, membership in employee organizations, marital status, personal favoritism or patronage. The procedures outlined below apply to all competitive service positions in the Offices of the United States Attorneys and EOUSA effective August 1, 1987. Staffing/placement actions relative to positions covered by these guidelines, will be made in accordance with the requirements of FPM Chapter 335, FPM Supplement 335-1, DOJ Order 1335.1B, this section of Title 3, applicable promotion plans and applicable negotiated agreements. Negotiated agreements take precedent until further negotiation of the specific article is addressed in the contract. However, limiting or restricting areas of consideration to certain categories or groups of candidates based upon such non merit factors as race, color, religion, creed, age, national origin, sex, nondisqualifying handicaps, politics, membership-nonmembership in an employee organization, marital status, personal favoritism or patronage, as a matter of policy, is prohibited.

In the interest of effective management, delegation of selection authority should generally be made to supervisory levels close to the position being filled. Whenever practical, it should be delegated directly to the supervisor responsible for the vacancy being filled.

#### B. Responsibilities:

1. The Personnel Officer, is responsible for:

a. Insuring that all actions to fill vacancies are consistent with the provisions of this plan.

b. Insuring that all persons involved in the administration of this plan have the necessary technical competence and understanding of personnel techniques and regulations.

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c. Advising and assisting the Offices of the United States Attorneys on competitive procedures, qualifications, and general recruitment/placement actions.

d. Advertising to fill vacancies within the EOUSA, Administrative Officer positions and for any positions for which the area of consideration is Department or government-wide.

e. Processing placement actions in conformity with this plan and maintaining proper administrative records.

f. Making necessary information available to employees and the public, ensuring individuals' rights to privacy are protected.

The Associate Director for Administrative Services may delegate any of the above responsibilities to the OUSAs.

2. United States Attorneys are responsible, except for positions as indicated above, for:

a. Insuring that no merit staffing action is taken on the basis of a prohibited personnel practice as defined by the Civil Service Reform Act of 1978, no personal favoritism or preselection is involved in a promotion or other merit staffing action and that no promise or guarantee of placement into a position is made prior to the expressed approval of the servicing personnel office.

b. Evaluating a candidate's qualifications, performance or potential for performance in a fair, impartial and objective manner.

c. Insuring that all available and interested candidates, not rejected on bases described in paragraph L. below, Rejection of Applications, are given the opportunity for application and consideration.

d. Properly preparing and distributing announcements, locating candidates, rating qualifications, referring candidates to selecting supervisors, and informing applicants of the results of their applications.

e. Preparing and submitting the total package of documentation relating to the merit staffing action to the servicing personnel office for approval.

United States Attorneys may assign the responsibility to administer this plan to responsible individuals in the organization (e.g., the Administrative Officer or the personnel specialist, when applicable).

C. Competitive Actions: All personnel staffing actions, including those listed in this section, are covered by this plan unless specifically

excluded under paragraph D below. Competitive actions include, but are not limited to:

1. Reassignment, transfer, or demotion to a position with known promotion potential greater than that of the current position, except as permitted by reduction-in-force procedures or to place an employee entitled to retained grade.

2. Selection for a detail of more than 120 days to a higher-graded position or to a position with higher known promotion potential. Prior service under previous details to higher graded positions or positions with higher promotion potential, and temporary or term promotions during the preceding 12 months is included whether competitive or noncompetitive in the computation of the 120-day limit.

3. Transfer to a position which has greater promotion potential than the potential of the employee's current position.

4. Reinstatement to a permanent or temporary position (which is expected to last more than 120 days) at a higher grade or to a position which has higher promotion potential than that last held in a nontemporary, competitive position, except for the reinstatement of a former SES employee or a former employee separated as a result of a RIF.

5. Promotion of an employee based on the assignment of supervisory or work leader duties and responsibilities.

6. Selection for training given primarily to prepare an employee for advancement or required for promotion (i.e., when eligibility for promotion depends on whether the employee has completed training).

7. Temporary promotion of over 120 days. Prior service under *all* details to higher graded positions and other temporary and term promotions during the preceding 12 months, whether competitive or noncompetitive, count toward expiration of the 120-day limit. The following conditions apply to temporary promotions:

a. A temporary promotion must be for a definite period of one year or less but may be extended for a definite period not to exceed one additional year, subject to prior approval of the servicing personnel office.

b. Requests for additional extensions must, at a minimum, be submitted to the servicing personnel office, 30 days in advance of the proposed effective date.

c. A temporary promotion may be made permanent without further competition provided the temporary promotion was originally effected under competitive procedures and the advertisement of the vacancy

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clearly stated that the temporary position may be made permanent without further competition at a later date.

d. A temporary promotion may not be used for the purpose of training or evaluating an employee in the position to which he/she has been temporarily promoted or for any other higher-grade position.

8. Any term promotion, unless excluded under paragraph D below.

9. Movement between pay schedules or classification systems which would be a change to a higher representative rate of pay. (The representative rate of a merit pay covered [GM] position is the same as that of an equivalent grade General Schedule [GS] position).

D. Noncompetitive Actions: The competitive procedures of this plan do not apply to:

1. A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification standard or the correction of a classification error.

2. Repromotion to a grade previously held in a nontemporary position in the competitive service from which the employee was demoted without personal cause and not at his/her own request. If the employee was demoted as a result of reduction-in-force or position reclassification, repromotion or reassignment to a position with greater promotion potential may also be effected noncompetitively.

3. Career promotion, i.e., when an employee, at an earlier stage, was selected from a civil service register, under a direct-hire authority, or under competitive promotion procedures for a position with an established career ladder, intended to prepare the employee for the full performance level of a position. To use this provision, the intent must be made a matter of record and career ladders for all positions must be documented. An employee may move noncompetitively to other positions with no higher career ladders.

4. Promotion of an employee whose position is classified at a higher grade because of additional duties and responsibilities. The employee must continue to perform the same basic function, and the former position must be absorbed administratively in the new position. The addition of the duties and responsibilities can not provide one employee with an unfair advantage over other employees who are qualified to perform them (i.e., a supervisor may not take duties and responsibilities which he/she knows or has good reason to believe are grade-enhancing, and arbitrarily assign them to a particular employee even though there are other qualified employees). This provision may not be used

for a promotion based solely on grade credit for work leader or supervisory duties.

5. Temporary promotion or detail to a higher grade position of 120 days or less.

6. Action taken as a remedy for failure to receive proper consideration in a competitive promotion action.

7. Appointment to a position from a civil service register or for which OPM has granted direct-hire authority.

8. Selection of a candidate from the DOJ Priority Placement and Referral List to any position for which registered, including positions with more promotion potential or at a higher grade level.

9. Selection of a candidate from OPM's Displaced Employee Program (DEP) for a position, including one with greater promotion potential, at or below the grade of the position from which the employee was, or will be, displaced.

10. Career ladder promotion following noncompetitive conversion of a cooperative education student.

11. Transfer to a position of the same or higher grade provided the candidate's current position has the same or higher promotion potential.

12. Position change made permanent from a temporary or term promotion, to a higher grade job provided the action was originally made under competitive procedures and it was represented to all competitors that it may lead to a permanent assignment without further competition.

13. Reassignment, lateral transfer, or voluntary demotion of a status candidate into a position having same, less or no greater promotion potential than that offered by the existing or most recent nontemporary, competitive service position.

14. Reinstatement to a position at a grade no higher than one's last nontemporary competitive service position, unless the position to which reinstatement is made has greater promotion potential except as authorized in paragraph D.9.

15. Reinstatement of any former career or career-conditional employee, who previously converted to a career SES appointment, to any position and grade for which qualified.

16. Employees currently receiving retained grade or pay may be reassigned to a position with greater promotion potential at their retained grade or repromoted to the grade from which demoted (or any intervening grade), including a position with greater promotion potential.

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17. Any personnel action as directed by the Department of Justice (DOJ), the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), or other organizations having the authority to impose a decision upon the EOUSA.

18. RIF related reassignments to:

a. Different pay systems which result in an employee receiving higher pay.

b. Positions with more promotion potential in a reduction-in-force situation. (A RIF does not actually have to be underway for this exception to apply. However, if a RIF is not in process, this provision would apply only to employees whose positions have been identified for abolishment, and only after affected employees have been so notified).

E. Management Options: At their discretion, supervisors may fill positions by means other than the competitive procedures described in this plan. Options include, but are not limited to:

1. Department of Justice Priority Placement Referral System (PPRS) List (see paragraph I.1.);

2. OPM certificates of eligibles;

3. Special hiring authorities such as, veterans readjustment appointments; handicapped appointments, etc.; or

4. Reassignment, lateral transfer, reinstatement, or voluntary demotion of a status applicant into a position with no known promotion potential or a position having no higher promotion potential than one's existing or most recent competitive service nontemporary position. Selection of a candidate who is eligible for noncompetitive placement can be made at any point regardless of vacancy announcement opening or closing dates.

In addition, supervisors have the right to:

1. Decide not to make a selection;

2. Select from any other appropriate source of candidates at any point in the selection process;

3. Extend the closing date;

4. Enlarge the area of consideration; and

5. Readvertise.

F. Career Ladder Positions: Career ladders will be maintained as a matter of record by the servicing personnel office. Once an employee is

selected for a career ladder position, he/she may be promoted without further competition to the full performance level indicated for the position, provided:

1. The original appointment to the career ladder position was made after competition under merit staffing procedures or other appropriate means, such as selection from a civil service certificate or appointments made as a result of special hiring authorities;
2. The employee meets qualification, time-after-competitive appointment and time-in-grade requirements for the higher grade position;
3. The employee has demonstrated his/her ability to perform more difficult and responsible duties at the higher grade level over a significant period of time (usually at least six months);
4. There is sufficient higher grade work to warrant a promotion; and
5. The immediate supervisor or higher level official certifies the recommendation for promotion.

Promotion or assignment into a career ladder position does not guarantee future advancement since that depends on the individual's ability to perform at the higher level and management's decision or ability to assign those duties.

An individual's promotion potential must be documented in the Official Personnel Folder (on the SF-50) and on the OF-8, the position description coversheet, for each level. The OF-8 forms will be maintained by the servicing personnel office.

G. Qualification Standards:

1. OPM Handbook X-118 states the required minimum qualifications for each grade and series of positions which will be used, except as otherwise approved by OPM, to determine whether employees are "basically qualified" for a particular position.

2. Selective placement factors, i.e., knowledge, skills or abilities which are essential for satisfactory performance on the job, are an addition to the basic qualification standard for a position, may apply to specific positions or groups of positions, and may be established if they are essential to successful performance in the position to be filled. The need for such requirements must be clearly demonstrated in the position description.

3. Job analysis is the method used to identify the knowledges, skills, abilities, and personal characteristics (KSAPs) important to a position. The job analysis must be based on and related to the official classified position description. KSAPs are defined below.

a. Knowledge—an organized body of information, usually of a factual or procedural nature, which, if applied, makes adequate performance of the job possible.

b. Skill—the proficient manual, verbal, or mental manipulation of data, people, or things that are observable, qualifiable, and measurable.

c. Ability—the power to perform an observable activity at the present time lacking discernable barriers.

d. Personal characteristic—a specific personality factor aptitude, physical or mental trait needed to do the work that appears either in addition to or to a greater extent than that generally expected of all employees in all jobs. If a personal characteristic is suggested, it must be described in terms of the work behavior that evidences this trait. Personal characteristics can be difficult to measure from the written record and are not to be routinely used. Before a personal characteristic may be used in the ranking process, it must be reviewed and approved by the servicing personnel office.

4. To be eligible for consideration for supervisory positions, candidates must also meet the supervisory qualification requirements published in OPM Handbook X-118, Supervisory Positions in General Schedule Occupations, Part III, in addition to any specific subject-matter knowledge and skill requirements. This applies to proposed actions, both competitive and noncompetitive, authorized under this plan. Each vacancy announcement must include the supervisory or managerial abilities identified in the X-118 that are applicable to the specific vacancy.

5. Candidates must meet qualification requirements, time-in-grade requirements and time-after-competitive appointment requirements by the closing date of the vacancy announcement in order to be determined qualified. This requirement is set in order to be fair to all candidates and to have a workable, explainable and consistent policy.

#### H. Job Analysis and Crediting Plan:

1. In accordance with FPM Chapter 335 and FPM Supplement 335-1, a job analysis and crediting plan will be developed for each vacancy advertised. For each vacancy announced at multiple grade levels, a job analysis and crediting plan must be completed for each grade level.

2. The job analysis will be conducted and the crediting plan developed by a subject matter expert (SME), i.e., a person who has had experience working in or supervising that type of position, who is thoroughly knowledgeable about the duties and responsibilities of the job, and is at least in a grade equivalent to the position to be filled,

but shall not be an applicant for the position being filled. The SME normally will be assisted by a personnel specialist or other individual, who is familiar with the job analysis/crediting plan process, who will serve as a technical advisor.

3. The crediting plan is the written basis for assigning points in evaluating candidates' training, awards, education and experience backgrounds against the knowledges, skills and abilities important to the position. Each crediting plan will provide for assignment of point values from one (1) through five (5) as indicated below.

<u>Levels</u>	<u>Point Value</u>
Outstanding	— 5 points
Excellent	— 4 points
Fully Satisfactory	— 3 points
Minimally Satisfactory	— 2 points
Barely Acceptable	— 1 point

4. Each KSAP will be described, at a minimum, at the minimally satisfactory, fully satisfactory, and excellent levels. If only the minimally satisfactory through excellent levels are described, room will be left to allow the rater/panel the discretion to award the barely acceptable point value if qualifications fall short of the minimally satisfactory description and outstanding value if qualifications exceed the excellent description. Half points may *not* be awarded.

5. An element may be weighted to give a greater point value if the job analysis demonstrates that an element is significantly more critical to predicting performance in the job than others. If an element is weighted, it must be justified, in writing, relative to the position description and for documentation of the merit staffing case file.

#### I. Locating Candidates:

1. Before advertising any vacancy, the Career Opportunities Bulletin must be reviewed to determine if there are any competitive status Department of Justice personnel who have been or may be separated by reduction-in-force. The servicing Personnel Management Team, Personnel Staff, EOUSA, must be contacted to coordinate referral of qualified candidates.

2. When the qualification requirements discussed in paragraph G are developed, they will be publicized in a vacancy announcement.

3. Regardless of the area of consideration, vacancy announcements must be posted on bulletin boards throughout the office, or distributed in district's normal manner, in which the vacancy is located, and may be forwarded to other federal activities in the commuting area, as appropriate.

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4. Vacancy announcements for Administrative Officer will be prepared by the servicing Personnel Management Team, Personnel Staff, EOUSA. Other positions for which the area of consideration is Department or government-wide, will be prepared by the servicing personnel office on Notice of Vacancy/Career Opportunities Preparation Form DOJ-396 and forwarded through the servicing Personnel Management Team, Personnel Staff, EOUSA, to the Justice Management Division's Personnel Staff for publication in the Career Opportunities Bulletin.

5. Vacancy announcements for part-time and temporary positions other than appointments based on special need, e.g., 30 day emergency appointments, must be distributed to local Federal Job Information Centers and city and state employment offices.

6. All other vacancy announcements will be prepared by the selecting office on Form USA-195. Each announcement will contain the following information:

- a. Announcement number and opening date;
- b. Area of consideration (see paragraph J);
- c. Name and telephone number of person to contact for additional information;
- d. Title, series, grade(s), and number of positions;
- e. Geographic location of the vacancy;
- f. Deadline for acceptance of applications:
  - A vacancy announcement will be open for at least
    - (1) 10 calendar days—GS-12 and below;
    - (2) 14 calendar days—GS/GM-13 and above; and
    - (3) Temporary positions—at least three work days, regardless of grade level.
- g. Duties;
- h. Promotion potential, if any;
- i. Qualification requirements, including provisions for substitution of education for experience and any selective factors, approved in advance by the PMS;
- j. Knowledge, skills, abilities and personal characteristics, (see paragraph G.3.);
- k. Evaluation methods to be used;

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l. Whether the position is temporary or part-time and, if so, the approximate number of hours per week or duration of the appointment;

m. Whether the position is supervisory and, if so, that a one year probationary period is required before any *initial* appointment becomes final (see 5 C.F.R. § 315.901);

n. Whether the position is subject to the Performance Management Recognition System. If it is, a one-year probationary period is required before any *initial* appointment to a supervisory or managerial position becomes final (5 C.F.R. § 315.901-909);

o. Instructions for applying including the need for additional documents, such as a supplemental questionnaire, if applicable, and a performance appraisal completed during the past year for each applicant, if required.

p. That selectee is subject to obtaining the required degree of security clearance; and

q. Include a statement regarding relocation expenses (see paragraph K.3.).

r. Include a statement that an application submitted in a postage-paid government envelope is a violation of OPM and postal regulations and therefore will not be considered.

s. Include a statement that failure to submit information requested may result in a lower rating in the evaluation process.

7. Supervisors may refer employees for promotion consideration. This is in accordance with the supervisor's responsibility to further the development of employees. However, supervisory referrals may be used only to supplement names obtained by other methods of locating candidates unless the employee is eligible for noncompetitive selection. The employees referred must meet the same requirements and be evaluated by the same means as other applicants, i.e., submission of SF-171 and related documents.

8. Employees of the Department of Justice desiring relocation to geographical areas outside the commuting area of their duty stations should contact, in writing, the heads of the offices in which they are interested. They should specify the types of positions and grades in which they are interested and include current SF-171's, Application for Federal Employment, and OBD-35s, Merit Promotion Program Appraisal Form, for each position for which they wish to be considered. Such employees should, where practical, be given, for a reasonable period of time (at least six months) full consideration for any appropriate vacancies for which they qualify subject to budget/ceiling constraints.

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9. Applications from non-Department of Justice applicants may be accepted at the discretion of individual offices and maintained in a voluntary applicant file. Applications from the file may be used to select applicants to supplement the candidates generated by merit staffing advertisements and other methods. If competing outside candidates are considered they will be evaluated against the same criteria as internal candidates.

10. Employees absent because of approved leave, travel, training or detail will be considered for vacancies provided they submit to their Administrative Officer, office manager or district's personnel specialist, as appropriate, a current SF-171 and a memorandum listing the types of positions for which they wish to be considered, grade levels and the duration of the absence.

J. Areas of Consideration:

1. The areas of consideration should be sufficiently broad to afford status employees reasonable opportunity for advancement and to provide an adequate supply of highly-qualified applicants. The minimum areas of consideration for permanent positions are:

a. GS-12 and below: Offices covered by this plan in the commuting area;

b. GS/GM-13: All the Offices of the United States Attorneys and the Executive Office for United States Attorneys; and

c. GS/GM-14 and above: Department-wide.

2. The area of consideration for positions at the GS-12 level and below may be broadened, e.g., to all Department of Justice activities or all Federal activities in the commuting area, region or nation in order to obtain more qualified applicants if it is anticipated that distribution within the minimum area of consideration will not generate a sufficient number, i.e., three (3) qualified applicants. Similarly, the area of consideration may be broadened for all of the above positions.

3. Regardless of the area of consideration used to locate candidates for a particular vacancy, any status employee of the Department may apply and consideration should be given, where practical, if ceiling and/or budget constraints do not preclude or otherwise restrict the filling of the position from such other Department of Justice sources. Concurrent consideration may be given to interested and available status candidates who have applied from outside the Department depending upon such factors as labor market conditions, the availability of qualified applicants from Departmental sources, ceiling spaces, etc.

Note: Vacancy announcements for temporary positions must be distributed to state employment offices in the commuting area, to the local Office of

Personnel Management Job Information Center, and also may be distributed to other potential recruitment sources.

K. Relocation Expenses: It is Executive Office policy that relocation expenses are authorized for employees whose transfer/movement to different geographical areas are determined to be in the interest of the government. However, there is no automatic entitlement to reimbursement of relocation expenses upon an employee's change of his/her post-of-duty; reimbursement of such expense is conditioned upon sound judgment and on affirmative management determination that the transfer/movement is, in fact, "in the interest of the government" and is not primarily for the convenience or benefit of the employee. In making determinations as to whether a transfer/movement is or is not "in the interest of the government," the following guidelines will apply:

1. A management-directed transfer/movement is determined to be in the interest of the government and accordingly payment of relocation expenses is authorized.

2. A transfer/movement requested by an employee for his/her own personal reasons, convenience, or benefit which is subsequently approved by management is determined not to be in the interest of the government for purposes of entitlement to payment of relocation expenses.

3. A selection stemming from an announced vacancy. In general, relocation expenses are normally authorized for an employee whose transfer/movement results from competitive selection pursuant to a merit staffing announcement. In view of recent Comptroller General decisions, the following statement must be included on all vacancy announcements to alert prospective applicants that they are not automatically entitled to payment of relocation expenses:

"Relocation expenses may or may not be authorized. The determination of entitlement to the payment of such expenses will be made in accordance with guidance in USAM 3-2.311."

Note that payment of relocation expenses is not automatic in all cases and generally will not be authorized where one or more of the following conditions/factors exist:

- a. Skill/grade level consideration: It is determined that it is generally not cost effective or in the interest of the government to pay moving expenses for selectees to positions at the GS-6 level and below or equivalent. Skills required for such positions are ordinarily readily obtainable from among local sources through on-site and/or local training facilities. This provision is not applicable where OPM has established special salary rates for the occupation and grade based upon a manpower shortage determination.

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b. Labor market condition: Where past merit staffing recruiting efforts for similar vacancies yield sufficient highly-qualified candidates (usually five or more) from within the local commuting area, it has been determined that it is not generally cost effective or in the interest of the government to pay moving expenses of a selectee who resides outside of the commuting area.

c. Relocation to accompany spouse: It has been determined that it is not in the interest of the government to move an employee at government expense where the employee is relocating to accompany his or her spouse and where the spouse's employer will or has covered the costs.

The provisions of sub-paragraphs 3(a) and 3(b) may be waived to permit the payment of relocation expenses in cases of extreme hardship or in light of the totality of the situation. Written requests for such waivers are to be directed to the Director, Executive Office for U.S. Attorneys and must include full justification/reasons why such waiver(s) should be granted.

L. Rejection of Applications:

The following constitutes basis for rejection of an application:

1. Is hand delivered after the closing date;
2. Is postmarked after the closing date;
3. Is postmarked on or before the closing date, but is received so late, to consider it would delay the selection process;
4. Is mailed in a postage-paid government envelope;
5. Does not include enough information on which to make an eligibility and/or qualification determination;
6. Is from a non-status candidate and concurrent consideration was not extended; or
7. Is from outside the area of consideration and concurrent consideration was not extended.

M. Evaluation Methodology: The Federal Merit Policy requires that selection for advancement be made from among the best-qualified candidates, i.e., qualified candidates who rank at the top when compared to other candidates eligible for a position. Unless otherwise excepted, all applicants for positions in the Offices of the United States Attorneys and the Executive Office for United States Attorneys will be reviewed before carrying out the evaluation and ranking process, and all applicants eliminated who do not possess, by the closing date, any one of the following:

1. Age requirements, if appropriate;
2. Time-after-competitive appointment, if appropriate;

3. Competitive status, if appropriate;
4. Qualifications requirements to be met, including selective factors, if appropriate; and
5. Time-in-grade requirement, if appropriate.

N. Candidate Evaluation:

1. If there are five or less qualified candidates who must compete there is no requirement for formal evaluation. In such cases, all eligible candidates may be referred to the selecting official as the best qualified group. Note, there is no requirement for formal evaluation of candidates eligible for noncompetitive selection. Normally, noncompetitive eligibles are not to be ranked (see paragraph O.1.).

2. If there are more than five qualified competitive candidates for a position with promotion potential no greater than GS-6, candidates must be ranked by at least one SME, as defined above.

3. Applicants for all positions at or with promotion potential to the GS-7 grade level or above for which there are more than five qualified competitive candidates, must be ranked by a panel.

4. Applicants for all work leader or supervisory positions, regardless of grade level, for which there are more than five qualified competitive candidates, must be ranked by a panel.

5. Two important factors must be observed regarding the panel.

a. At least two people, one of whom must be an SME, must comprise the panel. (See paragraph H.2.). Panel members should be at least at the grade equivalent to or higher than the position to be paneled.

b. In no case will a candidate for the vacancy, a relative of a candidate or the selecting official be a member of the panel.

6. Candidates will be rated on each KSAP using all available written sources of information, i.e., SF-171, Supplemental Statement, performance rating (to the extent that the rating is relevant to the position being filled), etc.

7. If rating is accomplished by a panel, members should rate candidates independently. Members should then review and discuss each candidate's individual factor scores to ensure that scores which differ by two or more points have not been awarded; panel members should try to resolve any such rating differences and document resolution efforts. To obtain final scores for each candidate, panel members should total their points and average the totals.

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8. The panel or individual SME must determine which of the eligible candidates are best-qualified based on numerical scores, and the basis for such determination must be documented in the merit staffing record. The best-qualified candidates are normally the candidates with the highest scores. There should be a meaningful distinction between those candidates who are in the best-qualified group and the remaining candidates. A meaningful distinction is a significant difference in the numerical scores. A significant difference is normally defined as more than a five-point difference from the next highest score.

O. Referral:

1. When all eligible, competitive candidates have been evaluated and ranked, the evaluator(s) is to prepare a USA-196 Promotion Candidate List, listing in alphabetical order the names of the best-qualified candidates. Each USA-196 is to document that there are no eligible and available candidates on the Department's Priority Placement and Referral List. If the vacancy was advertised at multiple grade levels, those candidates identified as best-qualified for a particular grade level should be grouped separately from those identified as best-qualified for other grade levels, or a separate list may be prepared for each grade level. Individual scores are *not* to be included on the form. Additionally, candidates eligible for noncompetitive selection should be grouped separately.

2. A certificate will normally show the names of three to five of the top-ranking candidates for the vacancy for each grade level to be filled with at least one additional candidate added for each additional identical vacancy.

3. If there are fewer than three best-qualified candidates, additional candidates from the qualified list will be certified to provide the selecting official with at least three candidates from which to choose. In such cases, additional candidates will be certified up to a maximum of ten or until there is a meaningful distinction between candidates' scores, whichever occurs first. The best-qualified and qualified candidates should be grouped separately and identified as such. Note: Selecting officials may not bypass "best qualified" candidates, to select a "qualified" candidate, without justification approved by the servicing personnel office and documentation made to the merit staffing file.

4. Depending upon the availability of candidates, the number of candidates referred to the supervisor may be less than three, i.e., when hard to fill positions do not attract more than three qualified applicants by the closing date.

P. Selection:

1. When the selecting official receives a merit staffing certificate he or she may elect to interview the candidates referred. If one candidate is interviewed, all candidates in the same ranking category, i.e., best qualified or qualified, and any higher categories should be interviewed. If one or more candidates are not available for the interview within a reasonable period (normally, one week) the selection process need not be delayed pending their availability. Telephone interviews are appropriate when a candidate is unable to appear because of schedule, geographic location, etc. However, equity must be observed and candidates interviewed by telephone must be asked the same questions as other candidates.

2. The selecting official is not required to fill a vacancy by selecting one of the candidates listed on the certificate(s). He/she may request readvertisement with an expansion of the area of consideration or initiate additional recruitment efforts to fill the job by some other type of placement action. However, if selection is to be made from those candidates who were rated and ranked under merit staffing procedures, those candidates identified as best qualified must receive first consideration for selection. If no selection is made or selection is eventually made from candidates other than those who have been identified as best qualified, the selecting official must document the reasons in the merit staffing file, and the documentation/justification must be approved by the servicing personnel office.

3. The selecting official must make a merit staffing selection within a reasonable period of time, i.e., no later than 60 days from the date of issuance.

4. The selecting official's decision to select a particular candidate is subject to the approval of the servicing personnel office, and such other approvals as may be required by law, regulation, or policy. The selecting official shall indicate his/her tentative decision and other actions as required on the Promotion Candidate List.

5. The selecting office will announce the selection and arrange for release of the employee from his/her current employment only after notification of approval of the action by the servicing personnel office. Employees selected should be released promptly from their existing positions, normally within 15 calendar days after selection or at the end of the first full pay period after selection.

6. Position changes within the Department involving changes in pay, e.g., promotions, voluntary demotions, reassignment from positions subject to special salary pay rates to positions not subject to such rates, etc., will be made at the beginning of a pay period as opposed to dates within a pay period. Position changes involving pay or a change from one pay plan to another will normally be effective on the first day

of the first pay period after the servicing personnel office gives final administrative approval of the action. In those circumstances where a personnel action such as described above also involves a change in supervisors, the effective date will be the first day of the second pay period following final administrative approval by the servicing personnel office, unless the affected supervisors (gaining and releasing) agree to an alternative date.

Q. Information to Candidates:

1. Every applicant who files for consideration under a merit staffing vacancy announcement is to be notified, in writing, by the selecting office of the outcome of each consideration received after final approval of the action.

2. Upon written request, the servicing personnel office will furnish to any candidate the information specified below:

a. The qualification standards and rating criteria (but not the crediting plan) used for the position, including selective placement factors;

b. Whether the candidate was considered for the position;

c. Whether the candidate met the qualification requirements;

d. Whether the candidate was in the group of eligibles from which selection was made; and

e. The name, title, organizational assignment, and geographic location of the person who was selected for the position.

3. Selecting officials are encouraged to discuss with employees the reason for the employees' nonselection and what they might do to improve their chances for future selection for advancement.

R. Documentation and Records:

1. Proper documentation is required for all merit staffing actions. The Personnel Officer, EOUSA, is responsible for providing instructions to ensure that all pertinent forms and documents are made a part of the merit staffing file for each vacancy announcement.

2. Documentation will be maintained by the servicing personnel office in accordance with FPM Chapter 335. Offices may keep a copy of the documentation for two years. Any requests for copies of any merit staffing announcement documentation should be forwarded to the office maintaining the official merit staffing case file.

S. Employee Complaints: Employee complaints arising out of the operation of this plan are to be handled in accordance with grievance procedures

prescribed in DOJ Order 1771.1B or, as appropriate, the equal opportunity procedures prescribed by DOJ Order 1713.4. Nonselection from among a group of properly ranked and certified candidates is not a basis for a grievance. There is no right of appeal to OPM.

**T. Violations:** Violations of merit staffing policy or procedure will be dealt with promptly, firmly, and fairly. Corrective action may be initiated by the servicing personnel office, EOUSA, the Department, OPM or MSPB. Action to rectify a violation may involve the employee erroneously promoted, the employee(s) who was not promoted or who was not given proper consideration because of the violation, and/or the officials who caused or sanctioned the violation. The nature and extent of actions taken will be determined on the basis of all facts of the case, with due regard to the circumstances surrounding the violation and to the equitable and legal rights of the parties concerned. The servicing personnel office may direct that the wronged individual be given priority consideration for the next appropriate vacancy.

**U. Disciplinary Penalties:** Any official found to have improperly discriminated on the basis of an employee's color, race, religion, national origin, politics, marital status, handicap, age, membership or nonmembership in an employee organization, sex, or on the basis of personal favoritism in the rating of an employee or in making a selection may be subject to disciplinary action as circumstances warrant.

### 3-2.337 Examining System

Other reference(s): DOJ Order(s) 337  
FPM Chapter(s) 337  
5 C.F.R., Part 337

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.338 Qualification Requirements (General)

Other reference(s): DOJ Order(s) 1338.1A  
FPM Chapter(s) 338  
5 C.F.R., Part 338

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.339 Qualification Requirements (Medical)

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 339  
5 C.F.R., Part 339

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

3-2.340 Other Than Full-Time Career Employment (Part-Time, Seasonal, On-Call, and Intermittent)

Other reference(s): DOJ Order(s) 1340.1  
FPM Chapter(s) 340  
5 C.F.R., Part 340

Additional references may be identified within the text of the resource(s) cited above.

A. Policy:

It is the policy of the Executive Office for United States Attorneys and the Offices of the United States Attorneys to provide part-time permanent employment opportunities that are consistent with the Part-Time Career Employment Act of 1978 and DOJ Order 1340.1, dated December 6, 1984. The nationwide goal of the Executive Office and the U.S. Attorneys' offices is to attain and maintain a constant percentage of part-time employment to full-time employment. This percentage shall be maintained at a minimum of one percent.

B. Responsibilities:

1. The Director, Executive Office for U.S. Attorneys, and all U.S. Attorneys are responsible for ensuring that the nationwide goals for part-time career employment are met. The Director is also responsible for the overall administration of the part-time career employment program and for ensuring the program is supportive of other special emphasis programs.

2. The Personnel Staff is responsible for assisting the Director in implementing the Part-Time Career Employment Program by:

a. Issuing appropriate instructions on the implementation and administration of the program;

b. Reviewing program achievements;

c. Responding to Departmental and OPM reporting requirements; and

d. Monitoring the program for compliance with Departmental and OPM policy guidance.

3. Districts are responsible for administration of the program by:

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a. Monitoring employment statistics, such as size of work force, turnover rate and workload fluctuations to determine if it may be desirable to establish a part-time position;

b. Monitoring patterns of overtime utilization to determine if the work could be more appropriately performed by utilizing a part-time worker instead of paying overtime rates;

c. Ensuring that all resources are considered, including women, minorities and handicapped individuals;

d. Performing administrative tasks in support of the program.

C. Limitation:

An initial appointment of an individual to work part-time may not be made with the intent to convert the employee to full-time after a brief interval, *i.e.*, part-time appointments are not to be used as trial periods.

D. Reporting Requirements:

U.S. Attorneys' offices are responsible for the compilation and submission of data requested by the Executive Office for United States Attorneys to respond to Departmental reporting dates of May 1 and November 1 of each year.

3-2.351 Reduction-in-Force

Other reference(s): DOJ Order(s) 1351.C, 1251.2, 1351.3  
FPM Chapter(s) 351  
5 C.F.R., Part 351

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

3-2.352 Reemployment Rights

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 352  
5 C.F.R., Part 352

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

3-2.353 Restoration to Duty From Military Service or Compensable Injury

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 353  
5 C.F.R., Part 353, 359

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.361 Career Intern Programs

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 361  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.362 Presidential Management Intern Program

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 362  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.410 Training

Other reference(s): DOJ Order(s) 1410.1C, 1410.3C  
FPM Chapter(s) 410  
5 C.F.R., Part 410

Additional references may be identified within the text of the resource(s) cited above.

(See Title 3-8.000)

### 3-2.412 Executive, Management and Supervisory Development

Other reference(s): DOJ Order(s) 1410.1C  
FPM Chapter(s) 412  
5 C.F.R., Part 412

Additional references may be identified within the text of the resource(s) cited above.

(See Title 3-8.000)

### 3-2.430 Performance Management

Other reference(s): DOJ Order(s) 1430.3A, 1540.1A and 1771.1B  
FPM Chapter(s) 430, 540, 771  
5 C.F.R., Part 430, 540, 771

Additional references may be identified within the text of the resource(s) cited above.

A. Performance Appraisal for Attorneys and Non-attorneys Who Are Not Covered by the Performance Management and Recognition System:

The performance appraisal process is detailed in DOJ Order 1430.3A. Except as noted in this section, Assistant United States Attorneys (AUSAs) are covered by the provisions of that Order and a subject Attorney Personnel Memorandum issued annually. AUSAs have an approved alternate rating cycle; therefore, provisions establishing dates for ratings, reports, etc. do not apply to them. The appraisal cycles for non-Performance Management and Recognition System employees are as follows:

Non-attorneys—April 1 to March 31 of each year.

General Schedule (GS) attorneys—July 1 to June 30 of each year.

AUSAs—Anniversary date with the office. This cycle is an approved exception to the Department's Performance Management System (PMS).

The following supplements the above references, addresses issues that are at the discretion of individual bureaus within the Department, and constitutes policy for the Executive Office and the Offices of the United States Attorneys.

1. For both attorneys and non-attorneys, Performance Work Plans (PWP) must include at a minimum, written performance standards at the Minimally Satisfactory, Full Successful, and Excellent levels.

2. All elements against which an employee is to be rated, both critical and non-critical (if any) are to be included in the PWP.

3. PWPs for positions which are classified as supervisory or managerial must contain job elements which address Equal Employment Opportunity and responsibilities under OMB Circular A-123 (waste, fraud and abuse).

4. Within a district, the United States Attorney is the highest level of review for the purpose of establishing PWPs and evaluating performance.

5. The Director, Executive Office for United States Attorneys (EOUSA), is considered the highest level of review in the EOUSA and is responsible for the resolution of all performance grievances.

6. The original of PWPs, indicating the final, approved rating and signed by all required officials, will be forwarded to:

a. The Servicing Personnel Office, for all non-attorneys or

b. The EOUSA for all attorneys. For AUSAs, the PWP should be forwarded with the request for administrative pay increase, if appropri-

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ate. PWPs for all attorneys will then be forwarded to the Office of Attorney Personnel Management.

B. Performance Appraisal—Performance Management and Recognition System (PMRS):

1. Job Elements and Performance Standards

a. Job Elements. As pay determinations are tied directly to performance ratings for PMRS employees, the performance appraisal process is a key element of this system. All elements against which a PMRS employee is to be rated, both critical and non-critical are to be included in the performance workplan. Rating officials may designate one or more critical elements as carrying more weight or importance than other critical elements. Performance of a weighted critical element(s) which is at a lower level than a majority of the critical elements can serve as a basis for an overall rating which is lower than a majority of the critical elements; however, rating and reviewing officials shall ensure consistency in applying this option for similarly situated employees. See DOJ Order 1540.1A (the Order) for further discussion.

b. Performance Standards. Performance standards are to be written, at a minimum, at the minimally satisfactory, fully successful and excellent levels.

2. Progress Reviews

At least one formal progress review is to be conducted during the rating period, normally halfway through an employee's rating cycle. For example, an employee who entered the position in question on November 1, 1987, would receive a progress review at the end of February or the beginning of March, 1988, i.e., halfway between November 1, 1987, and June 30, 1988, the end of the performance rating cycle.

3. Rating and Reviewing Officials

When a United States Attorney or the Director, Executive Office is the rating official, he/she shall also serve as the reviewing official since there is no higher official in the organization for purposes of this section. It is suggested, however, that whenever possible, the United States Attorney or the Director, Executive Office not act as both rating and reviewing official. Whenever intermediate supervisors exist, they should act as rating or reviewing official, as appropriate.

4. Performance Ratings

a. Although a tentative rating of record may not be communicated to the employee until after higher level of review, as discussed in the Order, it is recommended that the rating official give the employee the

opportunity to provide input, which the rating official should consider in arriving at a tentative rating.

b. Final appraisals shall be filed on the left-hand (temporary) side of the employee's Official Personnel Folder (OPF). When a rating is increased as the result of a successfully pursued grievance or other proceeding, the amended rating shall be placed in the OPF in lieu of the contested rating.

#### 5. Details and Temporary Promotions within the Department

a. If an employee is detailed or temporarily promoted within the Department, and when it becomes apparent that the assignment will last at least 90 days, written elements and standards shall be provided to the employee as soon as possible (after employee participation and approval by the reviewing official, if possible). The Order requires that elements and standards be provided to the employee no later than 30 days after the beginning of the detail or temporary promotion if the assignment is expected to last 120 days or longer.

b. The reviewing official shall approve the interim rating prior to formal communication to the employee, if possible.

#### 6. Actions Based on Less Than Fully Successful Performance

At any time during the year when a supervisor concludes that the employee's performance is below fully successful, the supervisor must: advise the employee of specific shortcomings between observed performance in the critical element(s) under scrutiny and the performance standard(s) associated with the particular element(s); provide the employee with a full opportunity to explain the observed deficiencies; and prepare a memorandum-for-the-file summarizing the above discussions, with a copy to the employee. For minimally satisfactory performance, the supervisor shall also consider counseling, training, supervising the employee more closely, or providing other assistance to help the employee bring his/her performance up to an acceptable level. Exactly what steps should be taken depend on the circumstances of the case. Actions to be taken for unacceptable performance are adequately addressed in the Order.

#### C. Performance Rating Grievances:

Attorneys and non-attorneys in the Offices of the United States Attorneys (OUSAs) and EOUSA, except members of the Senior Executive Service (SES), who wish to contest a performance rating or any aspect of a performance rating must adhere to the following material. Department of Justice Order 1771.1B and instructions issued by the Office of Attorney Personnel Management also apply to attorney personnel.

The Director, EOUSA has overall responsibility for the performance rating grievance system for all non-SES, attorneys and non-attorneys in

EOUSA and OUSAs. The Director may delegate all or a portion of the responsibility to a designee.

1. Representation: An employee who requests a review of his/her performance rating has the right to be assisted at any stage by a Department employee of his or her choice. If the employee's choice of representative creates a conflict of interest, or gives rise to unreasonable costs to the Government, the EOUSA can require that the employee select another representative.

2. Extensions of Time: The Director, EOUSA, or designee, may grant an extension, not to exceed ten calendar days, of each time limit stated in the following. All parties are to be informed in writing of all time extensions. A request for an extension of time that is not submitted in a timely manner may be rejected by the Director, EOUSA, or his/her designee.

3. Use of Official Time: The employee and his or her representative (if a Department employee) are entitled to a reasonable amount of official time to prepare the written submissions. Appropriate arrangements for the use of official time should be coordinated with the employees' supervisors. Normally, a reasonable amount of time should not exceed eight (8) hours. However, if there is disagreement on what constitutes a reasonable amount of time, the issue will be resolved by the Director, EOUSA, or designee.

4. Submission of Grievances:

a. A request for review of an official performance rating must be submitted in writing to the Director of the EOUSA or designee, and to the rating official, within 30 calendar days of the employee's receipt of the official appraisal.

b. The rating official must furnish a written reply to the employee's request for review to the Director of the EOUSA, or designee, within 20 calendar days of the date the Director of the EOUSA, or designee, received the request for review.

c. The employee may respond in writing to the rating official's reply. The response must be submitted to the Director of the EOUSA, or designee, within 10 calendar days of the date the Director of the EOUSA, or designee, received the rating official's reply. At this time, the employee must designate the Department employee who the employee has selected to serve on the Review Committee.

d. The record consists of the employee's comprehensive statement, the rating official's reply, the final statement, and the attachments to these submissions.

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July 1, 1992



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

November 30, 1995

TO: Holders of United States Attorneys' Manual  
Title 3.

FROM: Executive Office for United States Attorneys

*Carol DiBattiste*  
Carol DiBattiste  
Director

RE: Performance Management

NOTE: 1. This is issued pursuant to USAM 1-1.521.  
2. Distribute to holders of Title 3.  
3. Insert in front of USAM 3-2.430.

AFFECTS: USAM 3-2.430

PURPOSE: This Bluesheet updates and revises the policy for evaluating employee performance as a result of Public Law 103-89, PERS Termination Act of 1993; and a Department-approved exception to DOJ Order 1430.3A to implement a streamlined performance appraisal system.

\*\*\* NOTE: USAM 3-2.430, Sections A and B, are replaced by the following guidance. (Other sections of 3-2.430 remain unchanged). \*\*\*

3-2.430 Performance Management

Other Reference(s): DOJ Order(s) 1430.3A, and 1771.1B  
5 C.F.R., Part(s) 430 and 771  
APHI 430

A. Performance Appraisal for Attorneys and Non-attorneys:

1. Employee Coverage. All United States Attorneys' office (USAO) and Executive Office for United States Attorneys (EOUSA) employees are covered by the provisions of this section except for the following:

- a. Senior Executive Service employees;
- b. Positions filled by Noncareer Executive Assignments;
- c. Employees for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; or
- d. Positions otherwise specifically excluded by law or regulation.

2. Responsibilities

a. The United States Attorney is the highest level of review for the purpose of establishing Performance Work Plans and evaluating performance.

b. The Director, Executive Office for United States Attorneys (EOUSA) is considered the highest level of review in the EOUSA, and is responsible for the resolution of all performance grievances.

3. Appraisal Periods. Appraisal periods for USAO and EOUSA employees are the following.

Appraisal Periods	
For:	Rating Period:
Assistant United States Attorneys (AUSAs)	January 1 through December 31
Supervisory and Senior Litigation Counsel AUSAs	November 1 through October 31
Non-Attorney Staff	April 1 through March 31
GS Attorneys	July 1 through June 30
<b>MINIMUM APPRAISAL PERIOD</b>	<b>90 DAYS</b>

4. Rating and Reviewing Officials.

a. Assignment of responsibility as a rating or reviewing official is determined by the United States Attorney or the

Director, Executive Office for United States Attorneys, as appropriate. Generally, responsibility as a rating official should be assigned to the lowest practical supervisory level within the organization. Similarly, responsibility as a reviewing official should be assigned to the lowest practical level above the rating official.

b. When the United States Attorney or the Director, Executive Office for United States Attorneys, is the rating official, s/he shall also serve as the reviewing official.

5. Performance Work Plans. A Performance Work Plan (PWP) will be developed for each covered employee containing one or more critical performance elements. Non-critical performance elements may not be included. Employee input is strongly encouraged in developing PWPs.

a. Mandatory Performance Elements. In order to ensure that major management programs and objectives are consistently and systematically administered, groups of positions may be required to contain specific performance elements. Rating officials will incorporate mandatory performance elements into the work plans of covered employees. See APHI 430 for a listing of positions for which specific performance elements are required, and recommended performance standards.

b. Performance Standards.

(1). Each performance element **must** include a written standard of performance that defines the rating official's expectations for successful performance in such terms as quality of work, quantity of work, timeliness, individual or group goals and objectives, or in other such terms that are appropriate to the position. This constitutes the "*Meets Expectations*" level. Wherever possible, performance standards should address organizational objectives, goals, and other results-based performance evaluation criteria.

(2). In addition to performance standards that define management expectations for successful performance, performance standards **may** also be written at the next higher level, i.e., at the "*Substantially Exceeds Expectations*" level, under limited circumstances. Written performance standards may be developed at this level only when they will promote management goals and objectives by communicating, in writing, an exceptionally high level of performance. A written standard at the "*Substantially Exceeds Expectations*" shall include specific quality and quantity standards, or definition of specific organizational objectives, that clearly distinguish performance at this level from performance at the "*Meets Expectations*" level.

(3). Performance standards may not be written at the "*Fails to Meet Expectations*" level.

c. Work Plan Review. Each PWP completed by the rating official will be approved by the official designated as the reviewing official in advance of the plan being communicated to the employee.

6. Progress Reviews. At least one formal progress review will be held during the appraisal cycle. At the progress review the employee's accomplishments relative to each performance element will be discussed. The employee and the rating official will sign and date the employee's performance work plan to document the completion of each formal progress review.

