

# TITLE 3 EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

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## ORGANIZATION/PRIOR APPROVALS

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### 3-1.100 Organization—Introduction

Title 3, Executive Office for United States Attorneys, contains Executive Office policy, and is to be used with the United States Attorneys' Administrative Procedures Handbook, and the Orientation Manual for United States Attorneys.

### 3-1.120 Responsibilities

The Director of the Executive Office for United States Attorneys (EOUSA) provides oversight, executive assistance and operational support to the United States Attorneys offices (USAOs) and to the Attorney General's Advisory Committee of United States Attorneys, and coordinates the relationship between the United States Attorneys and the components of the Department of Justice and other agencies. The Director is assisted by a Principal Deputy Director, Principal Associate Director and a Deputy Director for Operations.

### 3-1.200 Prior Approval Requirements

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| 3-2.170 | To discuss recusal from a case or matter, contact General Counsel's Office and follow the procedures set out in USAP 3-2.170.001 (M). Approval is required by the Associate Deputy Attorney General, as delegated from the Deputy Attorney General. | Associate Deputy Attorney General              |
| 3-2.200 | To appoint or remove an Assistant United States Attorney. Authority to appoint an Assistant United States Attorney rests with the Director, OAPM. Authority to remove an Assistant United States Attorney rests with the Director, EOUSA.           | Director OAPM or Director EOUSA as appropriate |

3-4.213	The Director, EOUSA is responsible for administering the SAUSA program and Special Attorney (SA) program. Cross designation of State and Local attorneys and Assistant United States Attorneys, and appointment of Special Attorneys or Private Attorneys as SAUSAs, must be authorized by the EOUSA. See Administrative Procedures Handbook.	EOUSA
3-4.316	Prior to requesting temporary appointments and extensions, approval is required from Personnel Staff, EOUSA. Requests for temporary work year allocations must be justified in writing and submitted to the attention of the Deputy Director, RMP, EOUSA.	EOUSA
3-4.332	Districts that do not have delegated personnel authority can make no commitment to an applicant prior to completion of the certification process and approval of the Personnel Staff, EOUSA. Districts that do not have delegated personnel authority must obtain approval of Personnel Staff to make appointments.	Personnel EOUSA
3-4.334(A)	Subject to case-by-case approval of Assistant Director (AD), Personnel, United States Attorneys are authorized to establish a sabbatical program with law schools.	AD Personnel EOUSA
3-4.334(B)	To cross designate a federal prosecutor as a State or Local Prosecutor, approval is required from Assistant Director, Personnel Staff, EOUSA. Appointments are subject to some security restrictions.	AD Personnel EOUSA
3-4.451	For awards between \$1,001 and \$5,000 for Supervisory Assistant United States Attorneys (AUSAs) and Senior Litigation Counsels (SLCs), by Director, EOUSA. Awards between \$5,001 and \$10,000 for all employees require the approval of the Attorney General. All awards in excess of \$10,000 (up to \$25,000) for any employee require the approval of the Office of Personnel Management (OPM).	Director EOUSA/ AG/OPM as appropriate
3-4.511	To request exception to worker ceilings in each employment category (Assistant United States Attorney, paralegal, support staff, students), for each type of appropriation, approval is required by Deputy Director Resource Management and Planning (RMP), EOUSA.	Deputy Director RMP
3-4.550	Unless an exception is granted by the Director, EOUSA, only United States Attorneys may sign their own T&A reports, as certifying officer.	Director EOUSA

3-4.630	To request more than 52 weeks of LWOP, approval is required from Director, EOUSA. This approval does not apply to actions related to matters involving the Office of Workers' Compensation.	Director EOUSA
3-7.340	United States Attorneys must seek additional funding for the Emergency Witness Assistance Program (EWAP), from the Assistant Director, LECC/VW Staff, EOUSA. Requests for funds from the Victims of Crime Fund should be sent directly to the Office for Victims of Crime.	AD, LECC/VW Staff EOUSA
3-8.130	Expenditures and obligations under the Anti-Deficiency Act set forth at USAM 3-8.130—to obligate the government to expend funds beyond districts' litigation budget, approval is required from EOUSA.	EOUSA
3-8.210	Upon approval of the Deputy Director, Resource, Management and Planning (RMP), authorization can be obtained to pay for the services of interpreters and stenographers if none are available in an embassy or consulate. The Office of International Affairs in the Criminal Division should be consulted in the case of depositions to be taken in the U.S. at the request of a foreign court. If foreign witnesses are to be examined on the premises of the diplomatic or consular mission, arrangements should be made in advance with the Special Authorization Unit, JMD, to provide advance authority to the consular official to reimburse these witnesses in the same manner as those appearing in federal courts.	Deputy Director RMP
3-8.232	To serve a subpoena on an American citizen residing abroad, contact the Office of International Affairs (OIA), Criminal Division, or Office of Foreign Affairs (OFA), Civil Division. To obtain testimony of foreign nationals residing abroad, contact OIA or OFA.	OIA Criminal Div. or OFA Civil Div.
3-8.630	Revocation of an existing or nomination of a new certifying officer requires approval of the Deputy Director, RMP, EOUSA.	Deputy Director RMP
3-8.730	All official foreign travel for employees occupying Executive Schedule and SES positions requires approval of Deputy Attorney General. This policy includes the United States Attorneys.	DAG
3-8.740	Requests for first-class travel requires approval of Deputy Director, RMP.	Deputy Director RMP

3-8.800	Requests for relocation expenses requires approval of Deputy Director, RMP.	Deputy Director RMP
3-8.900	Request to hold LECC asset forfeiture training funded from Asset Forfeiture Funds requires approval of LECC/VW Staff, EOUSA.	LECC/VW Staff EOUSA
3-8.990	To seek authorization for a working meal at a district conference requires approval of Deputy Director, RMP, EOUSA.	Deputy Director RMP
EOUSA Resource Manual at 113	To request printing of official court instruments, contact Printing/Procurement Unit, JMD, and Assistant Director, Facilities Management and Support Services Staff (FMSS), EOUSA. If the need is recurring, a DOJ-2 should be submitted to EOUSA requesting a contract. <i>See</i> 3-13.100.	AD/FMSS EOUSA JMD Pnt/ Procurement Unit
3-13.232	To use forfeited property for official use, request must be submitted to the Assistant Director, Facilities Management and Support Services, EOUSA.	AD/FMSS EOUSA
3-13.530 and Resource Manual 130	Except for few narrow exceptions, employees are not authorized under government regulations (41 C.F.R. 101-6.400) to use government vehicles for travel between residence and place of work. Exceptions include: 1) when it is in the interest of the government that an employee 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) when 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 through EOUSA for home to work transportation.	AG through EOUSA
3-14.100;.111	To acquire, relocate, or release space requires approval of Assistant Director, FMSS, EOUSA. <i>See</i> also USAM 3-13.100.	AD/FMSS