7. Formal Appraisal of Performance. Rating officials should collect information regarding each employee's performance sufficiently in advance of the end of the appraisal cycle to ensure a completed, approved, formal appraisal of performance is issued within 30 days following the end of the rating cycle. Employee input should be encouraged to ensure all relevant accomplishments are considered by the rating official.

a. Assignment of performance element rating levels. The rating official will evaluate actual employee performance in comparison with defined expectations for successful performance for each performance element, and assign one of the following rating levels:

(1). "*Fails to Meet Expectations*" for fulfilling management objectives and organizational goals;

(2). "*Meets Expectations*" for fulfilling management objectives and organizational goals; or

(3). "*Substantially Exceeds Expectations*" for fulfilling management objectives and organizational goals.

b. In assigning each performance element rating level, the rating official will take into account the strengths and weaknesses of the employee's performance. A judgment will be made by the rating official of the performance element rating level that best represents the employee's performance as a whole as compared against the defined performance element standards as a whole.

c. Documentation of performance element rating levels. No additional narrative is required to document employee performance that meets an established, written, performance standard; e.g., at the "*Meets Expectations*" level. A written narrative is required whenever performance is rated at a level for which written performance standards have not been

established; e.g., at the *"Fails to Meet Expectations,"* or *"Substantially Exceeds Expectations"* level. In such cases, the rating official must provide a brief narrative of the employee's actual performance that serves as a basis for the rating determination.

d. Determination of overall rating level. An overall rating level will be derived as follows:

(1). *"Unacceptable."* Performance in one or more critical elements fails to meet standards for successful performance. This is a Level 1 rating as defined by 5 C.F.R. § 430.208.

(2). *"Meets Expectations."* Performance meets, or marginally exceeds, standards for successful performance. This level is appropriate when less than a majority, i.e., 50% or less, of all elements are rated at the *"Substantially Exceeds Expectations"* level. This is a Level 3 rating as defined by 5 C.F.R. § 430.208.

(3). *"Substantially Exceeds Expectations."* A majority, i.e., more than 50%, of the total number of elements are rated at the *"Substantially Exceeds Expectations"* level. This is a Level 5 rating as defined by 5 C.F.R. § 430.208.

e. Approval by reviewing official. Completed ratings of record must be reviewed and approved by the reviewing official before they are communicated to the employee.

#### 8. Details and Temporary Promotions within the Department

a. Written performance elements and standards shall be provided to an employee who is detailed or temporarily promoted within the Department for more than 90 days. Elements and standards shall be provided to the employee no later than 30 days after the effective date of the detail or temporary promotion.

b. The reviewing official shall approve the interim rating prior to formal communication to the employee.

9. **Actions Based on Less Than Fully Successful Performance.** Whenever a supervisor concludes that an employee's performance is not acceptable and would cause one or more performance elements to be evaluated at the *"Fails to Meet Expectations"* level, the supervisor must:

a. Advise the employee of specific shortcomings between observed performance in the element(s) under scrutiny and the performance standard(s) associated with the particular element(s);

b. Provide the employee with a full opportunity to explain the observed deficiencies; and

c. Prepare a memorandum-to-the-file summarizing the above discussions. The employee shall be provided a copy.

U. S. ATTORNEYS MANUAL 1988



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

July 31, 1995

**TO:** Holders of United States Attorneys' Manual  
Title 3.

**FROM:** United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Carol DiBattiste*  
Carol DiBattiste  
Director

**RE:** Revisions to the Procedures for Performance  
Rating Grievances

- NOTE:**
1. This is issued pursuant to USAM 1-1.521.
  2. Distribute to all holders of Title 3.
  3. Insert in front of USAM 3-2.430.

**AFFECTS:** USAM 3-2.430 C.

**PURPOSE:** The attached bluesheet revises the procedures for processing performance rating grievances submitted by all attorneys and non-attorneys in the United States Attorneys' Offices, and all attorneys and non-attorneys, except for SES members, in the Executive Office for United States Attorneys.

\*\*\* **NOTE:** The following replaces section 3-2.430 C.  
in your United States Attorneys' Manual:

3-2.430 C. Performance Rating Grievances

**Other reference(s):** DOJ Order 1771.1B, or, if applicable, its replacement Order;  
OAPM Memorandum 94-8-A, or, if applicable, its replacement memorandum;  
5 C.F.R. Part 771.

Attorneys and non-attorneys in the United States Attorneys' Offices (USAOs), and attorneys and non-attorneys, except members of the Senior Executive Service (SES), in the Executive Office for United States Attorneys (EOUSA), who want to contest a performance rating must adhere to the following procedures.

The Director, EOUSA, is responsible for deciding performance rating grievances submitted by all attorneys and non-attorneys, except members of the SES, in the USAOs and the EOUSA. The Director may delegate all or a portion of the responsibility to a designee. The designee may not be an official who was involved in rating the employee's performance or an official who is subordinate to an official who was involved in rating the employee's performance.

1. The Official Record: The employee's comprehensive statement (grievance), the rating official's response, the employee's reply to the rating official's response, and the attachments to these submissions, will comprise the official record. The review by the Director, or her designee, will be limited to the official record and will include only evidence which directly relates to the employee's performance. The employee is not entitled to a hearing or oral response.

a. The employee must deliver his performance rating grievance to the Director, or her designee, and the rating official, within 30 calendar days after the employee receives the official rating. The grievance must include a comprehensive statement explaining the reasons why the performance appraisal, or any part thereof, should be changed, the relief being sought by the employee (see infra paragraph 7 which discusses the relief the Director is authorized to provide to the employee), a copy of the contested appraisal which has been signed by all the parties, as well as any other supporting documentation.

b. The rating official may submit a written response, including supporting documentation, to the Director, or her designee, and to the employee, within 20 calendar days after the receipt of the grievance by the Director, or her designee.

c. The employee may submit a reply to the rating official's response to the Director, or her designee, and the rating official, within ten calendar days after the receipt of the rating official's response by the Director, or her designee.

2. Extensions of Time: The Director, or her designee, may grant an extension, not to exceed ten calendar days, of each time limit specified above in paragraph 1. All parties will be notified in writing of any extensions. A request for an

extension of time that is untimely may be rejected by the Director, or her designee.

3. Representation: An employee who contests his performance rating has the right to be assisted and/or represented by an individual of his choice, including another employee of the Department. If the employee's choice of representative creates a conflict of interest, or gives rise to unreasonable costs to the Government, the EOUSA can require that the employee select a different representative.

4. Use of Official Time: The employee and his representative, if the latter is an employee of the Department, are entitled to a reasonable amount of official time to prepare the written submissions. Arrangements for the use of official time must be coordinated by the employee(s) with the appropriate supervisor(s). Usually a reasonable amount of time should not exceed eight hours. In the event of a disagreement as to what constitutes a reasonable amount of time, the determination will be made by the Director, or her designee.

5. Fact Finding: If the Director, or her designee, determines that it is appropriate and necessary, the Director, or her designee, may engage in fact finding.

6. Employee's Burden: In order to prevail, the employee must demonstrate to the satisfaction of the Director, or her designee, that the appraisal, or any part thereof, should be changed.

7. Decision: The Director, or her designee, has the authority to increase an overall rating if the ratings on the individual elements merit such an increase pursuant to the instructions provided on the Performance Appraisal Record, increase an individual element rating, remove remarks, leave the rating unchanged, or return the record to the rating official for further consideration, in which case the Director, or her designee, will issue a final decision following such further consideration.

The Director, or her designee, will issue a written decision usually within 45 days after submission of the employee's reply to the rating official's response, or the deadline for the submission if the employee chooses not to submit the response. The Director's decision is final and not subject to further consideration or review within the Department.

5. Review Committee: The final decision on all grievances will be made by the Director of the EOUSA, or designee. The Review Committee will make a recommendation to the Director based solely on the record. There is no right to an oral presentation before the Committee. However, if a majority of the Committee determines that it is necessary, the Committee may engage in fact-finding.

a. The Committee will consist of at least three members including:

(1) The Associate Director for Administrative Services, EOUSA, or designee.

(2) A Department employee, including any attorney, designated by the employee. If the employee's choice of representative creates a conflict of interest or gives rise to unreasonable costs to the Government, the Director of the EOUSA, or designee, can require that the employee select another representative. To avoid unreasonable costs, the Director of the EOUSA, or designee, may require that the employee select a committee member who works in the Washington metropolitan commuting area.

(3) The Legal Counsel, EOUSA, or designee.

All members of the Committee must be currently employed by the Department and may not have participated in the assignment or review of the contested rating. The Director of the EOUSA, or designee, retains the right to disapprove selection of a committee member on the basis of a conflict of interest.

b. The Committee will have the authority, after considering an employee's request, to recommend to the Director of the EOUSA, or designee, any of the following actions:

(1) Adjust the overall rating;

(2) Adjust one or more individual element ratings;

(3) Remove one or more remarks;

(4) Leave the overall rating, individual element rating(s) and/or remark(s) unchanged; or

(5) Return the record to the rating or reviewing official for further consideration.

c. Committee's Recommendation:

The Committee will make a written recommendation to the Director of the EOUSA, or designee. Issues will be settled by majority vote of the Committee and the Committee will prepare a written recommendation to the Di-

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July 1, 1992



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

May 16, 1995

TO: Holders of United States Attorneys' Manual Title 3.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Carol DiBattiste*  
Carol DiBattiste  
Director

RE: Delegation of Authority for Performance Based Actions

NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.

2. Distribute to holders of Title 3.

3. Insert in front of USAM 3-2.451.

AFFECTS: USAM 3-2.432

PURPOSE: This Bluesheet clarifies current policy on United States Attorneys' authority to propose performance based actions related to Assistant United States Attorneys.

\*\*\* NOTE: Section 432. is added to USAM 3-2. Other sections of 3-2. remain unchanged. \*\*\*

A. Delegation of Performance Based Actions Authority:

Effective March 3, 1995, the Principal Deputy Director, Executive Office for United States Attorneys (EOUSA), the Deputy Director for Administrative Services, EOUSA, and each United States Attorney is delegated authority to propose performance based actions against Assistant United States Attorneys (AUSAs). Authority to issue final decisions relating to proposed performance based actions is not redelegated. Additionally, the Director, EOUSA, will retain authority to

determine whether to terminate temporary or trial period appointments of AUSAs, and whether an AUSA's temporary appointment will not be converted to a permanent appointment when it expires.

Under this delegation of authority, United States Attorneys may propose removals under 5 U.S.C. Chapter 43 for failure to meet the minimally satisfactory level of performance for one or more critical elements in an AUSA's performance work plan.

U.S. ATTORNEYS MANUAL 1988



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

February 17, 1994

TO: Holders of United States Attorneys' Manual Title 3.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Anthony C. Moscato*  
Anthony C. Moscato  
Director

RE: Limitations on the Granting of Quality Step Increases

- NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
2. Distribute to holders of Title 3.
3. Insert in front of USAM Title 3-2.451.

AFFECTS: USAM 3-2.451

PURPOSE: This Bluesheet changes the limitations on the granting of Quality Step Increases.

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\*\*\*NOTE: Sections (a). of USAM 3-2.451, (C) 2.(a) is replaced by the following guidance. Other sections of 3-2.451 are not affected.\*\*\*

3-2.451, (C) 2.(a) Incentive Awards

- a. The employee has not received another QSI within the preceding 52 calendar weeks nor a Sustained Superior Performance (SSP) award within the last six (6) months. If a SSP was received within the past 6 to 12 months, the QSI recommendation must be based on a different performance rating period; and

rector, or designee. Any Committee member may write a dissenting opinion which will be forwarded to the Director, or designee.

6. Decision:

The Director of the EOUSA, or designee, will make the final decision on the performance grievance after reviewing the Committee's recommendation. All parties will be notified in writing of the final decision.

3-2.451 Incentive Awards

Other reference(s): DOJ Order(s) 1451.1A  
FPM Chapter(s) 451, FPM Supplement 451-1  
5 C.F.R., Part 451

Additional references may be identified within the text of the resource(s) cited above.

A. Awards:

The Department of Justice has an institutionalized awards program designed to recognize and reward superior performance by its employees. The awards program for U.S. Attorney personnel is administered by the Executive Office for U.S. Attorneys (EOUSA). The Director, EOUSA, solicits nominations for Special Commendation Awards, the Director's Award for Superior Performance as an Assistant U.S. Attorney, the Director's Award for Outstanding Performance in a Litigation Support or Managerial Role, and the Director's Award for Equal Employment Opportunity. Unsuccessful nominees for the Attorney General's Awards are considered with other nominees for Special Commendation and Director's Awards.

Cash awards, except for Quality Step Increases, are not part of the basic compensation of an employee. They are, however, subject to withholding tax.

Note: Award nomination sometimes contain information that should be made available only to those involved in the decision process on a need-to-know basis and should be kept confidential during processing.

An award nomination normally should not be discussed with the nominee until the award has been approved.

B. The Director's Awards:

Nominations for the four Director's awards are solicited annually.

1. Special Commendation Award:

This award recognizes achievements which do not meet the criteria of the Attorney General's awards, but surpass the standards set for lesser awards. To be eligible for recognition, achievements or contributions must show one of the following:

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a. A significant act, service, or achievement that materially contributes to the successful accomplishment of the objectives of the organization;

b. Accomplishment of a particularly difficult case or assignment of above-average importance in a manner that reflects credit on the individual or the organization;

c. Innovations in service to the public or improvements which are of major importance to the organization in communicating its mission to the general community; and

d. Performance of an act of courage above that expected or required of an individual.

2. The Director's Award for Superior Performance as an Assistant United States Attorney:

This award is given by the Director, EOUSA, to honor Assistants whose performances are deserving of special recognition. This award is based on the following criteria:

a. Performance of general duties at a superior level of competence so that the performance can be clearly distinguished as better than that of other employees performing comparable duties; and

b. In addition, the nominee should have distinguished himself/herself by a significant act or series of related acts that materially contribute to the successful accomplishment of the U.S. Attorney's functions and duties.

c. The number of Assistants receiving this award normally will not exceed one percent of the total number of Assistant U.S. Attorneys in any one year.

3. The Director's Award for Outstanding Performance in a Litigation Support or Managerial Role:

This award recognizes outstanding achievements by attorney and non-attorney personnel serving in a litigation support or managerial role and not personally responsible for the preparation or presentation of litigation matters. To be eligible for consideration, the nominee must have demonstrated outstanding performance in a legal support or managerial role over a substantial period of time. The nominee's performance should have involved overcoming unusually difficult situations, significantly benefiting the successful accomplishment of the organization's mission.

The actual number of awards given will approximate those given for the Director's Award for Superior Performance.

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#### 4. The Director's Award for Equal Employment Opportunity:

This award is designed to recognize the most significant contribution(s) to the Equal Employment Opportunity Program (EEO) of a particular U.S. Attorney's Office, the EOUSA, or the Bureau as a whole.

A nomination may be made for any manager, employee, or group of employees in two categories: (1) attorney, and (2) non-attorney. The nominations will be based on significant contributions to the EEO in such areas as leadership, training, recruitment, conciliation, and/or any other activity that creates/enhances employment opportunities for women, minorities, and individuals with handicapping conditions.

One award will be presented annually in each of the two categories. If, on occasion, there is no qualified nominee in one of the categories but there is more than one in the other category, two awards will be presented in the one category.

#### C. Quality Step Increases:

This award may be given to no more than 25 percent of an office's non-attorney staff in any one fiscal year.

1. To be considered for a Quality Step Increase (QSI) the following criteria must be met:

a. The employee must perform the duties and responsibilities of his or her assigned position at a level that substantially exceeds an acceptable level of competency so that when viewed as a whole, the employee's performance is of a high level of quality, i.e., excellent or higher;

b. The performance rating must be based on the employee's current position; and

c. The performance being evaluated must have been sustained for a minimum of 120 days in the same position which is the minimum amount of time sufficient to show:

(1) that a supervisor/employee relationship exists; and

(2) that a sufficient amount of time has elapsed for the employee to fully perform the duties of the position.

2. The granting of a QSI is subject to the following limitations:

a. The employee has not received a QSI or Special Achievement Award for Sustained Superior Performance within the preceding 52 calendar weeks; and

b. At the time the QSI becomes effective, the employee is expected to remain for at least 60 days, in the same position and at the same grade level, after the effective date of the QSI.

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3. A QSI is not appropriate when:

- a. The employee is nearing retirement or separating from federal employment and would benefit for only a limited period;
- b. The employee is about to receive or just received a promotion which included consideration of the high level of performance the QSI would recognize;
- c. The employee is serving on a detail to another position;
- d. The employee is transferring to another position either within or outside the Department; and
- e. The employee's contribution is so significant that a large lump sum payment would be more fitting recognition than a smaller, continuing benefit.

D. Special Achievement Award:

Special Achievement Awards may be given to an employee or group of employees. The number of awards that may be given in any fiscal year is limited to no more than 10 percent of the office's total authorized full-time permanent staff.

E. Senior Litigation Counsel:

1. The Senior Litigation Counsel Program was created for the express purpose of recognizing truly outstanding Assistant U.S. Attorneys based on their overall careers as litigators. To qualify, an Assistant must meet the following criteria:

- a. Have at least five years experience as an attorney, the major portion of such experience having been as an active litigator in the federal court system;
- b. When nominated, be at a salary at least equivalent to the GS-15, step 1;
- c. Be recognized as an outstanding litigator in the federal court system as demonstrated by awards, letters of commendation, press coverage, or other material attesting to the success and quality of the attorney's advocacy skills;
- d. Be committed to the active litigation of significant cases and not be in a supervisory position;
- e. Be responsible for the in-office training of Assistants less knowledgeable in advocacy skills; and
- f. Have the stated intention of remaining with the Department of Justice for at least one year after designation, as well as the stated

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intention of being available, when it will not interfere with assigned caseload, to serve as a rotating faculty member of the Attorney General's Advocacy Institute.

2. Upon designation as a Senior Litigation Counsel, the Assistant may be eligible for a pay increase of up to 6% of his or her current salary. However, in no case may this increase cause the Assistant's per annum salary to exceed that of the established pay cap. This pay increase will not affect the Assistant's anniversary date for annual administrative pay increases.

3. It is expected that women and minority attorneys will be given an equal opportunity to obtain the requisite skills and qualifications necessary for such positions and that they will be given an equal opportunity to be considered for such positions.

4. Assistants selected to serve as Senior Litigation Counsel are to have the following "weighted critical elements" included in their performance workplans:

a. "Under the general direction of the U.S. Attorney, assumes complete responsibility for the preparation and presentation at the trial level of complex or difficult cases, often involving significant or novel issues."

(1) Fully Successful: Demonstrates a creative style and ability in complex and sophisticated matters working under the general direction of the U.S. Attorney, to:

(a) Develop appropriate legal theories and plans;

(b) Organize, prepare and direct investigations and proceedings leading to litigation;

(c) Effectively represent the United States' interest at all stages preliminary to trial; and

(d) As appropriate, coordinate a team in carrying out above functions.

(2) Excellent: In addition to the standard for "Fully Successful," is considered a subject-matter expert regarding specific areas of the law and is often consulted for advice by other U.S. Attorney offices and/or the Department's legal divisions. Is occasionally requested to assume the responsibility of representing the United States' interest by leading other districts or Department legal divisions in matters involving complex or novel issues of public interest and receiving high visibility.

b. "Under the general direction of the U.S. Attorney, has responsibility for the development and implementation of a litigation-oriented,

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'in-house' training program for the district's less knowledgeable attorneys.'

(1) Fully Successful: Identifies training needs, designs training to meet those needs at appropriate levels of lawyers' experience in the office, and plans for delivery of training, including a series of programs and materials. The training plan reflects thorough understanding of substantive issues and best use of staff expertise and talent.

(2) Excellent: Identifies training needs and designs a program that reflects imaginative use of teaching methods appropriate to subject and objectives, including use of video, demonstrations, and other alternatives to the lecture format. Presentations include experts, judges, and others from outside the office.

5. Any performance appraisal effected 120 days or more after an Assistant is selected as a Senior Litigation Counsel is to contain an explicit evaluation of the above "weighted critical elements." Any Assistant selected to be a Senior Litigation Counsel is expected to be rated at least at the "Fully Successful" level in these elements in order to remain in the program.

### 3-2.511 Classification Under the General Schedule

Other reference(s): DOJ Order(s) 1511.1A, 1511.4B, and 1511.6  
 FPM Chapter(s) 511  
 5 C.F.R., Part 511  
 28 C.F.R., Part(s) 0.131, 547

Additional references may be identified within the text of the resource(s) cited above.

#### A. United States Attorneys and Assistant United States Attorneys:

U.S. Attorneys and Assistant United States Attorneys are not covered by the Classification Act of 1949. Consequently, they do not have position descriptions. The Executive Office for U.S. Attorneys, however, maintains records indicating which attorneys handle specialized functional areas, such as criminal or civil matters or who have supervisory responsibilities. Thus, Assistant U.S. Attorneys are assigned numbers, similar to position description numbers, which reflect their functional specialties.

The Personnel Staff, Executive Office for U.S. Attorneys, has developed the following mandatory position description numbers. These numbers are to be used when an Assistant is working predominantly, not necessarily exclusively, on the type of matters indicated.

<u>Function</u>	<u>Position Description Number</u>
Criminal Attorney	P129CRM8

July 1, 1992



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

June 24, 1992

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*JM* Laurence S. McWhorter  
Director

RE: Classification Under the General Schedule

- NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.  
2. Distribute to holders of Title 3.  
3. Insert in front of USAM 3-2.511.

AFFECTS: USAM 3-2.511 A.

PURPOSE: This Bluesheet replaces out-of-date information in USAM Title 3-2 regarding United States and Assistant United States Attorney position numbers.

\*\*\* NOTE: Section A. of USAM Title 3-2.511 is replaced by the following guidance. Section B. of 3-2.511 remains unchanged. \*\*\*

A. United States Attorneys and Assistant United States Attorneys:

United States Attorneys and Assistant United States Attorneys do not have position descriptions because they are not covered by the Classification Act of 1949. The Executive Office for United States Attorneys, however, assigns a position number, similar to a position description number, to each United States Attorney and Assistant United States Attorney position, to indicate the position's supervisory, Senior Litigation Counsel (SLC) or non-supervisory/non-SLC responsibilities, as well as its functional area of responsibility (e.g., Criminal or Civil). Position numbers are listed in the United States Attorneys' Administrative Procedures Handbook.

<u>Function</u>	<u>Position Description Number</u>
Civil Attorney	P129CIV8
Criminal/Civil (General) Attorney	P129GEN8
Collections Attorney	P129COL8
Drug Task Force Attorney	P129DTF8
Tax Prosecution Unit Attorney	P129TPU8

Some offices may have attorneys who predominantly handle even more or other specialized areas such as lands, general tax, civil rights, or appellate matters. For those offices, the following additional standard position description numbers have been established. Use of these numbers is optional.

<u>Function</u>	<u>Position Description Number</u>
Civil Rights Attorney	P129CVR8
Appeals Attorney	P129APL8
Land/Environmental Protection Attorney	P129LDN8
Tax Attorney	P129TAX8

If an Assistant is recognized by the Executive Office as a member of the paid supervisory staff, then the last character in the mandatory or optional position description is changed from '8' to '1.'

The following position description numbers are mandatory:

<u>Function</u>	<u>Position Description Number</u>
First Assistant/Chief Assistant/Executive Assistant/Administrative Assistant	P129AA1
Senior Litigation Counsel	P129SLC8

**B. Delegated Classification Authority:**

Certain U.S. Attorneys have been delegated classification authority. As the perimeters of the delegations vary, a specific letter is transmitted detailing the scope of authority. Any action effected is to comply fully with Office of Personnel Management Position Classification Standards.

**3-2.512 Job Evaluation Under Federal Wage System**

Other reference(s): DOJ Order(s) None  
 FPM Chapter(s) 512  
 5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

**3-2.530 Pay Rates and Systems (General)**

Other reference(s): DOJ Order(s) None  
 FPM Chapter(s) 530  
 5 C.F.R., Part 530

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.531 Pay Under the General Schedule

Other reference(s): DOJ Order(s) 1530.3A, 1531.1B  
FPM Chapter(s) 530, 531  
5 C.F.R., Part(s) 530, 531

Additional references may be identified within the text of the resource(s) cited above.

#### A. Within-Grade Salary Increases:

If the immediate supervisor feels that an employee's performance does not or may not meet an acceptable level of competence, the Personnel Office, Executive Office for U.S. Attorneys should be contacted for technical guidance.

#### B. Quality Step Increases:

Quality step increases may be given to no more than 25 percent of an office's non-attorney staff in any one year.

### 3-2.532 Pay Under Prevailing Rate Systems (Reserved)

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 532, FPM Supplement(s) 532-1 and  
532-2  
5 C.F.R., Part 532

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.534 Pay Under Other Systems

Other reference(s): DOJ Order(s) 1540.1A  
FPM Chapter(s) 534  
5 C.F.R., Part 534 and Section 531.409  
28 U.S.C. §§ 541, 546, 548

Additional references may be identified within the text of the resource(s) cited above.

#### A. Administrative Basic Compensation:

##### 1. United States Attorneys

The salaries of U.S. Attorneys are set by the Attorney General. See 28 U.S.C. § 548. U.S. Attorneys are not eligible for annual salary increases (Administrative Pay Increases).

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## 2. Court-Appointed United States Attorneys

Any person appointed by a court pursuant to 28 U.S.C. § 546 to serve as U.S. Attorney receives the full salary level of the position, effective as of the date the person qualifies (i.e., takes the oath of office).

When an Assistant U.S. Attorney has served as court-appointed U.S. Attorney, and is reappointed as an Assistant U.S. Attorney after the new Presidentially-appointed U.S. Attorney has entered on duty, the following rules apply:

a. An Assistant returning to the same position, either supervisory or non-supervisory, shall receive the same salary he/she would have received had he/she not served as U.S. Attorney.

b. An Assistant returning to a higher position (either to a supervisory from a non-supervisory position, or to a higher supervisory position) shall be governed by rules of supervisory promotions, in addition to what he/she would have received had he/she not served as U.S. Attorney.

## 3. Supervisory Assistant U.S. Attorneys

Supervisory Assistant U.S. Attorneys generally are recruited from the ranks of regular Assistants or from a Department of Justice legal division. Upon promotion to a supervisory position, Assistants may be recommended for a pay increase of up to 6% of their current salary in recognition of the additional responsibilities of the supervisory position. If a supervisory Assistant is promoted to a higher-level supervisory position, i.e., from Deputy Chief to Chief of a Division, and the Assistant has been a supervisor in his or her current position for at least one year, the Assistant may receive up to an additional 6% pay increase. The anniversary date of newly-promoted attorneys will not change for annual administrative pay increases. If a supervisory Assistant is reassigned to a non-supervisory position in the same or another U.S. Attorney's Office, his or her annual salary shall be decreased by the amount in dollars he or she received in recognition of any supervisory promotions.

If supervisory Assistant United States Attorneys are recruited from outside the Department, the starting salary pay scale for regular Assistants based on experience will apply, but the Executive Office will recognize an increase in recognition of the supervisory responsibility.

Under these provisions, an Assistant United States Attorney shall not be promoted to a salary which exceeds the established pay cap.

The managerial skills necessary for the successful performance of each paid supervisory position shall be identified and the qualifications of candidates for those positions must be assessed in terms of the identified skills.

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The managerial skills of each nominee for a supervisory position must be defined with reference to each of the following activities:

- a. Those which reflect the ability to respond to the general public and client agencies;
- b. Those which reflect the ability to establish and maintain relationships with key individuals and groups and to serve as a spokesperson for the organization;
- c. Those which reflect the ability to establish goals and the structures and processes necessary to carry them out;
- d. Those which reflect the ability to insure that people are appropriately employed and dealt with fairly and equitably; and
- e. Those which reflect the ability to insure that plans are implemented and that appropriate results are achieved.

A Request for Personnel Action (SF-52), and a narrative description of the Assistant's managerial qualifications should be submitted to the Executive Office for United States Attorneys whenever an Assistant is recommended for a supervisory position, even if no pay increase is recommended. It is expected that women and minorities will be affirmatively sought for these positions and that ample opportunity will be provided for them to acquire the experience and to demonstrate the skills necessary to assume such responsibilities.

Supervisory Assistant United States Attorneys are eligible for annual salary increases in the amounts indicated in the memorandum entitled "Hiring and Promotion of Assistant United States Attorneys."

#### 4. Assistant United States Attorneys

Starting salaries for regular Assistant U.S. Attorneys are determined based on guidance contained in the annual memorandum entitled "Hiring and Promotion of Assistant U.S. Attorneys."

#### B. Administrative Salary Increases:

Assistant United States Attorneys are compensated under an "administratively determined" pay system which provides for annual pay increases called Administrative Pay Increases (APIs). These increases are in lieu of both the periodic promotions and within-grade increases received by Department attorneys paid according to the General Schedule.

The following tenets apply to Assistant United States Attorneys' compensation:

1. United States Attorneys determine annually whether an Assistant receives an API;

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2. There is a close linkage between performance and pay decisions, although United States Attorneys may exercise some discretion in making salary recommendations;

3. Assistants who are rated Excellent should receive salary increases equal to or greater than Assistants in the same salary range rated Fully Successful;

4. Normally, salary increases are effective the first pay period following the anniversary of the Assistant's last regular administrative pay increase. If the proposed effective date has "slipped" more than one month beyond the Assistant's initial entrance-on-duty (EOD) date within a district, the United States Attorney may request that the increase be effected the first pay period after the month and day of the EOD date.

There may be exceptions to the one-year period described above, such as in the following cases:

1. An attorney who transfers from one government agency to a United States Attorney's Office.

If upon transfer the attorney is granted a pay increase, the EOD date becomes the attorney's anniversary date. If, however, a transferring attorney's EOD salary is no greater than the next higher \$100 increment, the attorney is eligible for an API one year after his or her last within-grade increase or promotion. Cases such as this are handled individually and the first applicable pay increase date will be established by the Executive Office and noted on the SF-50, Notification of Personnel Action.

2. An attorney who has time in a non-pay status in excess of two weeks since his or her last API.

The effective date of the API will be delayed one full pay period for each interval, or part of an interval, of time in a non-pay status in excess of 80 hours.

3. An attorney who has a break in service.

If an attorney resigns his or her position and is reappointed within 52 weeks at the same salary level, the time the attorney is not on the payroll is not creditable toward completion of the 52-week period between APIs. The attorney must work the equivalent of the time off the payroll plus the remainder of the original 52-week period before being eligible for an API. If the attorney is reappointed at a higher salary level, the date of reappointment will become the new anniversary date for pay purposes.

The actual allowable increase that may be requested is published annually in a memorandum from the Director which addresses Assistant United States Attorneys' starting salaries and salary increases.

C. Performance Management and Recognition System:

1. Position Coverage

a. Public Law (P.L.) 98-615 dated November 8, 1984, established the Performance Management and Recognition System (PMRS) which replaced the Merit Pay System. Employees who are in positions classified in grades GS-13, GS-14, and GS-15 and who meet the definition of supervisor or management official as broadly defined in 5 U.S.C. § 7103(a)(10) and 5 U.S.C. § 7103(a)(11) respectively are covered by PMRS and designated by the pay plan GM.

b. Supervisor. Consistent with the provisions of 5 U.S.C. § 7103(a)(10), supervisor is defined as an individual employed by an agency in a GS-13, GS-14, or GS-15 position having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighter or nurses, the term "supervisor" includes only those individuals who devote a preponderance (51%) of their employment time to exercising such authority.

c. Management Official. Consistent with the provisions of 5 U.S.C. § 7103(a)(11), management official is defined as an individual employed by an agency in a GS-13, GS-14, or GS-15 position, the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department.

d. Positions which require the exercise of supervisory responsibilities that at least meet the minimum requirements for application of the Supervisory Grade-Evaluation Guide (SGEG), and positions which exercise managerial functions delineated in the introductory section to SGEG are also covered by PMRS.

e. Each employee identified as eligible for inclusion in the PMRS due to the nature of his/her position is to be advised of such determination via a memorandum from the office that classified the position. PMRS employees also shall be informed of and given access to DOJ Order 1540.1A (the Order), Title 3 material related to the PMRS, and other relevant materials explaining the PMRS. An employee who disagrees with the determination that his/her position is subject to inclusion in PMRS is encouraged to resolve the disagreement informally. Failing informal resolution, inclusion in PMRS will be handled through the grievance procedure in accordance with Department of Justice Order 1771.1B (August 30, 1982) and USAM Title 3, Employee Grievances.

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## 2. Performance Award Pool Manager

The Performance Award Pool Manager will ensure proper management of his/her Pool's performance ratings and equitable performance payouts associated with the ratings. Other functions and responsibilities of Performance Award Pool Managers are discussed in the Order. The Director, Executive Office, or designee, will serve as the Performance Award Pool Manager.

## 3. PMRS Pool Board

The Performance Award Pool Manager will establish a PMRS Pool Board, the functions of which are discussed in the Order. The Associate Director for Administrative Services, or designee, shall serve as Chair of the Pool Board. The actual structure and membership of the Pool Board will be determined by the Performance Award Pool Manager, except that the structure will parallel that of a Performance Standards Review Board, i.e., membership shall consist of at least six employees of the organization, at least half of whom must be PMRS competitive service employees, (see 5 C.F.R. 430.408(a)(1)).

## 4. Performance Standards Review Board

The Department's Performance Standards Review Board assesses the appropriateness of performance standards developed and used for Department PMRS employees, serves as an oversight body for the various PMRS Pool Boards and performs other functions discussed in the Order. The Pool Manager will nominate representatives to the Board annually in response to the Department's solicitation. An individual should not be nominated two years in a row, to ensure fair representation.

## 5. Unusually Outstanding Performance Award

Nominations for Unusually Outstanding Performance Awards shall be approved by the Performance Award Pool Manager and staffed through the Director, Executive Office who is responsible for submitting same to the Department's Performance Standards Review Board.

### 3-2.536 Grade and Pay Retention

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 536  
5 C.F.R., Part 536

Additional references may be identified within the text of the resource(s) cited above.

### Priority Placement of Employees Entitled to Grade/Pay Retention Benefits

A U.S. Attorney's Office shall make every effort to place a covered employee into a position at his or her former grade level via a program of "priority placement." So long as an employee is entitled to pay or grade

retention he or she is to be considered automatically and noncompetitively for all vacant positions at the former grade level of his or her position or at any intervening grade within the commuting area and under the same appointing authority. The employee may be placed in the position noncompetitively, and qualification requirements may be waived provided there is evidence that the employee can perform fully the duties of the position within ninety days.

If the employee is not selected noncompetitively, the vacant position may be filled by advertisement, but the covered employee's application is to be considered automatically. If the employee is among the "best qualified" group referred to the selecting official but is not selected, the selecting official must notify the employee in writing of the reasons for nonselection. A copy of the notification shall be included in the Merit Staffing Case File submitted to the servicing personnel office.

If an employee declines a "reasonable offer" of position at a grade equal to or higher than the employee's retained grade or at a rate of basic pay equal to or higher than the employee's retained pay, grade or pay retention benefits will be terminated on the last day of the pay period in which the declination is received. To be considered a "reasonable offer," the following conditions must be fulfilled:

1. The offer must be in writing and must include an official position description;
2. The offer must inform the employee that entitlement to grade or pay retention will be terminated if the offer is declined and that the employee may appeal the reasonableness of the offer as provided below.
3. The offer must be of tenure equal to or greater than that of the position creating the grade/pay retention entitlement;
4. The offered position must be full-time unless the employee was part-time in the position from which he or she gained entitlement to grade/pay retention; and
5. The position is in the same commuting area.

An employee whose grade/pay retention benefits are terminated for declining a "reasonable offer" may appeal the termination to the regional office of the Office of Personnel Management (OPM). The appeal must be filed within 20 calendar days after being notified of the termination and shall state the reason(s) why the employee believes the offer of a position was not reasonable. Decisions issued by OPM are considered final.

### 3-2.540 Performance Management and Recognition System

Other reference(s): DOJ Order(s) 1540.1A  
FPM Chapter(s) 540  
5 C.F.R., Part 540

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Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.550 Pay Administration (General)

Other reference(s): DOJ Order(s) 1551.1C, 1551.3, 1551.4A, 1551.5 and 1600.1  
FPM Chapter(s) 550, Supplement 990-2, Book 550  
5 C.F.R., Part 550

Additional references may be identified within the text of the resource(s) cited above.

#### A. Overtime:

United States Attorneys or their designees are authorized to approve paid overtime for their non-attorney staffs. Payment for overtime is authorized only within the limits of their overtime budgets.

The Executive Office for United States (EOUSA) makes a quarterly allocation of overtime funds to each U.S. Attorney's office based on estimates of overtime requirements within overall budgetary constraints. Estimates of overtime needs are requested from each office quarterly.

Because overtime under 5 U.S.C. § 5542 must be approved in writing, in advance, by a person authorized to do so, it is recommended that the U.S. Attorney delegate in writing authority to approve overtime. Normally, the Administrative Officer or the supervisors who are delegated authority to approve Time and Attendance Records should be delegated the authority to approve overtime.

U.S. Attorneys are not authorized to approve overtime for attorney personnel. Assistant U.S. Attorneys are professionals and should expect to work in excess of regular hours without overtime pay.

Overtime compensation earned while in travel status will be controlled by telling the employee when to travel and by what mode. If the employee travels at a different time or by a different mode than that which was ordered, the employee receives the lesser amount of compensation based on actual and estimated travel. See DOJ Order 1500.2.

#### B. Compensatory Time:

It is the Executive Office policy that all employees *must* use compensatory time prior to using annual leave.

Any request to have forfeited compensatory time converted to overtime pay, by either an exempt or non-exempt employee, must be made by the employee via the supervisor, endorsed by the United States Attorney, and sent to the Director, Administrative Services, for a review of entitlement

and certification of availability of funds. Each request must include a statement by the employee that he/she desires to have the compensatory time converted to overtime pay. The supervisor must state the hours of compensatory time for which the employee is to be paid, the date(s) it was earned, and the hours forfeited, if any.

To expedite processing, copies of time attendance records for the pay period(s) in which compensatory time was earned and all subsequent pay periods, the earnings and leave statements for final pay period of the leave year in which the compensator is being forfeited and the first pay period of the following leave year, and SF-71(s) referred to above must be submitted. Each request will be reviewed and approved requests will be forwarded to Payroll for processing.

C. Time and Attendance Reports:

Unless specifically authorized by the Director, EOUSA, only the U.S. Attorney may sign his/her own Time and Attendance Report, Form DOJ-296, as certifying official.

D. Justice Earnings Statements:

Office copies of OMF-44 must be filed in locked cabinets, accessible only to the U.S. Attorney, the administrative officer, individual(s) designated by the U.S. Attorney to perform the office's personnel functions, and, on a case-by-case basis, to other Executive Branch personnel who in the course of their official duties have a *need to know*.

3-2.552 Judgment Offsets

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 552  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

3-2.571 Travel and Transportation for Preemployment Interviews and Recruitment

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 571  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

Also see USAM 3-2.330

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July 1, 1992



U.S. Department of Justice

Executive Office for United States Attorneys

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Office of the Director

Washington, D.C. 20530

March 19, 1992

TO: Holders of United States Attorneys' Manual Title I  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

 Laurence S. McWhorter  
Director

RE: United States Attorney Authority To Establish Hours of  
Duty

NOTE: 1. This is issued pursuant to USAM 3-2.610.  
2. Distribute to Holders of Volume I, USAM.  
3. Insert in front of affected section.

AFFECTS: USAM 3-2.610A.

PURPOSE: This bluesheet sets forth a change in the delegation of  
authority to establish workhours.

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A. Office Hours of Operations

Assistant Directors within the Executive Office for United States Attorneys and United States Attorneys are authorized to establish official office hours for their individual organizations. This authority includes the establishment of both flexible (eight hours per day five days per week with variable starting times) and compressed (e.g. four ten-hour days per week) work schedules.

## 3-2.591 Allowances and Differentials Payable in Nonforeign Areas

Other reference(s): DOJ Order(s) 591  
FPM Chapter(s) 591  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

## 3-2.610 Hours of Duty

Other References: DOJ Order(s) None  
FPM Chapter(s) 610, FPM Supplement 990-2, Book 620  
5 C.F.R., Part 610

Additional references may be identified within the text of the resource(s) cited above.

A. Office Hours of Operations

Assistant Directors within the Executive Office for United States Attorneys and United States Attorneys are authorized to establish official office hours for their individual organizations. This authority includes the establishment of both flexible (eight hours per day five days per week with variable starting times) and compressed (e.g. four ten-hour days per week) work schedules.

B. Holidays:

Office heads may authorize holiday work in the same manner that overtime work is authorized. Holiday work for U.S. Attorneys and their regular Assistants should only be authorized in the case of a court appearance falling on a holiday. Holiday pay is charged to the district's overtime budget.

Intermittent employees are not entitled to premium compensation for holidays. An intermittent employee is defined as an employee of less than full-time status with no pre-scheduled regular tour of duty and paid at per diem or per hour rates (e.g., Special Assistant U.S. Attorneys who are appointed to work a specified number of days over a specific time period).

State and Local Holidays: It is the policy of the Executive Office that a U.S. Attorney's office may be closed in observance of a state or local holiday if:

1. The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating;

2. Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to work; or

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3. The duties of the employees consist largely or entirely of dealing directly with employees and officials of business or local government offices, and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which employees can be assigned on the holiday.

When group dismissals occur because of such a closing, the employees are excused without charge to leave and without loss of pay.

Authority to authorize such closings has not been delegated to the U.S. Attorneys. It resides with the Associate Director, Administrative Services, EOUSA. U.S. Attorneys are to advise the Executive Office at least two days before the date of the proposed closing where they believe such closing would be authorized due to a state or local holiday.

If an employee works on a day when the office has been closed for such a holiday, he/she cannot be authorized to receive holiday pay or compensatory time off. Normal payment is all that may be received.

C. Group Dismissals: (Also known as Administrative Leave)

1. With the noted exception, the Director, EOUSA and U.S. Attorneys are authorized to grant absence from duty without charge to leave or without loss of compensation (otherwise known as administrative leave) consistent with sound management practices and the provisions of applicable FPM Chapters and DOJ Order 1630.1A. (Note: This authority is *not* delegated for dismissal of *groups* of employees in the Washington, D.C. Metropolitan area; that authority is retained by Justice Management Division).

2. Emergency Situations. With the noted exception, the Director, EOUSA and U.S. Attorneys or their designees may close an office and place employees on administrative leave when it is in the best interest of the government to do so or the personal safety of the office personnel requires it; *i.e.*, bomb threats, snowstorms, floods, etc. (Note: Dismissals of employees in the Washington, D.C. Metropolitan area, due to weather conditions, are authorized by OPM).

The Director, EOUSA and U.S. Attorneys are responsible for designating and informing in writing those employees designated 'essential' whose presence on the job is required regardless of any general dismissal authority. This must be done annually, each October.

In the event of a prolonged breakdown of essential building services, the U.S. Attorney may close an office or part of an office and place employees on administrative leave. In those cases, it clearly must be established by reasonable standards of judgment that the conditions are such as to actually prevent working. The office should consider the physical requirements of the positions involved. Equity does not require that



U.S. Department of Justice

Executive Office for United States Attorneys

Washington, D.C. 20530

November 9, 1993

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys  
*Anthony C. Mosca*  
Anthony C. Mosca  
Director

RE: Excused Absences (Also known as Administrative Leave)

- NOTE:
1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.
  2. Distribute to holders of Title 3.
  3. Insert in front of USAM 3-2.630.

AFFECTS: USAM 3-2.630 G.

PURPOSE: This Bluesheet clarifies current policy on use of Administrative Leave for attendance at events.

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\*\*\* NOTE: Section G.5 is added to USAM 3-2.630.  
Other sections of 3-2.630 remain unchanged. \*\*\*

G. Excused Absences: (also known as Administrative Leave)

5. Attendance at events without charge to leave: Excused absence may be granted in limited circumstances when an event:

- a. is directly related to the office's mission;
- b. will enhance the professional development or skills of the employee in his/her current position (See USAM 3-8.250.); or,
- c. is officially sponsored/sanctioned by the Attorney General.

United States Attorneys may, at their discretion, grant employees a reasonable amount of time charged as excused absence to attend events such as training, conferences, or conventions as an official representative of the office or as a contributor on the agenda without charge to leave.

if a group of employees are dismissed, other employees also must be dismissed.

3. Hot Weather: U.S. Attorneys or their designees are authorized to allow dismissal of employees during hot weather when the temperature/humidity maximums in FPM Supplement 990-2, Book 610 are reached.

If an individual employee becomes incapacitated for duty due to the unusual level of temperature, he or she may be granted sick leave.

### 3-2.620 Alternative Work Schedules

Other reference(s): DOJ Order(s) 1600.1  
FPM Chapter(s) 620, FPM Supplement 990-2, Book 620  
5 C.F.R., Part 610

Additional references may be identified within the text of the resource(s) cited above.

#### Flexitime:

Flexitime must be approved by the Assistant General for Administration. Requests must be submitted through the Executive Office for United States Attorneys (EOUSA).

They should include:

1. Proposed core and flexible time;
2. Whether arrival and departure time will be set on a daily or weekly basis;
3. Plans for maintaining time and attendance records;
4. Additional building costs resulting from flexitime, if any, and potential savings in overtime or other expenses; and
5. Proposed effective date

The Personnel Staff, EOUSA, will provide offices considering the use of flexitime with further guidance on development and implementation.

### 3-2.630 Absence and Leave

Other References: DOJ Order(s) 1630.1A, 2120.6B, 2120.11  
FPM Chapter(s) 630, FPM Supplement 990-2, Book 630  
5 C.F.R., Part 630

Additional references may be identified within the text of the resource(s) cited above.

#### A. General:

The Director, Executive Office for United States Attorneys (EOUSA) and U.S. Attorneys or their designees are responsible for developing leave

policies for their offices to meet the needs of their organizations. Leave policies should include such information as who is authorized to approve leave on scheduled and emergency basis, when documentation is required, what documentation is acceptable, timeframes for requesting leave, and how tardiness will be handled.

Authority to approve leave requests should be delegated to the lowest supervisory level having personal knowledge of the work requirements and the employee's leave record. (However, offices may want to consider having one administrative level above the immediate supervisor retain authority to approve advance sick and annual leave, excuse absences not chargeable to leave or allow official time for representational functions). Individuals who approve leave must be made aware that they are responsible for verifying leave actions to insure that leave granted is legal and justifiable under leave laws and regulations. It is good practice to designate a primary and alternate approving authority.

**B. Annual Leave:**

All employees should be required to schedule annual leave throughout the year. Unless there have been bona fide efforts to schedule all excess annual leave throughout the year, and only if there is the likelihood that the scheduled leave actually will be taken, requests for extended periods of annual leave during the latter months of the year should not be approved.

All requests for annual leave must be submitted on an SF-71, Application for Leave. This will assist in requests for restoration of leave.

Court-appointed and Attorney General-appointed U.S. Attorneys are authorized to approve their own leave for periods of up to two weeks. Periods of more than two weeks must be approved by the Director, EOUSA.

Each U.S. Attorney, Presidentially-appointed, Attorney General-appointed and Court-appointed, is encouraged to designate an Acting U.S. Attorney (28 C.F.R. 0.131) if he/she plans to be absent from the office for an extended period of time. The Director, EOUSA, is to be notified of such a designation.