3-15.160

To submit urgent reports about significant events or events of media interest or concern to the Attorney General and Deputy Attorney General, follow instructions set forth at USAM 3-15.160. Such events include bomb threats which directly involve a USAO, threats against USAO personnel, and any natural or man made emergency which affects the continued operation of an office. The urgent report procedures should also be followed for communicating significant developments to the Department of Justice in new or pending important cases. For example:

1) Where a Justice Department litigating division has assumed responsibility for a case—one week advance notice should be provided to the appropriate supervisor whenever a major case development can be anticipated. A supervisor shall immediately report such information to the appropriate Assistant Attorney General. Upon receipt of the urgent report, the Assistant Attorney General shall notify the Associate Attorney General, when appropriate, the Deputy Attorney General and the Attorney General.

2) In cases where the USAO controls litigation, communication of major developments should be made to the EOUSA as soon as possible, and where the development can be controlled, at least one week in advance. An urgent report is required even where verbal notice has been given. EOUSA shall assume responsibility for further dissemination of the Urgent Report.

3) In cases where the USAO and DOJ litigating division are jointly involved in litigation, the USAO should report any major developments to the EOUSA via the email Urgent Report system. Verbal discussion with litigating division is non substitute for this responsibility.

4) Suggested criteria for determining what are major developments are: 1) implications cutting across several federal agencies; 2) large monetary liability at issue; 3) State or local government unit as a party; 4) involvement of some aspect of foreign relations; 5) high likelihood of coverage in news media, or Congressional interest; and 6) any serious challenge to Presidential authority or national security concerns. See 3-18.200.

- 3-15.170 The Deputy Attorney General may authorize the appointment of United States Attorney personnel as Special Deputy United States Marshals to enable them to carry firearms for personal protection in accordance with the April 29, 1999, DOJ policy pertaining to the appointment of United States Attorney Personnel as Special Deputy United States Marshals. Follow instructions set forth in the EOUSA Resource Manual at 132. DAG
- 3-18.100 All non GAO surveys, questionnaires, requests for information, should be submitted for coordination to Donna Enos, Counsel to the Director Staff, EOUSA. CTD EOUSA
- 3-18.120 If contacted by GAO, another component of the Department, or anyone else concerning a GAO visit, contact the Counsel to the Director, EOUSA. CTD EOUSA
- 3-18.200 Urgent Report Procedures are set forth at USAM 3-18.200. See also USAM 3-15.160.
- 3-19.123 Unusual witness expenses such as babysitting fees, ambulance service or high seasonal accommodations, which cannot be absorbed from witness allowances, require approval from Special Authorizations by written request: Form OBD-47, "Request, Authorization and Agreement for Fees and Expenses of Witnesses and Alternative Dispute Resolution Neutrals for Fees and Expenses of Witnesses." EOUSA
- 3-19.310; .320 For witnesses residing outside of the United States, contact the OIA, Criminal Division, prior to contacting United States citizens and Alien residents who are in foreign countries and whose status as United States immigrants is unchanged. Since foreign nationals residing in the foreign countries are not subject to the subpoena power of U.S. courts, their attendance can be obtained only on a voluntary basis. Obtaining testimony from foreign nationals is often a delicate matter, and care must be taken to avoid offending the sovereignty of the foreign country involved. OIA Criminal Div.
- 3-19.812 OIA, Criminal Division, or Office of Foreign Litigation (OFL), Civil Division should be consulted in the case of depositions to be taken in the United States at the request of a foreign court. OIA Criminal Div. OFL Civil Div.
- 3-19.851 Psychiatric examinations in tort cases, to determine the extent of injuries, require approval in the same manner as other expert witness requests are submitted. These examinations must not take place without written approval of the opposing counsel, or a court order under Fed.R.Civ.P. 35. Opposing Counsel/ or Court Order

5 CFR  
300.603

Approval is required of the Attorney General/Deputy Attorney General for waiver of time-in-grade requirement.

AG/DAG

DAG Memo  
9/29/2000

Deputy Attorney General approval is required for detailees to:  
1) any agency within the Executive Office of the President; 2) another branch of the Federal Government; 3) Offices of Special Counsel; 4) international agencies; or 5) assignments made under the Intergovernmental Personnel Act (IPA).

DAG

## UNITED STATES ATTORNEYS, ASSISTANT UNITED STATES ATTORNEYS, SPECIAL ASSISTANTS, AND AGAC

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### 3-2.100 United States Attorneys

The United States Attorney serves as the chief law enforcement officer in each judicial district and is responsible for coordinating multiple agency investigations within that district.

There are currently 93 United States Attorneys stationed throughout the United States, Puerto Rico, Guam and the Northern Marianas. One United States Attorney is assigned to each judicial district with the exception of Guam and the Northern Marianas, where a single United States Attorney serves in both districts.

### 3-2.110 History

The Office of the United States Attorney was created by the Judiciary Act of 1789 which provided for the appointment "in each district of a meet person learned in the law to act as attorney for the United States . . . whose duty it shall be to prosecute in each district all delinquents for crimes and offenses, recognizable under the authority of the United States, and all civil actions in which the United States shall be concerned . . ." 1 Stat. 92. Initially, United States Attorneys were not supervised by the Attorney General (1 Op. Att'y Gen. 608) but Congress, in the Act of August 2, 1861, (Ch. 37, 12 Stat. 185) charged the Attorney General with the "general superintendence and direction duties . . ." While the precise nature of the superintendence

and direction was not defined, the Department of Justice Act of June 22, 1870 (Ch. 150, 16 Stat. 164) and the Act of June 30, 1906 (Ch. 39, 35, 34 Stat. 816) clearly established the power of the Attorney General to supervise criminal and civil proceedings in any district. *See* 22 Op. Att'y Gen. 491; 23 Op. Att'y Gen. 507. Today, as in 1789, the United States Attorney retains, among other responsibilities, the duty to "prosecute for all offenses against the United States." *See* 28 U.S.C. Sec. 547(1). This duty is to be discharged under the supervision of the Attorney General. *See* 28 U.S.C. Sec. 519.

### **3-2.120 Appointment**

United States Attorneys are appointed by the President with the advice and consent of the Senate for a four-year term. *See* 28 U.S.C. Sec. 541. Upon expiration of this term, the United States Attorney continues to perform the duties of the office until a successor is confirmed. United States Attorneys are subject to removal at the will of the President. *See Parsons v. United States*, 167 U.S. 324 (1897).

### **3-2.130 Residence**

All United States Attorneys must reside in the district of their appointment except that in the District of Columbia and the Southern and Eastern Districts of New York, they may reside within 20 miles of their district. These provisions do not apply to a United States Attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. *See* 28 U.S.C. Sec. 545.

### **3-2.140 Authority**

Although the Attorney General has supervision over all litigation to which the United States or any agency thereof is a party, and has direction of all United States Attorneys, and their assistants, in the discharge of their respective duties (28 U.S.C. §§ 514, 515, 519), each United States Attorney, within his/her district, has the responsibility and authority to: (a) prosecute for all offenses against the United States; (b) prosecute or defend, for the government, all civil actions, suits, or proceedings in which the United States is concerned; (c) appear on behalf of the defendants in all civil actions, suits or proceedings pending in the district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury; (d) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law unless satisfied upon investigation that justice does not require such proceedings; (e) make such reports as the Attorney General shall direct. 28 U.S.C. Sec. 547.

By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United States is a party. They are the principal federal law enforcement officers in their judicial districts. In the exercise of their prosecutorial discretion, United States Attorneys construe and implement the policy of the Department of Justice. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of federal law enforcement.

### **3-2.150 Absence from Office—Acting United States Attorney**

Each United States Attorney is authorized to designate any Assistant United States Attorney in his/her office to perform the functions and duties of the United States Attorney during his/her absence from office, and to sign all necessary documents and papers as Acting United States Attorney while performing such functions and duties. *See* 28 C.F.R. Sec. 0.131.

### **3-2.160 Vacancy in Office—Appointments**

As amended on March 9, 2006, Section 546 of Title 28 authorizes only the President and the Attorney General to appoint a United States Attorney for the district in which the office of the United States Attorney is vacant. *See* 28 U.S.C. §§ 541, 546. The amendment also authorizes that individuals appointed by the Attorney General to serve as the interim United States Attorney will continue until such time as the Attorney General takes further action or a Presidential appointment is made pursuant to 28 U.S.C. § 541, thereby eliminating the provision of a 120-day term for United States Attorney appointments by the Attorney General, as well as the appointment authority for federal district courts. *See* USAP 3-4.213.003.

### **3-2.170 Recusals**

When United States Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of a personal interest or professional relationship with parties involved in the matter, they must contact General Counsel's Office (GCO), EOUSA. The requirement of recusal does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality.

A United States Attorney who becomes aware of circumstances that might necessitate a recusal of himself/herself or of the entire office, should promptly notify GCO, EOUSA, at (202) 514-4024 to discuss whether a recusal is required. If recusal is appropriate, the USAO will submit a written recusal request memorandum to GCO. GCO will then coordinate the recusal action, obtain necessary approvals for the recusal, and assist the office in arranging for a transfer of responsibility to another office, including any designations of attorneys as a Special Attorney or Special Assistant to the Attorney General (see USAM 3-2.300) pursuant to 28 U.S.C. Sec. 515. See USAP 3-2.170.001 (M).

### **3-2.200 Assistant United States Attorneys**

Assistant United States Attorneys are appointed by the Attorney General and may be removed by that official. See 28 U.S.C. Sec. 542. The Deputy Attorney General exercises the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of Assistant United States Attorneys. See 28 C.F.R. Sec. 0.15. Such authority may be, and has been, delegated to the Director, Executive Office for United States Attorneys.

Authority to appoint Assistant United States Attorneys may be, and has been delegated to the Director, Office of Attorney Personnel Management. Authority to effect reprimands, suspensions, and/or removal for Assistant United States Attorneys may be, and has been, delegated to the Director, EOUSA.

Assistants must reside in the district of their appointment, or within 25 miles thereof. These provisions do not apply to an Assistant United States Attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. See U.S.C. Sec. 545(a).

Assistants who are appointed on an interim basis under 28 U.S.C. Sec. 546, and who are not candidates for permanent appointment by the President as the United States Attorney pursuant to 28 U.S.C. Sec. 541, shall be offered, upon termination, reemployment to the last permanent position held. Reemployment is subject to all conditions of employment currently applicable to Assistants appointed pursuant to 28 U.S.C. Sec. 542. Of special note: an Assistant who served as a supervisor before becoming the interim United States Attorney cannot be guaranteed a return to that slot. Supervisory positions are not permanent. Such decisions rest solely with the discretion of the new United States Attorney. That individual is guaranteed only of returning to a permanent AUSA position.

### **3-2.210 Authority**

Assistant United States Attorneys are responsible to the United States Attorney for the performance of duties assigned by that official.

### **3-2.220 Recusals**

The same circumstances which require that a United States Attorney recuse himself/herself (see USAM 3-2.170) apply to an Assistant United States Attorney. Ordinarily, the fact that an Assistant United States Attorney recuses will not require that the United States Attorney or the office recuse itself and the case or matter may be reassigned to another Assistant. Specific questions should be directed to the Legal Counsel Staff of the Executive Office for United States Attorneys at (202) 514-4024 or the appropriate litigating division.

### **3-2.300 Special Assistants**

Section 543 of Title 28 authorizes the Attorney General to appoint Special Assistants to assist the United States Attorney when the public interest so requires, and to fix their salaries. These Assistants are designated

as Special Assistants to the United States Attorney and are appointed for the purpose of assisting in the preparation and presentation of special cases. Their salaries, if any, are a matter of agreement between the Department and the individual, and are fixed at an annual, monthly, per diem, or when-actually-employed rate. Under the appropriate circumstances, a private attorney may receive a Special Assistant appointment pursuant to 28 U.S.C. Sec. 543, with or without compensation, to assist the United States Attorney with specific matters. Such appointments raise ethics and conflict of interest issues that must be addressed. To appoint private attorneys as Special Assistant United States Attorneys pursuant to 28 U.S.C. Section 543, compensated or not, approval is required by EOUSA.

Attorneys employed in other departments or agencies of the federal government may be appointed as Special Assistants to United States Attorneys, without compensation other than that paid by their own agency, to assist in the trial or presentation of cases when their services and assistance are needed. Such appointments, and appointments of Assistant United States Attorneys from one United States Attorney's office to another, may be made by the United States Attorney requiring their services.