**C. Terminal Annual Leave:**

Terminal annual leave is leave immediately prior to an employee's separation from service where it is known in advance that an employee is to be separated from service.

It is the policy of the EOUSA that terminal annual leave requests will not be approved.

**D. Restoration of Forfeited Annual Leave:**

Normally, an employee is entitled to accrue up to 240 hours of annual leave. Annual leave in excess of 240 hours may be restored when it is

forfeited because of illness or exigencies of the public business, administrative error or an unjustified or unwarranted personnel action. The annual leave an employee potentially could forfeit is indicated on his/her JMD-44, Justice Earnings Statement, as "use or lose" leave.

With the exception of correction of an administrative error there is a strict requirement that annual leave be *scheduled in advance*. The definition of "annual leave scheduled in advance" is annual leave that is *requested in writing* from an official having authority to approve leave no later than six weeks before the end of the leave year. If all or a portion of the "annual leave scheduled in advance" is later cancelled by a supervisor because of a work exigency or is interrupted by a period of sickness, and the excess annual leave cannot be *rescheduled and used prior to the end of the leave year*, it is then eligible for restoration.

Annual Leave in "restored leave" accounts must be used by a deadline date or the annual leave is lost and not eligible for restoration. The "must be used by" dates for separate leave accounts are shown on Form OMF-14, Master Card, which are sent to the person who handle time and attendance reports. The separate leave accounts are administered as follows:

1. For the first leave year during which the separate leave account is established (and possibly the second leave year depending on the deadline date on the Form OMF-14), annual leave is not charged against the separate leave account until all the employee's regular leave account for the leave year (*i.e.*, 104 hours, 160 hours, or 208 hours) is used; and

2. Since any leave in a separate leave account is lost if not used by the deadline date, during the last leave year of a separate leave account all annual leave used is charged first against the separate leave account until it is liquidated. Once the separate leave account is liquidated, subsequent annual leave usage is charged against the regular annual leave account for the leave year.

Approval authority for restoration requests rests with the Director, EOUSA or designee; this authority is not redelegated to districts.

#### E. Repayment of Advance Sick Leave:

1. In the event an employee is advanced sick leave and fails to return to duty (retirement or resignation) due to an illness or disability, offices must request acceptable medical evidence to determine if the failure to return to work is in fact due to an illness or disability.

2. In the event the employee fails to return to work for a reason other than illness or disability, offices should inform employees of the following:

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a. Failure to return to duty after a period of advanced sick leave results in an indebtedness to the government.

b. Indebtedness may be repaid from an employee's retirement funds or annual leave account at the request of the employee.

c. In the event voluntary arrangements cannot be established to resolve the indebtedness, the Department may file a claim against the employee in accordance with DOJ Order 2120.3A, Collection of Indebtedness Resulting From Erroneous Payments to Employees.

F. Leave for Parental and Family Responsibilities:

1. Leave for Maternity Purposes:

a. There is no separate category of leave in the federal service called "maternity leave." Any absence for maternity reasons is chargeable to a combination of sick leave, annual leave, and/or leave without pay.

b. The period which the employee is unable to work is the period of incapacitation. This period is to be treated like any other medically certified temporary disability. Sick leave may be used to cover this period and to cover the time required for physical examination. If all sick leave is used, up to 30 days sick leave may be advanced at the discretion of the designated approving official provided the employee plans to return to the office. Annual leave or leave without pay may also be authorized during this period.

c. Should the employing office feel that a particular working situation or condition may have an adverse effect on a pregnant employee, the office must consult with competent medical authority, such as the on-site or local health service. Management must then advise the employee of the medical opinion and together a solution to any existing problem should be worked out.

d. If it is the employee who surfaces a problem or requests modification of her work duties due to a medical condition relating to her pregnancy, the office must request medical certification from the employee's physician as to the employee's condition, the nature of recommended limitations and duration. This certification will allow the office to properly accommodate the employee's condition.

e. After delivery and recuperation, the employee may desire a period of adjustment or need time to make arrangements for the care of the child. These additional requirements may be taken care of by the use of available annual leave or leave without pay. Approval of both annual leave and leave without pay are at the discretion of the designated approving official. However, efforts should be made to accommodate reasonable requests by the employee.

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f. In order to shorten the period of time in which an employee is away from the office, it may be appropriate to allow the employee to work part-time or to modify her duties. Such changes should be with the concurrence of the employee's doctor.

g. While there is no prescribed time for leave for maternity purposes, the usual period of authorized maternity leave is approximately 12 weeks, beginning 4 weeks before the expected date of delivery and extending about 8 weeks after delivery. Since each case is different, decisions on this type of leave should be made by designated approving officials in concert with the employee and her physician.

## 2. Leave for Adoption and Foster Care:

Employing offices must take care to remain flexible and compassionate in granting leave to adoptive and foster parents. Requests for annual leave or leave without pay for these parents should be honored whenever possible, of course, taking into consideration the needs of the office.

### G. Excused Absences: (Also known as Administrative Leave)

#### 1. Voting and Registration:

a. U.S. Attorneys or their designees are authorized to administer the procedures and leave limits in DOJ Order 1630.1A relative to the procedure to be followed for employees who wish to register and vote in local, state or national elections.

b. Administrative officers are responsible for disseminating information to serviced employees as to procedures to be followed in voting and registration leave requests.

2. Blood Donation: The Department encourages participation in blood donation programs. Contributions to these important programs benefit the community at large and thus every member of the Department. Office heads or their designees may excuse an employee up to an hour to give blood. In addition, up to four hours administrative leave may be granted the employee for recuperative purposes, *if needed*. An employee who feels well and is able to work after donating blood must return to his/her duty station.

3. Admission to the Bar: Administrative leave may be granted by office heads or their designees, in accordance with provisions of DOJ Order 1630.1A. However, administrative leave *may not* be authorized for studying for or taking bar exams.

#### 4. Official Time for Employee Representational Functions:

The Director, EOUSA and U.S. Attorneys or their designees are authorized to approve official time for representational functions after determining that such time is reasonable and mutually beneficial to the office and its employees.

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In making a determination as to what constitutes a reasonable amount of official time, approving officials will be led by the guidance in the DOJ Order.

H. Funeral Leave: The Director, EOUSA and U.S. Attorneys or their designees are authorized to grant funeral leave for funerals of certain military members in accordance with the provisions of FPM Chapter 630.

I. Leave Without Pay (LWOP):

The Director, EOUSA and U.S. Attorneys or their designees are authorized to approve all requests for LWOP, including those for periods in excess of 30 days. Office heads are also responsible for assuring that requests for LWOP have been reviewed by the employee's supervisor to assure that the value to the Government or the serious needs of the employee are sufficient to offset the cost and inconvenience which result from retaining an employee in a leave without pay status.

In addition to the conditions outlined in DOJ Order 1630.1A, approving officials will take into consideration such factors as whether there is a reasonable expectation that the employee will return to government service at the end of the period, whether the individual's health will substantially improve, and whether his/her employment record is commendable. Consideration must be given to the fact that except in the case of an employee on LWOP pending approval of disability retirement, the position remains "filled" while the employee is on LWOP. This will prevent employment of a replacement which may result in additional burdens on the remaining staff.

Maximum periods of LWOP have been established by the DOJ Order 1630.1A. Should an office head decide to grant LWOP for a circumstance not covered by the Order (such as when an employee desires to accompany spouse to a new geographic location and seek employment there) the LWOP granted cannot initially be authorized for a period in excess of 52 weeks.

Employees who enter a nonpay status (LWOP) should be advised that they must pay their share of the cost of federal Employees Health Benefits, if enrolled, for each pay period during which their salary is insufficient to cover the required premium.

3-2.711 Labor-Management Relations

Other reference(s): DOJ Order(s) 1711.1D  
FPM Chapter(s) 711, FPM Supplement 711-1  
5 C.F.R., Part 711

Additional references may be identified within the text of the resource(s) cited above.

Labor Management Relations:

Each employee has the right to join or not to join any labor organization which does not strike against or advocate the overthrow of the government

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of the United States. Employees must be allowed to exercise their rights freely without fear or penalty of reprisal.

If an office receives a petition for exclusive recognition, it must be forwarded immediately to the Personnel Officer, Executive Office for U.S. Attorneys. The Personnel Officer will prepare management's response and advise the U.S. Attorney on appropriate actions. When a labor organization has achieved exclusive recognition, a contract is negotiated. The Personnel Officer will advise the U.S. Attorney on appropriate procedures and bargaining position.

Managers and supervisors of organizations with contracts are responsible for insuring that the employees' rights and responsibilities are met. Any problems or questions should be immediately referred to the Personnel Officer, as the actions of one office may have Department-wide impact.

### 3-2.713 Equal Employment Opportunity

Other reference(s): DOJ Order(s) USA 1411  
FPM Chapter(s) 713  
5 C.F.R., None

Additional references may be identified within the text of the resource(s) cited above.

#### Upward Mobility Program:

It is the policy of the Executive Office for U.S. Attorneys to effectively utilize the personnel resources of the U.S. Attorneys' offices and the Executive Office by increasing the opportunities of lower-level employees to attain their full employment potential. To that end, the Executive Office has established an Upward Mobility Program which consists of three components—career and educational counseling, basic skills training, and job restructuring. These efforts are designed to supplement the Merit Staffing Plan.

A. Program Eligibility: Employees of the U.S. Attorneys' offices and the Executive Office who meet the following criteria are eligible for participation in the Upward Mobility Program:

1. Presently serving under a permanent competitive appointment;
2. Have at least one year of service with the Department; and
3. Are assigned to a single interval series job at or below GS-8.

B. Career and Educational Counseling: Career and educational counseling is an important part of the Upward Mobility Program. It is designed to provide employees with the opportunity to explore their career interests and to assist them in formulating realistic career plans. Offices will provide career counseling for all eligible employees. Upon request, coun-

seling will be provided by the Personnel Staff, in concert with the employee's supervisor.

C. General Education and Basic Skills: All eligible and interested employees should be afforded training opportunities designed to provide them with an understanding of the world of work, skill in dealing with others, and improved communications skills. Offices are encouraged to utilize local training facilities, including the Office of Personnel Management, to provide basic skills courses for all interested employees. These might include telephone techniques, basic filing, typing, shorthand, office procedures, and legal secretarial skills. This training is in addition to other training provided to employees, to improve their current performance. If training is primarily provided to qualify an employee for promotion, all eligible employees must be allowed to compete for the training opportunity. See USAM 3-2.335.

D. Upward Mobility Program Positions: Each U.S. Attorney's Office, to the extent possible, will identify positions to be included in the Upward Mobility Program. These positions may be ones which are suitable for redesign, may be "tagged" as trainee slots, or may be new positions that will be created as the result of new allocation or employee resignations.

In each case, a "bridge" position and a "target" position must be established. A "bridge" position is a transitional position that provides qualifying experience which may enable an employee to move from a dead-end position into a different occupation with greater growth potential. Usually, a bridge position is one in which a professional or administrative position has been converted to a technical level job by combining lower-level tasks from the professional occupation and higher-level tasks from the appropriate clerical or support occupation. The new position, or bridge position, becomes an interim or preprofessional job which has the related two-grade interval job as the target position.

A "target" position is a position for which an Upward Mobility Program participant will qualify upon satisfactory completion of a prescribed period (usually one year) in a program of formal and on-the-job training. The grade level(s) of the target position will be specified in the upward mobility position merit promotion announcement along with its known promotion potential. The target position must be identified and the position description prepared prior to filling the Upward Mobility position.

E. Filling Upward Mobility Positions: All positions filled under the Upward Mobility Program *must* be advertised under the Merit Promotion Plan. The area of consideration may be limited to the U.S. Attorneys' offices in the commuting area. See USAM 3-2.335. The vacancy announcement (USA-195) will be clearly labeled, "Upward Mobility Position."

Applicants must be Department of Justice employees who meet the criteria for program eligibility described above. In addition, applicants must

meet OPM qualification requirements for the bridge position. In some instances, employees may have to accept a lower grade because they do not meet the minimum qualification requirements at their current grade level. In such cases the Executive Office, to the extent permitted by applicable regulations, may adjust the employees salary to maintain the present salary level.

When ranking applicants for an Upward Mobility position, the greatest weight should be given to the supervisory appraisal of present performance and assessment of the candidates potential to assume higher-level responsibilities. To that end, each applicant's supervisor will be requested to complete an Upward Mobility Program Appraisal Form (OBD-169). No other form is to be used because the OBD-169 is designed to measure performance potential.

F. Career Development Plan: Each employee assigned to an Upward Mobility Position must have a formal, written Career Development Plan which outlines the on-the-job (OJT) experience, formal education, and/or training necessary to prepare the employee for successful performance in the target position. It is to be written within 30 days of placement in the bridge position. The plan is prepared jointly by the trainee, his or her supervisor, and the servicing Personnel Management Specialist.

Generally, most of the training involved in each Career Development Plan will be OJT. Formal training will be scheduled on an individualized basis to meet specialized training needs. This training may be provided by the Department of Justice, Office of Personnel Management, or local educational institutions.

G. Length of the Upward Mobility Program: Generally, each trainee has one calendar year from the date of placement in the bridge position to demonstrate the knowledge, skills, and abilities necessary to perform the duties of the bridge position as well as the potential to successfully perform in the target position. This period can be extended for an additional year.

Upward mobility trainees who successfully complete the training outlined in the Career Development Plan will be assigned non-competitively to their target positions at the end of the training period. Once in the target positions, advancement will be through non-competitive career promotions.

Trainees who are unsuccessful in completing the training outlined in their Career Development Plan or who in other ways do not demonstrate that they are able to perform the duties of the target position will be returned to their most recent former positions, if they have not been filled, or to positions of the same grade as their most recent former positions.

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H. Evaluation of Trainee's Progress: Supervisors of Upward Mobility Program trainees will monitor the participants' performance and development. Written appraisals will be provided to the servicing personnel office every three months. In addition, the trainee will submit progress reports, including an appraisal of the training experience, to the servicing personnel office. The due dates of these evaluation reports will be noted on the Career Development Plan.

I. Program Evaluation and Reports: Each office is required to submit to the Personnel Staff by September 15 of each year the following information:

1. Accomplishments during fiscal year:
  - a. Number of employees given formal career counseling;
  - b. Number of employees covered by the Upward Mobility Program who received formal basic skills training; and
  - c. Number of employees selected for Upward Mobility Program positions.
2. Plans for upcoming fiscal year:
  - a. Number, position title, series, and grade level of the position(s) to be designated as target positions for the Upward Mobility Program.
  - b. Plans for providing career counseling and training to employees covered by the Upward Mobility Program.

This information will be used by the Personnel Staff to prepare required reports and to assist it in its coordination role.

In addition to the report described above, offices with 100 or more employees will be required to conduct formal analysis of their Upward Mobility Programs as a part of their Affirmative Action Plans.

### 3-2.715 Voluntary Separations and Reduction in Rank or Pay

Other reference(s): DOJ Order(s) None  
 FPM Chapter(s) 715  
 5 C.F.R., Part 715

Additional references may be identified within the text of the resource(s) cited above.

#### Separations—Resignations:

Resignations are separations initiated by employees desiring to leave the United States Attorney's Office or the Executive Office for United States Attorneys (EOUSA). Although it can be suggested that employees resign, their resignations may not be demanded or coerced. Employees are

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U.S. Department of Justice

ENVIRONMENT & NATURAL RESOURCES Executive Office for United States Attorneys

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Washington, D.C. 20530

September 15, 1993

MEMORANDUM

TO: Holders of United States Attorneys' Manual,  
Title 3-2.000

FROM: United States Attorneys' Manual Staff

*Anthony C. Moscato*  
Anthony C. Moscato  
Director

RE: Full-Field Background Investigations for Personnel  
Assigned to Organized Crime Drug Enforcement Task Force  
(OCDETF) offices

AFFECTS: 3-2.732 Personnel Security Program

PURPOSE: This interim Bluesheet officially establishes the  
policy that personnel expected to fill vacancies in the  
OCDETF offices may not physically work in OCDETF  
offices or be assigned to perform OCDETF work until a  
full-field background investigation (FFBI) has been  
favorably adjudicated by the Department's Security  
Staff.

On several occasions, and most recently via memorandum to  
all United States Attorneys from then-Director Laurence S.  
McWhorter on November 25, 1991, it's been stated that before  
personnel can be assigned to OCDETF offices or perform OCDETF  
work, they first must have been subject to a favorably  
adjudicated FFBI.

This policy has not specifically been addressed in  
USAM 3-2.732, Personnel Security Program. Consequently, the  
following guidance is furnished to ensure that all Task Force  
offices are complying to this personnel security requirement.

Please insert this information in your United States Attorneys' Manual at 3-2.732.

Because of the nature of their work, the Organized Crime Drug Enforcement Task Force (OCDETF) offices have special security requirements which must be observed.

Since its inception, the OCDETF program has required that all newly-appointed personnel have a satisfactorily adjudicated full-field background investigation completed before physically working in OCDETF offices or before being assigned to perform OCDETF work.

This requirement may not be waived for students or other temporary staff to be used in these offices. Temporary staffing shortages in OCDETF offices may be covered by employees that have had a full-field background investigation conducted and satisfactorily adjudicated on "loan" from the United States Attorney's office.

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free to resign at any time. However, they are encouraged to give reasonable notice to allow for a replacement or work adjustment.

A resignation becomes effective at the close of business on the last day of the employee's active duty. It is the policy of EOUSA that terminal annual leave requests will not be approved (See USAM 3-2.630).

### 3-2.720 Affirmative Employment Programs

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 720  
5 C.F.R., Part 720

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.731 Personnel Suitability

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 731, FPM Supplement 731-1  
5 C.F.R., Part 731

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.732 Personnel Security Program

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 732  
5 C.F.R., Part 732

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.733 Political Activity of Federal Employees

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 733  
5 C.F.R., Part 733

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

### 3-2.734 Financial Disclosure Requirements

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 734  
5 C.F.R., Part 734

Additional references may be identified within the text of the resource(s) cited above.

A. Financial Disclosure Report:

To comply with the requirements of the Ethics in Government Act of 1978, each U.S. Attorney, and each Assistant U.S. Attorney occupying a supervisory position whose pay level is equivalent to GS-16 or above, must file a Financial Disclosure Report (Standard Form 278, Rev. 6/81) within 30 days after assuming the covered supervisory position, each May 15 for the preceding calendar year, and within 30 days after leaving his or her position for the period from the date of the last report up to the date of termination. Such reports are subject to disclosure to the public.

A court-appointed U.S. Attorney, or an Assistant U.S. Attorney occupying a supervisory position (including an acting U.S. Attorney in the U.S. Attorney's temporary absence) whose pay level is equivalent to a GS-16 or above, who is retained, designated, appointed or employed to perform services on all or part of 60 or fewer days in a calendar year is not required to file a public financial disclosure report.

However, a court-appointed U.S. Attorney, or an Assistant U.S. Attorney occupying a supervisory position (including an acting U.S. Attorney in the U.S. Attorney's temporary absence) whose pay level is equivalent to a GS-16 or above, who was initially expected to perform services on 60 or fewer days, but who thereafter performs services on more than 60 days in a calendar year must immediately file a financial disclosure report for the period from his or her initial retention, designation, appointment, or employment to the present, each May 15 for the preceding calendar year, and within 30 days of leaving his or her position from the date of the last report up to the date of termination. See 28 C.F.R. § 45.735-27.

B. Teaching and Lecturing:

Employees should be cautious to avoid any conflict of interest with their position and to insure that no interference with the performance of their official duties occurs. Assistant U.S. Attorneys must take annual leave or leave without pay for any time required for teaching during normal business hours. See USAM 1-4.330.

C. Civic Organizations, Professional Boards and Committees:

While certain activities (e.g., Community Chest) can be easily undertaken without creating problems, membership in national and local bar committees, state and municipal commissions, corporate boards of directors, arbitration panels, and similar organizations, with or without remuneration, could have the potential for creating a conflict of interest or an appearance of a conflict of interest if funded in whole or in part by

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the federal government. The Executive Office should be contacted whenever questions arise.

D. Gifts Received from Foreign Governments:

In accordance with Justice Property Management Regulations (JPMR) § 128-49.201, each U.S. Attorney's Office is required to submit to the Executive Office, Attention: Facilities Management and Support Services Staff, by January 11th each year, a listing of all gifts and decorations, regardless of value, received by employees, their spouses, or dependents from foreign governments during the preceding year.

3-2.735 Employee Responsibilities and Conduct

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 735  
5 C.F.R., Part 735  
USAM 1-4.000

Additional references may be identified within the text of the resource(s) cited above.

A. Standards of Conduct:

Under Executive Order 11222, each agency of the federal government is responsible for issuing regulations on the standards of ethical and other conduct for its employees. It is required that these standards be brought to the attention of each employee annually.

For the Department, these standards are contained in 28 C.F.R. Part 45, a copy of which can be found in USAM 1-4.700. Every current employee should receive a copy annually, and a copy should be given to each new employee when he/she enters on duty. Each employee should review these standards carefully and bring any problems to the attention of his/her supervisor. Any questions concerning the applicability of the Standards of Conduct should be addressed to the Legal Counsel, Executive Office for U.S. Attorneys.

B. Misconduct:

Allegations of misconduct are handled in accordance with 28 C.F.R. § 0.39.

It is the responsibility of the U.S. Attorney to:

1. Notify promptly the Counsel, Office of Professional Responsibility, of any allegation made against a Department employee involving any violation of law, Department order or regulation, or applicable standard of conduct, mismanagement, gross waste of funds, abuse of authority, or acts of reprisal against "whistleblowers";

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2. Take no further action on any allegation except to render such assistance as the Counsel, Office of Professional Responsibility may request; and

3. Remind employees in writing at least twice a year of the existence of the Office of Professional Responsibility, of their right to bring allegations of misconduct directly to the attention of the Office of Professional Responsibility, and of their obligation to cooperate fully with any investigation that Office may initiate.

Allegations against employees of the U.S. Attorney's Office should also be reported to the Executive Office for U.S. Attorneys.

C. Participation by Department Employees in Outside Cases:

Upon entering on duty, Department attorneys must, in general, withdraw from all cases they are currently handling in private practice. 28 C.F.R. § 45.735-9. The Deputy Attorney General, upon written request, may grant an exception to the newly-appointed U.S. Attorney for a limited number of cases, not involving the federal government, on which he/she has completed a substantial amount of work before appointment, provided withdrawal from these cases would seriously prejudice his/her clients. These cases should be completed within one year after entry on duty and may not interfere with the discharge of duties. Exceptions are rarely approved. After entry-on-duty, the Deputy Attorney General's approval is necessary before any cases may be handled. See 28 C.F.R. § 45.735-9. See also 18 U.S.C. § 205.

Assistant U.S. Attorneys must end all work on other matters before entering on duty. Requests for approval of outside employment by Assistant U.S. Attorneys should be addressed to the Deputy Attorney General and forwarded to the Executive Office for processing. The U.S. Attorney's endorsement of the request should appear on the request.

Fees for services rendered prior to appointment as U.S. Attorney or Assistant U.S. Attorney, but which are outstanding at the time of appointment, may be received unless the United States has a direct substantial interest in the matter and the matter is pending at the time of appointment. A specific dollar amount, or a specific percentage of the settlement or final judgment in matters that are pending, should be determined prior to appointment. A candidate for the position of Assistant U.S. Attorney must notify the Executive Office of the financial arrangements with regard to these fees.

D. Outside Activities:

U.S. Attorneys and Assistant U.S. Attorneys may not engage in any outside employment or the private practice of law, except as provided by 28 C.F.R. §§ 45.735-9(3), 45.735-6(b) and (d) or by the Deputy Attorney General's specific exception (28 C.F.R. § 45.735-9(e)). Requests for excep-

tions must be made in writing stating the reasons therefor and should be addressed to the Deputy Attorney General through the individual's superior. Such requests should be directed to the Executive Office for U.S. Attorneys.

One exception is that an employee may act as an agent or attorney, with or without compensation, for his/her parents, spouse, child, or any person for whom, or for any estate for which, he/she is serving as a personal fiduciary, except in those matters in which he/she participated personally and substantially as a government employee (28 C.F.R. §§ 45.735-5(d) and 45.735-9(d)). Specific situations should be determined on their own merits and questions in this respect should be brought to the attention of the Executive Office of U.S. Attorneys so that its staff and that of the Deputy Attorney General may review the situation as appropriate.

No U.S. Attorney or Assistant U.S. Attorney should engage in any professional practice or any other outside employment if the activity: (1) interferes with proper and effective performance of official duties; (2) creates or appears to create a conflict of interest; (3) reflects adversely on the Department of Justice; (4) will be influenced or appears to be influenced by the employee's position at the Department of Justice; (5) involves assertions contrary to interests or positions of the United States; or (6) involves a criminal matter in which the United States (or the D.C. Government) is a party or has a direct or substantial interest regardless of whether it is a federal, state or local proceeding. *Teaching is not considered the private practice of law under this rule* (28 C.F.R. § 45.735-9(f)).

E. Pro-Bono Work:

Title 28, Code of Federal Regulations, Section 45.735-9 encourages Department of Justice attorneys to participate in *pro bono* activities without compensation in their off-duty hours or while on leave. Leave will be granted for court appearance or other necessary absences incident to representation. Attorney's fees for such services may not be sought. In determining whether to provide *pro bono* services in a particular matter the attorney should consider the requirements of section 45.935-9(f) and, in particular, the prohibition against engaging in any professional practice that involves a criminal matter. Any attorney wishing to participate in such *pro bono* work must advise the Executive Office for U.S. Attorneys of his/her intention, identifying the name of the organization with which he/she will be associated and the general nature of the work, for a determination as to whether such activities fall in one of the accepted categories of public interest services. These categories are: (1) service to an indigent client; (2) service to defend an individual or public right in which society has an interest; (3) services to further the purpose of the organizational group; and (4) services to improve the administration of justice.

F. Post-Government Employment Restrictions:

The Ethics in Government Act of 1978, which amended 18 U.S.C. § 207, and the regulations issued thereunder bar certain acts by former government employees (including all officers, employees and special government employees, both attorney and non-attorney, of any U.S. Attorney's Office) which may actually make or give the appearance of making unfair use of prior government employment. Criminal penalties and disciplinary action may be imposed for violations. See 5 C.F.R. § 737 as amended in 45 *Fed.Reg.* 7401, 7402 (Feb. 1, 1980); 45 *Fed.Reg.* 8544, 8556 (Feb. 8, 1980); 45 *Fed.Reg.* 75500-01, 75518-19 (Nov. 14, 1980).

The regulations cited above, dated February 1, 1980, contain numerous examples of permissible and prohibited post-employment activities by various types of former employees. However, the regulations under the Ethics in Government Act do not incorporate or supplant restrictions that may be contained in other laws or professional codes of conduct. (See discussion in subparagraph G, *infra*.)

Requests from present or former employees of U.S. Attorneys' offices for the Department's view on prospective, specific factual situations or legal issues should be sent to the Director, Executive Office for U.S. Attorneys, for a written opinion from the Office of Legal Counsel or the Office of Government Ethics, as appropriate (pursuant to 5 C.F.R. § 738; 46 *Fed.Reg.* 2582 (Jan. 9, 1981)). Requests for materials not otherwise available may be made to the Executive Office for U.S. Attorneys.

The Office of Government Ethics (OGE) has issued advisory letters regarding the permissible and prohibited post-government employment activities of former government employees in specific factual situations under the Ethics in Government Act of 1978 (Pub.L. 95-521, as amended by Pub.L. 96-28) (and the predecessor statute, 18 U.S.C. § 207). Copies of briefs of the advisory letters which were prepared by the Executive Office for U.S. Attorneys may be obtained by contacting the Executive Office.

3-2.736 Personnel Investigations

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 736  
5 C.F.R., Part 736

Additional references may be identified within the text of the resource(s) cited above.

(Reserved)

3-2.737 Post Employment Conflict of Interest

Other reference(s): DOJ Order(s) None  
FPM Chapter(s) 737  
5 C.F.R., Part 737



U. S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

May 16, 1995

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys  
*Carol DiBattiste*  
Carol DiBattiste  
Director

RE: Delegation of Reprimand/Disciplinary Authority

- NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521.  
2. Distribute to holders of Title 3.  
3. Insert in front of USAM 3-2.751.

AFFECTS: USAM 3-2.751

PURPOSE: This Bluesheet clarifies current policy on United States Attorneys' authority to issue written reprimands and propose disciplinary actions related to Assistant United States Attorneys.

\*\*\* NOTE: Section 751 A. is added to USAM 3-2.751. Other sections of 3-2.751 remain unchanged. \*\*\*

A. Delegation of Reprimand/Disciplinary Authority:

Effective March 3, 1995, the Principal Deputy Director, Executive Office for United States Attorneys (EOUSA), the Deputy Director for Administrative Services, EOUSA, and each United States Attorney is delegated authority to issue written reprimands to Assistant United States Attorneys (AUSAs) and propose disciplinary actions against AUSAs. Authority to issue final decisions relating to proposed disciplinary actions is not redelegated.

Under this delegation of authority, United States Attorneys may propose suspensions of any length and removals, under 5 U.S.C. Chapter 75, for misconduct or for other such cause as would promote the efficiency of the service.

U.S. ATTORNEYS MANUAL 1988



U.S. Department of Justice

Executive Office for United States Attorneys

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Office of the Director

Washington, D.C. 20530

MAR 11 1991

TO: Holders of United States Attorneys' Manual Title 1  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

 Laurence S. McWhorter  
Director

RE: Paid Advertising

NOTE: 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to Holders of Volume I, USAM.  
3. Insert in front of affected section.

AFFECTS: USAM 3-4.120

PURPOSE: This bluesheet ~~deletes~~ the requirement to receive the concurrence of the U.S. Office of Personnel Management for non-attorney advertisements.

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Delete: Sentences 3 and 4 in paragraph 2, USAM 3-4.120  
Employment Advertising.

Insert: There is no longer a requirement that the U.S. Office of Personnel Management concur in the paid advertisements for non-attorney personnel. Refer to the Administrative Procedures Handbook Issuance/Personnel/Chapter 332 #2A, dated December 19, 1990, and/or the Personnel Staff, Executive Office for U.S. Attorneys for the correct procedures for placing employment advertisements.

the office may be kept in a separate file to be designated as an administrative file. This file should not contain any material which is properly included in the official personnel folders maintained in the Executive Office. These files must be disposed of in accordance to the General Records Schedule.

### 3-4.418 Maintenance of Attorney-Client Information

A. Introduction: In the course of handling civil actions brought against employees in their individual capacities, notes, letters, and memoranda are often generated reflecting the substance of confidential communications between employees and the Justice Department counsel. Under the Attorney General's policy statement on representation of federal employees, this information is entitled to the protection of the attorney-client communication privilege. See 28 C.F.R. § 50.15(a)(3). In order that this privilege be preserved, it shall be the responsibility of each Assistant U.S. Attorney assigned such a case to restrict access of such material to himself/herself, line supervisors and the U.S. Attorney. The following procedures, designed to assure adherence to this policy, only apply to communications with current or former government employees sued in their individual capacity. Records reflecting communications with employees sued *only* in their official capacity shall be placed in the nonrestricted litigation files.

For purposes of this policy, the definition of "attorney-client confidential information" is that information which is protected by the attorney-client privilege under applicable law.

B. Contents of Files: In all instances where an attorney is responsible for a case involving the representation of a current or former government employee in his or her individual capacity, the attorney should maintain in the case file only those attorney-client communications which are necessary for the conduct of any pending or possible future litigation. All other privileged material should be destroyed.

1. Open Files: The exterior of every case file that contains attorney-client communications should be clearly marked with the following symbol:

INDIV.REP.

Each U.S. Attorney should insure that every employee in the office is aware that access to case files so marked is restricted to the case attorney responsible for the case; to employees expressly directed by the case attorney to have access to the file; and to the attorney's supervisors.

2. Closed Files: When a file containing attorney-client communications has been authorized to be closed, the attorney who handled the case shall place all material containing attorney-client communications inside

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July 1, 1992

an envelope. The envelope should be sealed and a stamp should be placed over the seal with the following statement:

This file contains privileged attorney-client information. Access is limited to assigned trial attorneys and their supervisors only.

The envelope containing the privileged information should then be made a permanent part of the file. This procedure should be repeated if the envelope containing the confidential attorney-client material is ever opened by authorized individuals.

C. Disclosure: Access to all files containing confidential attorney-client material is limited to:

1. Any individual acting on behalf of or with written permission of the client/represented defendant;
2. The attorney assigned to the case; and
3. The immediate supervisors of the attorney responsible for the case and the U.S. Attorney.

#### 3-4.420 Directives

Department of Justice Order 0000.1 (July 14, 1971), Directives Subject Classification System, describe the numbering system for the Department of Justice directives and provide an alphabetical listing of subject categories.

A list of directives by number can be found in OBD-0000.2H (March 22, 1982) Directives Index as of January 1, 1988—U.S. Attorneys Offices and Division Field offices. Distribution is also listed.

To obtain missing or extra copies of these directives, complete a DOJ-182, Stocked Printed Items Requisition, and forward as directed for stocked forms. Should any directive be unavailable, call the Executive Office for help in obtaining a copy.

#### 3-4.430 Disposal of Records

The Department's records management program provides for the preservation of records of permanent (historical) value, the retirement of records no longer needed for current operations, and the disposition of non-record material.

#### 3-4.431 Closing Notice for Case Files

Form USA-207, Notice to Close Legal Case File, is the official closing notice for U.S. Attorney litigating case files. The use of this form is required for each closed case, and should be prepared by the attorney responsible for the case or the legal clerk or technician assisting that



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

February 27, 1991

MEMORANDUM FOR: Holders of United States Attorneys' Manual  
Title 3

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*jm* Laurence S. McWhorter  
Director

RE: Closing Notice for Case Files

NOTE: 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to holders of Volume I, USAM.  
3. Insert in front of affected section.

AFFECTS: USAM 3-4.431

PURPOSE: This bluesheet sets forth a new requirement for  
official case closing in a United States  
Attorney's office.

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The following should be added as the second paragraph of  
USAM 3-4.431:

Pursuant to an Office of the Inspector General finding  
made during a Fiscal Year 1990 United States Attorney's  
office inspection, it is now mandatory that an Assistant  
United States Attorney complete and sign Section III (METHOD  
CLOSED) of the Form USA-207, Notice to Close Legal Case  
File, prior to official case closing in all cases. Any case  
without the required Section III information and signature  
in the file CANNOT be officially closed.

[NOTE: If you or your staff have any questions, please do  
not hesitate to contact Judy Johnson, Management Analyst,  
Evaluation and Review Staff, at (202) 501-6930 or  
FTS 241-6930.]

attorney. It is mandatory that an Assistant U.S. Attorney (AUSA) complete Section III, Method Closed, and sign and date Section IV prior to official case closing. The AUSA will ensure that Section II has been completed and the closed case has been reviewed for possible permanent retention (see paragraph 3-4.432). Any case without the required Section II information and Section IV signature in the file *cannot* be officially closed. Form USA-207 shall be placed as the final document in the case folder. Federal Records Centers will not accept a closed case unless it contains a properly completed and signed Form USA-207.

Form USA-207 may be obtained by preparing Form DOJ-182, Stocked Printed Item Requisition, and submitting it to the Department of Justice Warehouse Services Unit.

### 3-4.432 Designation of Permanent (Historical) Cases

Review *each* closed case to determine if it meets any of the following criteria for permanent retention:

1. The case had an impact on a statute, rule, regulation, or law enforcement policy, e.g., set a precedent.
2. The case received local, regional or national media attention, or the interest of a Congressional committee or the Executive Office of the President, or widespread public interest.

When a closed case is designated as permanent, Section II, Item 1 of Form USA-207 shall be completed, and the case transferred under a *separate accession* to the Federal Records Center (FRC).

### 3-4.433 Preparing Records for Transfer to the Federal Records Center (FRC)

U.S. Attorneys should contact their servicing FRC to obtain the latest NARA Field Bulletin, which provides information on services available from and describes procedures involving the FRC.

Papers in closed litigative case files that are duplicated in the records of Federal courts may be removed and destroyed. Closed case files should also be purged of duplicate copies, unnecessary documentation, routing slips that contain no relevant information, etc.

Transfer closed, eligible files to the FRC annually, or more frequently if necessary. Inactive and closed records that have exceeded the authorized retention period may *not* be transferred to the FRC, and should be destroyed by the office. Any transfer to the FRC requires that the record have a minimum of one year remaining of the authorized retention period.

### 3-4.434 Boxing Records for Transfer

FRC boxes, available under National Stock Numbers 8115-00-117-8344; 8115-00-290-3379; or 8115-00-117-8249, must be used to transfer standard

size records (Exhibit A). Contact the FRC for assistance when non-standard records need to be transferred. Pack records in a logical sequence, and use a locator system to ensure that individual files can be identified and withdrawn in the future. Prepare a box-by-box listing (Exhibit B), to include, at a minimum, the case number and name(s) of the litigants. A copy of the box listing for each accession must accompany the Standard Form 135, Records Transmittal and Receipt, when it is sent to the FRC for approval.

Do not pack records with different retention authorities or different disposal dates in the same box or accession.

Boxes sent via the postal system or a transfer company must be sealed with pressure sensitive tape, and must include the complete address of the FRC and the sender. Shipping instructions are found in paragraph 3-4.390.

#### 3-4.435 Standard Form 135, Records Transmittal and Receipt

Instructions for preparing the SF-135 are given on the reverse side of the form, and a sample is shown in Exhibit C. The appropriate disposal authority shall be taken from the comprehensive retention schedule shown in Exhibit D; the General Records Schedules or a separate NARA approved retention schedule when announced by the EOUSA. When using the comprehensive retention schedule (Exhibit D), cite the authority in column 6(h) as: "USA Manual, Title 3, Exhibit D, Item \_\_\_\_". When transferring closed civil and criminal case files that have not been designated as permanent records, include this statement in column 6(f) of the SF-135: "CASES HAVE BEEN REVIEWED FOR HISTORICAL VALUE AND NONE ARE SIGNIFICANT IN TERMS OF LEGAL IMPACT OR INTENSITY OF PUBLIC INTEREST".

Forward the original and one copy of the SF-135, *together with one copy of the box listing*, to the appropriate FRC listed in Exhibit E. Upon approval, the FRC will assign an accession number in column 6(a) thru (c), a shelf location in column 6(j), and will return the SF-135 to the U.S. Attorney office. *Place a copy of the approved SF-135 in the first box of the accession.*

Accessions must be received by the FRC within 90 days after assignment of accession numbers (120 days for overseas shipments). Contact the FRC promptly if transfer cannot be made within this time period. Failure to comply will require the resubmission of a new SF-135 for approval.

#### 3-4.436 Marking the Boxes.

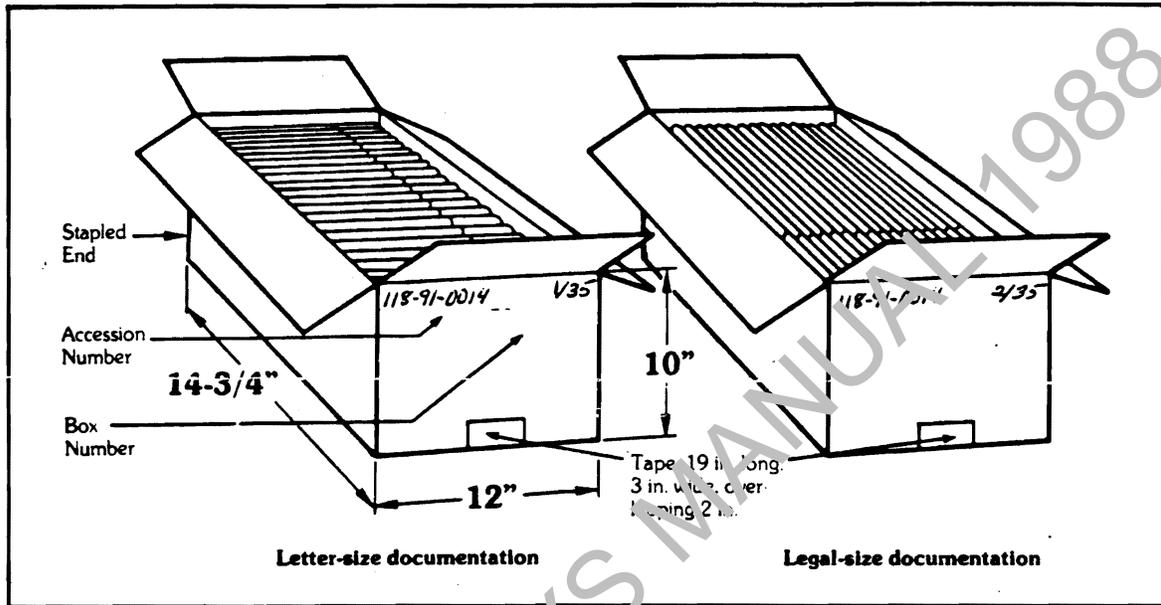
Write information directly onto the box with black felt tip marker on the *box end that does not have the stapled seam*. Do not use labels. The accession number is entered in the upper left corner, and the box number and total number of boxes in the upper right corner, as shown in Exhibit A.

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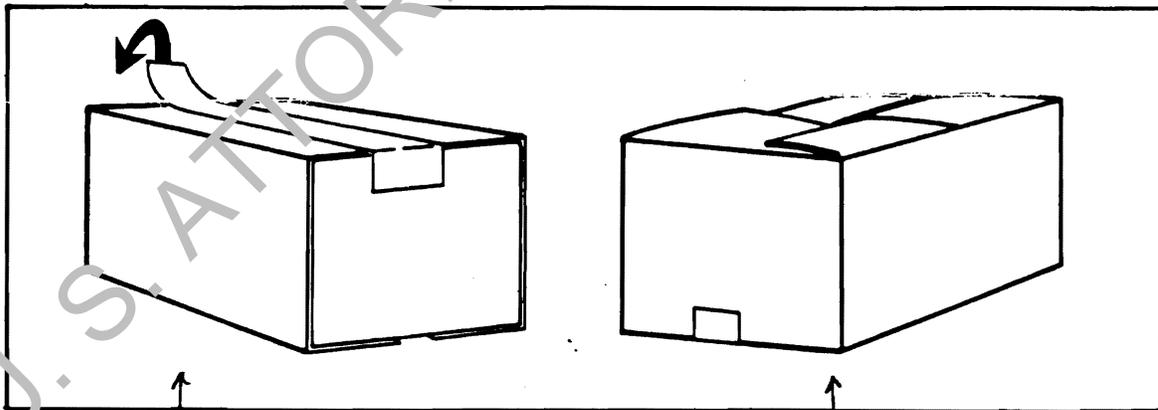
July 1, 1992

EXHIBIT A. EXAMPLE OF PACKING, MARKING AND SEALING BOXES.

PACKING AND MARKING BOXES.



SEALING BOXES.



Boxes sent to FRC by commercial carrier must be sealed with nylon filament tape.

Tuck flaps of boxes if records are transported 50 miles or less by Government vehicle.

July 1, 1992

## EXHIBIT B. EXAMPLE OF A BOX LISTING.

United States Attorney  
Department of Justice  
Judiciary Center Building  
555 Fourth Street, NW  
Washington, DC 20001

Box # 1  
88-0586 ARAGON, Mano  
89-0796 BOOZER, Bernard  
90-0173 AYESH, Gina Bout  
90-0924 CROOKS, Stacey J.  
90-1768 HERNANDIEZ, Peggy  
91-0078 ALBERTA, Jonathan Blaine  
91-0516 BENNETT, James V.  
91-0532 CULBREATH, Barre H.  
91-0693 NEWT, Derrick A.

Box # 2  
91-0889 JONES, Andrie R.  
91-0916 SOMUAH, Linda A.  
91-0920 AREMO, Ola  
91-0921 HOLLAND, Dorothea E.  
91-0922 CAMPBELL, Keith A.

Box # 3  
91-0923 DARIAH, Uylah U.  
91-0924 NOLLEY, Talisa F.  
91-0925 CRUZ, Santos I.  
91-0926 HARIVEL, Steve G.

91-0927 HORTON, Bobie D.  
91-0928 Valco Automotive/William  
Odle  
91-0929 Cash Connections, Inc.

Box # 4  
91-1102 PRAUS, Andrew  
91-1209 HAM, Jimmie  
91-R1265 RAJOUR, Jabran  
91-R1275 GRAY, Thomas  
91-R1308 MEDLEY, James A.

Box # 5  
91-R1310 VAUGHAN, Bryant B.  
91-1311 EWING, Ronnie  
91-R1323 ALVAREZ, Mario Roberto

Box # 6  
91-R1324 KENTISH, Desaree  
91-R1325 CEPHAS, Courtney  
91-1342 DANIELS, John M.  
91-R1354 MUSTICH, Joseph

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July 1, 1992

EXHIBIT C. EXAMPLE OF STANDARD FORM 135,  
RECORDS TRANSMITTAL AND RECEIPT.

**RECORDS TRANSMITTAL AND RECEIPT** Complete and send original and two copies of this form to the appropriate Federal Records Center for approval prior to shipment of records. See specific instructions on reverse.

1. TO (Complete the address for the records center serving your area as shown in 36 CFR 1228.150)  
**Federal Records Center**  
 (Enter address of the records center)

2. AGENCY TRANSFER AUTHORIZATION TRANSFERRING AGENCY OFFICIAL (Signature and title)  
 (Individual listed here must sign)

3. AGENCY CONTACT TRANSFERRING AGENCY LIAISON OFFICIAL (Name, office and telephone No.)  
 (Enter appropriate name & telephone #)

4. RECORDS CENTER RECEIPT RECORDS RECEIVED BY (Signature and title)  
 (Leave blank)

5. FROM (Enter the name and complete mailing address of the office to which the records. The signed receipt of this form will be sent to this address)  
 (Enter complete return address of the U.S. Attorney office)

**RECORDS DATA**

ACCESSION NUMBER		VOLUME (cu. ft.)	AGENCY BOX NUMBERS	SERIES DESCRIPTION (With inclusive dates of records)	RESTRICTION	DISPOSAL AUTHORITY (Schedule and Item number)	DISPOSAL DATE	COMPLETED BY RECORDS CENTER				
RG (a)	FY (b)							NUMBER (c)	LOCATION (1)	SHELF PLAN (2)	CONT. TYPE (3)	AUTO DISP. (4)
		(Leave blank)	6	1-6 See Atch'd List		USA Manual Title 3, Exhibit D, Item 4	1/2002	(Leave blank)				
				CASES HAVE BEEN REVIEWED FOR HISTORICAL VALUE AND NONE ARE SIGNIFICANT IN TERMS OF LEGAL IMPACT OR INTENSITY OF PUBLIC INTEREST.								

Enter appropriate restriction code from reverse side.

NSN 7840-00-834-4093 35-107 Standard Form 135 (Rev. 7-85) Prescribed by NARA 36 CFR 1228.152

July 1, 1992  
29

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE  
FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	C
	Record Series	Description	Disposition Instruction
1	Closed civil and criminal case files (including bankruptcy).	Case files initiated before 1889.	PERMANENT. Offer immediately to the National Archives and Records Administration (NARA). (NC-118-76-1(1a))
2		Case files for territorial periods 1912 and earlier.	PERMANENT. Offer immediately to NARA. (NC1-118-83-1(1))
3		Case files selected as significant because the issue had an impact on a statute, rule, regulation, or law enforcement policy; set a precedent; or received local, regional or national media attention, or the interest of a Congressional committee or the Executive Office of the President, or widespread public interest. Includes case files closed by former Strike Force Field Offices prior to 12-31-89.	PERMANENT. Transfer separately from other case files to the Federal Records Center (FRC) one year after case is closed. Offer to NARA 30 years after case is closed. (NC1-118-76-1(1c)) (N1-118-90-1(1a))
4		Case files involving sentences of 10 years or less (including probation and civil cases), which have not been selected as significant. Includes case files closed by former Strike Force Field Offices prior to 12-31-89.	Transfer separately by year of closing to the FRC one year after case is closed. Destroy 10 years after case is closed. Include the following statement in column 6(f), Form SF-135: "CASE(S) HAVE BEEN REVIEWED FOR HISTORICAL VALUE AND NONE ARE SIGNIFICANT IN TERMS OF LEGAL IMPACT OR INTENSITY OF PUBLIC INTEREST". (NC-118-76-1(1)) (N1-118-90-1(1b(1)))
5		Case files involving sentences of more than 10 years (excluding life sentence cases), which have not been selected as significant. Includes case files closed by former Strike Force Field Offices prior to 12-31-89.	Transfer separately by year of closing to the FRC one year after case is closed. Destroy one year after termination of sentence, including special parole. Include the following statement in column 6(f), Form SF-135: CLOSED CASE(S) INVOLVING SENTENCES THAT END IN THE YEAR ____ . CASE(S) HAVE BEEN REVIEWED FOR HISTORICAL VALUE AND NONE ARE SIGNIFICANT IN TERMS OF LEGAL IMPACT OR INTENSITY OF PUBLIC INTEREST. (NC-118-76-1(1d(2))) (N1-118-90-1(1b(2)))
6		Case files involving life sentences not selected as significant.	Transfer separately to the FRC one year after case is closed. Destroy 65 years after case is closed, or one year after death of offender, whichever is sooner. (N1-118-89-2(2))

July 1, 1992

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	C
	Record Series	Description	Disposition Instruction
7	Outstanding fugitive warrant criminal case files.	Case files selected as significant because the issue had an impact on a statute, rule, regulation, or law enforcement policy, e.g., set a precedent; or received local, regional or national media attention, or the interest of a Congressional committee or the Executive Office of the President, or widespread public interest.	U.S. Attorneys may, based on space constraints, transfer to the FRC under separate accession, five years after an outstanding fugitive warrant is issued and the fugitive has not been apprehended. Transfer to NARA 50 years after an outstanding fugitive warrant is issued and the fugitive has not been apprehended, or upon the death of the fugitive, whichever is sooner. (NOTE SPECIAL PROCEDURE. If the fugitive is apprehended within the 50 year retention period, the entire case will be permanently withdrawn from the FRC. Upon completion of litigation, the closed case will be transferred to the FRC under a new accession, using the disposition authority for closed significant cases, item 3.) (N1-118-91-1(1a))
8		Case files that do not meet the criteria for significant cases.	U.S. Attorneys may, based on space constraints, and provided the volume of each case is more than two cubic feet, transfer to the FRC under separate accession, five years after an outstanding fugitive warrant is issued and the fugitive has not been apprehended. Destroy 50 years after an outstanding fugitive warrant is issued and the fugitive has not been apprehended, or upon the death of the fugitive, whichever is sooner. (NOTE SPECIAL PROCEDURE. If the fugitive is apprehended within the 50 year retention period, the entire case will be permanently withdrawn from the FRC. Upon completion of litigation, the closed case will be transferred to the FRC under a new accession using the disposal authority in item 3,4,5 or 6, whichever is appropriate for the case at that time.) (N1-118-91-1(1b))

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE  
FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	
	Record Series	Description	Disposition Instruction
9	Environment and Natural Resources records.	Environment and Natural Resources case files assigned to the U.S. Attorney for litigation by the Chief, Land Acquisition Section, Environment and Natural Resources Division. Case files consist of appraisal reports, pleadings, transcripts of hearings, copies of title evidence, correspondence, exhibits, trial data, and related papers.	Transfer to the FRC one year after case is closed. Destroy 25 years after case is closed. (NCL-118-84-2(1))
10		Environment matter files that are not handled solely by the U.S. Attorney, containing copies of various documents filed elsewhere, established and used only for reference or informational purposes.	Transfer to the FRC one year after case is closed. Destroy five years after the case is closed. (NCL-118-84-2(2))
11		Rental files, consisting of collection documents and working papers of property rentals in Government housing projects and other property controlled by the Government, turned over to the Environment and Natural Resources Division for collection.	Destroy five years after the termination of the Government's use of the property and the distribution of the rent paid therefor. (II-NNA-2083(2))
12		Disbursement files, consisting of schedules and related papers pertaining to payments for properties purchased or occupied on rental basis.	Transfer to the FRC one year after payment. Destroy five years after payment. (II-NNA-2083(3))
13	Grand jury records, including special grand juries created by statutes dated 1889 and later. NOTE. Excludes those filed as part of a criminal case file, which receives the same disposition as the case which it relates.	Includes minutes, dockets, notes, shorthand notes of proceedings and transcripts of proceedings, documentary exhibits, manual or electronic recordings, translations, typewriter ribbons used to transcribe testimony, or any other recording or transcription of proceedings before the grand jury which cannot be disclosed unless provided by Rule 6(e) of the Federal Rules of Criminal Procedure.	Transfer to the FRC one year after closing. Destroy 10 years after closing. (NCL-118-83-1(2))
14		Closed grand jury ignoramuses (duplicated). (IGNORAMUS. Lat. Formerly the grand jury used to write this word on bills of indictment when, after having heard the evidence, they thought the accusation against the prisoner was groundless, intimating that, though the facts might possibly be true, the truth did not appear to them; but now they usually write in English the words "Not a true bill," or "Not found," if that is their verdict.)	Destroy when three years old. (344-T91(1))

July 1, 1992

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	
	Record Series	Description	Disposition Instruction
15	Financial litigation records.	Debt collection records which are maintained separately from litigation case files. May include claims collection litigation report; certificate of indebtedness; satisfaction of judgement or certificate of discharge; court and related legal documents such as consent judgements, orders, briefs, pleadings and settlement agreements; status reports and correspondence; Forms USA-117A, Criminal Debtor Card, USA-117B, Civil Debtor Card; and any other documentation developed during the negotiation, compromise, settlement and/or litigation of the indebtedness. Also included may be records maintained by private counsel under the Federal Debt Recovery Act of 1986, and which are turned over to the U.S. Attorney at the completion of debt collection efforts.	Transfer to the FRC one year after close of debt collection case. Destroy six years after close of debt collection case. (N1-118-89-3(1))
16		Automated data base information, containing data extracted from the case file and any data generated or developed to support the administrative operations of the debt collection program. Information may include personal data, e.g., name, social security number, date of birth and locator data; claim information; payment demand information; account information; and any other data related to the negotiation, compromise, settlement and litigation of indebtedness owed the United States.	Erase automated information from the data base six years after close of the debt collection case file. (N1-118-89-3(2))
17		Payment processing files and other debt collection records, which are established and maintained separately from the litigation case file, e.g., deposit tickets, check registers, bank statements and reconciliations.	May be transferred to the FRC one year after the close of the fiscal year. Destroy six years after the close of the fiscal year. (N1-118-89-3(3))
18	Investigative reports.	Investigative reports that are not filed as part of any litigation case file.	Transfer to the FRC when one year old. Destroy when five years old. (346-S45(2))
19	Second offense cards	When maintained.	Destroy when 15 years old. (346-S45(7))

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE  
FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	C
	Record Series	Description	Disposition Instruction
20	Docket records, e.g., Forms USA-115, Criminal Complaint and Court Proceedings Record; and USA-116, Civil Claim and Court Proceedings Record.	For criminal case files involving sentences of 10 years or less (including no sentence), and civil cases.	May be transferred to the FRC one year after close of case. Destroy 10 years after close of case. (NC1-118-83-2(1))
21		For criminal case files involving sentences of more than 10 years.	May be transferred to the FRC one year after close of case. Destroy one year after termination of sentence. (NC1-118-33-2(2))
22		For cases designated as permanent.	Retain in U.S. Attorney office until the case file is offered and accepted by NARA, then destroy. (NC1-118-83-2(3))
23		Grand and petit jury witness docket.	May be transferred to the FRC one year after case is closed. Destroy five years after case is closed. (346-S45(10))
24	Removal case files.	Containing requests for removal from one district to another of a person or persons against whom a criminal complaint, indictment or information has been filed in another district.	Transfer to the FRC after one year. Destroy when 10 years old. (346-S45(14))
25	Alphabetical index cards.	When maintained on criminal, civil and complaint files.	Destroy 10 years after close of case. (NC1-118-78-1(5))
26	Statistical records, e.g., Form USA-5, Monthly Statistical Report of U.S. Attorney.	Duplicate copies of statistical files and records of the U.S. Attorney consisting of copies of initial and final criminal docket reports; statistical summaries of criminal and civil cases; financial summaries; and lists of pending criminal cases.	May be transferred to the FRC one year after the date of the report. Destroy five years after the date of the report. (346-S45(16))
27	Files of hearing officers created pursuant to Section 5(g) of the Selective Training and Service Act of 1940, to hear claims of conscientious objectors from military training and service.	Consists of copies of hearing officers' reports and related papers, including copies of notices to conscientious objectors and replies thereto concerning dates and places of hearings, docket sheets, notes and related materials. 1940 - March 31, 1947.	Destroy immediately. (347-223(1))

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE  
FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	C
	Record Series	Description	Disposition Instruction
28	Copies of Selective Service forms.	Forms, e.g., DSS Form 551 showing records of delinquents under the Selective Training and Service Act of 1940, sent by local boards to U.S. Attorneys' offices, and copies of their letters of acknowledgment. October 1940 - May 1947.	Destroy immediately. (348-42(1))
29	Case files and general records pertaining to the arrest, detention and/or internment of alien enemies during World War I under the provisions of Section 12 of the President's Proclamation of April 6, 1917, and supplementary proclamations of December 11, 1917 and April 19, 1918.	Includes copies of official circulars and replies thereto, requests for and copies of Presidential warrants, receipts for prisoners, applications for and orders of parole, parole bonds, applications for exemption from classification of alien enemy, reports of Federal investigative agencies, alien report cards, testimony, war zone passes, copies of declarations of intention of naturalization, correspondence, and related papers. 1917 - 1920.	Destroy immediately. (348-66(1))
30	Records pertaining to the arrest, detention, internment of alien enemies during World War II.	Includes copies of Presidential warrants, receipts for prisoners, applications for and orders of parole, investigative reports, applications for permission to travel, notices of change of address, documents related to the seizure of contraband and all other material related thereto. 1941 - 1945.	Destroy immediately. (352-87(1))
31	Federal Prosecutor's Management Information System (PROMIS) for all U.S. Attorney offices <u>except</u> the District of Columbia.	Individual case information.	PERMANENT. Delete from U.S. Attorneys' office files two years after close of case and after pertinent information has been printed. Offer printed records to NARA for permanent retention when 10 years old. (NCl-60-83-8(2b(1)))
32		Tapes and diskettes containing core data sent to the Executive Office for U.S. Attorneys (EOUSA).	PERMANENT. Offer year end consolidated master files (on computer tape) with necessary documentation at EOUSA to NARA for permanent retention annually. (NCl-60-83-8(2b(2)))

EXHIBIT D. COMPREHENSIVE RETENTION SCHEDULE  
FOR U.S. ATTORNEY RECORDS.

I T E M	A	B	C
	Record Series	Description	Disposition Instruction
33		Core data sent to EOUSA which is consolidated and incorporated into the Docket and Reporting Data Base.	PERMANENT. Offer year end master file and necessary documentation to NARA annually. Release of criminal investigatory records contained in the system is subject to provisions of 36 CFR 1256.18. (NCl-60-83-8(2b(3)))
34	PROMIS for the U.S. Attorney, District of Columbia <u>only</u> .	Defendant record, case record, charge record, continuance record and witness/victim record.	PERMANENT. Offer to NARA with necessary documentation 15 years from the final disposition date, e.g., the date on which the defendant is found guilty or not guilty, the date of the plea bargain agreement, or the date the case is dismissed or nolle. (NCl-60-83-8(2a))
35	Docket and Reporting Data Base, Executive Office for U.S. Attorneys <u>only</u> .	Criminal and civil master files, the collections master file, and the transaction log file.	PERMANENT. Offer year end master file and necessary documentation to NARA annually. Release of criminal investigatory records contained in the system is subject to provisions of 36 CFR 1256.18. (NCl-60-83-8(1))

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Areas served	Federal records center	Areas served	Federal records center
District of Columbia, Maryland, West Virginia, and Virginia (except U.S. Court records).	(Mailing address only) Washington National Records Center Washington, DC 20409  (Shipping address only) Washington National Records Center 4205 Suitland Road Suitland, MD	Kansas, Iowa, Nebraska, and Missouri except greater St. Louis area.	Federal Records Center 2112 East Bannister Rd. Kansas City, MO 64131
Personnel records, medical and pay records of all Federal Government personnel. Records of agencies in greater St. Louis, MO area.	National Personnel Records Center 111 Winnebago St. St. Louis, MO 63118	Texas, Oklahoma, Arkansas, Louisiana, and New Mexico.	Federal Records Center P.O. Box 6216 Forth Worth, TX 76115
Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.	Federal Records Center 380 Trapelo Rd. Waltham, MA 02154	Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota.	Federal Records Center Bldg. 48 Denver Federal Center P.O. Box 25307 Denver, CO 80225
New York, New Jersey, Puerto Rico, and the Virgin Islands.	Federal Records Center Military Ocean Terminal Building 22 Bayonne, NJ 07002	Nevada except Clark County, California except southern California and American Samoa.	Federal Records Center 1000 Commodore Dr. San Bruno, CA 94066
Delaware, Pennsylvania, and U.S. Court records for Maryland, Virginia, and West Virginia.	Federal Records Center 5000 Wissahickon Ave. Philadelphia, PA 19141	Arizona, Clark County, Nevada, and Southern California (counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Orange, Los Angeles, Riverside, Inyo, Imperial, and San Diego)	Federal Records Center 24000 Avila Rd. Laguna Niguel, CA 92677
North Carolina. South Carolina. Tennessee. Mississippi. Alabama. Georgia. Florida. and Kentucky.	Federal Records Center 1557 St. Joseph Ave. East Point, GA 30044	Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).	Federal Records Center 6125 Sand Point Way Seattle, WA 98115
Illinois, Wisconsin, Minnesota, and U.S. Court records for Indiana, Michigan, and Ohio.	Federal Records Center 7358 South Pulaski Rd. Chicago, IL 60629		
Indiana, Michigan, and Ohio except for U.S. Court records.	Federal Records Center 3150 Bertwynn Dr. Dayton, OH 45439		

3-4.440 Forms

## 3-4.441 Standardized Forms

Whenever possible, standardized forms provided by the Department of Justice or the clerk of the court should be used. See OBD Order 2730.1B (April 23, 1982), Forms Index for Offices, Boards, and Divisions, for a list of forms stocked by the Department warehouse. These forms are available on request from the Department warehouse stock. Form DJ-182, Requisition for Stocked Printed Items, should be used for such requests. There is no charge and authorization is not generally required. Emergency requests may be phoned in on (301) 763-2965. Suggestions for changes in OBD, DJ, DOJ, or USA forms should be sent to the Support Services Manager, Facilities Management and Support Services Staff, Executive Office. Standard forms and optional forms are available for purchase from the General Services Administration via feds trip.

A list of the forms available is located in the Office Products volume of the GSA catalog system.

Responsibility for the management of form letters in the U.S. Attorneys' offices rests with the administrative officer (AO). All requests for new or revised forms and the overprinting of any existing forms and form letters must be reviewed and controlled by the AO. The AO should also review local forms which have been printed for the office. Those which have served their purpose should be discontinued and removed from the system. Similarly, forms should be updated as circumstances change.

The AO should watch form usage rates carefully, and stock replenishment orders should be performed as necessary.

The AO should ensure that standardized forms are used when applicable. If, in the AO's judgment, a standardized form does not completely serve its purpose, he/she should submit a request for revision to the Executive Office, Support Services Staff. He/she may also call attention to areas where greater standardization is possible. For further information on forms management, see "Forms Management Tips for Administrative Officers," published by the Department of Justice.

## 3-4.442 Special Forms

A special form, developed for use in a single district, can cost many times more than a standard stocked form. These special forms should be used only under the following circumstances:

- A. Significant time savings can be realized in recording information.
- B. No standardized form is available. (Special forms should not be printed merely to add the district name.)

C. Local rules or practices preclude use of a standardized form.

D. Information to be recorded is not available in other records or cannot be handled merely by revising an existing form.

E. Procedures relating to the Forms are in accord with regulations.

When it is determined that a special form is necessary, use the following procedure:

A. Develop the form.

B. Assign a number and date in the lower right hand corner. Numbers should be sequential, beginning with USA-40-district number-1; and in parentheses ED and date. For example: USA-40-96-1 (ED 8-1-81). Multiple-page forms should bear the same number, but page number should be indicated on all except page 1.

C. Complete a "Printing Requisition," DOJ-2, and forward, together with a brief justification, to the Support Services Manager, Executive Office.

Procedure for revision is the same except that the date will be preceded by REV date rather than ED. For example: USA 40-96-1 (REV 10-1-81).

A file consisting of an index and copies of all special or local forms should be maintained and kept up-to-date.

Should it be determined that a special form might be useful to all U.S. Attorney's offices, a memorandum should be submitted to the Executive Office with a copy of the form.

### 3-4.500 REPORTING AND TRANSCRIPTION SERVICES

Pursuant to the Federal Acquisition Regulation (FAR), contracts for reporting services will be developed and awarded for each United States Attorneys Office (USAO). These contracts will be established over a three year period until all districts have appropriate contracts.

In accordance with the FAR (Part 13, Subpart 13.106, Competition and price reasonableness), and the USAO Delegation of Procurement Authority, small purchase procedures may be utilized by the USAO to procure these services, provided that USAO requirements do not exceed \$2,500 per fiscal year.

If USAO requirements exceed \$2,500 per fiscal year, the Procurement Services Staff (PSS) Justice Management Division (JMD) will accomplish the procurement action. The PSS, in coordination with other JMD staffs has developed a standardized solicitation for obtaining contract coverage, which can be utilized for the current fiscal year and up to four additional option years for the procurement of these services. This solicitation

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July 1, 1992

includes grand jury and deposition actions and also addresses areas of concern such as physical and personnel security, format, contractor qualifications and response times. The geographic area of vendor consideration is a 50 mile radius of the USAO.

Instructions for initiating reporting contracts are contained in the Administrative Procedures Handbook.

#### 3-4.510 Use of Official Court Reporters

Be advised that all services such as Grand Jury, deposition and other reporting services not normally provided through official court proceedings may not be obtained by use of the services of an official court reporter or a firm owned by an official court reporter. This requirement is based on the section 3.601 of the Federal Acquisition Regulations (FAR) which prohibits this action by stating:

' 'Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government towards its employees.' '

Compliance with this regulation requires the termination of any business obtained from such individuals or firms.

If there is a compelling reason that precludes an alternative source for these services, an exception must be sought and obtained from the Assistant Attorney General for Administration in accordance with FAR 3.602.

Additionally the Dual Compensation Act (5 USC 5532) precludes the payment of attendance fees to official court reporters. Any such unauthorized payments should be refunded.

UNITED STATES ATTORNEYS' MANUAL

DETAILED  
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FOR CHAPTER 5

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U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

December 6, 1993

TO: Holders of United States Attorneys' Manual Title 3.  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Anthony C. Moscato*  
Anthony C. Moscato  
Director

RE: Use of Government Vehicles

NOTE: 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to holders of Title 3.  
3. Insert after USAM 3-4.510.

AFFECTS: NEW Section to USAM.

PURPOSE: This Bluesheet prescribes the policy for the Use of Government Vehicles, owned or leased, including non-temporary duty rentals, donations, or forfeitures, between an employee's residence and place of duty.

\*\*\* NOTE: This is a new section of the USAM. \*\*\*

3-4.600 MOTOR VEHICLE MANAGEMENT

3-4.610 Official Use of Government Vehicles Between Residence and Place of Employment

This prescribes the policy for the use of government passenger carriers owned or leased, (including non-temporary duty rentals, donations or forfeitures) between an employee's residence and place of employment.

### 3-4.611 Scope and Applicability

A. This applies to all United States Attorneys' offices, the Executive Office for United States Attorneys, and all employees of those offices.

B. This applies to the use of home-to-work transportation for employees on normal duty (non-travel) status performing assigned duties at their place of employment.

C. This does not apply to the use of a government passenger carrier when the passenger carrier is used in conjunction with official travel to perform temporary duty away from a designated or regular place of employment.

D. This does not apply to those employees essential for the safe and efficient performance of intelligence, counter-intelligence, protective services, or criminal law enforcement duties, when these employees have been so designated in writing by the Attorney General (Head of Agency) in approved Home-to-Work Plans.

### 3-4.612 References

- A. PL 99-550--Passenger carrier use.
- B. 31 U.S.C. 1344.
- C. 41 C.F.R. 101-6.4--Official Use of Government Passenger Carriers Between Residence and Place of Employment.
- D. Justice Property Management Regulations, Subpart 128-38.50--Official Use of Vehicles.
- E. Memorandum, Office of the Attorney General, dated February 28, 1989, Subject: Home-to-Work Transportation Plans.
- F. Memorandum, Assistant Attorney General for Administration, dated May 1, 1991, Subject: Use of Official Government Vehicles as a Taxable Benefit.
- G. 26 C.F.R. § 1.61-21 and 26 C.F.R. § 1.274-5T(k).

### 3-4.613 Policy

Employees of the United States Attorneys' offices, and the Executive Office for United States Attorneys, are not authorized under government regulations to use government vehicles for travel between residence and place of work. Commuting to and from work is considered a personal matter and not an official act. Except for a few narrow exceptions, government vehicles cannot be used for personal purposes.

In determining the appropriate use of a government passenger carrier the following apply:

A. Authorized Uses--The official uses of a government passenger carrier include:

1. Authorized programs, including program work under cooperative agreements or other contractual arrangements made pursuant to authority vested in the Department.
2. Use to render assistance in major disasters or emergency situations threatening loss of life or property.
3. Use by an employee in accordance with the provisions of the Federal Travel Regulations.

B. Home-to-Work Uses--The use of a government passenger carrier to transport an employee between his/her residence and place of employment is prohibited except when:

1. It is in the interest of the Government that an employee's travel start from the employee's residence rather than place of employment and written authorization to start travel from the employee's residence is secured (the vehicle may be temporarily stored at the employee's residence at the conclusion of a trip if approved under the same conditions), or
2. Used by employees engaged in field work, the character of which makes such transportation necessary and the approval of which (on an individual or group basis) has been approved by the Attorney General for home-to-work transportation.

C. Use of Official Government Vehicles--The Office of Legal Counsel has determined that use of a government vehicle for commuting and other personal purposes is a taxable benefit, unless the user is covered by a law enforcement or special vehicle exception. A general synopsis of law enforcement and special vehicle exceptions follows:

1. Unmarked Vehicles Used by Law Enforcement Officers

Under certain circumstances, the personal use of unmarked vehicles used by law enforcement officers is not taxed as a fringe benefit. In applying this rule to vehicles used by Departmental employees, each of the following criteria must be satisfied in order for the use of the vehicle not to be taxable.

- (a) The vehicle must be used by a law enforcement officer who is a full-time employee of the Department and whose duties and activities satisfy each of the following tests:
  - (1) Responsibility for the prevention or investigation of crimes involving injury to persons or property (including apprehension or detention of such persons for such crimes);
  - (2) Authorization to carry a firearm (regularly carries a firearm except when engaged in undercover work);
  - (3) Authorization to execute search warrants; and
  - (4) Authorization to make arrests (other than citizen arrests).
- (b) All personal use of the vehicle must be authorized by the Department. (Use of a vehicle for vacation or a recreation trip cannot qualify as an authorized use.)
- (c) All personal use of the vehicle must be incident to the employee's law enforcement function such as being able to report from home directly to a stakeout or surveillance site or to an emergency situation.

Uses/Users who do not qualify for each of the above listed criteria cannot be considered for the law enforcement exception for a government passenger carrier.

## 2. Special Vehicles

- (a) The use of certain vehicles such as forklifts, refrigerator trucks, buses, large trucks, farm and construction vehicles is not taxable as a benefit.
- (b) The personal use of vans and pickup trucks is normally taxable as a benefit unless such a vehicle has been modified so that it is not likely to be used more than a de minimis amount for personal purposes. For example, if a van has been modified to contain only a front bench seat and permanent shelving in the cargo area and that cargo area is continuously filled with equipment, personal use of the van would be deemed de minimis and will not be taxable.

3-4.620 Control of Vehicles - Logging Requirements

Each district that has motor vehicles will establish necessary procedures to maintain logs on the use of government vehicles (passenger carriers) which are utilized within the district and also to establish any home-to-work transportation used for official purposes. The log shall be accessible for audit and contain at least the following information.

- A. Date/time (out and in);
- B. Name and title of employee;
- C. Name and title of person authorizing use;
- D. Vehicle identification;
- E. Vehicle destination;
- F. Odometer reading (beginning and end);
- G. Purpose (including circumstances requiring Home-to-Work Uses)

Logs shall be maintained for a period of at least two years for the purpose of home-to-work transportation as a potential tax benefit and for mileage usage for justification purposes of the vehicles.

3-4.540 Control of Government National Credit Card

Each district shall establish procedures to ensure that credit cards are assigned to individual vehicle, personnel, or if such cards are shared, that an individual responsible for the safeguarding of the cards are appointed. Each district shall develop procedures and controls to provide the necessary safeguards as outlined in the Justice Property Management Regulation 128-38.12.

3-5.000 SPACE MANAGEMENT

## 3-5.100 OFFICE SPACE

3-5.110 General Description

The office of the U.S. Attorney functions within the court basically as an independent law firm whose sole client is the United States Government. The U.S. Attorney represents the government in all cases, both civil and criminal, to which the government is a party or in which it has an interest.

Functional arrangement of the U.S. Attorney's space requires public access to the reception area. All perimeter space beyond this point should be secured for access of U.S. Attorney personnel and authorized visitors.

In accordance with the Comprehensive Crime Control Act of 1984 (Public Law 98-473, October 12, 1984), the following limitation applies to renovating, remodeling, furnishing, or redecorating the office of any Government employee appointed by the President:

"Sec. 619. During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to renovate, remodel, furnish, or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless such renovation, remodeling, furnishing, or redecoration is expressly approved by the Committees on Appropriations of the House and the Senate."

3-5.120 Planning Criteria

## 3-5.121 Policy

The planning criteria are subject to the following policy statement:

On January 8, 1987, GSA issued, "FPMR Temporary Regulation D-73, a Quality Workplace Environment Program." The goal of this program is to increase efficiency and provide a quality working environment while reducing the amount and cost of Federal workspace. Space assignments are expected to average 135 sq. ft. or less per workstation, including supplemental space.

## 3-5.122 Space Allocation Standards

The standards included in this space allocation standard (SAS) shall apply to all new space requests submitted after December 12, 1989, and to those pending space requirements where the lease contracting process has not yet been started and/or the amount of square footage a U.S. Attorney's

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office (USAO) is to be assigned has not yet been approved and finalized by General Services Administration (GSA).

Only space requests signed by designated representatives of the Executive Office of the U.S. Attorneys (EOUSA) shall be accepted as final. These standards shall not be applied to existing U.S. Attorney space assignments unless a relocation of the entire office is planned.

Questions or disputes over the application of the standards contained in this SAS shall be referred to the Office of Real Estate, Office of Real Property Development (PQR) in the GSA Central Office for resolution.

#### Circulation and Layout Factors

The square footage goals contained in the SAS are targets which shall be utilized by the GSA Real Estate Division regional offices space planners to determine the space needs of each U.S. Attorney's office. In modular buildings and in older Federal Buildings where space and/or window configurations create difficulties in sizing rooms to the target square footages in the SAS, private offices and support rooms should be sized as close to the target square footages as is practical and economical on the basis of the most efficient and prudent use of space.

U.S. Attorney offices are densely partitioned, typically requiring a partition ratio of 1 linear foot of wall for every 10 sq. ft. As a result, a circulation and layout space factor will need to be considered by GSA space planners after a complete analysis of the U.S. Attorney's space needs against the SAS target standards have been completed. Since the age and configuration of typical Federal Buildings which house most U.S. Attorney offices varies widely, the amount of space added should be appropriate to the individual U.S. Attorney office and the Federal space where they will be housed. Where lease space is to be acquired to house U.S. Attorney functions, the circulation and layout factor added by GSA shall be adequate to ensure proper internal circulation, and address appropriate fire and life safety considerations in effect at the time the space request is received.

It shall be the responsibility of each GSA Regional Offices to ensure that the space authorized for each U.S. Attorney's office (as a result of their space analysis based on this SAS) is adequate for the efficient layout of all of the rooms, private offices and areas included in the approved SF-81A, "Space Requirements Worksheets". It shall also be the responsibility of the GSA Regional Office to furnish the EOUSA with a project schedule for each space request no less than nine months in advance of an office relocation. At a minimum, the schedule shall contain layout start and completion target dates, as well as a projected project completion (occupancy) date. Any schedule change shall be formally reported to the EOUSA in writing.

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It shall be the responsibility of the EOUSA to see that space layouts are reviewed and approved by the appropriate Justice Department officials and delivered to the appropriate GSA Regional Office in accordance with the approved project schedule. Failure to deliver approved space layouts in a timely manner shall result in the EOUSA becoming responsible for any delay cost claims incurred by GSA as a direct result of the failure to deliver approved layouts within the project schedule. In addition, claims which result from occupancy delays caused by the Justice Department's failure to issue telephone and/or equipment orders in time to ensure installation prior to the space completion/acceptance date specified by the project schedule shall be the financial responsibility of the EOUSA.

3-5.123 Office Standards

United States Attorneys

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
U.S. Attorney (Headquarters locations)	300	Walls shall extend from slab to structural slab and have a minimum Sound Transmission Class (STC) of 45. Duct penetration shall not compromise the specified STC. The office shall have solid wood core door with a special lock as stated in the EOUSA Physical Security Requirements. Vinyl wall covering or panel, chair rail, above-standard carpet with padding and drapery shall be installed.*  Classification: Office (Deadbolt lock)
U.S. Attorney's Toilet (Headquarters location only) —No shower	30	Fixtures include silent flush toilet, sink and separate hot and cold water controls installed in a two door, wood finished vanity with a one piece (no seams formica top and integral backsplash. Install an 18" x 24" mirror and the 110V AC ground fault electrical outlet above vanity. Install separate towel and toilet paper dispensers. Floor shall be ceramic tile. Install exhaust fan that is controlled by light switch. Provide sound deadening insulation in walls.

\* The Executive Office of the U.S. Attorneys shall provide a Reimbursable Work Authorization (RWA) to cover the difference in price between the standard finishes specified as Standard Alterations (SA's) and above-standard wall construction and finishes. The RWA shall also cover the difference in price between above-standard carpet and standard carpet.

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
		Classification: SP-1
U.S. Attorneys Office (Non-headquarters) -No private toilet -No shower -No private conference room -No panel	225	Walls shall extend from slab to structural slab and have a minimum Sound Transmission Class (STC) 45. Duct penetration shall not compromise the specified STC. The office shall have a solid wood core door with a special lock as stated in the EOUSA Physical Security Requirements. Standard paint and chair rail, above-standard carpet with padding and drapery shall be installed.*
		Classification: Office (Deadbolt lock)
U.S. Attorney's Private Conference Room (Headquarters location only)	300	Buildout the same as U.S. Attorney's private office.*
		Classification: Office
Secretary to the U.S. Attorney (Includes workstation & visitor seating) (Headquarters location only)	150	Above-standard office space buildout and finishes to match the U.S. Attorney's private office, including vinyl wall covering, (no panel), chair rail, drapery, carpet with padding.*
		Classification: Office
Chief Assistant U.S. Attorney & Managing U.S. Attorney in Branch Offices	225	Buildout same as the U.S. Attorney's private office.* No panelling
		Classification: Office
Secretary to the Chief Assistant U.S. Attorney & Managing U.S. Attorney in Branch Offices	100	Above-standard office space buildout and finishes to match that of Chief Assistant U.S. Attorney's private office, including vinyl wall covering, (no panel), chair rail drapery, carpet with padding.*
		Classification: Office
Supervisory Assistant U.S. Attorney	200	Walls shall extend from slab to structural slab and have a minimum Sound Transmission Class (STC) of 45.* Duct penetration shall not compromise the specified STC. The office shall have a solid wood

\* The Executive Office of the U.S. Attorneys shall provide a Reimbursable Work Authorization (RWA) to cover the difference in price between the standard finishes specified as Standard Alterations (SA's) and above-standard wall construction and finishes. The RWA shall also cover the difference in price between above-standard carpet and standard carpet.

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<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
		core door with standard lock. Standard office finishes shall be provided to include paint, carpet, and drapery. Classification: Office
Assistant U.S. Attorney	180	Standard office buildout and finishes. Paint and carpet, and standard window covering. Classification: Office
Executive Administrative Officer (EAO) (GS-14 or higher) Headquarters only	200	Same as Supervisory Assistant U.S. Attorney's private office.* Classification: Office
Administrative Officer or Deputy Administrative Officer to EAO	180	Standard office buildout and finishes. Same as Assistant U.S. Attorney's private office. Classification: Office
Assistant Administrative Officer (AAO) (private office only if AAO handles personnel duties)	150 or 135 open area	Standard office space buildout and finishes. Classification: Office
Personnel Officer (Private Office)	150	Standard office space buildout and finishes. Classification: Office
LECC Officer (Private Office)	150	Standard office space buildout and finishes. Classification: Office
Personnel Specialist (Open Area)	100	Standard Office space buildout and finishes. Classification: Office
Purchasing Agent/Clerk (Open Area)	100	Standard Office space buildout and finishes. Classification: Office
Systems Manager Supervisor (Private Office)	150	Standard office space buildout and finishes. Classification: Office
Assistant Systems Manager (Open Area)	80	Standard Office space buildout and finishes. Classification: Office
Paralegal (Private Office)	150	Standard Office space buildout and finishes.

\*The Executive Office of the U.S. Attorneys shall provide a Reimbursable Work Authorization (RWA) to cover the difference in price between the standard finishes specified as Standard Alterations (SA's) and above-standard wall construction and finishes. The RWA shall also cover the difference in price between above-standard carpet and standard carpet.

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
Secretarial/Clerk typist/legal technician	80	Classification: Office Standard Office space build- out and finishes.
Receptionist	135	Classification: Office Standard Office space build- out and finishes, except as noted in reception area en- try.
Clerk/Student Aides	60	Classification: Office Standard Office space build- out and finishes.
Collections Clerk (Open Area)	80	Classification: Office Standard Office buildout and finishes.
Task Force Supervisor (Private Office)	200	Classification: Office Buildout same as Assistant U.S. Attorney's private of- fice.
Task Force Attorney (Private Office)	180	Classification: Office Standard Office buildout and finishes.
Task Force Investigators (Open Area)	60	Classification: Office Standard Office buildout and finishes.
Visiting Attorney (Private Office)	180	Classification: Office Standard Office buildout and finishes.
Visitor Waiting Area (Pub- lic seating only) USAO to furnish average visitor totals. May be required on different floors, for collections units, and task force	20/visitor based on the average hourly to- tal. Not less than 150	Classification: Office Standard Office buildout to include carpet, vinyl wall covering or paint, chair rail, glass door at entry with USAO lettering. Wall sepa- rating the receptionist and office area from the visitors shall extend from slab to structural slab and contain a bullet-resistant window w/pass through and bullet re- sistant material installed on the surrounding walls and en- try door to office space. Size of window and class of firearm protection specified in requirements. Electric door strike and intercom, and door bell shall also be in

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
Library Headquarters and Branch Offices	1/every 6 legal volumes plus 20% future growth	<p>stalled. Locks per Physical Security Requirements.*</p> <p>Classification: Office (Fixed Duress alarm, Type II ballistic material)</p> <p>Standard Office buildout and finishes. Where required, added structural support may be needed. Whenever possible, shelving should be laid out with 4-5 foot aisles to minimize the necessity for costly structural reinforcement. GSA (or contract) structural engineers should be asked for assistance in preparing layouts to avoid costly structural support work. Optional glass for light filter.</p> <p>Classification: Office—unless structural work is required in which case an SP-3 classification may be appropriate.</p>
Library Support Space (Reference/reading area within)	25/every 5 Attys.	<p>Standard Office buildout and finishes.</p> <p>Classification: Office (If librarian on board, 150 sq. ft. private office within library)</p>
Main Conference Room (Optional built-in storage for video equipment)	400-600	<p>Walls shall extend from slab to structural slab and have a minimum STC of 45. Duct penetration shall not compromise the specified STC. The HVAC shall be separately zoned and controlled and be capable of a minimum of six complete air changes per hour with 20% fresh air. Solid core wood door installed. Wallcovering and chair rail. Recessed, incandescent lighting with separate dimmer switches.</p> <p>Classification: SP-5 (Dead-bolt lock)</p>

\*The Executive Office of the U.S. Attorneys shall provide a Reimbursable Work Authorization (RWA) to cover the difference in price between the standard finishes specified as Standard Alterations (SA's) and above-standard wall construction and finishes. The RWA shall also cover the difference in price between above-standard carpet and standard carpet.

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
Conference Rooms (Criminal Div., Civil Div., and Task Force)	200-300	Same as Main Conference Room, except install standard lighting. Classification: SP-5
Trial Preparation Room	250 2 per every 3 Judges	Walls shall extend from slab to structural slab and have a minimum STC of 45. Solid core wood door and lock per Physical Security specifications.* Classification: SP-5 (Dead-bolt lock)
Witness Interview	150 1 per every 10 Attys.	Same buildout as Trial Preparation Room.* No special lock.* Classification: SP-5 (Duress alarm receiver)
Collection Interview Room	150 1 per office location	Same buildout as Witness Interview Room.* Classification: SP-5 (Duress alarm receiver)
Deposition Room	200 1 per office location	Same buildout as Witness Interview Room.* Classification: SP-5
Evidence Room	150-250	Wall shall extend from floor to ceiling with 9 gauge expanded metal lath installed between wall studs. The expanded metal lath shall also be securely installed between the drop ceiling and structural slab above. Doors shall be steel or solid core wood with a security lock in accordance with Physical Security specifications. Optional built-in shelving, vinyl floor covering. Classification: Office (Electro-mechanical key operated deadbolt lock)
File Rooms	9 per legal or equivl.	Standard Office space buildout and finishes. Based on file system or number of files, floor load may require reinforcement. Optional locks for secured file room per Physical Security speci-

\* The Executive Office of the U.S. Attorneys shall provide a Reimbursable Work Authorization (RWA) to cover the difference in price between the standard finishes specified as Standard Alterations (SA's) and above-standard wall construction and finishes. The RWA shall also cover the difference in price between above-standard carpet and standard carpet.

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
		fications. Vinyl floor covering. Classification: Office—unless reinforced.
Teletype/Fax/Shredder	40 each	Standard Office buildout and finishes. Classification: Office
Copier/Printing Room (Size depending upon equipment)	150-300	Office quality buildout and finishes. Where large, noisy machines are to be housed in the room, extending the walls from slab to structural slab to raise the STC to 15 should be considered along with increased room air changes. Vinyl floor covering. Classification: Office
ADP Room (Based on equipment housed)	300-1000	Room buildout will vary with size and equipment needs. Most rooms will require a package HVAC unit sized for specified equipment plus some expansion, operational 24 hours a day. Units shall have the ability to control both temp. and humidity. Raised floor should only be used where cable requirements warrant. A separate electrical panel may be required in the room. Walls shall extend from slab to structural slab and contain a vapor barrier and a minimum STC of 45. Equipment specs. must be furnished. SP-5 unless a raised floor and separate electrical panel is required in the room in which case the space would be classified as SP-4.
Word Processing Room	150-250	Buildout will vary depending on equipment. Small installations may require no special environmental preparation. Equipment specs. to be furnished. Vinyl floor covering. Classification: Office if no HVAC is required. SP-5 if a package HVAC is needed.
Shared computer or word processing workstation/printers	60 each	Office quality space buildout and finishes. Classification: Office

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
Mail Sort Workstation	60	Office quality space buildout and finishes. Classification: Office
Supply Room (Headquarters and Branch locations)	200-300	Office quality buildout and finishes. Size room at 200 sq. ft. for offices with 25 or less attys. and 500 sq. ft. for the larger offices. Optional buildin shelving. Classification: Office
Storage Room (basement, attics, or other storage quality space)	—	Size of space to be determined by need and availability. Classification: ST-1 or SP-6 depending on the type of space.
Juris Terminal (in library)	40 ea.	Same finish as classification as the library. Classification: Office
Copy Machine (table top model)	40 ea.	Office quality buildout and finishes. Classification: Office
Copy Machine (Stand alone)	60	Office quality buildout and finishes. Classification: Office
Telephone Closet	75	Closet shall be located within the space assigned to the office. Closet shall have wall mounted 1/2" plywood in sufficient quantity to attach telephone equipment. A minimum of 2 duplex 110V, 15 amp electrical outlets shall be provided. Floors shall be vinyl tile. Solid core wood door with electro magnetic contact door sensors, dead-bolt lock. Classification: Office
Break room	150	Office quality buildout and finishes. Provide 18" x 24" stainless steel sink with hot and cold water supply and waste line mounted in a finished wood kitchen sink base cabinet. In addition, provide a total of 6 LF (including the sink base) of base cabinets with matching wall cabinets except above the sink base. Base cabinets shall have a 6 LF laminate

<u>Position/area</u>	<u>Sq. Ft.</u>	<u>Buildout Description</u>
		counter top with intergral splash block. Install an 110V, 20 amp electrical outlets. Vinyl floor covering. Classification: SP-1

Standard Office Finish: Carpet with padding, two coats semi-gloss paint, standard window covering (usually mini-blinds)

NOTE:

Space allowances include footprint and circulation. Perimeter Door Locks: All perimeter doors installed with key operated dead bolt locks. (Medeco Government Restricted Keyway series with cam-operated bolt or equivalent).

All offices to be provided with common use coat closets sufficient for use by personnel and visitors.

3-5.130 Location

The U.S. Attorneys' offices should be located within the Courthouse complex or in close proximity.

3-5.140 Procedures

3-5.141 Additional Space

If a determination is made that additional office space is required, the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys, should be contacted. In a letter, sufficient justification for the request should be provided, such as additional personnel authorized (specify type, i.e., attorney, support, number of each) or overcrowded or insufficient space to house presently authorized staff.

Authority for acquisition and/or relocation of space has not been delegated to the U.S. Attorneys. Such actions may be accomplished only by and with the approval of the Executive Office.

3-5.142 New Federal Buildings/Courthouses

GSA requests the Department to provide space requirements for the U.S. Attorney and other tenants when it contemplates construction of a new federal building and/or courthouse. The Executive Office contacts the U.S. Attorney's Office to obtain input, prior to compiling and submitting specific space requirements.

When copies of proposed office space layouts are received by the Executive Office, they are forwarded to the U.S. Attorney's Office for concurrence and return.

## 3-5.143 Release of Space

If contacted by the General Services Administration (GSA), U.S. Courts, or others requesting the release of space or relocation of your office, please contact the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys, immediately. Authority for release or relocation of space has not been delegated to the U.S. Attorneys and can be accomplished only through the Executive Office.

## 3-5.200 PARKING SPACE

3-5.210 Policy

GSA FPMR's state, agencies should assign parking spaces in this order: severely handicapped, executive personnel working unusual hours, van/car pools, POV's used for government business 12 days per month and which qualify for reimbursement travel.

It is the general policy of the Executive Office to provide parking spaces for official government vehicles permanently assigned to the U.S. Attorneys' offices. Parking for employee owned vehicles will be provided whenever possible consistent with the following criteria:

3-5.220 Assignment of Parking Spaces

1. Handicapped employee
2. United States Attorney
3. Paid Supervisory Assistant U.S. Attorneys only
4. Administrative Officer
5. Operational space — official government vehicle
6. Operational space — District Headquarters office
  - branch office
  - Unstaffed Branch office with frequent use justified.
7. High-crime areas — Designated by GSA based on a survey of the area and their recommendations.

UNITED STATES ATTORNEYS' MANUAL

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### 3-6.000 SECURITY MANAGEMENT

The continued protection of human and physical assets at each U.S. Attorney's Office or sub-office is essential to accomplishing its mission and objectives. Additionally, the active and enthusiastic participation of senior management and supervisory echelons is tantamount to the success of all security programs and directly proportional to the quality and applicability of the product derived therefrom. Security programs within the U.S. Attorney Offices will be structured in such a manner as to utilize three distinct components, each tasked with performing specified tasks and assuming responsibilities which contribute to the overall effectiveness of the security effort. These components are the Executive Office for United States Attorneys (EOUSA), a District Office Security Manager from each office and a Security Working Group composed of selected District Office Security Managers. Duties and responsibilities of each component are discussed below.

#### 3-6.010 Executive Office for United States Attorneys

The Executive Office for U.S. Attorneys provides the following:

A. Policy and procedural assistance to Districts for the implementation and day-to-day conduct for all security-related actions. This policy will be in keeping with all applicable statutes, Executive Orders, and Departmental Orders so as to ensure all required security programs meet regulatory requirements as well as the unique needs of each office.

B. General and specialized security training for all personnel involved in security-related duties.

C. Budgetary assistance and facilities management support to facilitate the design, procurement and installation of all security-related equipments, services and systems.

D. A structured methodology of threat and vulnerability assessment for each U.S. Attorney Office which will allow the determination of unique security requirements.

E. The necessary oversight to ensure compliance with all regulatory and departmental security policies, identify weaknesses, provide assistance and advice and formulate constructive recommendations to improve the quality of security support and overall security posture.

#### 3-6.020 District Office Security Manager

The U.S. Attorney will designate an individual, preferably a supervisory Assistant U.S. Attorney to function as the District Office Security Manager. This individual will manage all security programs of the district office and be assisted by other assigned individuals as required. He/she

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will serve as the principal security official for the district office and its sub-offices and advise the U.S. Attorney on all security matters. The responsibilities of the security manager are as follows:

A. Analyze the overall security posture of his/her respective office and recommend all necessary systems, equipment and services which will alleviate known vulnerabilities and risks.