In instances where an entire United States Attorney's Office recuses itself, the Attorney General may, pursuant to 28 U.S.C. Sec. 515, appoint any officer of the Department of Justice, or any attorney specially appointed under law, to conduct any kind of legal proceeding which United States Attorneys are authorized by law to conduct, whether or not such appointee is a resident of the district in which the proceeding is brought. Said appointee specially retained under authority of the Department of Justice is appointed as a Special Assistant or a Special Attorney to the Attorney General and reports directly to the Attorney General or delegee. Such appointments are executed by the Executive Office for United States Attorneys.

### **3-2.400 Division of Responsibility**

The division of responsibility in the Department of Justice between the offices of the United States Attorneys and the legal divisions is determined by statutes, Code of Federal Regulations provisions, Attorney General and Deputy Attorney General directives, and actual practice. It is also extensively discussed in the Manual's various titles.

### **3-2.500 History of the Attorney General's Advisory Committee of United States Attorneys (AGAC)**

The appointment of an Advisory Committee of United States Attorneys to the Attorney General was publicly announced on September 20, 1973, by Attorney General Elliot Richardson. By order dated February 13, 1976, Attorney General Edward Levi formally established the Committee and had its existence and responsibilities set forth in 28 C.F.R., Section 0.10.

### **3-2.520 Members**

The Committee consists of 17 United States Attorneys selected by the Attorney General. They are intended to represent office size, judicial district, issues and diversity. Service on the Committee normally shall not exceed three years. New members are appointed each year to provide for broad representation of United States Attorneys nationwide. The Attorney General selects a chairperson and vice-chairperson. The Committee establishes such subcommittees as it deems necessary to carry out its functions.

### **3-2.530 Functions**

The Advisory Committee has two functions. It gives United States Attorneys a voice in Department policies and advises the Attorney General of the United States.

In advising the Attorney General, the Committee conducts studies and makes recommendations to improve management of United States Attorney operations and the relationship between the Department and the federal prosecutors. It also helps formulate new programs for improvement of the criminal justice system and the delivery of legal services at all levels.

In serving the United States Attorneys, the Committee coordinates the collective efforts of the United States Attorneys with the divisions and agencies of the Department of Justice, and departments and agencies

external to the Department of Justice. It also represents the United States Attorneys with the Department of Justice, other departments and agencies of the government, and occasionally private organizations.

### **3-2.540 Subcommittees**

United States Attorneys who are not members of the Attorney General's Advisory Committee may serve on its subcommittees and working groups. A current listing of Advisory Committee members and Subcommittee members is available from the Executive Office for United States Attorneys at 202-514-4633.

**3-3.000**

## **EVALUATION AND REVIEW PROGRAM**

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The Director of the Executive Office for United States Attorneys (EOUSA) is required under 28 C.F.R. Part 0.22 to evaluate the performance of the Offices of the United States Attorneys, to make appropriate reports and to take corrective actions if necessary. An evaluation program enables EOUSA to fulfill this responsibility.

## PERSONNEL MANAGEMENT

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### 3-4.100 Introduction

Other reference(s): APHIs/Personnel/Chapter 000 #1; Chapter 002 #1; Chapter 003 #1

This title of the United States Attorneys' Manual (USAM) addresses personnel policy matters affecting the Executive Office of United States Attorneys and United States Attorneys' offices. Policy guidance is

structured and numbered in parallel with Title 5 of the Code of Federal Regulations (C.F.R.), to facilitate reference by users as well as maintenance of currency with respect to changes in personnel law and regulations.

Operational procedural and interpretive guidance is published in Administrative Procedures Handbook Issuances (APHIs) in the Personnel section of the United States Attorneys' Administrative Procedures Handbook.

In any instance where policy is not stated in this chapter, and in any instance where policy which is stated in this chapter erroneously conflicts with guidance published by higher authority, e.g., Justice-wide policies or Office of Personnel Management regulations, higher-level guidance will govern.

### **3-4.200 Personnel**

Other reference(s): 28 C.F.R. § 0.15; 28 C.F.R. § 0.138

The employment, separation and general administration of personnel in the Senior Executive Service and of attorneys and law students regardless of grade or pay is delegated to the Deputy Attorney General. Certain of these authorities are redelegated to the Director, Executive Office for United States Attorneys (EOUSA).

The authority to take final action in matters pertaining to the employment, direction, and general administration of non-attorney/non-law student personnel in General Schedule (GS) grades GS-1 through GS-15 is delegated to the Director, EOUSA.

These authorities are subject to further delegation.

### **3-4.213 Excepted Service**

Other reference(s): APHIs/Personnel/Chapter 213 #s 1-4; Chapter 295 #2; Chapter 300 #3; Chapter 315 #1; Chapter 720 #1; Chapter 831 #4; Chapter 990 #6; USAM Title 3-4.430; 5 C.F.R., Part 213; 28 U.S.C. § 543; 28 U.S.C. § 542

**A. Attorneys, Assistant United States Attorneys.** Attorneys appointed to the Executive Office for United States Attorneys (EOUSA) are excepted from the competitive service as Schedule A employees, 5 C.F.R. § 213.3102, and are compensated in accordance with the General Schedule.

Assistant United States Attorneys are appointed to United States Attorneys' offices (USAOs), are excepted from the competitive service under the aegis of 28 U.S.C. § 542, and are compensated in accordance with an administratively-determined pay system.

United States Attorneys are authorized to recruit, screen, and submit nominations of the best-qualified to serve as Assistant United States Attorneys.

**B. Law Clerks.** Law Clerk appointments may be made to law school graduates who have not passed the bar, not-to-exceed 14 months or less under the aegis of 5 C.F.R. § 213.3102(e). Law Clerks are counted against authorized AUSA positions or Paralegal Specialist positions, at the option of the United States Attorney and subject to available funding. Any Law Clerk position counted against the later category, however, will be funded at the average salary for a Paralegal Specialist position. Law Clerk recruiting and appointments are administered by the Office of Attorney Recruitment and Management.

**C. Special Assistant United States Attorneys and Special Attorneys** . The Director, EOUSA, is responsible for administering the Special Assistant United States Attorney (SAUSA) and Special Attorney program. Cross designation of State and Local attorneys and Assistant United States Attorneys, and appointment of Special Attorneys or Private Attorneys as SAUSAs, must be authorized by the EOUSA. See Administrative Procedures Handbook.

**D. Summer Legal Intern Program.** Summer Legal Intern appointees receive appointments as Paralegal Specialists, GS-950, under the aegis of 5 C.F.R. § 213.3101.

**E. Assignment of Attorney Work to Incumbents of Non-Attorney Positions.** USAO employees in the General Schedule (GS) 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 after being appointed as an Assistant United States Attorney (AUSA) or as a Special AUSA (SAUSA). GS employees are eligible for an uncompensated SAUSA appointment only if their GS rate of basic pay falls within the pay range of the appropriate Administratively Determined (AD) grade level. Otherwise, GS employees must be converted to compensated SAUSA appointments before being assigned attorney work.

**F. Student Educational Employment Program (SEEP).** *See generally* the EOUSA Resource Manual at 23.

**G. Separation of the Schedule C Secretary to the United States Attorney.** When a Presidentially-appointed United States Attorney (PA-USA) separates *during* a change of administration, all Schedule C employees (if any) in the District are expected to resign no later than the date the PA-USA separates. It is important to note that the Department of Justice can terminate a Schedule C appointment at any time and such termination may happen at the end of an administration. Schedule C employees are political appointees and should understand that a change in administration is a valid reason for them to vacate their positions.

When a PA-USA separates *outside* a change of administration, the District's interim USA may retain or terminate Schedule C employee(s). While the Executive Office for United States Attorneys (EOUSA) recommends that Schedule C employees be provided 30 days advance notice of termination, less than 30 days advance notice also is permitted. The Director, EOUSA, is authorized to sign a letter notifying the Schedule C employee of the effective date of the termination.

A new PA-USA may retain on the same appointment a Schedule C employee who was retained by the District's interim USA.

### **3-4.250 Personnel Management in Agencies**

Other reference(s): 5 U.S.C. §§ 2903 and 3331; 5 C.F.R., Part 250; USAM 3-4.200

**A. General.** It is the policy of the Executive Office for United States Attorneys (EOUSA) 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. Accordingly, selected personnel authorities may be delegated to particular United States Attorneys' offices (USAOs) to the extent that such a delegation will promote the effective accomplishment of the mission of the USAO. Specific delegations will be in writing, and are subject to modification or revocation as necessary.

**B. Oath of Office.** All employees are required to execute an oath of office (Appointment Affidavit, SF-61) upon appointment (*see* 5 U.S.C. §§ 2903, 3331). The Director, EOUSA, 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, EOUSA. Any redelegation of this authority must be in writing.

### **3-4.273 Personnel Management Evaluation**

Other reference(s): 28 C.F.R. § 0.22

Personnel management evaluations will be conducted on a regular basis for districts with specific written delegations of personnel authority from the Executive Office for United States Attorneys. The purpose of these evaluations is to: assess and analyze the effectiveness of the personnel management program in the United States Attorney's office; 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 office. 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.

### **3-4.274 Corrective Actions**

Other reference(s): None

United States Attorneys' offices (USAOs) which have been delegated personnel authority are responsible for taking all appropriate corrective actions to ensure personnel actions processed fully comply with applicable guidelines. Failure by a USAO to take such corrective actions may serve as a basis for withdrawal or suspension of delegated personnel authority in accordance with USAM 3-4.250.

### **3-4.293 Personnel Records**

Other reference(s): APHIs/Personnel/Chapter 293 #s 1 & 2; OPM Operating Manual - Guide to Processing Personnel Actions; OPM Operating Manual - Guide to Personnel Recordkeeping; 5 C.F.R., Part 293

Official personnel files will be maintained by the Personnel Staff, Executive Office for United States Attorneys (EOUSA), or by the United States Attorney's office with authority delegated by EOUSA.

### **3-4.294 Availability of Official Information**

Other reference(s): 5 C.F.R., Part 294; 28 C.F.R. § 16

Requests for disclosure of personnel information are to be forwarded to the Personnel Staff, Executive Office for United States Attorneys (EOUSA), or to the United States Attorney's office if it has been delegated personnel authority by EOUSA.

### **3-4.295 Personnel Forms and Documents**

Other reference(s): APHIs/Personnel/Chapter 295 #s 1 & 2; Chapter 990 #s 6, 9, 11 and 15; OPM Operating Manual - Guide to Processing Personnel Actions

All offices are to use the forms and documents designated in the United States Attorneys' Manual and the United States Attorneys' Administrative Procedures Handbook unless procedural instructions grant exceptions for certain delegated districts.

### **3-4.296 Processing Personnel Actions**

Other reference(s): APHIs/Personnel/Chapter 213 #1; Chapter 293 #s 1 & 2; Chapter 296 #s 1, 4, 5 and 6; OPM Operating Manual - Guide to Processing Personnel Actions

Specific instructions on processing personnel actions applicable to all servicing personnel offices are contained in the United States Attorneys' Administrative Procedures Handbook.

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

### **3-4.300 Employment (General)**

Other reference(s): APHIs/Personnel/Chapter 300 #s 1, 2, 3, 5, 6, and 7; Chapter 315 #1; Chapter 338 #4; 5 C.F.R., Part 300

**A. Personnel.** The authority to take final action in all matters pertaining to the employment, separation and general administration of:

- Non-attorney personnel (not including law students) in United States Attorneys' offices (USAOs) and the Executive Office for United States Attorneys (EOUSA) has been delegated to the Director, EOUSA (see 28 C.F.R. § 0.138); and the Executive Office may, and has, delegated authority beyond that described in this chapter to individual USAOs.
- With respect to Assistant United States Attorneys authority has been delegated to the Deputy Attorney General (see 29 C.F.R. § 0.15), with certain authorities redelegated to the Director, EOUSA. The Director's authority may not be redelegated. The authority to appoint Assistant United States Attorneys has been delegated to the Director, OAPM. *See also* 3-2.200.

The Executive Office may delegate authority beyond that described in this chapter to individual United States Attorneys' offices.

All recruitment will be conducted with an affirmative effort to achieve the goal of providing an equal opportunity for employment to as many interested, qualified applicants as possible.

Appointments in EOUSA and USAOs are restricted to United States citizens or those who owe permanent allegiance to the United States (currently, natives of American Samoa, Swains Island, and certain inhabitants of the Commonwealth of the Northern Mariana Islands are the only group that owe permanent allegiance to the United States).