B. Implement or cause to have implemented and locally oversight the Physical Security, Information Security, Personnel Security, ADP Security, Loss Prevention, Security Education and Awareness, Safety and Emergency Preparedness programs in accordance with current policy.

C. Develop or cause to have developed all contingency plans and the District Office Security Plan.

D. Prepare budget estimates for the implementation of security programs at the district office level and coordinate these and other requirements affecting security with the Executive Office for U.S. Attorney and the Security Working Group.

E. The District Office Security Managers' Handbook (DOSM), Vol. I-II sets forth security procedures for district offices.

F. Refer to DOSM, Vols I-II, for DOJ orders.

### 3-6.030 Security Working Group

The Security Working Group is responsible for:

A. Reviewing the status of all ongoing security programs for the district office's perspective and make recommendations for their continuance, enhancement or termination as necessary.

B. Reviewing requests for funding of security actions which are designed to implement security programs or actions to further compliance with existing statute or policy directives before referral to the Budget Sub-Committee.

C. Providing a single source of advice on security matters representing United States Attorney offices to the Associate Attorney General and the Director, Executive Office for United States Attorneys.

D. Providing recommendations concerning the impact of security programs on the operational requirements of United States Attorney offices.

### 3-6.100 SECURITY PROGRAMS

#### 3-6.110 Physical Security

Physical security encompasses the sum total of systems and procedures required to protect and support all other security areas and should meet

the requirement of Executive Order 11642 and Department policies as contained in the current issuance of DOJ Order 2620.4. The complement of physical security constraints will be tailored to each environment to adequately reflect the threat, vulnerability and risk associated with a particular office. The Executive Office will establish recommended safeguard minimums designed to meet common threats, such as:

1. Central access control points protected by ballistic materials and configured to minimized forced entry.
2. Duress alarms for requesting immediate assistance.
3. Telephone on-hook security and encryption capability.
4. Alarm systems which detect surreptitious entry during non-working hours.
5. Soundproofing in offices in which sensitive and classified conversations take place.
6. Secure storage for evidence and classified/sensitive files.
7. Security plan requirements as specified in Executive Order 11652, containing the delegation of security responsibilities, local security procedures and contingency plans for bombs threats, natural disasters, etc., as required by Executive Orders 11490, 11921, and 11179.

### 3-6.111 Secure Communications (STU-III)

In April of 1991 the Executive Office received the operational security doctrine for the national STU-III program. Of particular note are the following excerpts:

—INTENT: "Our greatest concern in developing the STU-III is to protect vulnerable U.S. Telecommunications. Therefore, in implementing the provisions of this instruction, heads of departments and agencies should not impose security restrictions which would inhibit prompt fielding or discourage use of the terminals. Any relaxations to the provisions of this document must receive the prior approval of the National Manager, (NSA)."

—SCOPE: "The provisions of this instruction apply to all departments and agencies of the U.S. Government and to their contractors who handle, distribute, account for, store or use the type 1 terminal and associated COMSEC material."

—SENSITIVE INFORMATION DEFINED: "(This term is defined the same as the term 'sensitive information' is defined in Public Law 100-235)—Any information, the loss, misuse, or unauthorized access to or modifica-

tion of which could adversely affect the national interest of the conduct of federal programs, or the privacy to which individuals are entitled under section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy."

USE OF TERMINALS: "The Type 1 terminal is intended to provide secure voice and data capabilities through the U.S. Government and U.S. Government contractor communities where there is a requirement for transmission of classified or sensitive unclassified U.S. Government information. The Type 1 terminal will replace or augment, where appropriate, all current secure and non-secure telephones where these requirements exist."

The importance of this secure capability among all the United States Attorneys' Offices lies in the national commitment to provide a means to facilitate all aspects of the Executive Branch's mandate to protect sensitive information throughout the Federal government. This requirement has been underscored by the administration's efforts toward the war on drugs. The Attorney General has been fully briefed by NSA and supports the program in all respects.

#### A. Telecommunications Security Objectives

Within the Executive Office, the Telecommunications Security effort is accomplished within the Physical Security Program designed to support all United States Attorneys' Offices. The secure or encrypted telecommunications requirements are addressed by the STU-III Program. The overall objectives of the telecommunications security efforts are generally as follows:

1. Install sufficient secure voice capability at each staffed location and to all personnel as necessary to meet operational requirements. Basically, this entails providing STU-III terminals to all United States Attorneys, all Supervisory Assistant United States Attorneys prosecuting traditional drug cases, and other selected personnel (Strike Force Assistant United States Attorneys, District Office Security Managers, etc.).
2. Install at each staffed location and other selected sites, a secure communications triad consisting of one AT&T STU-III, one secure facsimile machine, one IBM compatible PC with IMAGENET and SACS software, and one 'AB' switching unit. The installation of the Secure Triad System will enable each office to communicate with other departmental and federal entities by way of secure (encrypted) voice, facsimile and PC data exchange. Additionally, it will permit the complete interface between these components.

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3. The installation of physical security safeguards at each office to include:

- Locating the telephone control panel which services each location within the protected premises of the United States Attorney's Office complex or the physical control of such panels when located outside of the tenant office spaces.
- Installation of line cards or handset cutoff devices on telephone line pairs or telephone handsets to ensure the maximum level of on-hook security protection.
- Periodic Technical Security Countermeasures (TSCM) surveys to detect the presence of hostile emitters or eavesdropping devices.
- The installation of other safeguards on datalines and systems utilized for the transmission of less sensitive and non-national security information.

B. STU-III INSTALLATION

STU-III terminals were designed to replace existing telephone units and are configured for easy installation. In most cases, installation is easily accomplished by unplugging the existing telephone instrument and plugging in the STU-III terminal. Department of Justice policy states that before any telephone system can be purchased, it must first be determined that it is STU-III compatible. In those instances where the STU-III terminal is not fully compatible with the existing telephone system, additional modification may be required. When this occurs, contact should be initiated with the EOUSA COMSEC Custodian for assistance.

To alleviate budgetary constraints on district offices, the Executive Office has elected to pay all costs associated with the installation of the STU-III terminals.

For modifications to existing telephone systems or installation of additional lines and jacks, District Officers will need to initiate a purchase order for the required work with their local telephone company or servicing GSA office.

Modification of offices to meet the minimum physical security requirements for STU-III's will be coordinated through the Security Programs Office. In GSA owned buildings, work such as replacing an existing door with a solid wood core door or installation of dead bolt locks should be done with funding from an office's miscellaneous Reimbursable Work Authorization (RWA) fund. If the office is in leased space, the district can initiate a purchase order to have the security enhancements done. In either case, after work is completed, copies of the billing vouchers should be forwarded to the Security Programs Office for endorsement/validation.

### C. STU-III REPAIR/REPLACEMENT PROGRAM

The Executive Office anticipates that with the distribution of over 4,000 STU-III terminals, a small portion of units will require repair or replacement. Because all terminals must be centrally accounted for as Controlled Cryptographic Items (CCI), the repairs of these units must be accomplished in the same fashion. To maintain positive accountability, all repairs and/or maintenance to the terminals will be provided by the Security Programs Office.

COMSEC Responsible Users will be responsible for initially troubleshooting a non-functioning unit as outlined in the terminal's operating guide. If basic troubleshooting fails to correct the malfunction, the Executive Office COMSEC Custodian should be contacted. Additional troubleshooting may be attempted and if the malfunction persists, the unit will be returned to the Executive Office and a replacement unit provided immediately. The malfunctioning unit will be repaired, placed in the Executive Office inventory, and made available to the next office requiring a replacement.

Return of STU-III terminals will be via U.S. Registered mail. Terminals must be repacked in an original STU-III shipping container with an accompanying Standard Form (SF)-153 transfer report enclosed. Blocks 1-4, 9-12, and 20 should be completed by the sender, together with a brief description of the malfunction noted in the lower part of block 9.

STU-III's immediately replaced will be hand receipted for a permanent transfer basis by the COMSEC Representative and the user in the same manner as original equipment.

### 3-6.120 Information Security

Information Security entails the protection of all material which bears a national security classification or which is considered sensitive to the mission-related responsibilities of the office, e.g., grand jury information, witness information, tax information or other sensitive case information. A documented and well structured program will be instituted to ensure adequate protection, control and access to information received from other agencies in accordance with their requirements and the safeguarding of all national security information as specified in Executive Order 12356; 11652; 28 C.F.R., Part 17; and the current issuance of DOJ Order 2600.4, 2600.3B in DOSM, Vol. II, 2620.4. Receipt, control, transfer, clearance, access and destruction procedures will be developed and placed into effect. These procedures will be tailored to the working environment to achieve the necessary protection but minimize the interference with administrative and operational procedures. See, also DOSM, Vol. I, D.

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## 3-6.121 Grand Jury Information

Refer to DOSM, Vol. I, D-4; Vol. II, DOJ order 2600.4.

## 3-6.122 Limited Official Use Information

Refer to DOSM, Vol. I, D-3; Vol. II, DOJ order 2620.7.

3-6.130 Personnel Security

Personnel Security entails the effective screening, selection, investigation and suitability adjudication of all personnel assets employed by the Executive Office and U.S. Attorney Offices. The Personnel Security Program will meet the requirements of Executive Orders 10450, 10550, 11935, DOJ Order 2610.2 (DOSM, Vol. II) applicable Federal statutes, and other agency requirements as published. Minimum standards will include the development and application of standardized adjudication policies for both competitive and excepted service personnel which are in consonance with applicable regulations and policy and which are consistent with other agencies of government. See, also DOSM, Vol. I, I.

3-6.140 ADP Security

The ADP Security Program entails the procedural and operational security of all information contained in automated systems, the systems themselves and all programming and access to the systems and the information. The ADP Security Program will be implemented in accordance with Pub.L. No. 100-235, The Computer Security Act, 1987; National Bureau of Standards Federal Information Processing Standards (FIPS) Publication 31; 5 U.S.Code; and the current issuance of DOJ Order 2640.2B (DOSM Vol. II). Minimum requirements of the ADP Security Programs will entail the development of contingency plans that will allow the continuation of automated processing in the event of natural disaster or system damage. Procedural guidance will be developed which will employ basic ADP Security safeguards such as separation of functions, access control of the system, protection of the system and equipment from misuse or computer related crime, and control of compromising emanations and safety considerations. Also see, DOJ 2640.3 (DOSM, Vol. II), and DOSM, Vol. I, H.

3-6.150 Loss Prevention

Loss prevention entails the accountability of all government assets against misuse, pilferage and waste and will be instituted in accordance with 41 C.F.R. and the current issuance of DOJ Order 2630.2A (DOSM, Vol. II). Development and utilization of easily accomplished accounting systems for items which enjoy a higher risk of threat and pilferage will be utilized to further the loss prevention effort. These systems and a loss prevention awareness effort will be minimum requirements for all offices.

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### 3-6.160 Security Education and Awareness

Security Education and Awareness is designed to teach all federal employees their basic responsibilities and duties required to perform their respective security functions within their environment. The responsibility rests with each office of the Federal Government to ensure that each person is provided this level of training. The Security Education and Awareness Program will develop cost-effective means of providing general security training to all employees and specialized training to those individuals whose duties are more involved with the security process. Each office will make the widest possible use of training aids and awareness documents to promote and complete understanding of security requirements. See, DOSM, Vol. I, E.

### 3-6.170 Safety and Health Program

It is the policy of the Executive Office for U.S. Attorneys and the U.S. Attorney Offices to administer an Occupational Safety and Health Program (OSHP) to ensure safe and healthful working conditions for its employees while on the job. Effective administration of this program requires that supervisors, employees and the Safety and Health Manager for the Executive Office for United States Attorneys develop and maintain a system which ensures prompt reports, investigations, and corrections of any unsafe and unhealthful working conditions.

Employees are encouraged to report immediately to their supervisors any conditions or situations in any office which they believe may reasonably contribute to an unsafe and unhealthful work site. No employee shall be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition or for other authorized participation in the OSHP activities. See, DOJ Order 1779.2A in DOSM, Vol. II.

### 3-6.171 Responsibilities

Responsibilities in administering the OSHP as set forth in DOSM Vol. I-Vol. II are as follows:

A. The *Director* of the Executive Office for United States Attorneys has overall responsibility for the OSHP. The Director, or his/her designees, shall promote employee awareness of occupational safety and health matters through channels such as the "For Your Information" news bulletin, pamphlets, handbooks, and posters. The Director shall also ensure that the Safety and Health Manager for the Executive Office adheres to the specific requirements and guidelines to maintain an effective Safety and Health Program as outlined in Department of Justice Order 1779.2A (February 12, 1982) in DOSM, Vol. II.

B. The *Safety and Health Manager* is responsible for receiving and investigating reports of unsafe or healthful working conditions and for making every effort to promptly abate such matters. The manager will effect reasonable actions to abate unsafe working conditions within the timeframes set forth in an established abatement plan. If a condition cannot be abated within the specified timeframe, the manager is responsible for notifying the Director, Executive Office for United States Attorneys, his/her designee of the condition, the corrective efforts initiated, the basis for the delay, and a recommended course of action.

C. The *U.S. Attorney* is responsible for establishing an Occupational Safety and Health Committee (OSHC) in his or her office which, pursuant to Department policy, will be composed of at least one management and one nonmanagement employee. The United States Attorney is responsible for designating a member of his/her staff to serve as the OSHC Coordinator. The OSHC will monitor and execute safety and health policies of the program. The OSHC Coordinator will be responsible for reporting to the Safety and Health Manager of the Executive Office any unsafe or unhealthful working conditions. Additionally, each local OSHC will be responsible for the following duties:

1. Monitoring and assisting the safety and health program at establishments under its jurisdiction and making recommendations to the Safety and Health Manager on the operation of the program;
2. Monitoring findings and reports of workplace inspections to confirm that appropriate corrective measures are implemented;
3. Participating in inspections of the establishment, when requested by the Safety and Health Manager;
4. Reviewing and recommending changes, as appropriate, to procedures for handling safety and health suggestions and recommendations from employees;
5. Commenting on standards proposed pursuant to the provisions of Chapter 3 of Department of Justice Order 1779.2A (February 12, 1982) (DOSM Vol. II) when requested by the Safety and Health Manager;
6. Monitoring and recommending changes, as required, in the level of resources allocated and spent on the safety and health program; and,
7. Reviewing OBD, Bureau or other establishment responses to reports of hazardous conditions, safety and health program deficiencies and allegations of reprisal.

### 3-6.172 Incident Investigations

Incident investigations are important and necessary if reoccurrences of the incidents are to be prevented and if general working conditions are to

be reasonably free of safety and health hazards. Investigations will be conducted of the following incidents:

- A. Any employee injury, occupational disease, or death connected with the performance of official duties;
- B. All known public injuries and property damage within the jurisdictional administration of the Department where there is a reasonable possibility of a tort claim to be filed against the United States;
- C. Any fire, regardless of its cost, involving equipment, building structures, or contents of any property under Department control;
- D. Any motor vehicle accident involving Department of CSA motor pool vehicles and those privately owned, commercially leased or legally seized when used on official business; and
- E. Any other property under the control of the Department that is damaged by accident (repair or replaced for any reason other than fair wear and tear) irrespective of the cost to repair or replace such property.

### 3-6.173 Security Incident Reporting

Refer to DOSM Vol. I, G1, 3.

### 3-6.174 Emergency and Contingency Planning

All districts should have a copy of Occupant Emergency Plan. Refer to DOSM Vol. I, G1-2.

### 3-6.180 Storing Firearms

Refer to DOSM Vol. II, DOJ Order 2620.4, para. E, pgs. I-13.

### 3-6.200 UNITED STATES ATTORNEY'S OFFICE SECURITY PLAN

Each U.S. Attorney's Office is required to develop and implement an office security plan containing, at a minimum, the elements listed below. This plan must be reviewed annually prior to May 1 and two copies of any changes or revisions provided to the Facilities Support Staff, Executive Office for U.S. Attorneys. See, DOSM, Vol. I, Vol. II and DOJ Order 2600.2B.

### 3-6.210 Elements of the Security Plan

Elements of the security plan are as follows:

A. General Site Information: This section should contain information regarding the geographical location of the office and a description of the

physical layout, size of the area, age of the building, historical significance of building, which numbered floors are occupied by this office, etc.

B. Threat Information: This section should briefly describe any unusual considerations which should be taken into account in determining security systems for the office complex. Information concerning the crime rate in the area or in the building should be considered and is available from the General Services Administration representative in the form of a 'GSA Risk Matrix'. Additional considerations to be placed in this section would be the location of a Communist Bloc diplomatic mission within 50 miles of the office; unusual case trends which increase the threat to employees; etc.

C. Security Responsibilities: A brief description describing the assignment of security responsibilities and the number of positions involved from the District Office Security Manager to those individuals who assist him/her in meeting known security requirements (ADP Security—Systems Manager, etc.).

D. Physical Security: Describe in detail the physical security systems used, such as:

1. Present Security System. A brief description of the present security system in place, both hardware and procedural. This description should indicate the security employed at the point of entry to the building as well as that used within the office space occupied by the United States Attorney. Specific items of interest are: type of guards utilized; whether or not magnetometers are used; hours of guards; who provides emergency response (during the day and during non-working hours); how access to the building is gained during non-working hours; what other government offices are located nearby which can offer assistance (FBI, USMS), etc.

2. Access Controls. A brief description of the procedures by which persons gain access to the United States Attorney offices to include an explanation of when the office is cleaned and whether or not cleaning personnel are supervised. Other spaces within the office complex which employ a compartmented access control such as computer rooms, secure storage/vault areas, financial collection spaces, secure conference rooms, etc., should be listed together with an explanation of the compartmented system being utilized.

3. Grand Jury Room. Describe the location and physical security of the grand jury room. Include an evaluation of the susceptibility of the grand jury room to physical penetration during both working and non-working hours, an evaluation of whether or not conversation from within the grand jury room can be overheard outside should also be included together with an estimate of the ease with which witnesses may be brought into the room undetected.

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E. Information Security: A brief description of each type of material held to include, national security information, tax information, grand jury information, etc., the volume and the storage facilities used to protect it. This section should also discuss office practices with respect to the protection of case files and files containing other sensitive information when such files are not in their storage containers, both during working as well as non-working hours; a description of the procedures and equipment utilized for document destruction; the estimated quantity (in cubic feet) of material destroyed monthly; any use of private contractors to perform destruction, etc.

F. ADP Security: A brief description of how the program complies with the requirements of DOJ Order 2640.2. Specific points to be covered are the designation of the ADP Facility Security Officer, the results of the latest risk analysis, when the risk analysis was last updated, local policies and procedures developed, description of audit trail procedures, backup file procedures, access control, data encryption system employed, etc.

G. Contingency Planning: A description indicating the development and use of contingency plans for bomb threats, alternate information storage, natural disaster; inclement weather; for flood or fire, etc. This section should also include estimates for off-site emergency requirements such as: space requirements; storage requirements; transportation, financial and personnel support; etc.

H. Personnel Security: Briefly describe the applicant screening process and position sensitivity determination procedures utilized and indicate whether or not they comply with DOJ policy. This section will also contain information concerning the background investigation update program and the procedures utilized for the assignment of personnel to the Organized Crime and Drug Enforcement Task Force (OCDETF).

I. Emergency Planning: This section will contain a complete description of the Occupant Emergency Plan (OEP) in place and any special provisions which have been established in support of the plan. Specific items which are to be included are: whether or not this office is the prime tenant in a Federally owned facility; if the plan makes provisions for communications, a command center, serious illness, injuries or mechanical entrapment; identification of emergency medical resources; identification of employees trained in first aid/CPR; evacuation procedures; designation of key individuals and assignment of duties; bomb threat, search and removal procedures; etc. Additionally, if this office has been designated as a Federal Emergency Management Association (FEMA) Regional Emergency Coordinator, sufficient explanation concerning the development and general provisions adopted in support of this program will be provided. Of specific importance is a description of liaison procedures utilized between the Regional Emergency Coordinator and the District Emergency Coordinators.

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J. Safety: This section will provide a description of the Safety and Health Program presently in place. It should include a discussion concerning the procedure, local policies or unique provisions which have been developed to further the goals and objectives of the health and safety program. Any unusual or unique situations which impact on the safety and health of employees or in the fulfillment of safety and health objectives should also be provided together with a description of the efforts taken to alleviate them and the measure of success enjoyed.

K. Education and Training: Each office will provide information in this section to indicate the existence and content of all training and awareness efforts which provide for the orientation, training, and awareness briefing of employees in all areas of security and associated disciplines described herein. Included should be the annual training hour objective devoted to each area and the total persons to which this training is intended to reach.

L. Deficiencies: This section of the plan should identify security deficiencies for each of the elements of the plan. It should be explained whether the deficiency is due to the office procedure, resource limitation or other factors such as building design, etc. Following the description of each deficiency, the remedial steps being taken should also be described.

M. Dissemination of Plan: This section will contain comments indicating that the plan has been provided to the Executive Office for United States Attorneys as required and describing its local dissemination to office personnel in furtherance of the security and awareness program.

### 3-6.300 TAX RETURNS AND TAX RETURN INFORMATION

The policies and procedures herein established are designed to preclude the unauthorized disclosures of tax returns and tax return information coming into the custody of the Executive Office for U.S. Attorneys and offices of the U.S. Attorneys. This is to establish minimum standards governing the transmission, custody, and disclosure of tax returns and tax return information, consistent with the provisions of safeguard requirements of Section 6130(p)(4) of the Internal Revenue Code. See, DOJ Order 2620.5A (DOSM, Vol. II) and DOSM, Vol. I, D-6.

### 3-6 310 Individual Responsibility

The effectiveness of this tax return and tax return information security program depends upon the alertness, reliability, and discretion of every individual who receives tax returns and tax return information. The importance of effective security and of the position of trust imposed upon each individual who has possession, access, or control of such information is

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indicated by the criminal penalties imposed by 18 U.S.C. § 1905 and 26 U.S.C. § 7213.

### 3-6.320 Access To and Dissemination and Control of Tax and Tax Information

The following principles and requirements will be adhered to in the Executive Office for United States Attorneys and the offices of the United States Attorneys.

A. Access to tax returns and tax return information shall be limited to those employees of the Executive Office designated by the Director or the Director's designee and in the case of United States Attorneys' offices, by the United States Attorney, or his/her designee(s) as having a need for such returns and information in connection with the carrying out of their official duties. No person shall be entitled to knowledge or possession of access to, tax returns and tax return information solely by virtue of his/her office or position.

B. Tax returns and tax return information shall not be disseminated to or discussed with or in the presence of unauthorized persons.

C. Any person who has knowledge of the loss or possible compromise of any tax return or tax return information shall promptly report the circumstances to the Director in the case of the Executive Office for United States and to the United States Attorney in the case of reports from the offices of the United States Attorney. The United States Attorney shall report to the Director of the Executive Office for United States Attorneys who will be responsible for investigating and preparing recommendations to the Deputy Attorney General as to any follow-up action that may be required.

### 3-6.330 Physical Control Over Tax Returns and Tax Return Information

The Director, Executive Office for United States Attorneys, and the United States Attorneys or their designees shall be responsible for maintaining, as a minimum, control over tax returns and tax return information consistent with security requirements provided below.

A. When documents cannot be personally transmitted between authorized recipients, the transmittal of tax returns and tax return information and related working papers shall be transferred by registered mail with a return receipt requested and labeled, "LIMITED OFFICIAL USE: TO BE OPENED BY ADDRESSEE ONLY" to be signed by the receiver or a designated representative who is authorized access to the returns and tax return information.

B. To avoid inadvertent disclosures to unauthorized persons, federal tax information must be kept separate from other information to the maximum extent. In situations where physical separation is impractical, such files should be clearly labeled to indicate that federal tax information is

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included and care should be taken to remove all such federal tax data to preclude access by any unauthorized persons.

Tax returns and tax return information and related information and related working papers shall be stored under the sole control of designated employees who are authorized access to tax returns and tax return information. When copies of tax returns and tax return information and related working papers are no longer needed, they shall be, in lieu of any other written directive, destroyed under the supervision of a designated representative who is authorized access to tax returns and tax return information. A written report of this destruction, identifying the papers, will be retained for a period of 10 years and later incorporated into the respective Records Disposal Programs of the office in question. Original IRS documents shall be returned to the IRS. No office is authorized to retain custody of original tax returns except by special arrangement with the Commissioner of Internal Revenue or his/her designee.

### 3-6.331 General

The following guidelines are to assist in developing procedures and standards to ensure compliance with this order and in conformance with Section 6103(p)(4) of the Internal Revenue Code. If assistance or equipment, such as locked files are required, please contact the Assistant Director, Facilities Management and Support Services Staff, in writing, stating your specific requirements.

A. Disposal of Tax Information Upon Completion of Use: The Tax Reform Act of 1976 requires that certain actions be taken by users of federal tax information in order to protect its confidentiality.

Recipients will either return the information (including any copies made) to the office from which it was originally obtained or make the information undisclosable and furnish a written report describing the manner in which the information was made undisclosable to such office.

The following precautions should be observed when federal tax information is destroyed:

1. Material furnished by the Internal Revenue Service and recipient-generated material such as extra copies, photo impressions, computer printouts, carbon paper, notes and work papers should be destroyed by burning, mulching, pulping, shredding, disintegrating, or handcutting.

2. Burning precautions: The material is to be either burned in an incinerator that produces enough to burn the entire bundle or the pages should be separated to ensure that all papers are consumed.

3. Shredding precautions to make reconstruction more difficult—the paper should be inserted so that lines of print are perpendicular to the

cutting line; small amounts of shredded paper should not be allowed to accumulate in the shredder bin. The paper should be shredded to effect  $\frac{1}{4}$  inch wide or smaller strips, microfilm should be shredded to effect  $\frac{1}{35}$ -inch by  $\frac{3}{8}$ -inch strip.

4. Pulping should be accomplished in such a manner that all material is reduced to particles one inch or smaller.

5. Disintegrating should be accomplished with a  $\frac{1}{2}$  inch or smaller screen.

6. Federal tax data in identifiable form must never be released to private contractors for unsupervised destruction. Destruction of the data should be witnessed by an employee authorized access to tax returns and tax return information.

7. After it has served its purpose, magnetic tape containing federal tax data must not be made available for reuse by other offices or released for destruction without first being subjected to electromagnetic erasing. If reuse is not intended, the tape should be destroyed by cutting into lengths of 18 inches or less or by burning to effect complete incineration.

8. If it is necessary to have magnetic disc packs which contain federal tax data refurbished by the manufacturer, the work must be accomplished on site. If this cannot be done, the disc pack should be purposely and obviously damaged prior to discard.

B. Inspections: Periodic inspections will be conducted during the year by the Executive Office for United States Attorneys and the IRS Auditing Teams to ascertain that safeguards are adequate. These safeguard reviews will be accomplished pursuant to written procedures which provide for inspection of all United States Attorney offices and the Executive Office for United States Attorneys.

If there are inspections other than those performed internally or by the IRS or GAO, access to federal tax information may not normally be permitted.

Safeguard inspections will include such items as:

1. The storage and handling of federal tax information;
2. A review of how access to federal tax information is granted to employees;
3. An assessment of physical security;
4. Verification that federal tax information has not been commingled with other information in such a way that its confidentiality could be inadvertently compromised;

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5. After-hours security;
6. Review of who has access to combination safes and changes of combination;
7. Analysis of security procedures and instructions to employees;
8. Examination of waste disposal procedures;
9. Interviews of those charged with security responsibilities;
10. Review of planned organizational changes to assure that security considerations are covered.

The Tax Reform Act of 1976 provides that safeguards are subject to review by the Internal Revenue Service and the General Accounting Office (GAO), including your written procedures and inspection findings.

C. Control Over Tape Processing: Processing of federal tax information in magnetic tape mode (including tape reformation or reproduction, or conversion to punch cards or hard copy printout) must be performed only under the immediate supervision and control of authorized employees of the Executive Office for United States Attorneys and offices of the United States Attorneys in a manner which will protect the confidentiality of the information on the magnetic tape file.

Accordingly, in those cases where computer facilities are shared with other agencies, the Executive Office for United States Attorneys and the offices of the United States Attorneys may only permit their own employees access to magnetic tapes containing federal taxpayer information.

If it is necessary to use the services of a private contractor or employees of another office which does not have designated access from the Executive Office for United States Attorneys and offices of the United States Attorneys, an employee designated access to tax returns and tax return information must be present at all times during the computer run. Under no circumstances should private contractors or non-Executive Office for United States Attorneys and United States Attorneys' employees be permitted unsupervised access to the tapes or any access to output generated as a result of processing such tapes.

Control over tapes must never be relinquished to a private contractor (or another office) even if the purpose is merely to erase old tapes for reuse.

D. Security of Magnetic Tapes: Magnetic tape files should be kept in a secured area under the immediate protection and control of an employee having access to tax returns and tax return information and who has been properly designated that access by competent authority.

If you cannot maintain an area to house the tapes which is restricted solely to your office, special measures must be taken to protect the confidentiality of the data. For example, if the master file tape is kept in a general data processing facility, the tape must be stored in a locked cabinet and the keys must be only in the possession of employees so designated access to tax returns and tax return information.

Tape reels, when not in storage, must never be left unattended. When not in use they are to be promptly returned to the storage area.

Good security practices requires that inventory records of tapes be maintained for purposes of control and accountability. Such records should show the receipt, movement and ultimate disposition of our magnetic tapes.

E. Employee Awareness of the Need for Security: All employees should be thoroughly briefed on all security procedures and instruction on tax returns and tax return information requiring their awareness and compliance. Periodic reorientation sessions should be conducted to ensure that all appropriate employees adhere to all security requirements.

Employees should be advised of the provisions of § 7213(a) of the Internal Revenue Code which makes unauthorized disclosure of information from a federal income tax return a crime that may be punishable by a \$5,000.00 fine, five years imprisonment, or both. As part of the awareness program copies of the law should be provided to each affected employee.

Employees who have access to federal tax information should also be advised of the provisions of § 7217 of the Internal Revenue Code which permits taxpayers to bring suit for civil damages in a United States district court for unauthorized disclosure of returns and return information. This section allows for punitive damages, as well as actual damages, and provides that in no case shall a plaintiff entitled to recovery be awarded less than the sum of \$1,000 with respect to each instance of unauthorized disclosures as well as the cost of the action.

F. Recordkeeping and Reporting Requirements of the Tax Reform Act of 1976: United States Attorney offices are required to establish a permanent system of standardized records of requests by or to it for disclosure of federal tax returns or return information. Thus, the United States Attorneys' records will not only reflect what was obtained from the Internal Revenue Service, but also what additional disclosures were made. These records are to be maintained for a ten year period and must set forth the reason for such request by or to it, and any disclosure made by or to it.

A written report describing the safeguard procedures established and utilized to ensure the confidentiality of federal tax information is to be sent annually to the Director, Disclosure and Security Division, Internal Revenue Service, Room 1603, PM;S;DS, 1111 Constitution Avenue, N.W. Wash-

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ington, D.C. 20224. Copies of the report are to be directed to the Director, Office of Legal Services, Executive Office for United States Attorneys. The initial report should be provided within one month of receipt of such information.

The administrative office or designated official is responsible for enforcing and, when necessary, implementing security regulations or procedures within each office.

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U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

JUL 12 1990

TO: Holders of United States Attorneys' Manual Title 1  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*LSM* Laurence S. McWhorter  
Director

RE: Credit for Multi-District Forfeiture Cases

NOTE: 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to Holders of Volume I, USAM.  
3. Insert in front of affected section.

AFFECTS: USAM 3-7.110

PURPOSE: This bluesheet sets forth procedures for crediting work done in multi-district asset-forfeiture cases.

As the Department of Justice has placed greater emphasis on Asset Forfeiture, the need for an accurate accounting system of the assets being forfeited by the United States Attorneys' offices has arisen. The United States Marshals Service (USMS) statistics reflect only the monies they put in the Assets Forfeiture Fund in the district of deposit. This method of accounting does not accurately reflect the total monies being forfeited by the Asset Forfeiture Unit of the United States Attorney's office for that district. For example, when a United States Attorney's office forfeits an asset in another district or gives assistance to another district to complete a forfeiture and/or execute a forfeiture order, credit should be given to each United States Attorney's office participating in the case.

Pursuant to my memorandum regarding credit for Asset Forfeiture work issued July 19, 1990, new emphasis is being placed on the Asset Forfeiture statistics reported into the individual United States Attorneys' offices' case management systems (PROMIS, PC-USACTS, and USACTS-II). The following procedures should be followed to ensure that your district

receives the appropriate credit when more than one district is involved in a forfeiture case.

#### NEW ACCOUNTING PROCEDURES FOR MULTI-DISTRICT FORFEITURE CASES

When multiple districts are involved in a forfeiture case, the Assistant United States Attorneys (AUSAs) should agree at the beginning of the forfeiture case on an approximate percentage to be credited to their respective districts based upon anticipated work hours and other factors. If the proportion of work on the forfeiture case has changed among the districts when all of the assets have been disposed of (this includes real property), the agreement should be modified.

The following factors should be considered by the AUSAs:

- o Number of AUSA and support staff work-hours spent on the criminal prosecution and the criminal and/or civil forfeiture case by the United States Attorney's office during the investigation and the prosecution of the case;
- o District which initiated the criminal investigation and the criminal and/or civil forfeiture case;
- o Number of AUSA and support staff work-hours spent in post-forfeiture issues such as disposition of real property and resolution of equitable sharing requests.

When a determination is made regarding the percentage of the monies to be credited to the participating United States Attorneys' offices, the AUSAs are to advise their financial litigation unit of the dollar amount to be credited to their district. The financial litigation unit should then report this case like all other forfeiture cases.

#### PROCEDURES FOR DISAGREEMENT ON MULTI-DISTRICT CREDIT

If an agreement cannot be reached by the AUSAs involved in a multi-district forfeiture case, the matter should be referred to the United States Attorneys in each district involved in the forfeiture for a determination of the credit each district is to be awarded using the factors above.

If the United States Attorneys are unable to reach a decision, a request shall be made to the Director of the Asset Forfeiture Office (AFO) to convene a three-member panel consisting of a representative from EOUSA, a representative from AFO, and a representative from the Executive Office for Asset Forfeiture. This panel will determine the percentage of monies

to be credited to each district involved in the forfeiture case. Each district will submit a memorandum stating the credit that is being sought by that district and a justification for its position. The panel will make a decision within 30 days of receipt of the memoranda from all the districts involved in the forfeiture case. The panel's decision will be final.

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Office of the Director

Washington, D.C. 20530

June 27, 1995

TO: Holders of United States Attorneys' Manual  
Title 3.

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*Carol DiBattiste*  
Carol DiBattiste  
Director

RE: Prevention of Sexual Harassment

- NOTE:
1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.521
  2. Distribute to holders of Title 3.
  3. Insert in front of USAM 3-9.000.

AFFECTS: USAM 3-9.000

PURPOSE: This Plusheet clarifies current policy requiring the districts to establish Prevention of Sexual Harassment Contact Persons.

\*\*\* NOTE: USAM 3-9.500 is added to USAM 3-9.000.  
Other sections of 3-9.000 remain unchanged.

3-9.500 PREVENTION OF SEXUAL HARASSMENT CONTACT PERSONS

Pursuant to the Attorney General's mandate for the prevention of sexual harassment, each district is required to designate a Prevention of Sexual Harassment Contact Person. Large districts may appoint more than one Contact Person. The purpose of this requirement is to enhance existing program efforts to eliminate sexual harassment by establishing a procedure outside the existing equal employment opportunity and grievance processes.

Districts may not appoint a manager or supervisor as the Contact Person. Appointing a manager may result in a conflict of interest because of the different roles of managers and Sexual Harassment Contact Persons. Managers must make decisions and take appropriate action after an independent fact-finding. To appoint a Contact Person who is a member of management would tend to blur the two functions.

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3-11.000 CIVIL PREJUDGMENT DEBT COLLECTION ACTIVITY

## 3-11.100 REFERRAL OF CLAIM FROM AGENCY

3-11.110 Claims Collection Litigation Report

The Federal Claims Collection Standards (4 C.F.R. Parts 101 to 105) prescribe regulations which agencies must follow to collect, compromise, and suspend or terminate collection action on their claims. The Standards further provide for the referral of administratively uncollectible agency claims to the Department of Justice for litigation. Agencies are required to provide certain information to the Department when referring claims for litigation and enforced collection. See 4 C.F.R. § 105.1 *et seq.* The Financial Litigation Staff, with the support and cooperation of the General Accounting Office, developed the Claims Collection Litigation Report (CCLR) as the standard report to provide this information. On January 20, 1983, the General Accounting Office officially implemented the CCLR for uniform use by all agencies when referring administratively uncollectible claims to the Department of Justice for litigation and enforced collection.

Unless an exception has been granted by the Financial Litigation Staff, in consultation with the General Accounting Office, agencies are required to provide a completed CCLR with each claim that is referred. See 4 C.F.R. § 105.2. U.S. Attorneys' offices are responsible for ensuring that agencies comply with the requirements set forth in the CCLR package. These requirements should be addressed with local agency representatives when claims are referred without the CCLR, or the CCLRs provided are inadequate. The Associate Director for Financial Litigation should be advised of any problems which cannot be resolved or continue to persist at the local level. The Financial Litigation Staff will work with agency headquarters personnel to resolve them.

It is important to bear in mind that some of the items of information requested on the CCLR may be superfluous to a particular agency's claims or impossible for the agency to obtain. The agency's inability to obtain all information required on the CCLR should not be viewed as a bar to the referral of a claim for litigation. However, information requested on the CCLR should be provided to the extent feasible and any omissions should be explained by the agency on the face of the CCLR.

Copies of the CCLR package were provided to all United States Attorneys' offices in January 1983, when the package was officially implemented. The Financial Litigation Staff can provide one or several additional copies to a U.S. Attorney's Office upon request.

The Financial Litigation Staff developed a Short Form CCLR for use by agencies in referring claims of \$5,000 or less, including interest, administrative costs and penalties. Agencies will prepare the Short Form and

accompanying referral package using the instructions included in the January 20, 1983, CCLR package. If properly prepared, the Short Form CCLR should provide United States Attorneys with adequate information to handle the majority of uncontested debt claims referred by agencies.

The General Accounting Office officially implemented and distributed the Short Form CCLR to all agencies on March 14, 1986. Copies were provided to United States Attorneys' offices at that time. The Financial Litigation Staff can provide additional copies to a U.S. Attorney's Office upon request.

### 3-11.120 Review of CCLR and Claim Referral Package

Financial Litigation Unit personnel should know and fully understand the requirements set forth in the Federal Claims Collection Standards and CCLR package, and the importance of these requirements in their review of claim referral packages and their financial litigation work.

Within five (5) working days after receiving a claim from an agency, Financial Litigation Unit personnel shall (1) determine whether the claim is accompanied by a CCLR, and (2) review the CCLR to verify that the information requested on the report and required under the Standards has been provided.

### 3-11.121 Deficient CCLR and Claim Referral Package

If the CCLR and accompanying claim referral package is deficient and the deficiency cannot be resolved expeditiously with a minimum of effort, a deficiency or declination letter shall be immediately prepared and used to return the claim to the agency. This letter will inform the client agency of the specific reason(s) why the claim is considered deficient and that the U.S. Attorney presently declines to litigate and enforce collection. The letter will also serve to notify the agency to update their debtor file or automated data system so that the claim is removed from "Referred to United States Attorney" status.

A claim may be considered deficient for one or more of the following reasons:

- A. Referral made beyond statute of limitations date (4 C.F.R. § 105.1(a));
- B. Debtor does not reside in the district;
- C. CCLR not provided (4 C.F.R. § 105.2(1));
- D. Debtor's current address not provided (4 C.F.R. § 105.2(a)(2));
- E. Current credit data not provided (4 C.F.R. § 105.2(a)(3));

F. Credit data provided does not indicate that there is a prospect of effecting enforced collection from the debtor (4 C.F.R. § 105.2(a)(3));

G. Referral not accompanied by summary and supporting documentation of actions taken by agency to collect or compromise a claim (4 C.F.R. § 105.2(a)(1));

H. Supporting documentation deficient;

I. Claim is less than \$600 and without other merit (4 C.F.R. § 105.4);

J. Claim lacks litigative merit; and

K. Cost to be incurred through litigation exceeds amount of debt.

The specific reason(s) why the referral is considered inadequate shall be identified and explained in the deficiency or declination letter sent to the agency.

Suit shall not be filed on any claim which is referred after the applicable statute of limitations period has expired. Such claims shall be immediately declined and returned to the agency using the deficiency or declination letter. It is important to remember that all agencies are required to refer claims to the Department of Justice as early as possible, consistent with aggressive agency collection action and, in any event, well within the period for bringing a timely suit against the debtor. 4 C.F.R. § 105.1(a).

### 3-11.122 Complete CCLR and Claim Referral Package

As soon as it is determined that the CCLR and accompanying referral package is complete, the claim shall be opened in PROMIS, USACTS, USACTS II or the United States Attorneys' Docket and Reporting System. An acknowledgment letter shall be promptly sent to the referring agency to officially notify the agency that the claim has been received and provide the agency with the United States Attorney Claim Number (USAO Number).

It is most important that the acknowledgment letter and all subsequent correspondence with the agency provide both the USAO number and the Agency File or Claim Number. This will enable the agency to enter the U.S. Attorney's identifying number into their debtor file or automated data system and, thus, allow for cross-referencing and claim reconciliation needs. For this same reason, all debtor records in PROMIS, USACTS, USACTS II or the Docket and Reporting System must include the Agency File or Claim Number and the debtor's Social Security Number or taxpayer identification number.

### 3-11.130 Prejudgment Demand

Each U.S. Attorney's Office can best determine whether a prejudgment demand letter should be sent to the debtor. Many offices have determined

that the demand letters which the agency sends to the debtor are sufficient and that any further demand is unnecessary and counterproductive. These offices proceed directly with the filing of a complaint. The Financial Litigation Staff strongly urges that, except in unusual circumstances, prejudgment demand letters not be used.

If the demand letter is returned by the Postal Service without a change of address and a good address cannot be obtained expeditiously with a minimum of effort, the claim shall be returned to the agency using the deficiency or declination letter.

Once the demand letter has been sent, the date established in the letter for full payment shall be entered into the automated tickler system maintained on PROMIS, USACTS, USACTS II or the word processing system. If full payment or an appropriate offer to repay is not received from the debtor by this date, the Financial Litigation Unit shall immediately file a complaint against the debtor in U.S. District Court.

#### 3-11.131 Response from Debtor Prior to Filing Suit

If the debtor responds to the demand letter, acknowledges the debt and requests to enter into an installment repayment plan, the debtor shall be required to complete and sign a Form OBD-100, Financial Statement. If an installment repayment plan is justified based upon a review of the Financial Statement, the debtor shall then be required to *execute a consent judgment and that judgment entered immediately with the court*. The consent judgment shall be for an amount equal to the principal amount of the debt plus all prejudgment interest, administrative costs and penalties payable to the date of judgment, and court costs. The client agency shall be promptly notified of the entry of the judgment.

The use of confession-judgment notes (sometimes referred to as "Cognovit notes") or promissory notes containing agreement for judgment is not acceptable. A claim shall remain in prejudgment status only in those instances where the debtor agrees to pay the debt in full within 30 days and executes a consent judgment with the understanding that the judgment will be entered with the court if full payment is not received within 30 days. When this is done, the date established for receipt of full payment shall be entered into the automated tickler system to ensure timely followup. If the debtor makes payment in full within the established 30-day period, both the case file, containing the executed consent judgment, and the debt record on PROMIS, USACTS, USACTS II or the Docket and Reporting System should be closed. Whenever full payment is not received within the 30 days, the executed consent judgment shall be entered immediately with the court and enforced collection efforts initiated.

The reason for this policy is twofold. First and foremost, claims are referred to the U.S. Attorney for litigation and enforced collection and,

once a determination has been made to pursue a claim, the government's interests should be promptly secured. Given that the debtor has been provided ample opportunity to arrange for repayment of the debt prior to referral, it is counterproductive for the U.S. Attorney to provide further opportunity for repayment without first securing the government's interests.

The U.S. Attorney shall personally approve and set forth in writing for the Financial Litigation Unit any exceptions to this policy which are required for the handling of unusual types of situations or claims. Any approved exceptions shall be incorporated into the United States Attorney's Financial Litigation Plan.

The terms for repayment should be set forth within the body of a separate, written installment repayment plan or letter of agreement. If the terms for repayment are included in the consent judgment, such consent judgment shall also provide for future modification of the terms upon stipulation of the parties. This will allow for increases in the debtor's monthly payment amount when justified by updated financial information.

Financial Litigation Unit personnel should always endeavor to increase the amount of a debtor's monthly payment so that the debt is liquidated in the shortest period of time possible. Updated financial information should be obtained from the debtor and reviewed at least every six months to one year. Appropriate dates should be entered into the automated tickler system to ensure that the updated financial information is periodically obtained and reviewed.

#### 3-11.140 Filing Suit

Pursuant to an Office of the Inspector General finding made during a Fiscal Year 1990 United States Attorney's office inspection, routine, fully-documented referrals for debt collection action should be filed within 30 days of receipt. More complex referrals which may require additional preparation time should be filed within 45 days. Incomplete referrals should be declined immediately.

These guidelines apply generally to debt collection referrals which are routine in nature. These guidelines should be considered but are not mandatory for referrals which raise unusual issues under Rule 11 of the Federal Rules of Civil Procedure or where the referral is made during an ongoing fraud investigation or for referrals which involve similar types of issues.

#### 3-11.141 Service of Summons and Complaint

#### 3-11.142 Service of Summons and Complaint by Mail

Service of the summons and complaint upon the debtor may be made by mail in accordance with Fed.R.Civ.P. Rule 4.

A deadline date of 20 days for the debtor's return of the Notice and Acknowledgment for Service by Mail shall be entered into the automated tickler system to ensure timely followup.

If the envelope addressed to the debtor is returned by the U.S. Postal Service without a change of address, and a good address cannot be obtained with a minimum of effort, the claim shall be promptly returned to the agency using a deficiency or declination letter. If the Postal Service provides a new address for the debtor, service of the summons and complaint by mail may be attempted again.

### 3-11.143 Acknowledgment of Service by Mail Not Returned

When the Acknowledgment for Service by Mail is not returned by the debtor within 20 days after mailing, a U.S. Marshals Service Form 285 shall be prepared and delivered with the summons and complaint to the U.S. Marshal for personal service. An appropriate deadline date for the return of service shall be entered into the automated tickler system to ensure timely followup. If the debtor cannot be located by the U.S. Marshal, the claim shall be returned to the agency using a deficiency or declination letter.

Upon receipt of the U.S. Marshal's return of service, a deadline date 25 days from the date of service shall be entered into the automated tickler system. If the debtor fails to file an answer within the 20 days provided under Fed.R.Civ.P. Rule 12(a), a Declaration and Request for Default and Default Judgment shall be filed with the court by that deadline date. The default judgment should be for an amount equal to the principal amount of the debt plus all prejudgment interest, administrative costs and penalties payable to the date of judgment, and provide for postjudgment interest and costs of suit. The judgment should include an itemization of the principal amount of the debt, prejudgment interest, and administrative costs and penalties.

### 3-11.144 Acknowledgment of Service by Mail Returned by Debtor

If the debtor returns the Acknowledgment for Service by Mail, a deadline date of 25 days from the date of return shall be entered into the automated tickler system. A Declaration and Request for Default and Default Judgment shall be filed with the court no later than that date if the debtor fails to file an answer within the 20 days provided under Fed.R.Civ.P. Rule 12(a).

The debtor may communicate his or her desire to enter into an installment repayment plan before a Default Judgment is filed with the court. In this case, the debtor shall be required to complete and sign a Form OBD-500, Financial Statement. If an installment repayment plan is justified based upon a review of the Financial Statement, the debtor shall be required to

execute a consent judgment and that judgment should be entered immediately with the court.

### 3-11.150 Debtor Files an Answer to Complaint

When an answer is filed by the debtor, the Assistant U.S. Attorney responsible for financial litigation will proceed with the litigation of the merits of the claim. If in the answer the debtor admits that he is indebted to the United States as stated in the complaint or raises only immaterial issues such as prior inability to pay, the Assistant U.S. Attorney should move immediately for judgment in favor of the United States.

The debtor may wish to stipulate to judgment subsequent to filing an answer. The Assistant U.S. Attorney shall require as preconditions to the stipulation:

- A. That the debtor submit a Form OBD-500, Financial Statement;
- B. That the stipulation contain a proviso that the debtor notify the United States Attorney's office in writing of any change of address; and
- C. That the stipulation contain a proviso that the debtor will accept service of process by mail at the address provided on the Financial Statement or address subsequently provided by the debtor.

If the court declines to award judgment, the claim shall be promptly returned to the referring agency.

### 3-11.200 CIVIL POSTJUDGMENT FINANCIAL LITIGATION ACTIVITY

#### 3-11.210 Initial Postjudgment Activity

##### 3-11.211 Reporting the Judgment

As soon as the judgment is entered by the court, the PROMIS, USACTS, USACTS II or Docket and Reporting System shall be updated to show that the judgment has been obtained.

##### 3-11.212 Perfecting the Judgment

Upon the entry of any judgment (whether by default, stipulation, court determination, or by the referral of a judgment from another district), immediate action shall be taken to perfect the judgment as a lien. Such action should be in accordance with controlling state law. Special care should be taken to ensure that the judgment is perfected as a lien in the county in which the debtor resides as well as any other county in which the debtor owns real property.

In most instances, the judgment should be satisfied within this period of time. However, care should be taken so that, if necessary, the lien is

renewed in a timely manner. An appropriate date prior to expiration of the lien shall be entered into the automated tickler system for this purpose. If the case is subsequently closed without collection and returned to the agency, the closing letter shall advise the agency to notify the United States Attorney's office if the agency wants the judgment lien renewed.

### 3-11.213 Bill of Cost

Upon entry of a judgment, the Financial Litigation Unit should present a Bill of Cost to the Clerk of the U.S. District Court. The amount of any costs taxed by the Clerk shall be included in the letter notifying the agency of entry of judgment. Of course, a Bill of Cost should also be presented for the recovery of any subsequent costs, and the agency promptly informed of the amount of such costs once taxed by the Clerk.

### 3-11.214 Notice of Entry of Judgment to Client Agency

The client agency shall be promptly notified of the entry of the judgment. Except in unusual circumstances, copies of judgments shall *not* be provided to the agencies. Generally, agency personnel responsible for updating individual debtor, automated system or accounting records are members of non-legal staffs. Often they do not understand and, thus, misconstrue the terms of the judgment and the specific monetary relief granted. This results in discrepancies between United States Attorney and agency debt records, particularly with respect to postjudgment principal and interest balances. The letter of notification should contain the necessary information to enable the agency to properly update their records and maintain accurate balances. The letter will also serve as a request for any supplemental ability to pay information which the agency may have obtained subsequent to referring the claim.

### 3-11.220 Postjudgment Demand

Immediately following expiration of the 10-day appeal period, a letter shall be mailed to the debtor providing notice of entry of the judgment and demanding payment in full within a time certain. The period of time established for full payment from the debtor shall not exceed 30 days from the date of the letter.

The date by which full payment should be received from the debtor shall be entered into the automated tickler system to ensure timely followup. If full payment or an appropriate offer to repay is not received by this date, enforced collection proceedings shall be initiated immediately.

### 3-11.221 Debtor Responds to Postjudgment Demand

### 3-11.222 Debtor Offers to Make Installment Payments

Prior to expiration of the time established in the demand letter for full payment, the debtor may respond and offer to make installment payments

to satisfy the judgment. When this occurs, the debtor shall first be required to complete and sign a Form OBD-500, Financial Statement.

Under no circumstances shall an installment repayment plan be agreed to or the terms and conditions of any plan be discussed with the debtor prior to receiving a completed and signed Financial Statement. Complete financial information must first be reviewed by Financial Litigation Unit personnel to determine whether a repayment plan would be appropriate and, if so, to ensure that the maximum monthly payment amount is obtained.

### 3-11.230 Installment Repayment Plans

#### 3-11.231 Establishment of Repayment Plan

An installment repayment plan shall be established only when the debtor is unable to make payment in full, or to obtain suitable financing from a private institution in order to make payment in full. Financial Litigation Unit personnel should always bear in mind the time and cost associated with each installment repayment plan, such as for processing monthly payments and for updating and maintaining debt records.

Establishment of an installment repayment plan shall not be considered unless and until a Form OBD-500, Financial Statement, has been fully completed and submitted by the debtor. Under no circumstances shall an installment repayment plan be agreed to or the terms and conditions of any plan be discussed with the debtor prior to receiving a Financial Statement. All financial information provided must first be reviewed by Financial Litigation Unit personnel to determine whether a repayment plan would be appropriate and, if so, to ensure that the maximum monthly payment amount is obtained and the judgment liquidated at the earliest possible date.

In reviewing the debtor's Financial Statement, full consideration should be given to the enforced collection remedies available to the United States under controlling state law. An installment repayment plan should not be agreed to when the Financial Statement shows the availability of assets or property, real or personal, which could be obtained under state law and the judgment satisfied in a more efficient and timely manner.

All installment repayment plans shall be in writing. Each plan should provide for the entire judgment amount, together with interest and court costs, to become immediately due and payable upon debtor's default on the terms and conditions of the plan. The plan should specifically state that any default on the terms and conditions will entitle the United States to execute on the judgment without notice to the debtor.

Monthly payments shall always be in as large an amount as the debtor is financially able to pay. The minimum amount which may be accepted is \$60.00 per month. Any payment of less than \$60.00 per month shall be reviewed and approved by the Assistant U.S. Attorney responsible for debt collection.

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July 1, 1992

Factors to be considered by the Assistant U.S. Attorney in determining whether to grant an exception shall include the non-exempt assets of the debtor as shown on the Financial Statement, the employment status of the debtor, monthly income remaining after the debtor provides for the "necessaries" of life and health for himself and family, and any extenuating circumstances such as disability or illness. Any agreement to accept less than \$60.00 per month shall be temporary and the debtor shall be so advised. Updated Financial Statements shall be obtained from the debtor and thoroughly reviewed at least every six (6) months to determine whether an increased monthly payment amount is justified. Appropriate dates shall be entered into the automated tickler system to ensure that updated financial information is obtained and reviewed in a timely manner.

The amount of the monthly payment required under an installment repayment plan shall be based upon the following guidelines:

	Total Amount of Indebtedness	Maximum Repayment Period
\$	0 - \$ 900.00	6 months
\$	901.00 - \$ 1,800.00	12 months
\$	1,801.00 - \$ 2,700.00	18 months
\$	2,701.00 - \$ 3,600.00	24 months
\$	3,601.00 - up	36 months

Any exceptions to these guidelines shall be reviewed and approved by the Assistant U.S. Attorney responsible for financial litigation.

### 3-11.232 Judgments in Paying Status Retained by United States Attorney Until Fully Satisfied

Except as provided at USAM 3-11.233, *infra.*, all paying judgments shall be retained by the U.S. Attorney's Office until fully satisfied. Judgments shall not be returned to the referring agency for collection of installment payments. All payments are to be made by the debtor to the United States Attorney's office (made payable to the U.S. Department of Justice) and deposited through the Direct Deposit (Lock Box) System.

The policy does not affect in any way the return of uncollectible judgments to the agencies *for surveillance*.

### 3-11.233 Return of Certain Bankruptcy Cases to Agencies for Collection

An exception to the policy set forth at USAM 3-11.232, *supra*, has been established for certain bankruptcy cases. A U.S. Attorney's Office may return Chapter 11, 12 and 13 bankruptcy cases which remain in good payment status for one year to the referring agency for continued collection, unless fraud or conversion of government property was an issue in the bankruptcy action.



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

August 31, 1995

TO: Holders of United States Attorney's Manual Title 3  
FROM: United States Attorney's Manual Staff  
Executive Office for United States Attorneys

  
Carol DiBattiste  
Director

RE: Return of Bankruptcy cases to Agencies for Collection

NOTE: 1. Distribute to Holders of Volume I, USAM  
2. Insert in front of affected section.

AFFECTS: USAM 3-11.232 and 3-11.233

PURPOSE: This bluesheet replaces the guidelines on the return of  
bankruptcy cases to agencies for collection.

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3-11.232 Judgments in Paying Status in Non-bankruptcy Cases  
Retained by United States Attorney Until Fully  
Satisfied

All paying judgments, other than in bankruptcy cases, see  
USAM 3-11.233, infra, shall be retained by the United States  
Attorney's Office until fully satisfied. Judgments shall not be  
returned to the referring agency for collection of installment  
payments. All payments are to be made by the debtor to the  
United States Attorney's Office (made payable to the U.S.  
Department of Justice) and deposited through the Direct Deposit  
(Lock Box) System.

3-11.233 Return of Bankruptcy Cases to Agencies for Collection

A policy different from that set forth above, at USAM  
3-11.232, has been established for bankruptcy cases under  
chapters 11, 12, and 13, in which there is a confirmed plan which  
provides for repayment to the government. After confirmation of  
a plan takes place, the case shall be returned to the agency for  
monitoring and collection.

If special circumstances exist in a particular case which indicate that there is a likelihood of the debtor, or debtor in possession, defaulting on its terms of repayment to the government under the plan, or other problems exist relating to timely payment or timely notification of default, the United States Attorney's Office may continue to handle the case while monitoring its plan for compliance. At such time, as these special circumstances no longer exist, the United States Attorney's Office shall return the case to the agency for continued collection.

An exception to the policy of returning cases to the referring agency arises when the United States Attorney's Office has reason to believe that there has been fraud or conversion of government property in a bankruptcy case. The case should then be referred to the civil division of the United States Attorney's Office for screening, in order to determine whether there are measures to be taken that would provide for additional civil collections, or if it should be forwarded to the Criminal Division of the United States Attorney's office for possible prosecution.

The United States Attorney's Office and referring agency representatives should coordinate locally to ensure that any bankruptcy case returned to the agency can and will be handled properly. A brief letter must accompany each returned case. This letter shall advise the agency of its responsibility for collection and processing payments under the debtor's plan, and for returning the case to the United States Attorney's Office within 30 days of a default by the debtor on the terms of payment under the plan, for purposes of litigation and enforcement. The letter should include the debtor's full name, the agency's file number, the scheduled payment amount pursuant to the confirmed plan, and the scheduled payment date.

The United States Attorney's Office must also advise the debtor, debtor in possession, or, where distribution is made by a trustee, advise that trustee as well, in writing that the referring agency will be monitoring the debtor's account, that all future payments should be sent directly to the referring agency, and warn the debtor of the consequences of his or her failure to maintain the payment schedule.

The U.S. Attorney's Office and referring agency representatives should coordinate locally to ensure that any bankruptcy case returned to the agency can and will be handled properly. A brief letter must accompany each returned case. This letter shall advise the agency of their responsibility for collecting and processing installment payments and for returning the case to the U.S. Attorney's Office within 30 days of the debtor's default on the terms of the payment schedule. The letter should also include the debtor's full name, the agency's file number, the scheduled payment amount, and the scheduled payment date.

The United States Attorney's Office must also advise the debtor in writing that the referring agency will be monitoring the debtor's account, that all future payments should be sent directly to the referring agency, and warn the debtor of the consequences of his or her failure to maintain the payment schedule.

#### 3-11.234 Default on Installment Repayment Plan

"Default" is defined as the debtor's failure to make a payment within five (5) days of the payment due date agreed to and established in the written installment repayment plan. In the event of a default, a past due notice shall be mailed to the debtor not later than 20 days from the date of default.

The past due notice should clearly advise the debtor that if he or she fails to make payment and cure the default within 10 days of the date of the notice, or fails to make any future payments as scheduled in the plan, the U.S. Attorney's Office will proceed to execute on the judgment without notice.

Under no circumstances shall the missed payment be forgiven. The debtor shall be required to make up the missed payment in order for the default to be considered cured. If the debtor fails to cure the default or provide an appropriate response within 10 days, immediate steps shall be taken to satisfy the judgment out of any non-exempt assets available to the United States under state law.

#### 3-11.240 Enforced Collection Proceedings

When a debtor fails to respond to the postjudgment demand letter or to cure a default on the terms of an established repayment plan, *immediate* steps shall be taken to initiate enforced collection proceedings. The rights and remedies available to the United States as a judgment creditor and exemptions available to the debtor under state law will be considered in determining the most efficient and effective means to satisfy the judgment. Full use should be made of those enforced collection remedies available to the United States under state law.

## 3-11.241 Proceedings Supplementary to and in Aid of a Judgment

## 3-11.242 Discovery to Determine Ability to Pay

Full use shall be made of those discovery methods (*e.g.*, written interrogatories, judgment debtor exams, *etc.*) provided for in the Federal Rules of Civil Procedure whenever financial information is not provided voluntarily by the debtor. If the debtor fails to respond to such discovery requests, those sanctions provided for under the Federal Rules of Civil Procedure shall be pursued promptly and vigorously.

All financial information which is obtained shall be thoroughly reviewed and a determination made on how to proceed to enforce the judgment.

## 3-11.243 Writ of Garnishment

The purpose of the writ of garnishment is to obtain money and credits of the debtor which are in the possession, custody or control of some third party. Garnishment of wages, bank accounts or other funds may be provided for as a judgment enforcement remedy under state law. If such remedy is available, the debtor's financial information should be reviewed to determine whether to obtain a writ of garnishment. State law will generally determine the procedure to be followed in obtaining such a writ.

Once an application for a writ of garnishment has been made, an appropriate deadline date shall be entered into the automated tickler system to ensure that the garnishee (third party) complies with the writ and the money is received. Appropriate deadline dates shall also be entered into the tickler system so that subsequent writs of garnishment, if required under state law, are issued in a timely manner.

If the debtor offers to enter into a voluntary payroll deduction plan subsequent to garnishment, the amount of the monthly payment under such a plan shall not be less than the amount which could be obtained on a monthly basis under a writ of garnishment. Any exception to this policy shall be approved by the Assistant U.S. Attorney responsible for financial litigation. Current financial information should be obtained from the debtor before this action is taken.

## 3-11.244 Offset of Federal Employee Judgment Debtor's Salary

Section 124 of Public Law No. 97-276, 96 Stat. 1195, 1196, provides a postjudgment federal employee salary offset remedy which is separate and apart from the administrative salary offset provisions of 5 U.S.C. § 5514. Section 5514 authorizes federal employee salary offset (of up to 15%) whenever the head of a federal agency has determined that an employee is indebted to the United States. Section 124, though, is limited to instances where a court has determined that a federal employee is indebted to the United States.

Specifically, Section 124 provides that the indebtedness of any federal employee to the United States, as determined by a court of the United States in an action or suit brought against such employee by the United States, may be collected in monthly installments, or at officially established regular pay period intervals, by deductions in reasonable amounts from the current pay account of the employee.

The following types of disposable pay are subject to federal employee judgment debtor offset under Section 124:

- A. Basic pay;
- B. Special pay;
- C. Incentive pay;
- D. In the case of an employee not entitled to basic pay, other authorized pay; and
- E. In the case of an employee who retires, resigns, or whose employment ends for some other reason before collection of the judgment is completed, subsequent payments of any nature due the individual from the paying agency or the United States Treasury.

The maximum amount deducted for any period ordinarily may not exceed one-fourth (25%) of the net disposable pay from which the deduction is made. However, collection should be made during the period the individual is expected to be employed. Therefore, deduction of a greater amount may be necessary to make the collection within the expected employment period. The minimum amount deducted for any period must equal at least 15% of the net disposable pay from which the deduction is made.

If the employee retires, resigns or the employment period ends for some other reason before the judgment is fully satisfied, deductions must be made from subsequent payments of any nature due the individual from the paying agency or the United States Treasury.

The *Federal Personnel Manual System* includes government-wide guidelines which must be followed to initiate and process Section 124 offsets. These guidelines should be reviewed carefully to ensure that all offsets are handled properly.

The guidelines specifically address how offsets will be handled when a federal employee judgment debtor transfers to another agency or separates from federal service before the judgment is fully satisfied. Whenever Financial Litigation Unit personnel know that an employee plans to separate or has separated from federal service and is eligible for retirement, and thus entitled to receive monthly payments from the Civil Service Retirement Fund, a completed Standard Form 2805 and two (2) attested copies of the judgment should be submitted immediately to the Office of Personnel

Management (OPM). This will allow OPM to initiate the recovery of any remaining judgment amount through offset of 25% of each monthly payment made to the employee from the retirement fund.

A Standard Form 2805 and two (2) attested copies of the judgment should also be submitted to OPM in those cases where a Section 124 offset had not been initiated but the judgment debtor is receiving payments from the retirement fund.

It is important to note that if the employee separates from federal service *but is not eligible for retirement*, the employee may request a lump sum refund of all money paid into the retirement fund. Thus, it is necessary that a Standard Form 2805 and two (2) attested copies of the judgment be submitted immediately so that OPM can "freeze" the employee's retirement account *before* a lump sum refund is made. In this situation, OPM will offset as much money as is available and needed to satisfy the remaining judgment amount, not merely 25%.

Once initiated, a Section 124 offset shall not be lifted until the judgment is paid in full.

#### 3-11.245 Execution on Real and Personal Property

Financial information obtained from the debtor may show non-exempt property of a sufficient value to satisfy the judgment in full or in significant part. If so, a writ of execution may be issued and praecipe prepared directing the attachment of the non-exempt property of the debtor and directing its sale for satisfaction of the judgment. Personal property should be liquidated prior to the liquidation of real property. In the event real property is to be liquidated, the agency should agree to the preparation of a preliminary title report to determine feasibility.

The types of property subject to execution and the method of levy as to each are as diverse as there are states. Generally, the law of the state where the property is situated controls the type of property subject to execution and the procedure for execution. Controlling state law should be carefully reviewed.

#### 3-11.300 CIVIL COMPROMISE POLICY

The Attorney General has the inherent authority to compromise any action insofar as it involves the United States, its agencies, or any of its agents who are parties in their official capacities. The Attorney General has delegated settlement authority in civil cases to the several Assistant Attorneys General and certain other officials.

A compromise is an agreement to accept less than the total amount owing in principal, interest and costs. Any compromise amount which is considered shall be based upon the total amount due as of the date of the

compromise (including all accrued interest and costs), and accepted only when it is not in the best interest of the government to pursue the full amount of the debt. Under no circumstances should a case be compromised without advance consultation with the client agency, unless the agency has clearly indicated that some other procedure would be acceptable.

Whenever a claim is compromised, the full compromise amount shall be collected in a lump sum. Any agreement to accept several payments must provide for payment of the *full* compromise amount within 90 days. If several payments are agreed to with full payment within 90 days, the government's claim must be secured by the entry of a judgment. The judgment shall be for an amount equal to the principal amount of the debt *plus* all prejudgment interest, administrative costs and penalties payable to the date of judgment, plus postjudgment interest and costs of suit. When full payment is made as agreed, a Satisfaction of Judgment should be filed with the court. If payment is not made as agreed, immediate steps should be taken to enforce collection of the *full amount* of the judgment.

Following consummation of a compromise, the Financial Litigation Unit shall promptly send the client agency a notice of compromise and a closing letter.

The letter will serve to document for the agency the reason(s) why the claim was compromised. In addition, it will inform the agency of the total amount recovered. All program or creditor agencies are required to report to the Internal Revenue Service the amount of a debt which is written-off or compromised. The amount reported may be determined by the Internal Revenue Service to be taxable income of the debtor. The Internal Revenue Service regulations require all reporting *must be done by the program or creditor agency*. Therefore, it is most important that Financial Litigation Units promptly notify the agency of any compromise and the total amount recovered so that the agency can comply with the reporting requirements. Finally, the letter will serve to advise the agency that any remaining amount shown on their records as due from the debtor should be adjusted to reflect that the claim has been satisfied in full.

### 3-11.400 SUSPENSION AND TERMINATION OF CIVIL POSTJUDGMENT COLLECTION ACTION

#### 3-11.410 Suspension of Collection Action

In some instances the prospects for obtaining a substantial sum through enforced collection proceedings will be so poor that continuation of such efforts would be futile. At the same time, however, future prospects for enforcing collection may be such that the judgment cannot be considered permanently uncollectible. Collection action on such judgments may be suspended. The Assistant U.S. Attorney responsible for financial litiga-

tion should review and approve each case in which suspension is recommended to ensure that such action is appropriate.

Whenever collection action is suspended, appropriate dates shall be entered into the automated tickler system to ensure timely, periodic review. Updated financial information must be obtained from the debtor prior to making each review.

Updated financial information shall be obtained and a re-evaluation of the debtor's ability to pay shall be made *at least* once every six (6) months. In those situations where the debtor's financial situation is expected to improve in the near term (*e.g.*, near term employment prospects or improved income potential), updated financial information should be obtained at least every three months.

Judgments should not be retained in a suspense status for more than two years. If a determination is made that a judgment remains uncollectible after making timely, periodic reviews of the debtor's financial situation over a two-year period, the judgment should be returned to the agency for surveillance or closed as uncollectible.

#### 3-11.420 Termination of Collection Action

#### 3-11.421 Return to Agency for Surveillance

Many judgments which are deemed presently uncollectible may have future collection potential. For example, the debtor may be young, or well educated or may inherit wealth. When this situation exists, a decision must be made on whether to suspend collection action or to return the judgment to the agency for surveillance. By necessity, this decision must be made on a case-by-case basis, giving due regard to the judgment amount, the posture of the debtor, the likelihood for improvement in the debtor's financial situation and the effectiveness of those judgment enforcement remedies available under state law.

In order to return a judgment to the agency for surveillance the following criteria must be met:

A. All other claims arising out of the same transaction have also been reduced to judgment;

B. The judgment is presently uncollectible but has future collection potential, and the U.S. Attorney is not in a better position than the agency to keep the matter under surveillance;

C. The U.S. Attorney is satisfied that, as a practical matter, the transfer will not adversely affect the chances of collection or the amount that will be collected;

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D. The agency is willing to accept the transfer and understands that it is not authorized to undertake final settlement, reduction, or release of any unpaid balance without the specific authorization of the Department of Justice, and all judicial proceedings to enforce or release judgments are to be conducted by the U.S. Attorney; and

E. The U.S. Attorney considers it unlikely that the judgment will be returned for further proceedings.

The transmittal letter returning the judgment to the agency for surveillance shall advise the agency to notify the U.S. Attorney's Office if at some future time documentation can be provided that the debtor is financially able to pay and the case should be reopened. The letter shall inform the agency of the date on which the judgment lien will expire and request that the U.S. Attorney be notified in writing six (6) months prior to that date if the agency wishes to have the judgment lien renewed.

Controlling judgment lien perfection statutes should be taken into account with respect to returning judgments for surveillance. Some state statutes require judgment lien renewal as often as every three years. Where the life of the judgment lien is limited to such a short period of time, the U.S. Attorney's Office should make appropriate arrangements with individual agencies concerning the return of judgments for surveillance.

If, subsequent to return, the debtor's financial situation improves or enforcement action becomes practical, the agency is obliged to re-refer the case to the U.S. Attorney for legal action.

Once a judgment is returned to the agency for surveillance, the collection record should be closed as provided for in the *PROMIS User's Guide*, *USACTS* and *USACTS II Operator's Manuals* or the *United States Attorneys' Docket & Reporting System Manual*.

### 3-11.422 Closing Judgment Cases as Uncollectible

A judgment case should be closed whenever present and future prospects of collecting a substantial amount are so poor that the reasonable probability is against realizing a net gain over the expenditure of money and manpower required to keep the case in an open status.

An uncollectible judgment case may be closed and returned to the agency for surveillance at any time, when justified. However, a system should be established for routinely reviewing all judgments that remain in nonpaying status for two (2) or more years following the date of judgment. The procedures listed below should be used to review and close judgments remaining in nonpaying status for two (2) years or more.

A. If the judgment debtor has no ability to pay, as determined by a financial statement obtained or debtor examination conducted within the

last 180 days, the case should be closed and returned to the agency for surveillance. The agency must be advised of the period of time the judgment will remain in effect and provided notice that, if the judgment lien should be renewed, the agency will so advise six (6) months before its expiration date. The agency may, of course, return a case if it becomes aware of assets.

B. If no action has been taken on the case within 180 days, a new financial statement should be obtained or a debtor examination conducted. If the debtor has no ability to pay, as determined by the new financial statement or debtor examination, the case should be closed and returned to the agency for surveillance. The agency must be advised of judgment lien information as set forth in A., *supra*. If the debtor appears to have means to pay, vigorous collection efforts should occur.

C. If a current address is not available and the debtor cannot be located after reasonable diligence, the case should be closed and returned to the agency for surveillance. It should be noted that a current credit report must be obtained as a part of the Financial Litigation Unit's efforts to locate the debtor prior to closing the case. Also, the agency must be advised of the steps taken to locate the debtor and informed that the case should be returned if a good address is obtained by the agency at a future date.

Closing nonpaying judgments using these procedures is consistent with the policy that judgments should not be retained in a suspense status for more than two (2) years. The procedures are not intended to preclude a Financial Litigation Unit from closing an uncollectible case sooner than two years from the date of judgment or for retaining a judgment case for a longer period of time when warranted. Use of the procedures will enable Financial Litigation Unit personnel to eliminate nonpaying judgments from their case inventory and enable them to concentrate more time and effort on newer, more collectible debt referrals.

The transmittal letter used to return judgments to the agencies for surveillance shall advise the agency to notify the U.S. Attorney's Office if at some future time the debtor can be located or documentation can be provided that the debtor is financially able to pay and the case should be reopened. The letter shall inform the agency of the date on which the judgment lien will expire and that the U.S. Attorney be notified in writing six (6) months prior to that date if the agency wishes to have the judgment lien renewed.

Once a judgment case is closed and returned to the agency, the collection record should be closed as provided for in the *PROMIS User's Guide*, *USACTS* or *USACTS II Operator's Manuals*, or the *United States Attorneys' Docket & Reporting System Manual*.

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It is important to note that closing a case and writing off the unpaid balance as uncollectible will have no effect whatsoever upon the judgment's validity. Since a case closed as uncollectible can be reopened at any time if there is reason to do so, the debtor should not be informed of such decision.

### 3-11.500 PAYMENT PROCESSING INTERNAL CONTROLS

This policy has been amended and updated to meet the guidelines on internal control systems published by the Office of Management and Budget in Circular A-123 dated August 16, 1983. Deficiencies in internal control policies were identified by the Office of the Inspector General, Inspections Division, during two investigations conducted in Fiscal Year 1990.

#### 3-11.501 Standards For Internal Financial Control--Employee Responsibilities

Provisions for the reporting of government funds which have been misplaced or lost can be found in 28 C.F.R. Sec. 0.372, USAM 1-4.100, and USAM 3.2.735B. In accordance with these provisions, the United States Attorney and the legal counsel for the Executive Office for United States Attorneys (FTS 368-4024) must be notified immediately of lost or missing funds and an investigation must be made of each reported incidence. In addition, all allegations of misconduct or mismanagement of money must be reported to the Office of Professional Responsibility.

In order to comply with these provisions, each district must designate responsible personnel in writing. Senior Financial Litigation Unit employees are responsible for training other Unit employees and ensuring compliance with all internal controls. Failure to observe these internal control requirements may result in indictment and prosecution.

#### 3-11.510 Receipt of Payments

Each United States Attorney's office is responsible for ensuring that all payments received (checks, other negotiable instruments, cash or currency) are properly handled and processed. One employee, at that point in the office where payments are first received (e.g. mail room, receptionist's desk), shall be delegated the responsibility for the initial processing of payments, whether received directly from a person or in the mail. Under no circumstances shall this initial procedure be performed by an employee of the Financial Litigation Unit. Whenever possible, the employee delegated this responsibility should perform these duties in plain view of at least one other person.

The Administrative Officer should use a separate system of internal controls for checks received for obligations other than debts owed the United States. Examples would be travel reimbursement checks and checks

payable to plaintiffs in settlement of claims against the United States. If the person at the place of entry is unsure whether the check should be routed to the FLU or to the place designated by the Administrative Officer, the check should be routed to the FLU which will resolve the problem.

The employee designated to prepare the check log shall record the amount of each payment received during the day on a daily, preprinted and sequentially numbered, log sheet and produce a calculator tape showing each payment amount. Payments in cash or currency may be recorded on a separate log sheet, which is clearly identified as a record for this type of payment. However, a bound ledger is the preferred method for recording payments in cash or currency. Once the cash has been converted to a money order or cashier's check, the check number and amount of the check or money order shall be entered on the check log on the date of conversion, and this disposition shall be entered on the cash log.

Once completed, the log sheet and tape shall then be initialed and dated by the employee. The copy of the log sheet shall be maintained at the point of initial receipt in the office. The original of the log sheet, the original calculator tape, and all payments, shall be delivered immediately to the Financial Litigation Unit for further processing and direct deposit. See check log included in Appendix A.

The procedures set forth above will ensure initial establishment of internal controls and an audit trail necessary for all payments received. A second employee shall be delegated the responsibility for carrying out these procedures in the absence of the employee with primary responsibility.

Upon receipt of the copy of the log sheet, original calculator tape and payments in the Financial Litigation Unit, the employee delegated the responsibility for verification of payments shall prepare a second calculator tape to verify the amount and number of payments delivered to the unit, and sign and date the log sheet. A second employee shall be delegated alternate responsibility. The tape shall be initialed and dated by the responsible employee. Any discrepancy, either in the number or the amount of payments, shown on the copy of the log sheet or the two separate calculator tapes, must be resolved *immediately* and before any further payment processing action is taken.

Checks or money orders which cannot be deposited on the day of receipt, i.e., checks returned for signature or because sufficient information is not available to process the payment, must be entered on an Exception Register. See detailed instructions and a copy of the Exception Register form which are provided at Appendix A.

When the Exception Register is prepared it shall be placed with the check(s), or money order(s), in a safe or locked cabinet. An in/out log sheet shall be maintained and a designated member of the Financial Litiga-

tion Unit should examine the log sheet daily to ensure that the checks are expeditiously processed through the Lock Box. When deposit is made, the information shall be entered on the Exception Register and the register shall be filed behind the daily check log for the date the payment instruments were received. With the exceptions of payments on fines, assessments and restitution for non-federal victims, a check or money order should be endorsed as soon as the item has been identified for entry on the deposit slip, using the "For Deposit Only" stamp.

The check log and cash log (if applicable) produced each day shall be maintained on preprinted, sequentially numbered pages and shall be reconciled daily with the Deposit Slip, which is prepared for the deposit of payments through the Direct Deposit (Lock Box) System, and with the payment tally produced daily through PROMIS, USACTS-II or PC USACTS. This reconciliation shall be completed by an employee other than the employee designated the responsibility of preparing the original log(s) and calculator tape, showing the amounts of all payments delivered to the Unit. This is necessary to ensure proper internal audit control.

### 3-11.511 Receipt of Cash or Currency

All debtors must be advised to make payments by check or other negotiable instrument (such as a money order) payable to "U.S. Department of Justice." Payments made to the order of the "United States Treasury" may be processed but should be discouraged. If a debtor pays in cash or currency, the payment must be accepted and handled as described in paragraphs 3-11.512 and 3-11.513.

A separate cash log shall be maintained and recorded on preprinted, sequentially numbered pages or in a bound ledger. A Form USA-200 Receipt *must* be completed and provided to the debtor whether or not the debtor wants or requests a receipt. One copy of the receipt shall be maintained in numerical order in a separate file. The debtor shall be advised of the necessity to make all future payments by check or other negotiable instrument.

The form USA-200, Receipt, is the only receipt form approved by the Department of Justice for use by the Financial Litigation Unit.

### 3-11.512 Conversion of Cash or Currency to Checks

All cash or currency delivered to the Financial Litigation Unit must be converted immediately to a check or other negotiable instrument for deposit through the Direct Deposit (Lock Box) System. The date and amount of cash converted shall be entered into the log as described at 3-11.511, and any voided receipts must be accounted for by filing a copy of the voided receipt in the numerical file copy file.

It will be necessary to make the conversion at a financial institution or post office. The employee responsible for carrying cash or currency to a financial institution for conversion should always be accompanied by another person. If large sums of cash need to be converted, the United States Marshal should be asked to provide a security escort. Each United States Attorney's Office is responsible for establishing local policy on when the Marshal escort is needed and when a second employee within the Financial Litigation Unit should accompany the person responsible for the conversion. The amount of cash to be converted, the bulkiness of the cash, the location of the office, the distance to be traveled and the means of transportation are examples of factors to be considered in establishing a local policy.

Contact the administrative officer to establish procedures for payment of the conversion fees as a litigation expense using the draft payment system. Only if cash payments are received frequently should procedures be established for payment of fees to the financial institution on a monthly or quarterly basis.

#### 3-11.513 Security of Cash Which Cannot Be Converted Immediately

Any cash or currency which cannot be converted immediately to a payment instrument acceptable for deposit through the Direct Deposit (Lock Box) System *must* be kept in a secure area and *must* be logged into and out of that area. (See 3-11.511 *supra.*) All United States Attorneys' offices must use equipment such as safes, locked file drawers, *etc.*, for this purpose. Procedures should be established concerning access to keys and, where applicable, changes to combination locks.

#### 3-11.520 Deposit of Payments

With the exception of fines, and assessment and restitution payments to non-federal victims, which were not processed through the "Direct Deposit" System, all checks or money orders for federal debts shall be endorsed as soon as possible after receipt in the Financial Litigation Unit. The person responsible for preparing the deposit shall enter the appropriate deposit number and item number on the back of each check or money order.

Deposit slips (Form OBD-230), shall be filled out completely with all required data. The deposit slips shall be used sequentially and shall be signed and dated by the preparer, as well as verified and countersigned by the employee who verifies the deposit and the check log. The USAO number shall be written on the face of all checks or money orders in the lower left hand corner.

#### 3-11.521 Deposit of Payments Over \$50,000

Payments of \$50,000 or more shall be electronically (or wire) transferred to the C&S Bank. If the United States Attorney or Assistant is aware

that a large payment is to be made, steps should be taken to have the remitter made arrangements for a wire transfer through his/her bank. If the remitter is unwilling to do this, the remitter should be instructed to furnish a certified or cashier's check in lieu of a personal or company check.

If the check is drawn on a bank which has a branch in the area of the United States Attorney's Office, arrangements should be made to deliver the check to the bank for electronic transfer. Most banks require that electronic transfers be made prior to 2:00 p.m.

The format information for electronic transfer may be found in Appendix A. The United States Attorney's Office is to notify the Debt Accounting Operations Group (DAOG) of the Department of Justice by transmitting a facsimile (FAX) as soon as the transfer has been made. If the FAX machine is not operating, then a call should be made to the Regional Technician to alert DAOG regarding the transfer. Calls should not be made to the C&S Bank.

The confirmed electronic deposit will appear on the district's next monthly bank statement at the end of the deposits with a 900 series number.

#### 3-11.522 Direct Deposit of Payments

All payments received, shall be deposited daily through the Direct Deposit (Lock Box) System. The procedures set forth in Order OBD 2110.19, dated June 23, 1986, shall be followed. Forfeiture payments are to be delivered to the U.S. Marshal Service for deposit in the Assets Forfeiture Fund, or the U.S. Customs Service for deposit into the Customs Forfeiture Fund. All criminal payments, other than BOP or wire transfer payments, are to be delivered to the Clerk of the Court. Local policy may be established on how these checks are delivered to the Clerk. No payments are to be delivered to the client agency.

All payments received shall be deposited daily through the Direct Deposit (Lock Box) System. The procedures set forth in Order OBD 2110 (final draft dated January 31, 1984) shall be followed. (Forfeiture payments are to be turned over to the U.S. Marshals Service for deposit in the Asset Forfeiture Fund. Depending on the date of offense, certain criminal fines are to be turned over to the Clerk of the Court. No payments are to be turned over to the client agency.)

#### 3-11.530 Posting Payments

All payments received shall be posted daily in accordance with procedures established in the *PROMIS User's Guide*, *USACTS-II Operator's Manual*, *PC-USACTS Operator's Manual*, as well as Order OBD 2110.19, June 23, 1986, Direct Deposit Lock Box System.

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Bureau of Prisons' and IRS Off-set payments shall be posted promptly (no later than the fifth working day after receipt) from the printouts. These payments are to be reconciled against the district's payment tallies (payments not received by USAO) or the PC-USACTS report U. The designated person performing the reconciliation shall initial and date the payment list when the reconciliation is complete. The tallies or financial reports are to be attached to the original notification list and maintained in a permanent file for each fiscal year. The file may be transferred to the Federal Record Center one year after the close of the fiscal year. The file may be destroyed six years after the close of the fiscal year.

Reconciliation of criminal payments received by the Clerk of Court which are posted by the Financial Litigation Unit shall be made by verifying the notification records against the tallies produced daily through PROMIS, USACTS-II or PC-USACTS. (Example: Prepare a calculator tape of the receipts or lists received and verify the received tape against the payments posted.) These initialled tallies and tapes must be retained in a permanent file, by fiscal year. The file may be transferred to the Federal Record Center one year after the close of the fiscal year. The file may be destroyed six years after the close of the fiscal year.

From time to time districts are notified that a payment has been received by the agency. If this notification is other than in writing, the agency should be requested to confirm payment by transmitting a facsimile to the United States Attorney. Reconciliation of these payments will be performed in the same manner as reconciliation of criminal payments stated above.

### 3-11.531 Separation of Duties--Deposits

A complete separation of duties shall be maintained between those persons preparing check logs, those persons verifying deposits and those persons recording entries to individual debtor's records.

In offices where it is impractical to achieve a complete separation of duties, due to the number of employees in the FLU or other reasons, substitute controls shall be implemented. For example, a weekly verification of check/payment logs by the Assistant U.S. Attorney responsible for the FLU, or a designated disinterested person, shall be conducted. The person delegated responsibility for verification shall compare the deposit tickets against the check logs, at least weekly, making a notation of the date of verification and the period covered by the verification.

### 3-11.532 Private Counsel Pilot Program

Financial Litigation Units in districts participating in the Private Counsel Pilot Program cannot modify financial records or post payments on civil debts. These functions are performed exclusively by the Central

Intake Facility, a government contractor. Financial Litigation Units in these districts receive payments on civil debts only in the following circumstances: debtor error, initial payments on installment payment agreements and initial or lump sum payments on debts litigated by an Assistant United States Attorney who is not assigned to the FLU. The Financial Litigation Unit must forward any payment it receives to the Central Intake Facility for processing on the day it is received in the unit. Payments on criminal debts must be made to the Clerk of Court.

Check logs may be prepared by Financial Litigation personnel in these districts. Mail should be delivered unopened to these units and an individual shall be designated to open the mail and log in any checks received. Another individual shall be designated the responsibility for carrying out these procedures in the absence of the employee with primary responsibility. The individual responsible for preparing the check log is also responsible for accepting and entering any payment not received by mail.

A second individual with a designated backup must enter the civil payments on the Register of Direct Payments Received program. A printout should be generated and attached to the check log. The total amount of pilot program payments should be entered as "Sent Other" on the check log and "CIF" should be annotated in the space provided. The procedures described at 3-11.511 to 3-11.513 must be followed if a payment is made in cash or currency.

#### 3-11.540 Application of Payments for Civil Debts

The "U.S. Rule" shall be followed in applying civil payments. Under this rule, a partial payment is credited first to court costs and fees, second to accrued interest, and the balance, if any, to principal. Subsequent interest then accrues on the remaining principal, computed from the date of the partial payment. See *Woodward v. Jewell*, 140 U.S. 247, 248 (1891); 45 *Am. Jur. 2d*, Interest and Usury, § 99; 47 C.J.S. Interest § 66.

The "U.S. Rule" shall also be followed in applying any payments received prior to entry of a judgment *unless* the debtor's obligation (or the program legislation under which it arises) *expressly* provides otherwise.

#### 3-11.541 Application of Payments for Criminal Debts

The "U.S. Rule" is not followed when applying payments to *criminal* penalties imposed for offenses committed on or after January 1, 1985. For criminal penalties, a partial payment is credited in the following order, unless otherwise directed by the Court:

- |                        |                    |
|------------------------|--------------------|
| 1. Special Assessments | 5. Interest        |
| 2. Restitution         | 6. Penalties       |
| 3. Fines               | 7. Attorney's Fees |
| 4. Costs               |                    |

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## 3-11.542 Reconciliation of Bank Statements

The supervisor in charge of the FLU, or a designated employee, shall reconcile the monthly deposits against the monthly bank statement to ensure that all deposits were received and credited by the bank. Discrepancies in amounts should be immediately reconciled against the check logs and deposit slips. If a deposit item is missing from the confirmed list, the supervisor shall place a call to the regional technician, DAOG, JMD. The call should be followed up by a written memo to JMD. A copy of the memo should be placed with the bank statement in question. The supervisor shall follow up with JMD in ten working days if the problem has not been resolved.

If the bank statement includes checks which have not been honored, e.g. for insufficient funds, the supervisor shall ensure that the payments are inactivated. A copy of the check shall be returned to the debtor with a demand for payment. The dishonored check shall be returned to the debtor after the replacement payment has been honored.

Once the bank statement has been reconciled, the supervisor shall initial and date the statement. The statement shall be maintained in a file in reverse chronological order. The file may be sent to the Federal Record Center (FRC) after one year. The FRC will destroy the file after six years.

3-11.550 Debt Collection Records

Debt Collection Records, whether maintained as separate files or in the civil/criminal case files, should include all applicable records, e.g.:

- Claims Collection Litigation Reports (CCLR)
- Certificates of Indebtedness
- Satisfactions of Judgment or
- Certificates of Discharge
- Court and Related Documents, including
- Financial Statements
- Consent Judgments
- Orders
- Briefs
- Pleadings and Settlement Agreements
- Status Reports and Correspondence.

Any other documentation developed during the negotiation, compromise, settlement and/or litigation of the indebtedness shall remain in the file, together with Form USA 207, Notice to Close Legal Case File. See 3-4.431. These files should also contain any records maintained by private counsel participating in the Department's pilot program and which are turned over to the United States Attorney at the completion of debt collection efforts.

This information shall be retained in the file when it is shipped to the Federal Record Center (FRC). The file may be sent to the FRC one year after

disposition of the case. The FRC will destroy the file six years after close of the case.

Presentence Information Reports (PSIs) and other asset investigation reports, such as credit reports and tax returns, may be maintained separately in a secure manner which limits access to authorized personnel. Local policy should be established on the disposition of these records, i.e., whether they should be destroyed by shredding, burning or returned to the appropriate party.

#### APPENDIX A

#### CHECK LOG INSTRUCTIONS

1. In order to comply with Department of Justice internal control policy, this log must be prepared by someone other than the Financial Litigation UNIT (FLU) personnel. It should be prepared by the person who normally opens the mail.
2. All checks received in the office, whether hand delivered or received in the mail, must be logged in at the one point so designated by the United States Attorney for the district.
3. The original of the check log (white copy) will be retained by the FLU and the copy (yellow) by the Administrative Division. The log is to be filed numerically by fiscal year. That is, from October 1st through September 30th of the following year. This file must be retained for one year after the close of the fiscal year. It may then be sent to the Federal Record Center. It may be destroyed six years after the close of the fiscal year. If a log sheet is voided for any reason, the original voided copy must be retained in this file. The voided carbon copy (yellow) will be filed in the Administrative Division numerical file. If the number of checks received on any given day exceeds the number of lines on the check log, subtotal the first page and any additional pages needed, and calculate the final total, for all checks received that day, on the last page. The entry "page \_\_\_ of \_\_\_" in the bottom left corner of the form should be completed when using multiple logs to enter checks received the same day.

NOTE: For audit purposes, it is imperative that the check logs be maintained in numerical sequence; including those which are voided for any reason, or multiple logs used on the same day.

4. The log must be prepared using permanent, non-erasable ink, if handwritten. It must be signed by the preparer.
5. The log date will be entered by the preparer on the sequentially numbered check log. The preparer will enter the check number, the type, from whom the payment was received, and the amount. The FLU agent will enter the final disposition or deposit item # at the end of each line. Final disposition notes are: (a) Deposit Item #, (b) Mailed, (c) Exception Register, (d)

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sent to Clerk of Court, (e) Sent to Marshal, (f) Sent/delivered other—specify.

6. The original check log (white), along with a calculator tape total and the checks, is to be delivered to a designated person in the FLU. That person will prepare a second calculator tape to insure that the amount and number of checks listed is correct and if so, will then sign the carbon copy of the log. If there is a discrepancy, it must be immediately called to the preparer's attention. The preparer shall make the necessary correction to the original and carbon, initialling same.

7. The "Date and Initials" field is an optional field for use by the FLU as needed. It may be used by the person who actually keys the checks into the system as a control as each check is processed.

8. At the end of each day, a reconciliation of the log, deposit ticket and tallies will be made. The person making and/or verifying the reconciliation will sign the log, which is to be filed numerically by fiscal year. Any exception registers, once completed, will be filed behind the appropriate check log for the date of the exception register.

9. Reconciliation of the check log is accomplished by the person who verifies the deposit for that date by completing the following:

- |                                      |   |
|--------------------------------------|---|
| a. Received today                    | Total dollar value of checks received this date.  |
| b. From previous exception registers | Total dollar value of any checks which were on an exception register and are now being deposited this date.   |
| c. Subtotal                          | Total of lines a. & b.  |
| d. Deposited                         | Total dollar amount of deposit for this date.   |
| e. Sent to Clerk                     | Total dollar amount of checks sent to Clerk.  |
| f. NFR mailed out                    | Total dollar amount of checks mailed to victims this date.  |
| g. Sent other                        | Total dollar amount of checks so marked in accordance with instruction step 5, except for 5(c), exception register.   |
| h. Difference                        | Subtract lines d, e, f and g from line c. If all checks have gone out this date, the line will be "0.!" If not, this line will equal the dollar amount of items marked "exception register" in accordance with 5(c). If this line has a balance other than "0," an exception register must be prepared. |

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The original Check Log maintained in the FLU (white) is to be filed in numerical order by fiscal year. The retention period is the same for the copy (yellow), maintained in the Administrative Division.