**B. Employee Orientation.** The EOUSA and USAOs 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.

**C. Filling Confidential Positions to United States Attorneys.** All positions requiring, as a primary assignment, a close and confidential relationship to the United States Attorneys, e.g., the Secretary to the United States Attorney, must be filled on a non-permanent basis so successor United States Attorneys may select an individual of his/her own choosing. "Non-permanent" placement options include:

- *Schedule C appointment* which is subject to prior approval by the Department, White House, and Office of Personnel Management as appropriate;
- *Term appointment* which may be made for up to four years;
- *Time-limited promotion*; or
- *Reassignment.*

**D. Hosting Enrollees of Federal Grant Programs.** See generally USAP 3-4.213.005(M)..

**E.** Recruitment and selection of candidates to fill the following positions is subject to prior approval by the individual or office indicated:

Position Being Filled	Approval Authority
Administrative Officer	Director, EOUSA
Any position covered by special retirement coverage under 5 U.S.C. §§ 8336(c) or 5 U.S.C. 8412(d), e.g., Criminal Investigators	Director, EOUSA
Intelligence Specialist	Chief Operations Officer, EOUSA
Regional Security Specialist	Chief Operations Officer, EOUSA
System Manager, Senior IT Specialist, or Supervisory IT Specialist	Chief Information Officer, EOUSA
Human Resources Officer or Human Resources Specialist who functions as Human Resources Officer	Assistant Director, EOUSA PS
Budget Officer or Budget Analyst who functions as the Budget Officer	Chief Financial Officer, EOUSA

Executive Office for United States Attorneys' staff will participate with the United States Attorneys' offices in the interview process as subject matter experts when filling these vacant positions.

### 3-4.308 Volunteer Service

Other reference(s): APHIs/Personnel/Chapter 296 # 6; 5 C.F.R., Part 308; OPM Operating Manual - Guide to Processing Personnel Actions

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 the Executive Office for United States Attorneys (EOUSA) or any United States Attorney's office (USAO).

### **3-4.316 Temporary Employment**

Other reference(s): APHIs/Personnel/Chapter 300 #1; Chapter 315 #1; Chapter 316 #s 1 & 2; Chapter 332 #2; Chapter 335 #1; Chapter 831 #4; 5 C.F.R., Part 316

Requests for temporary worker allocations must be justified in writing and submitted to the attention of the Deputy Director for Financial Management, Executive Office for United States Attorneys.

Prior to requesting temporary appointments and extensions, approval is required from the Personnel Staff, EOUSA.

### **3-4.332 Recruitment and Selection Through Competitive Examination**

Other reference(s): APHIs/Personnel/Chapter 315 #1; Chapter 332 #s 1 & 2; Chapter 335 #1; 5 C.F.R., Part 332

**Office of Personnel Management Certification and Objections to Eligibles.** Districts that do not have delegated personnel authority can 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, EOUSA, prior to submission to the Office of Personnel Management.

All nonselected applicants who expressed an interest in a vacancy are to 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.

### **3-4.334 Temporary Assignment Under Intergovernmental Personnel Act**

Other Reference(s): 5 C.F.R., Part 334 USAP 3-4.300.002, Details of Employees to Organizations Outside the Department of Justice, and Intergovernmental Personnel Act (IPA) Assignments; USAP 3-2.213.001, Appointment of Special Assistant United States Attorneys and Special Attorneys

**A. Sabbatical Program.** Subject to case-by-case approval by the Assistant Director, Personnel Staff, Executive Office for United States Attorneys (EOUSA), United States Attorneys are authorized to establish sabbatical programs with law schools. Assistant United States Attorneys (AUSAs) 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 United States Attorney's office (USAO). This program will give selected AUSAs 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) and the Civil Service Reform Act of 1978 (P.L. No. 95-454), which, inter alia, permit exchanges between the Federal Government and institutions of higher learning. In every case, a formal agreement must be entered into between the school and the Director, EOUSA, and the employee must agree to the assignment.

To be eligible, an AUSA normally will have at least five years of experience with the USAO 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 AUSA as well as to the courses to be taught.

Professors selected for this program will be appointed as Special AUSAs. 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 will be cleared through the Department of Justice.

**B. Cross Designation of Federal Prosecutors as State and Local Prosecutors.** Cross designation of a federal prosecutor as a State or Local Prosecutor under the IPA is appropriate only when the assignment will be full-time or last longer than one year.

In all other cases, cross-designation may be authorized upon the request from, or with the concurrence of, a state or local government, and with the consent of the employee and the United States Attorney concerned. While serving in a cross-designated capacity, an Assistant United States Attorney is deemed to be on a regular work assignment.

### **3-4.335 Promotion and Internal Placement**

Other reference(s): USAP 3-4.335.002.

NOTE: Neither the Department's Career Transition Assistance Plan nor the Interagency Career Transition Assistance Plan are addressed in this document. Guidance on these topics will be promulgated separately and incorporated into this document at a later date.

**Policy.** It is the policy of the Executive Office for United States Attorneys (EOUSA) and United States Attorneys' offices (USAOs) 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 religion, parental status, sexual orientation, protected genetic information, race, color, creed, age, national origin, sex, nondisqualifying disabilities, politics, membership or nonmembership in employee organizations, marital status, personal favoritism or patronage.

An extensive discussion of Promotion and Internal Placement procedures is in USAP 3-4.335.002.

### **3-4.340 Other Than Full-Time Career Employment (Part-Time, Seasonal, On-Call, and Intermittent)**

Other reference(s): 5 C.F.R., Part 340

**Policy.** It is the policy of the Executive Office for United States Attorneys (EOUSA) and the United States Attorneys' offices (USAOs) to provide part-time, permanent employment opportunities consistent with the Federal Employees Part-Time Career Employment Act of 1978. The nationwide goal of EOUSA and USAOs is to attain and maintain a one percent or higher, constant percentage of part-time employment to full-time employment.

### **3-4.410 Training**

#### **A. Responsibilities.**

1. United States Attorneys and the Director, EOUSA, shall delegate training approval authority to the lowest appropriate subordinate supervisory levels.
2. Supervisors shall:
  - a. Identify individual and organizational training needs,
  - b. Consider the most effective approaches to meet training needs, and
  - c. Approve training requests within their organizations that will promote employee and unit effectiveness.

**B. Training Funded by the Government.** Employees and officials of the Department of Justice may attend conferences, conventions, professional meetings or other meetings at government expense provided they meet the following criteria:

1. The conference or meeting is directly related to the individual's work in the Department; or

2. They are to take an active part in the conference or meeting and such participation will benefit the government.

**C. Training for United States Attorneys.** Training approval for United States Attorneys was delegated by the Attorney General to the Director, Executive Office for United States Attorneys, who redelegate this authority to the Director, Office of Legal Education. *See* USAP 3-6.000.001.

**D. Training for Supervisors.** Non-Attorneys who are assigned to supervisory positions are required to receive at least 80 hours of formal training or its equivalent within the first two years in a supervisory position. Attorneys who have supervisory responsibilities are encouraged to do likewise. At a minimum, 40 hours of this training must be completed either immediately prior to, or not later than one year after the individual assumes the supervisory position.