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3. The preparer will enter the appropriate header information, the check number, remitter and dollar amount. If the United States Attorney's number (USAO #) is available, it should be entered as well. The total of all undeposited checks for the day will be entered and then the preparer will sign and date the log.
4. The Unit supervisor, or some other designated person, shall verify the log against the checks and then sign the verification below the preparer's name. The checks shall then be placed for safe-keeping in a safe or locked cabinet.
5. The Unit supervisor shall follow up the next working day to determine whether or not the check can be processed for deposit. If not, the supervisor shall place a note with the log stating the reason for further holding of the check.
6. Once the information has been received to allow disposition of the check, the check shall be promptly deposited and the deposit date and number, item number, and initials entered by the appropriate technician. If the check is for a non-federal victim, and is mailed directly to the victim, a notation to that effect shall be entered in the comment field along with the date the check was mailed.
7. The total amount deposited and/or disposed of shall be entered and the person who verified the original preparation of the log, shall verify the final disposition. If that person is out of the office, the designated back up should perform this duty.

U.S. DEPARTMENT OF JUSTICE

EXCEPTION REGISTER  
(Items Not Deposited on Day Received)

Page \_\_\_\_\_

For: United States Attorney Office \_\_\_\_\_ District of \_\_\_\_\_ City: \_\_\_\_\_

Date Instruments Received: \_\_\_\_\_

DEPOSIT INFORMATION:

ITEM NO.	CHECK/MONEY ORDER NO.	NAME OF DEBTOR OR REMITTER	DOLLAR AMOUNT	USAO CLAIM NO.	DEPOSIT DATE	DEPOSIT NO.	DEPOSIT ITEM NO.	TECHNICIAN INITIALS AND/OR COMMENTS
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Total Amount NOT Deposited: \$ \_\_\_\_\_ Total Amount Deposited: \_\_\_\_\_

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Verified By: \_\_\_\_\_ Date: \_\_\_\_\_

Verified By: \_\_\_\_\_ Date: \_\_\_\_\_

USE ONLY FOR CHECKS OR MONEY ORDERS NOT DEPOSITED ON DAY RECEIVED!

APPENDIX A  
INSTRUCTIONS FOR ELECTRONIC TRANSFER (EFT)

Item 6: Reference Number. The reference number may be inserted by the sending bank to identify the transaction.

\* Item 7: Amount. The amount will include the dollar sign and the appropriate punctuation, including cents digits.

Item 8: Sending Bank Name. The telegraphic abbreviation which corresponds to Item 4 will be provided by the sending bank.

\* Item 9: Citizens and Southern National Bank Name. It should appear on the funds transfer message in the manner stated below:

Character #	Character(s)	Definition
1-3	C&S	C&S telegraphic abbreviation
4		Space (leave blank)
5-7	ATL	Second part of the C&S Bank telegraphic abbreviation
8		Space (leave blank)

\* Item 10: Bank Account Number. (00924449) This item is of CRITICAL IMPORTANCE. It must appear on the funds transfer message. This eight-digit numeric symbol identifies DAOG.

\* Item 11: Collection Office Name. Insert your collection office name (abbreviations are acceptable).

Legal Division/District Name

An example of how this line, which is comprised of Items 9, 10, and 11, could read is:

C&S ATL (00924449) Southern District New York

\* Item 12: Comments Section.

Collection Office Code (up to 4 characters) - Fiscal

Year (1 digit) - EFT

Debtor name (up to 30)

Collection Office Claim Number (up to 8)

Example: NYS-1-EFT

Smith, Joe P.

8800042

S A M P L E

INSTRUCTIONS FOR ELECTRONIC FUNDS  
TRANSFER TO THE DEPARTMENT OF JUSTICE

(Omitted items will be provided by sending bank)

<u>Item</u>	<u>Explanation of Item</u>	<u>Information to be Coded</u>
2	Receiving Bank Code (Citizens & Southern National Bank, Atlanta, GA)	061000052
7	Amount to be Transferred	\$2,000,000.00
9	Receiving Bank Code	C&S(space)ATL(space)
10	Department of Justice Account Number	00924449
11	Payee Name	Southern District New York
12	Deposit Identifier Debtor Collection Office Claim Number	NYS-1-EFT Smith, Joe P. 8800042

Please Note: Item 12 must be completed to apply your payment correctly.

INSTRUCTIONS FOR ELECTRONIC FUNDS  
TRANSFER TO THE DEPARTMENT OF JUSTICE

July 1, 1992

(Omitted items will be provided by sending bank)

<u>Item</u>	<u>Explanation of Item</u>	<u>Information to be Coded</u>
2	Receiving Bank Code (Citizens & Southern National Bank, Atlanta, GA)	061000052
7	Amount to be Transferred	\$_____
9	Receiving Bank Code	C&S(space)ATL(space)
10	Department of Justice Account Name	00924449
11	Payee Name	
12	Deposit Identifier Debtor Collection Office Claim Number	

Please Note: Item 12 must be completed to apply your payment correctly.

U.S. ATTORNEYS MANUAL 1988

Electronic Funds Transfer (EFT)

Department of Justice  
Debt Accounting  
Operations Group

ATTN: Regional Technician

FAX #:

DEBTOR \_\_\_\_\_

AMOUNT \_\_\_\_\_

COLLECTION OFFICE  
CLAIM NO. \_\_\_\_\_

AGENCY CODE \_\_\_\_\_

REFERRING AGENCY CLAIM NO. \_\_\_\_\_

AGENCY PROGRAM / CAUSE  
OF ACTION CODE \_\_\_\_\_

ANTICIPATED DATE  
OF TRANSFER \_\_\_\_\_

U.S. ATTORNEYS MANUAL 1988

SAMPLE

Electronic Funds Transfer (EFT)

Department of Justice  
Debt Accounting  
Operations Group

U.S. Attorney  
Southern District New York  
Financial Litigation Unit

ATTN: Regional Technician

FAX #:

DEBTOR

Smith, Joe P.

AMOUNT

\$2,000,000.00

COLLECTION OFFICE  
CLAIM NO.

8800042

AGENCY CODE

ZSBA

REFERRING AGENCY CLAIM NO.

11-123456789

AGENCY PROGRAM/CAUSE  
OF ACTION CODE

COMC

ANTICIPATED DATE  
OF TRANSFER

05-08-91

U.S. ATTORNEY'S MANUAL 1988

INSTRUCTIONS FOR MAKING ELECTRONIC FUNDS TRANSFER TO THE DEBT ACCOUNTING OPERATIONS GROUP OF THE UNITED STATES DEPARTMENT OF JUSTICE THROUGH THE CITIZENS AND SOUTHERN NATIONAL BANK

[1]			
[2] * 061000052	type	[3]	
	[5]	reference	amount
		[6]	*[7]
ordering bank and related data			
[8]			
* [9]	*[10]	(00924449)	* [11]
* [12]			
* [12] Collection office code - FY - EFT			
* [12]			

Item 1: Priority Code: The priority code will be provided by the sending bank. (Note: Some Federal Reserve District Banks may not require this item.)

Item 2: Citizens and Southern National Bank Code: THE NINE DIGIT IDENTIFIER IS THE ROUTING SYMBOL OF THE C&S BANK. THIS ITEM IS A CONSTANT AND IS REQUIRED FOR ALL FUNDS TRANSFER MESSAGES THROUGH THE C&S BANK.

Item 3: Type Code: The code will be provided by the sending bank.

Item 4: Sending Bank Code: This nine-digit American Bankers Association identifier will be provided by sending bank.

Item 5: Class Code: The class code may be provided by the sending bank at its option.

\* To be provided by the debtor or the debtor's attorney to the sending bank.

3-11.600 INTEREST

3-11.610 Interest Recoverable by the Government

3-11.611 Civil Prejudgment Interest

The United States is entitled to recover prejudgment interest. See *Royal Indemnity Co. v. United States*, 313 U.S. 289 (1940); *Billings v. United States*, 232 U.S. 261, 284-289 (1914); *United States v. Eastern Airlines, Inc.*, 366 F.2d 316, 321 (2d Cir.1966). Interest should be demanded in every case in which the collection of interest is appropriate. When the government prevails in a suit where there is no contract or instrument which contains a provision for interest, the rate of the interest to be recovered for delayed payment of the obligation to the United States should be determined by the interest provision of the Debt Collec-

tion Act of 1982, 31 U.S.C. § 3717, and the Federal Claims Collection Standards, 4 C.F.R. § 102.13. See also Commercial Litigation Branch Monograph entitled "Interest on Claims By and Against the Government," June 1984.

When interest is provided for by note or contract, the complaint should pray for prejudgment interest at the rate specified therein. When money is paid out or property is delivered as a result of fraud or deceit, interest should be demanded from the date the debtor received the benefit of the funds or property. In other cases, interest should be collected from the date of notice of overpayment, or the first demand for repayment, as the case may be. See *RFC v. Service Pipe Line Co.*, 206 F.2d 814 (10th Cir.). Agency Certificates of Indebtedness will normally reflect the date of first demand for repayment and the applicable rate of interest.

As noted above, the interest rate established pursuant to 31 U.S.C. § 3717 does not apply if a statute, regulation, agreement or contract prohibits charging interest or explicitly fixes the rate of interest. For example, in suits for the recovery of balances due the Postal Service, interest may be recovered at the rate of six percent from the time of default. See 28 U.S.C. § 2718. Interest is also expressly recoverable in suits to recover moneys paid or credits granted by the Postal Service as a result of mistake, fraudulent representations, collusion, or misconduct of a Postal Service officer or employee. See 39 U.S.C. § 2605.

### 3-11.612 Civil Postjudgment Interest

Postjudgment interest should be affirmatively and specifically provided for in the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52-week United States Treasury bills settled immediately prior to the date of the judgment. See Commercial Litigation Branch Monograph entitled "Interest on Claims By and Against the Government," June 1984. However, civil judgments in favor of the United States bear interest as allowed by law, whether or not interest has been expressly provided for in the judgment. See 28 U.S.C. § 1961. Under the statute, postjudgment interest accrues on the *entire* amount of the judgment from the date of entry, including any prejudgment interest awarded therein. See *United States v. Briggs Manufacturing Company*, 460 F.2d 1195, 1196 (9th Cir.1972); 45 Am.Jur.2d, Interest and Usury § 78; 47 C.J.S. Interest § 21. Also, under the statute postjudgment interest is computed daily to the date of payment, and *compounded annually* for judgments awarded in U.S. District Court on or after October 1, 1982. See 28 U.S.C. § 1961(b).

### 3-11.620 Interest Computations

The financial litigation subsystems of PROMIS, USACTS and USACTS II allow for the computation of interest. Financial Litigation Unit person-

nel should refer to the *PROMIS User's Guide* or *USACTS and USACTS II Operator's Manuals* for procedures to be used for computing interest. Those Financial Litigation Units which have not yet converted to PROMIS, USACTS or USACTS II should make full use of the programmable calculator located in the Unit to compute interest.

It is important to note that interest on civil money judgments awarded in the U.S. District Court on or after October 1, 1982, must also be *compounded annually*. See 28 U.S.C. § 1961(b). This means that once a year on the anniversary date of the judgment any *outstanding interest* balance must be added to the outstanding principal balance, thus creating a new principal balance. This new principal balance then becomes the starting point for computing interest on the judgment during the following year.

### 3-11.700 TRANSFERS AND ASSISTS—CIVIL CASES

#### 3-11.710 Transfers

When a judgment debtor relocates to another district, the debtor's case must be transferred to the U.S. Attorney Office of jurisdiction (*i.e.*, district where debtor now resides or "transferee district") for collection. Copies of all pertinent documentation from the case file should be provided to the transferee district. The procedures set forth in the *PROMIS User's Guide*, *USACTS and USACTS II Operator's Manuals*, or *United States Attorney's Docket & Reporting System Manual* for transferring cases should be referred to and followed.

Once the transfer is accepted by the transferee district, that district assumes full responsibility for further collection action. The transferring district should then close their case file, but retain the file in the Financial Litigation Unit until Satisfaction of Judgment is entered.

Usually a case should not be transferred to another district until a judgment has been obtained. All U.S. Attorney Financial Litigation Units are responsible for reducing claims to judgment and securing the government's interests as soon as possible after receipt of a claim from an agency. In view of this policy, there should be only a few instances when it would be necessary to transfer a prejudgment claim to another district.

Whenever a case is transferred to another U.S. Attorney's Office, the office transferring the claim shall promptly notify the referring agency of the transfer. The agency must be informed of each transfer made so that they can update their debtor file or automated system data to reflect the proper United States Attorney's Office of jurisdiction. This will ensure that any future correspondence or inquiries from the agency on a given claim are directed to the proper U.S. Attorney's Office and also allow for overall reconciliation of United States Attorney and agency claim data.

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3-11.720 Assists

Instances will arise when a Financial Litigation Unit will require the assistance of another United States Attorney's Office to collect a judgment. A request for an "assist" from another district should be made, for example, when:

A. A debtor has assets or is employed in another district and the assistance of that district is needed to attach the debtor's assets or garnish the debtor's wages;

B. There are multiple debtors on one debt and they reside in other districts; or

C. The principal debtor resides within the district but guarantors or sureties reside in another district.

The Financial Litigation Unit requesting assistance is responsible for:

A. Providing specific instructions on the assistance needed, *e.g.*, "register the judgment and levy on the debtor's boat which is stored at . . ." or "perfect the judgment as a lien in \_\_\_\_\_ County, provide this district with a copy of the recorded lien, and then close the file";

B. Providing all the needed documentation, such as the CIV 101, certified copies of the judgment, proof of the debtor's ownership in the property to be levied against, or verification of employment;

C. Entering or reporting payments to reflect monies collected by the assisting district.

D. Keeping the assisting district advised of any changes to the debt balance, *e.g.*, as the result of payments received by your district.

It is important to note that primary record keeping and reporting responsibility rests with the office requesting assistance.

## 3-11.800 CLOSING CIVIL JUDGMENT CASES

When a judgment has been collected in full or when the terms of a compromise agreement have been met, appropriate action shall be taken to ensure that a Satisfaction of Judgment and any other necessary documents are filed with the court(s) of record and judgment liens of record are released.

Once this is done, the debtor and the referring agency shall be promptly notified that the judgment has been satisfied in full and provided with a copy of the Satisfaction of Judgment. The collection record shall then be closed in accordance with procedures set forth in the *PROMIS User's Guide*, *USACTS* and *USACTS II Operator's Manuals* or the *United States Attorneys' Docket & Reporting System Manual*.

## 3-11.900 REPORTING, MANAGEMENT GOALS AND CIVIL FINANCIAL LITIGATION TOOLS

3-11.910 Reporting

The requirements for reporting financial litigation activity through PROMIS, USACTS, USACTS II or the United States Attorneys' Docket & Reporting System are not addressed in detail in this chapter. Debt Collection Unit personnel should refer to the *PROMIS User's Guide*, *USACTS* or *USACTS II Operator's Manuals* or *United States Attorneys' Docket & Reporting System Manual* (Order USA 2840) for all reporting requirements and the instructions to be used to meet those requirements.

All referred debt claims must be opened in the appropriate reporting system within five (5) working days of receipt. Those claims which are immediately declined *and reported on Form USA-228* shall not be opened in PROMIS, USACTS, USACTS II or the Docket and Reporting System.

In order to ensure the accuracy of records maintained in the reporting system, EOUSA-generated verification and/or error lists must be reviewed upon receipt and corrections made as appropriate.

## 3-11.911 Reporting of Immediate Declinations of Civil Referrals

All affirmative litigation referred to U.S. Attorneys which is immediately declined and returned to the agencies must be reported to the Office of Information Management, Executive Office for United States Attorneys, in the following manner.

A. Docket & Reporting System Districts. U.S. Attorneys' Offices using the Docket & Reporting System shall report immediate declinations of civil referrals once a month on Form USA-228, "Monthly Report of Immediate Declination of Civil Referrals." The report for each month shall be submitted by the fifth working day of the following month to the Caseloads Collection Unit, IM/EOUSA.

Regarding Form USA-228, it is important to note that only those referrals for affirmative litigation which are immediately declined *and* which have not been opened in the Docket and Reporting System should be included on the form. Also, as stated in the instructions, an individual entry must be made on the form for each immediate declination and each column of the form must be completed.

A Form USA-228 must be submitted for each month. If no immediate declinations are made during a given month, the form must be annotated with the phrase "No Immediate Declinations Made" and submitted to the Caseload/Collections Unit.

As Docket & Reporting System districts convert to either PROMIS, USACTS, or USACTS II, they will convert their method of reporting immediate civil declinations to the method described at B., *infra*.

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B. PROMIS, USACTS and USACTS II Districts. U.S. Attorneys' Offices using PROMIS, USACTS or USACTS II shall report immediate declinations of civil referrals either through their respective system or by submitting a Form USA-228 once a month to the Caseload/Collections Unit as instructed at A., *supra*. Districts are to report either through their respective system or by submitting Form USA-228, not both. Use of only one of these methods will prevent duplicate reporting.

It is most important that the Office of Information Management receive the required data on immediate declinations of civil referrals. The availability of complete and accurate centralized information has become increasingly important, particularly in light of government-wide reporting requirements which, in effect, have made it necessary to account to the Office of Management and Budget for referrals made by the agencies. While this focuses primarily on those claims referred for litigation and enforced collection, we should be able to readily account for any affirmative litigation which is immediately declined. The information reported by each district, coupled with the information already available to us through the case tracking systems, will enable us to account fully for all referrals made by the agencies.

3-11.920 Management Goals

3-11.921 Establishment of Quantitative Goals

The Assistant U.S. Attorney responsible for financial litigation shall establish and provide to the U.S. Attorney quantitative goals for the Financial Litigation Unit for each fiscal year. Goals should be established for the following categories: cash recoveries including net effective rates of collection by imposition type; total net accounts receivable; and cost to collect.

3-11.922 Report to U.S. Attorney on Financial Litigation Accomplishments

The Assistant U.S. Attorney responsible for financial litigation shall provide a report to the U.S. Attorney at the beginning of each month quantifying the accomplishments of the Unit during the preceding month and comparing these accomplishments with those of the previous month. By using these reports, the U.S. Attorney will be able to quickly review, by number and dollar amount, both the claims collection activity and the claims litigation activity of the Unit.

A cumulative semi-annual report should also be provided to the U.S. Attorney comparing the claims collection activity and the claims litigation activity of the Unit during the six-month period with that of the previous six months, or with that of the same six-month period of the previous year.

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3-11.930 Civil Financial Litigation Tools

## 3-11.931 Automated Tickler Systems

All Financial Litigation Units should have and make full use of an automated tickler system. Such a system will serve to ensure that all required financial litigation activity and any necessary followup is performed in an efficient and timely manner.

## 3-11.932 Skiptracing

Financial Litigation Unit personnel are obliged to take aggressive action to collect claims which are referred by the agencies. However, they are not required to "perform collection actions which should have been undertaken by any other agency." See 4 C.F.R. § 102.1. Claims are referred to U.S. Attorneys' Offices for litigation and enforced collection, and the referring agency is under an affirmative obligation to provide the *current* address of the debtor. See 4 C.F.R. § 105.2. Claims received for litigation should be *ready* for litigation. Although a limited amount of skiptracing incident to litigation, such as occasional address verification prior to suit, may appropriately be undertaken, claims are *not* referred to United States Attorneys' offices for skiptracing, and heroic efforts to locate the debtor are not required.

## 3-11.933 Use of the Media

In appropriate instances, the Assistant U.S. Attorney responsible for financial litigation should give consideration to the discreet use of the media to publicize efforts to collect debts due the United States. Use of the media as a collection technique should be considered only in those cases in which the amounts owed are very large, where a particular type of case exists in sufficient numbers to create a newsworthy event, or where unusual action has been taken which would dramatize the office's efforts to collect.

Because many inherent problems exist in using the press and publicity as a collection device, use of the media should be evaluated on a case-by-case basis and should not be used without intensive evaluation and coordination with the U.S. Attorney. The U.S. Attorney or a representative specifically designated by the U.S. Attorney should be the sole spokesperson for the Financial Litigation Unit on media matters.

UNITED STATES ATTORNEYS' MANUAL

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3-12.000 COLLECTION OF CRIMINAL MONETARY IMPOSITIONSResponsibilities of the United States Attorneys

Effective May 8, 1990, responsibility for the enforcement of judgments, fines, penalties, and forfeitures was assigned to the United States Attorneys. Prior thereto, the responsibility for collecting monetary impositions was divided between the Department's litigating divisions and the United States Attorneys. However, the United States Attorneys, in fact, enforced the collection of almost all such impositions, including those imposed in cases prosecuted by the Department's litigating divisions. The Code of Federal Regulations was amended to reflect the major role played by the United States Attorneys in the collection of monetary impositions. Thus, that responsibility was assigned to the United States Attorneys with respect to all criminal monetary impositions imposed in their respective districts, unless the Assistant Attorney General for a litigating division specifically notifies the United States Attorney that the litigating division will assume the enforcement responsibilities. 55 Fed.Reg. 19,063 (1990) (to be codified at 28 C.F.R. § 0.171).

Each United States Attorney shall designate an Assistant United States Attorney to be responsible for activities related to the satisfaction, collection, or recovery of judgments, fines, penalties and forfeitures (including bail bond forfeitures). Section 0.171 of Title 28 of C.F.R.

Within the United States Attorney's office, the Assistant United States Attorney designated to be responsible for the satisfaction, collection, or recovery of claims and judgments will establish an effective criminal collection program. In such a program all monetary impositions arising from a prosecution are systematically entered into the Financial Litigation Unit's case tracking system. The debtor is located, accurate and complete financial information is secured, and the judgment is enforced by arranging and supervising appropriate payments or by taking legal action to eliminate the debt. The Financial Litigation Unit (FLU) of the United States Attorney's office performs most of the criminal fine collection work. Most criminal collection tasks can be accomplished effectively by paralegal or clerical personnel of the Financial Litigation Unit. However, in order to employ legal sanctions available to enforce criminal fines, attorney supervision and participation is necessary. Teamwork between the attorney and the support staff is critical to the efficient functioning of the entire system.

Role of the Executive Office for United States Attorneys

The Executive Office for United States Attorneys (EOUSA) is responsible for establishing policies and procedures and other appropriate action to accomplish the satisfaction, collection, or recovery of fines, special assessments, penalties, interest, restitution, bail bond forfeitures and court costs arising from the prosecution of criminal cases by the Depart-

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ment of Justice and the United States Attorneys. (Responsibility for establishing policy and procedures concerning the imposition of criminal fines remains in the Criminal Division.) 55 Fed.Reg. 19,063 (1990) (to be codified at 28 C.F.R. § 0.22).

Pursuant to this delegation of authority, EOUSA is responsible for the following functions:

A) Establish policy and procedures on criminal fine collection issues, including policy and procedures for fine collection using the Internal Revenue Code, interpret criminal fine collection laws, and propose Department legislation relating to criminal fine collection;

B) Establish guidelines, including the establishment of monetary limits, for the compromise or closing of those criminal debts which may be compromised or closed; *i.e.*, appearance bond forfeiture judgments, interest and penalties;

C) Provide guidance, training and advice to all components of the Department of Justice and the United States Attorneys regarding criminal fine collection issues; and

D) Prepare and distribute to attorney and support personnel materials on policy and procedure designed to maximize the collection of criminal fines.

Within EOUSA, the Financial Litigation Staff has the mission of articulating and promulgating policy with regard to the collection of impositions arising from criminal prosecutions which comports with the overall goals of the Department and EOUSA. To this end the Financial Litigation Staff shall initiate, develop, and implement effective procedures to collect criminal monetary impositions.

The Information Management Staff of EOUSA is charged with responsibility for all office automation and litigation support for the offices of the United States Attorneys. This includes development of coding policies and procedures in support of the local caseload and collections case tracking systems (PROMIS, USACTS-II, pc-USACTS) and maintenance of the central Legal Process Debt Collection System, which consolidates information from all offices of the United States Attorneys.

The Evaluation and Review Staff (EARS) of EOUSA is responsible for evaluating financial litigation operations in United States Attorneys' offices, including the evaluation of an office's criminal collection program. The evaluations are conducted by experienced financial litigation personnel in the field who participate in the peer evaluation program. Financial Litigation evaluators serve as members of integrated teams responsible for evaluating an office's entire operation. EARS summarizes for the Attorney General and Deputy Attorney General the written reports

prepared by the evaluators and, where appropriate, requests that assistance be provided by EOUSA staff to the office.

### 3-12.010 Waiver of Interest or Late Payment Penalties

Interest and late payment penalties for criminal fines may be waived by the United States Attorney if he finds that reasonable efforts to collect them are not likely to be effective. Section 3612(h) of Title 18. This provision applies to any fine in the inventory, regardless of the statute under which it was imposed.

Unlike the provisions for the remission of a fine found at 18 U.S.C. § 3573, no application to the court is necessary to waive interest or penalties. This waiver may be accomplished unilaterally by the United States Attorney's office so long as a determination is made that reasonable efforts to collect the interest and penalties are not likely to be successful.

Nevertheless, the legislative intent of adding interest and late payment penalties to criminal fines was to provide strong incentives for prompt payment. In order to obtain the maximum incentive for prompt payment, enforce interest and late payment penalties must be enforced whenever reasonable efforts to collect them are likely to prove effective.

The waiver of interest or penalties should be considered only *after* the principal amount of the fine has been paid in full.

### 3-12.011 Application of Partial Payments

Section 3612(i) of Title 18 provides that partial payments relating to fines will be applied in the following order: to principal; to costs; to interest; and then to penalties. Where, for example, the fine has been paid but a small amount of interest remains unpaid, the interest may be waived and the case closed. On the other hand, if there is reason to believe that continuing collection efforts will result in recovery of the interest or penalty, a waiver should not be granted.

### 3-12.020 Depriving Debtors of Their Residence

Approval of the United States Attorney should be obtained prior to levying execution upon a criminal debtor's residence. Normally execution on a criminal debtor's residence should not be made if the debtor is cooperative and making reasonable efforts to satisfy the judgment. Similarly, execution upon the debtor's personal property should not result in the debtor's family becoming a public charge. This policy, however, should not be interpreted as permitting the criminal debtor to live an extravagant lifestyle.

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## 3-12.100 APPEARANCE BOND FORFEITURE JUDGMENTS

EOUSA develops policy concerning the collection, compromise, and/or closing as uncollectible of appearance bond forfeiture judgments. Experience soon teaches the collections attorney that unenforceable appearance bond judgments create a large amount of work for the FLU with very little, if any, money returned to the government. Thus, release from custody secured in a manner other than by an appearance bond may be advisable. These other types of release are designed to secure the defendant's appearance but do not result in judgments against judgment-proof debtors. The collection attorney is encouraged to recommend the use of these alternative forms of custody release in appropriate cases.

The types of release prescribed by the Bail Reform Act of 1984 appear at 18 U.S.C. § 3142. which reads in part:

## § 3142 Release or detention of a defendant pending trial

(b) The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, . . . , unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c)(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

subject to one of the following conditions: release on recognizance, an unsecured appearance bond, conditional release, or a bond with a specified percent cash deposit.

3-12.110 Release on Recognizance

Release on personal recognizance is release from custody without a monetary bond requirement. Under this release procedure the judicial officer sets other non-monetary release conditions to ensure the appearance of the defendant at court.

When the defendant who is released on his own recognizance does not appear, there is no collection problem since there was no monetary condition of release. Failure to appear is enforced by 18 U.S.C. § 3146, which establishes prison terms of varying lengths or a declaration of forfeiture for refusing to obey a court order to appear or to surrender for sentencing.

A term of imprisonment imposed for bail-jumping must, by law, be consecutive with any other prison term imposed.

Utilization of release on recognizance by United States Magistrates can alleviate the problem of appearance bond forfeiture judgments where release is conditioned on insufficiently secured or completely unsecured appearance bonds.

### 3-12.120 Unsecured Appearance Bonds

When a defendant who has been released on an unsecured appearance bond fails to appear, a motion for forfeiture of the bond and a request for judgment should ensue as expeditiously as court rules allow. Once the judgment is obtained, the debt should be collected as a civil judgment.

It is EOUSA policy that all unsecured personal bonds be reduced to judgment and aggressively enforced. Unlike criminal fines, these civil judgments may be compromised or closed as uncollectible when collectibility is doubtful either in fact or at law. As a rule, the judgment should not be compromised or closed while the principal remains a fugitive. However if the underlying case is closed by the United States Attorney's office, it is recommended that the collection case then be closed as uncollectible. A copy of the judgment should be placed in the case file in the event the fugitive is eventually apprehended and found to have assets.

### 3-12.130 Conditional Release

The judicial officer may determine that neither release on personal recognizance nor execution of an unsecured bond will reasonably assure the defendant's appearance. Where the defendant is indigent, there are conditions of release set forth in 18 U.S.C. § 3142(c), which do not require a judgment-proof defendant to post bail. An indigent defendant may be released to remain in custody of a designated person, or to report on a regular basis to a designated law enforcement agency, etc. Failure to obey such restrictions may result in a term of imprisonment under 18 U.S.C. § 3146, in addition to any term imposed for the underlying offense.

Where the defendant does have assets, the following forms of conditional release under § 3142(c) utilize the posting of money or property which may result in the collection of forfeited bail.

Release of the defendant may be ordered:

♦(c)(1)(B) . . . subject to the least restrictive further condition or combination of conditions which may include the further condition that the person— . . .

(xi) execute an agreement to forfeit upon failure to appear as required, such designated property including money, as is

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reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or percentage of the money as the judicial officer may specify, or

(xii) execute a bail bond with solvent sureties in such an amount as is reasonably necessary to assure the appearance of the person as required.

### 3-12.140 Bonds With a Specified Percent Cash Deposit

If none of the previous additional release requirements are considered sufficient to ensure the appearance of the defendant, the judicial officer may require the execution of an appearance bond in a specific amount and the deposit in the registry of the court, in cash or other security, of a specified percentage of the amount of the bond.

This condition of release definitely places a financial burden on the individual if he or she fails to appear. If the deposit is anything other than cash, the officer of the court accepting it should be urged to ensure that the deposit is owned by the individual presenting it. The agency investigator can often provide information in that regard.

If the security accepted for deposit in the registry is a deed to real property, the guidelines outlined below may help ensure that the value of the security is sufficient to satisfy the amount set for bail if the principal fails to appear.

When a bond is forfeited under these conditions, the judgment may be compromised or closed as uncollectible in the same manner as described above at USAM 3-12.160. 18 U.S.C. § 3146 provides as a penalty for a failure to appear both the forfeiture of any bail as well as a term of imprisonment.

### 3-12.150 Cash Deposit or Surety Bond

If personal restrictions and specified percent cash deposits are considered insufficient protection, the judicial officer may require the execution of a bail bond with sufficient solvent sureties or, in lieu thereof, deposit of cash.

### 3-12.151 Cash Deposit

A cash deposit in the full amount of the bail is the easiest type of release condition to enforce. If the defendant fails to appear, the judge orders the total deposit to be forwarded to the Treasury. No collection problem is created.

### 3-12.152 Personal Sureties

In dealing with personal sureties, remember the distinction between the discretion to grant bail and to accept the bond after bail has been granted.

While bail pending trial in non-capital cases is almost a right of the defendant, Fed.R.Crim.P. 46(d) provides that every surety must appear to be qualified. It states:

Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

In some districts, court employees, such as the United States District Court Clerk, are authorized to judge the acceptability of assets pledged to meet the requirements of the appearance bond.

Those officers accepting or taking bond have a certain amount of discretion as to what they will accept as financially sufficient. *Hodgkinson v. United States*, 5 F.2d 628 (5th Cir.), cert. denied, 269 U.S. 554 (1925). Courts have variously held that this discretion may be exercised to reject for moral risk as well as financial, *United States v. Nebbia*, 357 F.2d 303 (2d Cir.1966); to reject a bond by a surety fully indemnified against loss by a third party, *United States v. Lee*, 170 F. 613 (S.D. Ohio 1909); or to reject property outside the district, *Ex parte Cassesse*, 288 F. 197 (E.D.N.Y.1923). United States District Courts may set guidelines for the exercise of such discretion.

The United States Attorney may wish to seek judicial promulgation of rules governing the property requirements of personal sureties. Such rules could require that the net worth of the surety be at least equal to the amount of the bond.

Suggested guidelines for real property offered as surety are listed below:

A. Obtain a certified copy of the deed to all of the surety's real property which is listed as a part of his net worth.

B. Obtain a certified copy of the deed showing the surety's residence homestead (if this property is exempt under state law from creditor's process).

C. Require presentation of letters from two independent appraisers showing the fair market value of the real property listed on the net worth statement, exclusive of the surety's residence homestead (if exempt under state law from creditor's process).

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D. Require the defendant to provide a certificate of payment of all taxes due from any taxing authority with power to seize the pledged property for failure to make payment.

E. Obtain a statement from the mortgagee of any property in the net worth statement showing the amount of the mortgage.

Each of these documents may be presented by the prospective surety to the judicial officer admitting or setting bail.

If such guidelines are adopted by the court and followed by those accepting bail, the collection of judgments when the defendant fails to appear will be greatly simplified.

If personal sureties are insolvent or unable to meet the conditions of the bond, the United States Attorney should initiate an investigation to determine if the surety falsified assets when justifying ability to serve as surety. Prosecutions for false swearing or perjury under 18 U.S.C. § 1001 should be pursued vigorously against those who have sworn falsely as to their property in order to act as sureties.

Where a personal surety has pledged realty as collateral for an appearance bond, the United States Attorney can seek to have the realty forfeited directly to the United States when judgment is sought under Fed.R.Crim.P. 46(e)(3). This is accomplished by moving for a court order to vest title of the pledged realty in the United States pursuant to 18 U.S.C. § 3146, which states in part:

If a person fails to appear before a court as required and the person executed an appearance bond pursuant to section 3142(b) or is subject to the release condition set forth in clause (xi) or (xii) of section 3142(c)(1)(B), the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section forfeited to the United States.

The order should also seek the appointment of a receiver, who would be directed to preserve the realty, sell it and deliver the proceeds of the sale, after paying fees, expenses, etc., to the United States Attorney for application to the appearance bond forfeiture judgment.

This order should further direct the United States Marshal to place the United States in exclusive possession of the pledged realty. This provision of the order often results in the surety doing his or her utmost to persuade the fugitive to surrender in the hope of securing the return of his or her property under Fed.R.Crim.P. 46(e)(4).

It is necessary to refer to state law to determine the type of deed obtained by the United States, since this may vary from state to state.

## 3-12.153 Individuals Serving as Professional Sureties

The guidelines for justification of sureties should also be followed for individuals acting as professional, paid sureties. The problem often encountered when dealing with an individual professional surety is that one piece of property often is pledged as security for several bonds. In the event of a default or several defaults, the value of the property is insufficient to cover the several amounts.

Payment in full should be demanded and collected from professional sureties promptly.

Compromise or closing as uncollectible is allowed when dealing with professional sureties. However, only in exceptional situations, e.g., insolvency or bankruptcy of the surety, would EOUSA authorize closing judgments of more than \$500,000 when paid, professional sureties are involved. The United States Attorney should follow the same criteria for appearance bond forfeiture judgments of \$500,000 or less as are followed in closing or compromising other claims of \$500,000 or less.

In all cases of extended nonpayment, compromise or closing a bond secured by a professional surety requires a stipulation that the surety will no longer write bonds in federal court.

## 3-12.154 Corporate Sureties

Federal law governing corporate sureties for Federal bonds is found at 31 U.S.C. §§ 9301 to 9309.

Corporations engaged in the business of providing bonds for the Federal government must appear on the current Department of the Treasury, Fiscal Service, Bureau of Financial Operations Circular 570: *Surety Companies Acceptable on Federal Bonds*. Those corporations whose names appear in the circular have met the standards of Title 31, United States Code, and need not justify their ability to meet the financial obligation assumed under the bond. Fed.R.Cr.m.P. Rule 46(d). A copy of Circular 570 is on file with the clerk of court. The notes at the end of the circular are helpful when preparing to enforce a judgment against a corporate surety.

Treasury approved surety companies are required to appoint federal process agents in the district where its principal office is located and in the district where the bond is to be performed. The name of the process agent for a particular company may be obtained from the clerk of the district court. The federal process agent is the person whom the corporation has designated to receive process, i.e., writs of execution, etc. (Do not confuse the Federal process agent with the agent who wrote the bond; they are seldom the same.) Demand letters, enclosing a copy of the judgment, should be sent to the person the surety company has designated as federal process agent in your district. Likewise, a writ of execution or

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other process against the corporation should be served on the process agent. Where a process agent has not been appointed or is absent, service is to be made directly on the clerk of court of the district court. Fed. R.Crim.P. 46(e)(3).

Section 9305 of Title 31 provides that a surety corporation may not write additional bonds if it does not pay a final judgment or order against it on the bond and if no appeal or stay of judgment is pending 30 days after the judgment is entered. If a corporate surety fails to pay the judgment after 30 days and does not appeal the case, the United States Attorney should file a motion to show cause in the district court why the surety should not be enjoined from writing appearance bonds in the district. If the court grants the order, a copy of it should be sent to the Financial Litigation Staff, EOUSA.

Corporate sureties providing Federal bonds (appearance, performance, immigration, etc.) are insurance companies. The McCarran-Ferguson Act, 15 U.S.C. § 1012, precludes the application of federal laws if they would otherwise impair state law regulating the insurance business. This statute will be of importance when considering legal action to enforce claims against an insurance company.

### 3-12.160 Enforcement of Appearance Bond Forfeiture Judgments

As noted above, it is EOUSA policy that all forfeited appearance bonds be moved to judgment and collected as expeditiously as possible.

Rule 46 of the Federal Rules of Criminal Procedure provides the statutory basis for the enforcement of bail bond forfeitures. Subsection 46(e) not only provides for the forfeiture (and for the setting aside of forfeitures), but also for the movement to judgment, and the remission of judgments.

Bail bonds are enforced in a two stage procedure involving, first, a declaration of forfeiture of bail for breach of the bond, which the court may later set aside, and second, the entry of judgment of default upon which execution may issue. *U.S. v. Eisner*, 323 F.2d 38 (6th Cir. 1963). The forfeiture provision of Rule 46 is designed to discourage violations of bail covenants and to deter defaults which create unnecessary delay and expense to the government. *Smith v. U.S.*, 357 F.2d 486 (5th Cir. 1966). A commissioner [now magistrate] is not empowered to forfeit a bail bond. *Swanson v. U.S.*, 224 F.2d 795 (9th Cir. 1955). Penalty of bail forfeiture is one for damages and is deemed civil, not criminal, in nature. *U.S. v. Barger*, 458 F.2d 396 (9th Cir. 1972). Remission in whole or part of forfeited bail is a matter vested in the sound discretion of federal district court. *Sifuentes-Romero v. U.S.*, 374 F.2d 620 (5th Cir. 1967).

If the bond is declared forfeited, a motion for judgment should be made as expeditiously as possible under court rules and should be followed by an

effort to gain not only any deposit within the registry of the court, but also the balance of the judgment due.

Since civil judgments do not abate with the debtor's death, collection efforts may continue against the estate of a deceased debtor.

The Bankruptcy Reform Act of 1978 (Pub.L. 95-598, 92 Stat. 2549), effective October 1, 1979, eliminated the priority granted appearance bond forfeiture judgments in bankruptcy proceedings. When a surety against whom the United States has a judgment files for bankruptcy, the government should file a claim. The law of some states requires that an insurance company doing business in the state deposit a certain sum with the state insurance commissioner which is kept on deposit in that state's banks. Money to pay a judgment or claim may sometimes be found in deposit in the insurance commissioner's office.

Where property is pledged, the judgment should also seek the appointment of a receiver, who would be directed to preserve the realty, sell it and deliver the proceeds of the sale, after paying fees, expenses, etc., to the United States Attorney for application to the appearance bond forfeiture judgment.

This order should further direct the United States Marshal to place the United States in exclusive possession of the pledged realty. This provision of the order often results in the surety doing his or her utmost to persuade the fugitive to surrender in the hope of securing the return of his or her property under Fed.R.Crim.P. 46(e)(4).

Within these guidelines, United States Attorneys are authorized to compromise appearance bond forfeiture judgments in cases where the difference between the amount of the judgment and the proposed settlement does not exceed \$500,000, and where the amount of the judgment is less than \$500,000. Where such amounts exceed \$500,000, authority for compromise or closing must be obtained through EOUSA.

The Financial Litigation Units should be aware of deposits of cash or securities in the court registries. If the prosecution results in the imposition of a fine, the cash or security deposited by the defendant as security for appearance may be applied in satisfaction of the fine. The Crime Control Act of 1990 created new section 28 U.S.C. § 2044, which provides that upon motion of the United States Attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States Attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or verdict of the defendant's guilt has been entered and before sentencing except upon the showing that such assessment, fine, restitution, or penalty cannot be imposed for the offense the

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defendant committed or that the defendant would suffer an undue hardship. 28 U.S.C. § 2044 does not apply to any third party surety. Cash or securities deposited by a surety as collateral on an appearance bond may not be applied in satisfaction of a fine imposed upon the defendant who appeared in accordance with the obligation of the bond. *Heine v. United States*, 135 F.2d 914 (6th Cir. 1943); *United States v. Davis*, 47 F.Supp. 176 (S.D.N.Y. 1942), *aff'd.*, 135 F.2d 1013 (2d Cir. 1943). Money or security in the court registry has been directed to satisfy fines before tax liens. *United States v. Klein*, 163 F.Supp. 823 (S.D.N.Y.1958).

### 3-12.200 FINES AND RESTITUTION IMPOSED AS CONDITIONS OF PROBATION

Collection policy for fines and restitution that are conditions of probation vary according to the statute under which they are imposed.

For offenses committed prior to January 1, 1985, the imposition of a fine and/or restitution as a condition of probation under 18 U.S.C. § 3651 (1984)—REPEALED is applicable. Note that while this statute is repealed, it is repealed only with respect to offenses committed after November 1, 1987.

For offenses committed on or after January 1, 1985, and prior to November 1, 1987, 18 U.S.C. § 3651 (1985)—REPEALED, as amended by section 4 of the Criminal Fine Enforcement Act of 1984, applies. Again, this statute is repealed only with respect to offenses committed after November 1, 1987.

For offenses committed on or after November 1, 1987, a term of probation may be ordered as provided by 18 U.S.C. § 3561, unless the offense is a Class A or B felony and the defendant is an individual; or the offense is an offense for which probation has been expressly precluded; or the defendant is sentenced to a term of imprisonment at the same time for the same or a different offense. For a felony, the court shall provide that the defendant either pay a fine, make restitution, or perform community service as an explicit mandatory condition of probation. Fines and restitution may also be ordered as discretionary conditions of probation under the Sentencing Reform Act. The fine shall be ordered pursuant to the provisions of Subchapter C of Chapter 227 of Title 18. Restitution is to be ordered pursuant to §§ 3663 and 3664. 18 U.S.C. §§ 3563(b)(2) and (b)(3).

### 3-12.210 Remission of Fines or Restitution During Probationary Period

a. For offenses committed prior to November 1, 1987.

The provisions of 18 U.S.C. § 3651 allow the court to impose a fine or restitution as a condition of probation and to eliminate all or a portion of the condition during the period of supervision. The statute states that "[w]hile on probation and among the conditions thereof, the defendant [m]ay be required to pay a fine in one or several sums; ..." and "[m]ay be

required to make restitution ....' 'The court may revoke or modify any condition of probation, or may change the period of probation.'

Fines imposed specifically as conditions of probation provide flexibility and strong control by the court during the period of supervision. If an outstanding balance remains and the probationer has made good faith attempts to satisfy the imposition, the court may remit the portion of the fine which the debtor is unable to pay.

b. For offenses committed on or after November 1, 1987.

Pursuant to 18 U.S.C. § 3563(c), the court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of probation.

### 3-12.220 Fine Remission Upon Expiration or Revocation of Probation

a. For offenses committed prior to January 1, 1987.

1. A fine imposed as a condition of probation may be remitted by the court during the period of probation. Another portion of 18 U.S.C. § 3651 indicates that, in certain circumstances, the fine will be eliminated when the period of probation terminates. This part states that '[t]he defendant's liability for any punishment (other than a fine) imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation.'

Initially, it must be determined whether the fine has been imposed as a condition of probation. This should be clearly stated in the judgment and commitment order. For example, the following language would indicate that the fine is a condition of probation:

Ordered and adjudged that the defendant having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five years and to pay a fine of \$5,000, execution of sentence is hereby suspended and the defendant is placed on probation for a period of three years and, as a special term and condition of probation, the defendant will pay a fine of \$5,000.

Other judgment and commitment orders will be less clearly worded but will nevertheless, impose a fine as a condition of probation. 18 U.S.C. § 3651 states that '[p]robation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.' The Criminal Code presumes that probation extends to the entire sentence.

Therefore, any phrase describing the fine in the following or similar terms will allow the Assistant United States Attorney with criminal col-

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lection responsibility to interpret the sentence as imposing the fine as a condition of probation:

"The fine imposed is to be paid as a condition of probation."

"The fine imposed is to be paid according to the terms and conditions established by the Probation Office."

"The fine is to be paid through the Probation Officer."

2. If the fine or restitution is imposed as a condition of probation, it terminates with the expiration or revocation of probation.

(a) Expiration. If probation expires (terminates at the end of supervision), the fine or restitution is remitted and the United States Attorney should close the collection case. *United States v. Rosello*, 193 F.Supp. 900 (D.P.R.1961). A notation of the closing, citing 18 U.S.C. § 3651, is entered on the collection record.

(b) Revocation. If probation is revoked by the court, the United States Attorney must look to the action of the court to determine if an imposition remains to be collected. See 18 U.S.C. § 3653. There are three possibilities:

(1) The court may order execution of the sentence which it originally imposed and suspended. In the example of the five-year sentence of imprisonment and \$5,000 fine, the defendant would once again owe the original \$5,000 fine and the United States Attorney would immediately initiate enforcement attempts.

(2) The court may impose a new sentence. The new sentence may be no greater than that which was originally imposed, but may be less severe. 18 U.S.C. § 3653. In other words, the court may reimpose the \$5,000 fine or impose a smaller fine authorized by statute. It may not impose a larger amount, even if the larger amount is authorized by the statute under which the defendant was sentenced. *Roberts v. United States*, 320 U.S. 264 (1943). If a fine is imposed at resentencing, the defendant once again owes the amount assessed and the United States Attorney should immediately initiate enforcement attempts. If no fine is imposed at resentencing, the defendant does not owe a fine and the United States Attorney may close the collection case.

(3) The court may have originally suspended imposition of sentence. This means that instead of sentencing the defendant to five years imprisonment and a \$5,000 fine, the court imposed no sentence at all, but simply placed the defendant on probation and directed the defendant to pay a fine (or restitution) as a condition of probation. If imposition of sentence was suspended, the court may impose any sentence it originally may have imposed by



Office of the Director

Washington, D.C. 20530

April 26, 1995

**TO:** Holders of the United States Attorneys' Manual Title 3

**FROM:** United States Attorneys' Manual Staff  
Executive Office for United States Attorneys  
*Carol DiBattiste*  
Carol DiBattiste  
Director

**RE:** Suspension of Criminal Collection Action

**NOTE:** 1. Distributed to Holders of Volume I, USAM  
2. Insert in front of affected section

**AFFECTS:** USAM 3-12.300

**PURPOSE:** This bluesheet replaces the suspension of criminal collection action policy by clarifying and broadening the permissible uses.

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### 3-12.300 SUSPENSION OF CRIMINAL COLLECTION ACTION

Criminal fines, restitution, assessments, interest, penalties, and court costs (hereafter referred to as "criminal debts") may be placed in suspense whenever it is determined that reasonable efforts to collect are currently not likely to be effective. This includes cases where the defendant is able to make only nominal payments that, if continued, will not result in payment in full within the life of the debt. The segregation of uncollectible criminal debts, the deadwood, from the remainder of the criminal collection inventory will enable the Financial Litigation Unit to focus its attention on active cases where a likelihood of collection exists. The guidelines set forth below must be followed in order to suspend criminal collection action.

#### 3-12.310 Application of the Suspense Policy

a. The suspense policy does not apply to criminal debts that are no longer enforceable, e.g., fines over 20 years old or

special assessments over five years old. Fines over 20 years old should be closed unless the United States Attorney and the defendant have agreed in writing to an extension of the period of liability. Section 3613(b) of Title 18. The obligation to pay a special assessment ceases five years after judgment. Section 3013 of Title 18.

b. Prior to placing a criminal debt in suspense, liens must be filed as appropriate.

c. Criminal debts placed in suspense can and will be selected for the IRS Tax Refund Program provided that the defendant's name and Social Security Number are properly entered into the office's case tracking system.

d. All criminal debts placed in suspense as uncollectible or unlocatable must be reviewed periodically to determine collectibility or whether the defendant can be located. Appropriate dates must be entered into the case tracking system to ensure timely, periodic review. At least once every year skiptracing efforts must be undertaken on updated financial information obtained to determine if the defendant can be located or has the ability to pay. If the amount of the total criminal debt owed by the defendant is equal to or less than \$25,000 but more than \$10,000, this review may be conducted every two years. If the amount of the total criminal debt is \$10,000 or less, this review may be conducted every three years.

e. Suspending collection action of a criminal debt has no effect upon the judgment's validity. Whenever the Financial Litigation Unit learns that a defendant has the ability to pay or the defendant can be located, the criminal debt must be removed promptly from suspense and collection action pursued.

f. Information on the coding of suspense action is available in the office's system operation manual.

### 3-12.311 Permissible Uses

a. Deportation. The criminal debts of a defendant, regardless of the total amount, may be placed in suspense if the Financial Litigation Unit has been advised or has information that the debtor has been deported or is a foreign national who has departed the United States. Where appropriate, remission of a fine, in accordance with the remission policy set forth below at 3-12.350, should be considered.

b. Debt not due. When the court orders other than immediate payment of a criminal debt, the debt should be suspended until due.

c. Stay of enforcement. If a criminal case is on appeal and the defendant is granted a stay of enforcement by the court pursuant to Rule 38, all criminal debts should be suspended until the stay is lifted.

d. Uncollectible. The criminal debts of a defendant may be placed in suspense if financial information obtained on the defendant within the last 180 days (such as a financial statement, credit report or third party information) indicates no ability to pay or the ability to only make nominal payments. Nominal payments are those which, if continued at the current payment rate, will not result in payment in full within the life of the debt.

e. Unlocatable. The criminal debts of a defendant may be placed in suspense if a current address is not available for the defendant and the defendant cannot be located after reasonable diligence. Reasonable diligence is defined as: (1) district policy when the total criminal debts imposed against a defendant total less than \$100,000; and, (2) at least three skiptracing efforts when the total criminal debts imposed against a defendant total \$100,000 or more. If a Social Security number and last known address are available for the defendant, a current credit report must be obtained prior to the record being placed in suspense.

### 3-12.312 Approval Necessary to Suspend Collection Action

Each United States Attorney's office must establish guidelines for approving the suspense of collection. The following are recommended guidelines, subject to the approval of the United States Attorney.

a. For criminal debts imposed totalling less than \$100,000, senior support staff in the Financial Litigation Unit may approve the suspension of collection.

b. For criminal debts imposed totalling \$100,000 or more, the Assistant United States Attorney responsible for financial litigation must approve the suspension of collection.

statute. Thus, if a \$5,000 fine is imposed at this point, the United States Attorney should immediately initiate collection attempts. If no fine (or restitution) is imposed, the United States Attorney may close the collection case.

In all three instances, in order for the defendant to owe a fine or restitution, it must be imposed at resentencing. If a fine or restitution is not assessed at the resentencing, the United States Attorney may close the collection case. It is, therefore, imperative that the United States Attorney be informed of the results of the probation revocation hearing so that he or she may take the appropriate action with respect to the outstanding fine.

If the fine or restitution is not imposed as a condition of probation, neither expiration nor revocation of probation will affect the existence of the fine. Expiration is the natural termination of probation after the period of supervision has ended. Revocation is court-ordered termination of probation because of probation violations. In both instances, when the fine is not a condition of probation, the fine continues in existence and must be collected by the United States Attorney, even though probation terminates.

b. For offenses committed on or after January 1, 1985, through November 1, 1987.

The Criminal Fine Enforcement Act of 1984 amended 18 U.S.C. § 3651 with regard to criminal fines (but not with regard to restitution). For offenses committed on or after January 1, 1985, through November 1, 1987, the court may remit a fine or restitution during the period of probation. However, if at the end of probation, a fine (only, and not restitution) imposed as a condition of probation is not paid in full, the court may terminate probation but the defendant remains obligated for the balance of the fine. In such instances, the United States Attorney should immediately initiate collection attempts under 18 U.S.C. § 3565. However, restitution imposed solely as a condition of probation for offenses committed during this period will terminate with the expiration of a term of probation.

c. For offenses committed on or after November 1, 1987.

1. Expiration.

a. Fines. Section 3563(b)(2) provides that if a fine has been imposed pursuant to the provisions of subchapter C of Chapter 227, payment of the fine may be made a condition of probation. If the court does not modify or reduce a fine that is a condition of probation prior to the expiration of the term of probation, the defendant remains obligated to pay the unpaid balance of the fine. After the expiration of the term of probation, the United States Attorney is responsible for collection of the unpaid balance of the fine until

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the liability to pay the fine expires as provided by § 3613(b). Upon showing that reasonable efforts to collect a fine or assessment are not likely to be effective, 18 U.S.C. § 3573 permits the Government to petition the court to remit all or part of the unpaid portion of a fine.

b. Restitution may be ordered as a condition of probation even though restitution is not ordered as a separate offense pursuant to § 3663. 18 U.S.C. § 3563(b)(3). If restitution is ordered as a separate offense, the order of restitution continues after the term of probation expires. However it is suggested in all cases that at the end of the probation period the court be moved under Fed.R.Civ.P. 56 to grant summary judgment for the balance of the restitution that remains outstanding. This will provide the victim with a civil judgment which may be enforced by the victim. See *Teachers Insurance and Annuity Association v. Green*, 636 F.Supp. 415 (S.D.N.Y.1986).

2. Revocation. If the defendant violates a condition of probation at any time prior to the expiration or termination of probation, the court may: (a) continue the defendant on probation, with or without enlarging or modifying the conditions; or (b) revoke the sentence of probation and impose any other sentence that was available at the time of the initial sentencing. If the sentence of probation is revoked, the United States Attorney must look to the revocation order to determine whether the resentencing imposes a new fine or restitution. Section 3565(a) of Title 18.

### 3-12.300 SUSPENSION OF CRIMINAL COLLECTION ACTION

Criminal fines, restitution, assessments, interest, penalties, and court costs (hereafter referred to as "criminal debts") may be placed in suspense whenever it is determined that reasonable efforts to collect are currently not likely to be effective. The segregation of uncollectible criminal debts, the deadwood, from the remainder of the criminal collection inventory will enable the Financial Litigation Unit to focus its attention on active cases where a likelihood of collection exists. The following guidelines must be followed in order to suspend criminal collection action.

#### 3-12.310 Application of the Suspense Policy

a. The suspense policy does not apply to criminal fines over 20 years old. Fines over 20 years old should be closed unless the United States Attorney and the defendant have agreed in writing to an extension of the period of liability. Section 3565(h) of Title 18.

b. The suspense policy does not apply where the criminal debtor is incarcerated and eligible to participate in the Bureau of Prisons Inmate Financial Responsibility Program.

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July 1, 1992

## 3-12.311 Prerequisites to Suspension of Collection Activity

The following conditions must be met before suspending criminal collection action:

## a. Fines Imposed for Misdemeanors/Infractions

1. A fine imposed for a misdemeanor/infraction may be placed in suspense if financial information on the defendant, such as a financial statement, credit report or third party information obtained within the last 180 days indicates no ability to pay. If the amount imposed is over \$500, the judgment must be perfected as a lien prior to being placed in suspense. (For amounts less than \$500, the judgment may be perfected in accordance with local policy.)

2. A fine imposed for a misdemeanor/infraction may be placed in suspense if a current address is not available for the defendant and the defendant cannot be located after reasonable diligence. If a Social Security number and last known address are available for the defendant, a current credit report must be obtained prior to the record being placed in suspense. (For amounts less than \$500, the judgment may be perfected in accordance with local policy.)

3. A fine imposed for a misdemeanor/infraction may be placed in suspense if the Financial Litigation Unit has been advised or has hard information that the debtor has been deported or is a foreign national who has departed the United States. In such instances, remission of the fine, in accordance with the remission policy set forth below at 3-12.350 should be considered.

## b. Fines Imposed for Felony Offenses

1. A fine imposed for a felony offense may be placed in suspense if financial information on the defendant, such as a financial statement, debtor examination, information obtained through discovery, or third party information obtained within the last 180 days indicates no ability to pay. Prior to placing a fine in suspense, the judgment must be perfected as a lien, if possible. A tickle date must be entered into the case tracking system to ensure that, if needed, any liens of record are renewed in a timely manner.

2. A fine imposed for a felony offense may be placed in suspense if a current address is not available for the defendant and the defendant cannot be located after reasonable diligence. For felony offense fines, reasonable diligence is defined as pursuing at least three skip tracing procedures. If a Social Security number and last known address are available for the defendant, a current credit report must be obtained as a part of the Financial Litigation Unit's effort to locate the defendant. Prior to suspending collection action, the judgment must be perfected as a lien according to state law, if possible.

3. A fine imposed for a felony offense may be placed in suspense if you have been advised or have hard information that the defendant has been deported and has no assets or the defendant is a foreign national who has deported the United States and has no assets. In such instances, remission of the fine, in accordance with the remission policy set forth below at § 3-12.350 should be considered.

#### 3-12.312 Approval Necessary to Suspend Collection Action

Each United States Attorney's office must establish guidelines for approving the suspense of collection. The following are recommended guidelines, subject to the approval of the United States Attorney.

a. Fines Imposed for Misdemeanors/Infractions. Senior support staff in the Financial Litigation Unit may approve the suspension of collection action on fines imposed for misdemeanors/infractions.

b. Felony Offense Fines Less than \$25,000. Senior support staff in the Financial Litigation Unit may approve the suspension of collection action on felony offense fines under \$25,000.

c. Felony Offense Fines of \$25,000 or More. The Assistant United States Attorney responsible for financial litigation must approve the suspension of collection action on felony offenses of \$25,000 or more.

#### 3-12.313 Review of Fines Placed in Suspense

All criminal fines placed in suspense must be reviewed periodically to determine collectibility or to determine if the defendant can be located. Appropriate dates must be entered into the case tracking system to ensure timely, periodic review.

a. Fines Imposed for Misdemeanors/Infractions. At least every two years skip tracing efforts must be undertaken or updated financial information obtained to determine if the defendant can be located or has the ability to pay. If the amount of the imposition is less than \$500, this review may be conducted every three years.

b. Fines Imposed for Felony Offenses. Skip tracing efforts must be undertaken or updated financial information obtained at least once a year.

c. Fines over Twenty Years Old. The suspense category should be reviewed periodically for any fines over twenty years old. Such fines should be removed from suspense and closed.

#### 3-12.314 Miscellaneous Information Relating to Suspending Collection Action

A. Refer to your systems operation manual for information on the coding of suspense action.



Cheryl

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INDIAN RESOURCES  
SECTION

July 8, 1992

TO: Holders of United States Attorneys' Manual Title 3  
FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys  
Laurence S. McWhorter  
Director  
RE: Special Assessments Imposed Against Indigent, Undocumented Aliens  
AFFECTS: USAM 3-12.320  
PURPOSE: This bluesheet sets forth guidelines for the remission of special assessments imposed against indigent, undocumented aliens.

The following new section has been added to USAM 3-12.320

3-12.321 Remission of special assessments imposed against undocumented aliens.

Pursuant to 18 U.S.C. § 3013, the court shall impose a special assessment on any person convicted of an offense against the United States. The imposition of special assessments under this section is mandatory and without regard to the defendant's ability to pay. Thus, assessments are imposed against indigent, undocumented aliens who are about to be deported. In such cases, there is no likelihood that the assessment will be paid.

Upon the petition of the Government showing that reasonable efforts to collect an assessment are not likely to be effective, the court may remit all or part of the unpaid portion of the assessment. 18 U.S.C. § 3573.

The obligation to pay an assessment expires five years after the date of the judgment. 18 U.S.C. § 3013(c).

3.12-321.1 Remission of Assessments at Sentencing

In those cases where the convicted person (1) is an undocumented alien, (2) is about to be deported, (3) has no assets to satisfy the assessment, (4) is not sentenced to a fine, restitution or other monetary penalty, and (5) is not sentenced to

any incarceration, the Assistant United States Attorney who is present at sentencing should move for remission of the assessment at that time pursuant to 18 U.S.C. § 3573..

Under 18 U.S.C. § 3573, the Government must show that reasonable efforts to collect a fine or assessment are not likely to be effective. If the convicted person is represented by court-appointed counsel, that is an indication that reasonable efforts to collect the assessment prior to his deportation will not be successful. The border patrol will know whether the convicted person has any cash on his person that may be used to satisfy the assessment.

### 3-12.321.2 Remission of Existing Assessments Against Undocumented Aliens

In some districts, assessments have been imposed against thousands of deported aliens with no assets. Because of the tremendous number of cases, these assessments have not been entered in the case tracking system. Where the convicted person has been sentenced only to pay a special assessment and has been deported, the following approach is recommended:

A. Assessments which will expire through lapse of time within the next six months. Unless there is contact with the debtor suggesting that the assessment may be collectible, these assessments should be allowed to expire five years after the date of judgment.

B. Other assessments. It is recommended that the United States Attorney's office prepare a blanket petition for remission, which states that all persons whose names appear on the attached list are deported aliens without ability to pay the special assessments. A list containing the name of each deported alien whose assessment is being remitted, the court number, and the amount of the assessment being remitted should be attached to the blanket petition for remission.

The blanket petition should be filed with the court that imposed the assessments. It is not necessary that it be filed with the same judge who imposed the assessments.

It is recommended that the United States Attorney discuss this procedure with the Chief Judge before filing the blanket petition for remission.

3. Case tracking. In those cases where the special assessments imposed against deported aliens have not been entered in the case tracking system, the blanket petition for remission should be retained in the files as a record of the remission. The debtors whose names appear on that petition should not be entered in the case tracking system.

B. Criminal fines placed in suspense can and will be selected for the IRS Tax Refund Program provided that the defendant's name and Social Security Number are properly entered into your case tracking system.

C. It is important to note that suspending collection action of a criminal fine has no effect upon the judgment's validity. Whenever you become aware that a defendant has the ability to pay or the defendant can be located, the criminal fine must be removed promptly from suspense and collection action pursued.

### 3.12.320 Miscellaneous Information

a. Coding. Refer to your systems operation manual for information on the coding of suspense action.

b. IRS Tax Refund Program. Criminal fines placed in suspense can and will be selected for the IRS Tax Refund Program if the defendant's name and Social Security number are properly entered into your case tracking system.

c. Reactivating Collection Activity. Suspending collection action on a criminal fine has no effect on the judgment's validity. Whenever you become aware that a defendant has the ability to pay or the defendant can be located, the criminal fine must be removed promptly from suspense and collection action pursued.

### 3-12.321 Remission of Special Assessments Imposed Against Undocumented Aliens

Pursuant to 18 U.S.C. § 3013, the court shall impose a special assessment on any person convicted of an offense against the United States. The imposition of special assessments under this section is mandatory and without regard to the defendant's ability to pay. Thus, assessments are imposed against indigent, undocumented aliens who are about to be deported. In such cases, there is no likelihood that the assessment will be paid.

Upon the petition of the Government showing that reasonable efforts to collect an assessment are not likely to be effective, the court may remit all or part of the unpaid portion of the assessment. Section 3573 of Title 18.

The obligation to pay an assessment expires five years after the date of the judgment. Section 3013(c) of Title 18.

### 3-12.321.1 Remission of Assessments at Sentencing

In those cases where the convicted person (1) is an undocumented alien, (2) is about to be deported, (3) has no assets to satisfy the assessment, (4) is not sentenced to a fine, restitution or other monetary penalty, and

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(5) is not sentenced to any incarceration, the Assistant United States Attorney who is present at sentencing should move for remission of the assessment at that time pursuant to 18 U.S.C. § 3573.

Under 18 U.S.C. § 3573, the Government must show that reasonable efforts to collect a fine or assessment are not likely to be effective. If the convicted person is represented by court-appointed counsel, that is an indication that reasonable efforts to collect the assessment prior to his deportation will not be successful. The border patrol will know whether the convicted person has any cash on his person that may be used to satisfy the assessment.

### 3-12.321.2 Remission of Existing Assessments Against Undocumented Aliens

In some districts, assessments have been imposed against thousands of deported aliens with no assets. Because of the tremendous number of cases, these assessments have not been entered in the case tracking system. Where the convicted person has been sentenced only to pay a special assessment and has been deported, the following approach is recommended:

A. Assessments which will expire through lapse of time within the next six months. Unless there is contact with the debtor suggesting that the assessment may be collectible, these assessments should be allowed to expire five years after the date of judgment.

B. Other assessments. It is recommended that the United States Attorney's office prepare a blanket petition for remission, which states that all persons whose names appear on the attached list are deported aliens without ability to pay the special assessments. A list containing the name of each deported alien whose assessment is being remitted, the court number, and the amount of the assessment being remitted should be attached to the blanket petition for remission.

The blanket petition should be filed with the court that imposed the assessments. It is not necessary that it be filed with the same judge who imposed the assessments.

It is recommended that the United States Attorney discuss this procedure with the Chief Judge before filing the blanket petition for remission.

3. Case tracking. In those cases where the special assessments imposed against deported aliens have not been entered in the case tracking system, the blanket petition for remission should be retained in the files as a record of the remission. The debtors whose names appear on that petition should not be entered in the case tracking system.

### 3-12.330 Fines Against Dissolved, Inactive, or Defunct Corporations

This policy applies to fines imposed against corporate defendants for offenses committed prior to November 1, 1987, the effective date of the Sentencing Reform Act.

It is the policy of the Department of Justice that criminal fines involving corporations not be closed until payment in full is received or the corporation has been legally dissolved. Legal dissolution generally occurs when the corporate charter is forfeited, not when the corporation becomes inactive or defunct. In other words, the corporation must cease to exist as a corporate entity, not merely in the status of no longer doing business.

While the Department agrees that involuntary dissolution through state action should not be the exclusive method by which a fine from a defunct corporation may be closed, alternative procedures must carefully ensure that the corporation is permanently defunct before the debtor is presumed dead and enforcement efforts are terminated. Therefore, forfeiture of the corporate charter, or the right to do business, or any other corporate power which has the legal effect of less than complete dissolution, but which prevents the corporation from transacting business until certain fines and penalties are paid, may be considered equivalent to dissolution. Nevertheless, corporate fines may not be closed until seven years after the date on which the corporate powers were forfeited and until seven annual checks with the appropriate state agency have confirmed that the corporation has not been restored to an active status.

In some states, a corporation never expires but may be renewed any time upon payment of a state franchise tax. In this situation exists, the Financial Litigation Unit should make annual inquiries with the Secretary of State or other officials responsible for corporation supervision to ascertain current status. The case may be closed after seven years of inactivity.

If the corporate powers, rights, and privileges have not been restored after seven years, the corporate fine may be administratively closed. An appropriate entry must be entered in the collection record.

If the corporation is later restored to active status, the collection case must be reopened and the debtor vigorously pursued.

3-12.350 Policy for the Remission or Modification of Criminal Fines Under 18 U.S.C. § 3573

Section 3573 was amended by the Anti-Drug Abuse Act to permit the court, upon petition by the Government that reasonable efforts to collect a fine were not likely to be successful, to remit all or any part of a fine or assessment, including interest and penalties, regardless of the date of imposition. Thus, this statute applies to any unpaid fine in the inventory. This amendment permits the United States Attorney to petition the court to remit uncollectible fines, which if granted, will allow you to remove the fine from your inventory. Given the burgeoning amount of crimi-

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nal fine debt being carried by the United States Attorneys, it is extremely important that the inventory is purged of all of the deadwood.

Where there is a reasonable belief that a fine will never be collected, petition for remission of all or part of the fine is preferable to placing the case in suspense and waiting 20 years for the liability for payment to cease. It is suggested that priority for remission be given to older cases where you have extensive documentation that the debtor cannot reasonably be expected to pay the fine or that based on the data available, you cannot reasonably expect to locate the debtor.

Where a fine is currently uncollectible, but reasonably may become collectible in the future, the fine should be placed in suspense until it becomes collectible and not remitted. See 3-12.300 *et seq.* for policy on suspending collection activity.

In determining whether administrative suspension or court-ordered remission should be utilized, discretion should be exercised, especially if a fine was imposed in a case that was of local community interest. All petitions should have the approval of the United States Attorney prior to submission to the court. Further, in sentencing defendants for offenses committed on or after January 1, 1985, the court was required to consider the defendant's ability to pay the fine when imposing sentence. Thus a sentence imposing a long term of imprisonment and a fine should not, in itself, be a reason for requesting remission. The defendant may have assets with which to pay the fine and may also earn money during his term of incarceration.

Section 3573 provides that the petition must be filed in the district where the fine was imposed unless jurisdiction has been transferred. Where you have a foreign judgment and court jurisdiction was not transferred, the judgment must be returned to the originating district with a request that the financial litigation unit of that district initiate a petition for remission. Be sure to include the documentation to prove that collection cannot be reasonably expected.

It is important to remember that fines are imposed to punish convicted criminals and to deter others from committing the crime. Thus the United States Attorney or the court may not grant the petition on the grounds that such action sends the "wrong message" to those inclined to commit such an offense. Where the petition is declined, the case may be placed in suspense.

3-12.400 RESTITUTION ORDERED UNDER THE VICTIM AND WITNESS PROTECTION ACT (18 U.S.C. §§ 3579, 3580 AND §§ 3663, 3664)

3-12.410 Policy Pertaining to the Collection of Restitution

It is the Department's policy that United States Attorneys will enforce orders of restitution on behalf of victim(s), whether the victim is the

Government or a third party, to the same extent that they enforce the collection of a fine. Departmental guidelines provide for assisting victims in recovering from their losses to the fullest extent possible consistent with available resources. The criminal prosecutor has the responsibility for obtaining the name of the victim(s) and the amount due. See *Guidelines for Victim and Witness Assistance* Office of the Attorney General, July 9, 1983. The Probation Officer should include the names of the victim(s) and amount of loss to each in the presentence investigation report. Where there are many victims, the judgment may contain an addendum listing the names, addresses, and amounts due each victim. The order of restitution should be specific as to whether the defendant is to make restitution directly to the victim, or is to turn the restitution over to the Attorney General for transfer to the victim. 18 U.S.C. §§ 3579(F)(4) and 3663(f)(4). Where the judgment fails to include the name and amount due to the victim, an amended order should be requested.

Subsections 3579(h) or 3663(h) of Title 18 permit enforcement of the order of restitution by the United States as if it were either a fine or a civil judgment, or by the victim as if it were a civil judgment. The legislative history of the amendment to § 3579(h) makes it plain that the United States may enforce the order of restitution on behalf of a victim when that person is other than the United States. Pleadings made by the United States on behalf of a third party victim should indicate that they are being made by the United States or behalf of the victim pursuant to 18 U.S.C. § 3579(h) or § 3663(h). When acting on behalf of a third-party victim, it should be remembered that the United States has no right to compromise a judgment on behalf of the victim.

Unless the court designates in its order that a particular victim(s) is to be paid prior to other victims, all victims designated in the order of restitution have the same priority and should share in the distribution of restitution payments. The preprinted language on the judgment and commitment order form distributed by the Administrative Office of the United States Courts in July, 1990, states that restitution payments shall be divided proportionately among the victims based on the amount of the loss of each victim. Thus, if Victim A is owed a total of \$1,000 and Victim B a total of \$500 and the defendant makes a payment of \$150, \$100 will be paid to Victim A and \$50 will be paid to Victim B.

While it may be convenient to make disbursements to victims in alphabetical order, or to pay the debtors owed the largest amounts (or the smallest amounts) before others or to divide the total amount of restitution equally among all of the victims, this should not be done without court approval.

Whether to enforce orders of restitution in favor of third party victims must be determined on a case by case basis consistent with the needs of the victim and the resources of the United States Attorney's office. Assistance to third party victims is subject to the conditions listed below:

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a. Where restitution is ordered to be turned over to the Attorney General for transfer to the victim and the amount is not voluntarily forthcoming from the defendant, or

b. Where the court has ordered restitution as a discretionary condition of probation under 18 U.S.C. § 3651 and enforcement of the order is requested by the probation officer, or

c. Where restitution is ordered to be paid directly to the victim, the defendant fails to pay the victim, and the United States Attorney is requested by the victim or the probation office to enforce the order.

This policy is subject to the following conditions:

a. That there is an indication that the defendant has assets with which to pay the restitution;

b. That the collection effort will be pursued only so long as there are assets from which to collect;

c. That the collection efforts will cease after the principal is collected unless interest has been specifically ordered by the court. (It is the policy of the Department of Justice that interest will not be collected on restitution unless the court specifically orders interest to be paid in its order of restitution).

d. That collection of restitution for persons other than the victim is at the discretion of the United States Attorney. The government may cease acting in behalf of the victim upon fulfillment of the order of restitution;

e. The above conditions may be waived by the United States Attorney; and

f. When conditions a-d are encountered and a decision is made to cease the collection effort on behalf of the victim, the victim and other persons will be notified in writing by the United States Attorney that the United States will no longer pursue the case in his behalf, citing the reason(s) therefor, and that they may retain private counsel at their own expense. In general, the reasons for returning the case to the victim should be similar to those in which the United States returns civil cases to its client agencies.

### 3-12.411 Reporting of Restitution

Any payments of restitution received by the United States Attorneys' offices on or after the effective date of this policy shall be reported in the case management system (PROMIS, USACTS-II or PC-USACTS), without regard to whether the victim is the United States or a third party. Such payments shall be reported in accordance with the appropriate case manage-

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July 1, 1992



U.S. Department of Justice

Executive Office for United States Attorneys

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Office of the Director

Washington, D.C. 20530

March 20, 1992

TO: Holders of United States Attorneys' Manual Title 3

FROM: United States Attorneys' Manual Staff  
Executive Office for United States Attorneys

*LSM* Laurence S. McWhorter  
Director

RE: Reporting of Restitution

NOTE: 1. This is issued pursuant to USAM 1-1.510.  
2. Distribute to Holders of Volume I, USAM.  
3. Insert in front of affected section.

AFFECTS: USAM 3-12.411

PURPOSE: This bluesheet sets forth guidelines for the reporting of restitution payments in the case management system.

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The following new section has been added to USAM 3-12.400.

3-12.411 Reporting of restitution.

Any payments of restitution received by the United States Attorneys' offices on or after the effective date of this policy shall be reported in the case management system (PROMIS, USACTS-II or PC-USACTS), without regard to whether the victim is the United States or a third party. Such payments shall be reported in accordance with the appropriate case management system users manual. Use of the USA-117A (Criminal Debtor Card) is no longer authorized.

ment system users manual. Use of the USA-117A (Criminal Debtor Card) is no longer authorized.

### 3-12.500 FINES IMPOSED BY UNITED STATES MAGISTRATES

a. The Federal Magistrates Act (28 U.S.C. §§ 631-639) concerns the United States Attorney's responsibility for collecting fines imposed by United States magistrates. The Attorney General is charged with the responsibility of collecting *all* unpaid fines that are certified to him by the clerk of court. A fine imposed by a magistrate is no different than any other fine; any and all statutes for fine collection apply to their collection. Because magistrates often try large numbers of cases and may hold court in locations away from the district court, such as in national parks or at military and naval installations, different procedures are necessary to process the collection of these fines. The situation is further complicated by the transferring of responsibility for the receipting of payments from the United States Attorney to the Clerk of Court.

b. United States Magistrates generally hear cases where the defendant is charged with misdemeanors or petty offenses. A petty offense is defined as a Class B or Class C misdemeanor or an infraction. 18 U.S.C. § 19. District courts may publish rules which allow certain specified offenses to be satisfied by a forfeiture of collateral. For such offenses, the defendant may elect to stand trial before a magistrate or to not stand trial and forfeit collateral (*i.e.*, the violation notice or citation together with the money to pay the fine is mailed to a Central Violations Bureau (CVB). The CVB is an organization which serves a group of district courts. The CVB receives the money which is later forfeited by the magistrate when the defendant does not appear at the trial.

c. If the defendant fails to appear and does not send the money to the CVB, the magistrate orders his arrest and the defendant is brought before the magistrate. The magistrate also hears those cases in which the defendant, having received a citation or violation notice, elected to stand trial. The Department remains responsible for the collection (but not the receipt) of unpaid fines in these cases. To expedite collection, a procedure has been established by an agreement between the Department and the Administrative Office of the United States Courts for notices of delinquency or default (on Departmental letterhead) to be sent to debtors by those CVBs with automated equipment. The CVB will furnish a report to the United States Attorney regarding cases for which default notices were sent during the previous month. The United States Attorney should then enter the judgment in its collection system and follow appropriate collection procedures. Where the CVB does not have automated equipment, the clerk of court will notify the United States Attorney of unpaid fines, who will then enter the judgment in the case tracking system and follow appropriate collection procedures.

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d. The Magistrate also hears other cases for offenses that are not initiated by a citation or violation notice. These cases may involve Class A misdemeanors (which are not petty offenses) and for which larger fines may be imposed. Responsibility for collection of unpaid fines in these cases remains with the United States Attorney.

### 3-12.600 STAND-COMMITTED FINES

a. A stand-committed fine is one which requires that the debtor remain incarcerated until the fine is paid in full. The title "stand-committed" refers to the special manner in which this fine is enforced and is derived from the wording of the sentence which is usually similar to the following: "Ordered and adjudged that the defendant, having been found guilty of said offenses, is hereby ordered to pay a fine in the sum of \$1,000 and to stand committed in the custody of the Attorney General or his authorized representative until the fine is paid in full."

b. The Sentencing Reform Act has no provision authorizing a stand-committed fine. However where the offense occurred prior to November 1, 1987, the applicable law, 18 U.S.C. §§ 3565 and 3569, which provide for stand committed fines, may be utilized. See *U.S. v. Atlantic Disposal Service, Inc.*, 887 F.2d 1208 (3rd Cir.1989).

c. Occasionally, the sentencing judge will suspend execution of a stand-committed fine for 30 or 60 days to allow the defendant an opportunity to secure adequate funds to satisfy the imposition. When this occurs, the suspense system should be annotated to initiate a review of the case two weeks before payment is due. At that time, if the fine has not been paid in full, the debtor should receive a letter stating that he will be incarcerated on the date designated for execution of the sentence if the fine remains unpaid. If payment is not received on the appointed day, the United States Attorney should prepare an Order of Arrest and an affidavit in support of the order, present it to the presiding judge for signature, and deliver it to the United States Marshal who will arrest the debtor and place him in incarceration until the fine is paid in full or the debtor is released by law.

d. Since indigents may not be imprisoned for debts, 18 U.S.C. § 3569 details the procedure by which an indigent with a stand-committed fine may be released from imprisonment without paying the fine. The debtor must apply to the United States Magistrate for a hearing to determine his indigency. The hearing is usually conducted on the last day of the term of the sentence, since § 3569 provides that the convict's eligibility to make application to take the oath is based on the defendant's having completed the term of imprisonment. If the debtor is serving a term of years, the application in writing is made to the nearest United States Magistrate in the district where he is imprisoned. After notice to the United States Attorney where the fine originated and to the United States Attorney in the

district where the hearing is to be conducted, the Magistrate will hear and determine the matter. The United States Attorney where the fine originated should forward any financial information relating to the debtor to the United States Attorney where the hearing is to be conducted for presentation at the hearing. If no information disputing the debtor's claim of indigency is received from the United States Attorney, it will be assumed that the inmate's statement is true. If during the hearing on the debtor's financial status, there is evidence that he or she is unable to pay the fine and has no property exceeding \$20 in value (except property exempt from the creditor's process in the state where the inmate is imprisoned) the United States Magistrate will administer and the inmate may take a pauper's oath and be discharged from the incarceration.

e. 18 U.S.C. § 3569 provides that if the debtor possesses non-exempt property in excess of \$20 value, the United States Magistrate will not order the inmate's release. However § 3569 also provides that the inmate is still eligible for release if the United States Attorney (and not the United States Magistrate) determines that certain property is reasonably necessary for the support of the debtor or the debtor's family, the inmate may be released on payment of the excess amount. On the other hand, if the United States Attorney determines that retention of all or certain assets are not necessary for the support of the inmate or his family, failure on the part of the inmate to pay the excess amount on his fine results in the debtor's being returned to incarceration.

f. The pauper's oath serves only to release the debtor from imprisonment. It does not remit the fine or relieve the debtor of his or her obligation to make full payment. See *United States v. Jenkins*, 141 F.Supp. 499 (S.D.Ga.), *aff'd.*, 232 F.2d 83 (5th Cir.1956). Nor does serving an additional 30-day term as provided for in 18 U.S.C. § 3569 (1983) serve as a substitute or alternative for payment of fine. See *Vitagliano v. United States*, 601 F.2d 75 (2d Cir.), *cert. denied*, 444 U.S. 1085 (1979). The United States Attorney must continue vigorous and aggressive collection attempts until the fine is paid in full and may enforce the judgment by execution against the property of the debtor. However, the debtor may not be sentenced for contempt of court for failure to make payment. See *United States v. Beard*, 241 F.2d 170 (2d Cir.1957).

g. Until the enactment of the Criminal Fine Enforcement Act of 1984 (Pub.L. 98-596), 18 U.S.C. § 3569 provided that the debtor must be confined for an additional 30 days before he or she was qualified to petition for an indigency hearing and the pauper's oath. However, *Williams v. Illinois*, 399 U.S. 235 (1970), and *Tate v. Short*, 401 U.S. 395 (1971), have invalidated this 30-day provision. When a debtor who is serving a term of years reaches release date, the debtor is immediately eligible for release if he or she has taken the pauper's oath. The Criminal Fine Enforcement Act also amended 18 U.S.C. § 3565 to provide that the court could order a stand-

committed fine only if it found by the preponderance of the information relied on in sentencing that the defendant had the present ability to pay a fine or penalty.

### 3-12.700 FINE ENFORCEMENT POLICY DURING APPEAL

a. The Department of Justice formerly proscribed garnishment or execution against the property of the defendant during the pendency of an appeal. This policy has been reconsidered in view of the large number of narcotic and white collar crime cases in which there is likelihood that the defendant will conceal or convey assets during appeal. In such cases, the United States Attorney should take action to protect the interests of the government.

b. A variety of possibilities exists to ensure that the defendant's assets will not be dissipated during pendency of an appeal. Unless a stay of execution was ordered at sentencing, the United States Attorney may levy execution on the debtor's property 10 days after entry of judgment and place the funds it secures in the registry of the court. *United States v. Fujimoto*, 14 F.R.D. 448 (D.Hawaii 1953).

c. When an appeal is filed, the defendant has the right to request a stay of execution on the payment of a fine under provisions of Rule 38 of the Federal Rules of Criminal Procedure. However, Rule 38 provides the court several options to allow the government to preserve its ability to collect the fine if a stay is granted and the case is affirmed. Fed.R.Crim.P. 38(c) provides:

A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the court of appeals upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, to submit to an examination of assets, and it may take any appropriate order to restrain the defendant from dissipating assets.

Rule 38(c) applies to stays of fines for offenses committed after November 1, 1987. Rule 38(a)(3) of the Fed.R.Crim.P. is applicable to stay of fines for offenses committed prior to November 1, 1987; the wording of Rule 38(c) and 38(a)(3) is the same. The effect of Rules 38(c) and 38(a)(3) has been modified by 18 U.S.C. §§ 3624 and 3572(g).

1) For offenses committed after December 31, 1984, and before November 1, 1987, 18 U.S.C. § 3624 provides that unless exceptional circumstances exist, if the sentence to pay a fine is stayed pending appeal, the court granting the stay shall include in such stay a requirement that the defendant deposit the fine in the registry of the court,

provide a bond or other security to ensure payment of the fine, or be restrained from transferring or dissipating assets.

2) For offenses committed after November 1, 1987, 18 U.S.C. § 3572(g) modifies the court's use of Rule 38(a)(3) by providing that unless exceptional circumstances exist (as determined by the court), the court shall require the defendant to deposit in the registry of the court any amount of the fine that is due; or require the defendant to provide a bond or other security to ensure payment of the fine, or restrain the defendant from transferring or dissipating assets.

3) The Sentencing Reform Act amended Rule 38 to add subsection (e) providing for stays of execution with regard to restitution and forfeiture.

d. Unless the court orders a stay for the fine in the sentence, or provides for other than immediate payment of the fine, the Government should execute on the defendant's property as soon as possible after sentencing. If an appeal is taken, no execution shall issue nor proceedings be taken for its enforcement until the expiration of 10 days after entry of judgment. Fed.R.Civ.P. 62(a). If the court has not deferred payment, the fine is payable immediately. The United States Attorney should execute on the defendant's property. Cash collected while the case is on appeal is to be deposited in the registry of the court pending outcome of the appeal. The defendant may request a stay of execution of the fine as provided by Rule 38(c). FLU personnel must understand that the court, having ordered immediate payment of the fine, expects the Government to enforce that order. Any motion to have the defendant post security for payment of the fine should come only after the defendant has requested a stay. If the defendant requests a stay, the court may then order the defendant to give security to ensure payment of the fine. *See United States v. Graziano*, 682 F.2d 1284 (11th Cir.), cert. denied, 466 U.S. 937 (1982).

e. If the court orders a stay, or the defendant requests a stay, the Government should file motions requesting the deposit of the whole fine, or in the alternative, a bond to guarantee payment of the fine, or an order restraining the defendant from transferring or dissipating assets, or an examination of the defendant's assets. A financial examination of the defendant, or of third parties having a financial relationship with the defendant, and conducted under the Federal Rules of Civil Procedure, may, of itself, cause the defendant to post the fine.

f. Care should be taken that no confusion exists about the bond guaranteeing the defendant's appearance during the appeal and a bond to guarantee the payment of the fine. The appearance bond will be exonerated when the conditions to appear have been met, and may have been posted by third parties who have no obligation to pay the fine. Fed.R.Crim.P. 46(f). A bond to guarantee payment of the fine will normally be co-signed by a

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professional surety company which guarantees to pay the fine if the defendant defaults. *United States v. Phillips*, 42 F.R.D. 581 (W.D.Pa.1967), vacated on other grounds sub nom., *United States v. Sams*, 406 F.2d 404 (3d Cir.1969).

### 3-12.800 ENFORCEMENT OF FINES DURING INCARCERATION

a. United States Attorneys should make every effort to enforce a fine judgment during the period of the defendant's incarceration; cases should be placed in suspense status only after all enforcement attempts have been exhausted.

b. Every incarcerated fine debtor should receive a demand letter reminding the inmate of his or her outstanding imposition. The letter should include a Financial Statement of Debtor (Form OBD-500 or OBD-500B) and direct that the form be completed and returned to the United States Attorney. Many incarcerated debtors will, of course, refuse to cooperate in this manner. Others, however, will provide a brief summary of their financial situation. If real property is listed in the completed OBD-500, OBD-500A, OBD-500B, or discovered in independent searches conducted by the United States Attorney or other governmental agencies, a judgment lien should be perfected. If non-exempt, easily liquidated personalty is found, execution should immediately issue. In other words, no enforcement opportunity should be postponed to satisfy the fine simply because the debtor is incarcerated.

c. The Bureau of Prisons strongly encourages each sentenced inmate to satisfy his legitimate financial obligations, which include child support, restitution to victims, and fines and special assessments through the Inmate Financial Responsibility Program. The prison staff meets with each inmate to develop a plan for meeting these obligations by using the inmate's outside resources or institution earnings for payment. The inmate is responsible for making all payments required by the financial responsibility plan. Payments may be made from earnings of the inmate within the institution or from outside resources. Funds are electronically transferred from the prisons to the lock box. Twice monthly a printed record of payments made by inmates is sent to the Financial Litigation Units.

Where an incarcerated debtor fails to cooperate in meeting his financial obligations, consideration should be given to bringing the debtor before the court for a deposition. 18 U.S.C. § 3621(d) provides that the United States Marshal shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the Government. Fed.R.Civ.P. 30(a) provides that the deposition of a person confined to prison may be taken only by leave of court on such terms as the court prescribes.

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d. Garnishment of prisoners' trust funds (wages earned for prison work) is proscribed as a result of the interpretation of legislation establishing prison industries and as a matter of policy settled between the Criminal Division and the Bureau of Prisons. With the exception of the Internal Revenue Service tax liens (for past-due income taxes) and repayment for willful destruction of government property, the terms of the trust contract require the permission of the inmate before funds can be disbursed. The rationale supporting exemption of prisoners' trust fund from garnishment reflects concern for rehabilitation of inmates. Since prisoners are not compelled to work, but are paid when they do, garnishment of the wages of working inmates would discourage employment in prison industries and preclude any rehabilitative benefits derived from such work.

### 3-12.900 INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

Section 3-12.900 of the USAM dated October 1, 1988, is rescinded effective October 1, 1988.

## CODE OF FEDERAL REGULATION REFERENCES

Title & Section	USAM Section	Title & Section	USAM Section
4 C.F.R., Parts 101-105	3-11.110	5 C.F.R., Part 550	3-2.550
4 C.F.R. § 102.1	3-11.932	5 C.F.R., Part 610	3-2.610
4 C.F.R. § 102.13	3-11.611	5 C.F.R., Part 610	3-2.620
4 C.F.R. § 105.1 et seq.	3-11.110	5 C.F.R., Part 630	3-2.630
4 C.F.R. § 105.1	3-11.121	5 C.F.R., Part 711	3-2.711
4 C.F.R. § 105.1	3-10.150	5 C.F.R., Part 715	3-2.715
4 C.F.R. § 105.2	3-11.110	5 C.F.R., Part 720	3-2.720
4 C.F.R. § 105.2	3-11.121	5 C.F.R., Part 731	3-2.731
4 C.F.R. § 105.2	3-11.932	5 C.F.R., Part 732	3-2.732
4 C.F.R. § 105.4	3-11.121	5 C.F.R., Part 733	3-2.733
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5 C.F.R., Part 297	3-2.297	5 C.F.R., Part 752	3-2.752
5 C.F.R., Part 300	3-2.300	5 C.F.R. § 752.404	3-2.752
5 C.F.R., Part 301	3-2.301	5 C.F.R. § 752.405	3-2.752
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5 C.F.R., Part 315	3-2.315	5 C.F.R., Part 870	3-2.870
5 C.F.R., Part 315.901	3-2.335	5 C.F.R., Part 890	3-2.890
5 C.F.R. §§ 315.901-315.909	3-2.335	5 C.F.R., Part 930	3-2.930
5 C.F.R., Part 316	3-2.316	28 C.F.R., Subpart X	3-2.308
5 C.F.R., Part 330	3-2.330	28 C.F.R., Part 0.15	3-2.752
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5 C.F.R., Part 338	3-2.338	28 C.F.R. § 0.39	3-2.735
5 C.F.R., Part 339	3-2.339	28 C.F.R., Part 0.131	3-2.511
5 C.F.R., Part 340	3-2.340	28 C.F.R. § 0.131	3-2.630
5 C.F.R., Part 350.501	3-2.531	28 C.F.R. § 0.131	3-3.710
5 C.F.R., Part 351	3-3.313	28 C.F.R. § 0.131	3-8.332
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5 C.F.R., Chapter 351	3-3.313	28 C.F.R. § 0.140	3-4.120
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5 C.F.R., Part 430	3-2.430	28 C.F.R., Part 17	3-6.120
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31 C.F.R. § 224.....	3-12.154	41 C.F.R. § 101-25.301.....	3-4.232
41 C.F.R. § 101.....	3-4.232	41 C.F.R. § 101-25.403.....	3-4.232
41 C.F.R. § 101-11.4.....	3-4.431	41 C.F.R. § 101-26.8.....	3-4.332

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5 U.S.C. § 302	3-4.120	18 U.S.C. § 3613	3-12.320
5 U.S.C. § 2108	3-2.752	18 U.S.C. § 3624	3-12.700
5 U.S.C. § 2903	3-2.311	18 U.S.C. § 3651	3-12.200
5 U.S.C. § 3110	3-2.310	18 U.S.C. § 3651	3-12.200
5 U.S.C. § 3331	3-2.311	18 U.S.C. § 3651	3-12.510
5 U.S.C. §§ 3371-3376	3-2.334	18 U.S.C. § 3651	3-12.400
5 U.S.C. § 3372	3-2.334	18 U.S.C. § 3653	3-12.210
5 U.S.C. § 5105	3-2.311	18 U.S.C. §§ 3663-3664	3-12.400
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5 U.S.C. §§ 8501-8508	3-2.850	28 U.S.C. § 548	3-2.534
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15 U.S.C. § 1692	3-10.120	28 U.S.C. § 753	3-3.210
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# 1994 General Index Cumulative Supplement

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Cumulates and replaces previous General Index Supplements

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