**E. Fees for Attendance At Meetings.** Fees for attendance at meetings which meet the training criteria may be paid for pursuant to the Department of Justice Order 1200.1, Part 5, Training and Development dated October 3, 2000.

### **3-4.430 Performance Management**

#### **A. Policy.**

1. The goal of the performance management system for the United States Attorneys' offices (USAOs) and the Executive Office for United States Attorneys (EOUSA) is to:
  - a. Achieve a diverse, results-oriented, high performing workforce;
  - b. Effectively differentiate between high and low performance; and
  - c. Link individual performance to organizational goals and desired results.
2. Employee performance standards will, to the extent practicable:
  - a. Incorporate human capital objectives of the Department, EOUSA and USAO that directly link to organizational goals and desired results; and
  - b. Include performance elements that systemically align with appropriate strategic plans.
3. Meritorious employee performance in accomplishing organizational goals and objectives, will be recognized and rewarded as appropriate.
4. Employees demonstrating unacceptable performance will be given an opportunity, and appropriate assistance, to improve. Failure to improve unacceptable performance after an opportunity to do so may result in reassignment, reduction in grade, or removal.
5. The performance management system will be communicated to all covered employees, supervisors, and managers to ensure effective program administration.

**B. Employee Coverage.** All United States Attorneys' offices (USAO) and Executive Office for United States Attorneys (EOUSA) employees are covered by the provisions of this section except where excluded specifically by law or regulation.

#### **C. Responsibilities**

1. The United States Attorney and the Director, EOUSA, will designate rating and reviewing officials. 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.
2. Performance plans and ratings of record shall be reviewed and approved at the next higher level of supervision above the immediate supervisor.

**D. Appraisal Period.** The appraisal period is one year, January 1 through December 31. The minimum appraisal period is 90 days.

**E. Performance Work Plans.** Performance work plans will normally be issued within 30 days after the beginning of the appraisal period or change to a different position which is expected to last 120 days or more.

1. Performance Elements.
  - a. Each PWP must contain at least two critical performance elements. Non-critical performance elements may not be included.
  - b. At least one performance element must align with organizational strategic plans.
  - c. The Attorney General or the Deputy Attorney General may issue mandatory elements which must be included in affected employee performance plans.
2. Performance Standards. To the extent possible, performance standards should be results-oriented and align with organizational strategic plans.
  - a. Each performance element listed in the PWP 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 goals, group goals, objectives, or in other such terms that are appropriate to the position. This constitutes the "Successful" level.
  - b. Performance standards may also be written at the next higher level, i.e., at the "Outstanding" level.
  - c. Performance standards may not be written at the "Unacceptable" level.

**F. Progress Reviews.** At least one formal progress review will be held during the appraisal cycle. The progress review must be documented by the signature of the employee, the supervisor, and the date.

**G. Formal Appraisal of Performance.** Performance shall be evaluated using Rating Pattern B under 5 C.F.R. Part 430. It is strongly encouraged that ratings of record are completed within 60 days after the close of the rating period.

1. Performance Element Evaluation. Rating officials will evaluate actual employee performance in comparison with written performance elements and standards, and assign one of the following performance levels for each element:
  - a. "Unacceptable"
  - b. "Successful"
  - c. "Outstanding"

A narrative supporting the rating official's determination is required only in the absence of written performance standards at the assigned element rating level.

2. Overall Evaluation. An overall rating of record will be derived as follows:
  - a. "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.
  - b. "Successful." Performance meets 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 "Outstanding" level. This is a Level 3 rating as defined by 5 C.F.R. § 430.208.
  - c. "Outstanding." Performance substantially exceeds the "Successful" criteria in such areas as productivity, exceeding specific goals and objectives, or overall performance superior to most, if not all, peers. Specifically:
    - 1) A majority, i.e., more than 50%, of the total number of elements are rated at the "Outstanding" level; and
    - 2) At least one performance element the element that specifically links to organizational goals and desired results, and which aligns with the organization's strategic plan, is rated at the "Outstanding" level. This is a Level 5 rating as defined by 5 C.F.R. § 430.208.
3. Approval by reviewing official. Completed ratings of record must be reviewed and approved by the reviewing official before they are communicated to the employee. The United States Attorney may serve as the rating and reviewing official for the following positions:

- a. Schedule C employees;
- b. First Assistant United States Attorney, or equivalent; and
- c. Secretary to the United States Attorney, or equivalent.

4. **Records Retention.** Ratings of record and supporting documents in employee performance files will be retained for four years, or as required by 5 C.F.R. § 293.404, by the servicing personnel office.

#### **H. Interim Ratings**

1. An Interim Rating shall be issued whenever an employee has completed the minimum rating period and moves to another position.
2. Interim ratings issued during the performance period will be considered in deriving a rating of record for position(s) in the same occupational series.

#### **I. Details and Temporary Promotions**

1. Written performance elements and standards shall be provided to Departmental employees who are detailed or temporarily promoted for 120 days or more. Elements and standards shall be provided to the employee no later than 30 days after the effective date of the detail or temporary promotion.
2. Employees serving on detail or temporary promotion shall have a rating of record issued in accordance with the appraisal system of the organization to which detailed or temporarily promoted.
3. Organizations from which an employee is detailed or temporarily promoted shall make performance determinations and take necessary employment action based on the employee's last rating of record.

**J. Program Evaluation.** Performance management program effectiveness will be evaluated in conjunction with periodic evaluations of the offices of the U.S. Attorneys required by 28 C.F.R. § 0.22 (a)(1).

**K. Savings Provision.** Administrative action initiated under previous appraisal program(s) shall continue to be processed in accordance with the law and that previous program.

### **3-4.451 Awards**

Awards will recognize and reward superior employee performance in such areas as accomplishing organizational goals and objectives, suggestions or accomplishments that contribute to the efficiency or improvement of government operations, and performance as reflected in the employee's most recent rating of record.

#### **A. Delegation of Authority.**

1. United States Attorneys (USA) may approve:
  - Cash awards to \$5,000 for all staff except for Supervisory Assistant United States Attorneys (AUSAs) and Senior Litigation Counsel (SLC).
  - Cash awards to \$1,000 for Supervisory AUSAs and SLC.
  - Time-off awards up to 120 hours per leave year per employee. A full-time employee may be granted a maximum of 40 hours of time off from duty as an incentive award for any single contribution.
2. The Director, EOUSA may approve:
  - Cash awards to \$5,000.
  - Time-off awards up to 120 hours per leave year per employee. A full-time employee may be granted a maximum of 40 hours of time off from duty as an incentive award for any single contribution.

## **B. Quality Step Increase (QSI)**

1. Quality Step Increases (QSIs) should be limited to recognizing extraordinary levels of employee excellence. To be considered for a Quality Step Increase (QSI), the following criteria must be met:
  - a) The employee's performance rating must be at the "Outstanding" level.
  - b) The performance rating must be based on the employee's current position.
  - c) The performance being evaluated must have been sustained for a minimum of six months in the same position.
  - d) The employee has not received a QSI within the preceding 52 calendar weeks nor a Sustained Superior Performance (SSP) award within the last six (6) months. If an SSP was received within the past 6 to 12 months, the QSI recommendation must be based on a different performance rating period.
  - e) At the time the QSI becomes effective, the employee is expected to remain for at least 60 days and continue performing at the "Outstanding" level for at least an additional six months..
2. A QSI is not appropriate when the employee:
  - a) announces intentions to retire or separate from federal employment;
  - b) is about to receive, or has just received, a promotion;
  - c) is serving on a detail to another position; or
  - d) is transferring to another position.

## **C. Cash Awards**

1. Performance-Based Awards. To be eligible for one-time cash award an employee's most recent rating of record must be "Outstanding" or the employee must be rated "Outstanding" or equivalent on one or more job elements, with additional justification by management on the award nomination form.
2. Special Act Awards. A special act award may be granted to recognize services in the public interest in connection with, or related to, an employee's official employment.
3. On-the-Spot Awards. On-the-spot awards may be granted to recognize promptly short-term special acts or service which do not merit larger awards. Receiving an on-the-spot award is not disqualifying for the subsequent receipt of any other cash or honorary incentive award. The same contribution, however, should not be used as the sole basis for an on-the-spot award and another award unless the on-the-spot award is subsequently deemed clearly inadequate to recognize the value of the employee's contribution.

## **D. Time-Off Awards**

1. Authority to grant time off awards not to exceed one work day may be redelgated to the lowest supervisory level.
2. Authority to grant time off awards in excess of one work day may be redelgated only if the approving official is at a higher organizational level than the recommending official. The Director, EOUSA and each United States Attorney may serve as recommending and approving officials.
3. Time off awards may not be converted to cash.
4. Time off awards may not be used to compensate or reward employees for working outside the basic workweek.

## **3-4.511 Position Classification**

Other reference(s): APHIs/Personnel/Chapter 295 #1; Chapter 312 #s 1-3; Chapter 511 #s 1-3; Chapter 551 #1; 5 C.F.R., Part 511

**A. United States Attorneys and Assistant United States Attorneys.** United States 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 United States Attorneys, however, maintains records indicating which attorneys handle specialized functional areas, such as criminal or civil matters, or who have supervisory responsibilities. Thus, Assistant United States Attorneys are assigned numbers, called "Master Record Numbers" (the National Finance Center's nomenclature for "position description numbers"), which reflect their functional specialties.

**B. Delegated Classification Authority.** Certain United States Attorneys have been delegated classification authority. As the parameters of the delegations vary, a specific letter is transmitted detailing the scope of authority. Any action which is effected is to comply fully with Office of Personnel Management Position Classification Standards.

**C. Position Management.**

**1. Responsibility.** United States Attorneys and the Director of the Executive Office for United States Attorneys are responsible for organizing and assigning work among positions in their respective organizations in a manner which will serve mission needs effectively and economically. This includes achieving a proper balance between skills availability, funds limitations, sound human resource utilization, efficiency and economy, mission requirements, and matters of public policy.

**2. Worker Ceilings.** Approved FTE worker ceilings in each employment category (Assistant United States Attorney, paralegal, support staff, and student) are not to be exceeded unless an exception is requested and approved. To request an exception to worker ceilings in each employment category (Assistant United States Attorney, paralegal, support staff, and students), for each type of appropriation, approval is required by the Deputy Director for Financial Management, EOUSA.

**3. Position Descriptions.** Managers are responsible for ensuring that current, factually correct position descriptions (PDs) are prepared for all positions paid on the basis of the General Schedule (e.g., GM and GS). Pds are necessary for purposes in addition to classification, such as recruitment, placement, training, and performance evaluation.

**4. Projected Positions.** The term "projected position" in the context of this section means a support position which is established in advance of the date the duties and responsibilities actually materialize. In order to verify that duties and responsibilities have materialized as expected, projected positions must be desk audited within six months after they are occupied.

### **3-4.534 Pay Under Other Systems**

This Title contains information on salaries paid to United States Attorneys (USAs) and Assistant United States Attorneys (AUSAs).

**A. USAs:**

1. General. The salaries of USAs are set by the Attorney General (AG) or Deputy Attorney General pursuant to 28 U.S.C. § 548.

2. AG-Appointed and Court-Appointed USAs. An individual appointed as USA by the AG or the district court, pursuant to 28 U.S.C. § 546, shall be paid the full salary of the USA position, effective as of the date of appointment. An AUSA who has been appointed as USA by the AG or the district court, and who is then reappointed as an AUSA, will be returned to the same type of position s/he held immediately before accepting the USA position, and will be granted any increases in salary s/he would have been granted had s/he remained in his/her AUSA position.

**B. AUSAs:**

1. AUSAs. AUSA salaries are set in accordance with an Administratively Determined pay plan approved by the AG or DAG pursuant to 28 U.S.C. § 548. See USAP 3-4.534.001(M), Administratively Determined Pay Handbook.

2. Supervisory and SLC AUSAs. Supervisory and SLC AUSAs occupy their positions via temporary promotions not-to-exceed four years or less, and are subject to subsequent assignment to lower-level supervisory or SLC AUSA positions or to line AUSA positions at any time. Upon such "reassignment," the AUSA's salary is reduced.

C. Senior Litigation Counsel. The Senior Litigation Counsel (SLC) program was created for the express purpose of recognizing truly outstanding non-supervisory Assistant United States Attorneys (AUSAs) based on their overall careers as litigators. To qualify, an AUSA must meet the following criteria:

1. 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;
2. When nominated, be at a salary at least equivalent to GS-15, step 1;
3. 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;
4. Be responsible for the in-office training of Assistants less knowledgeable in advocacy skills; and
5. Not supervise any AUSAs; and
6. Have the stated intention of remaining with the Department of Justice for at least one year after designation, and be available, when it will not interfere with assigned caseload, to serve as a rotating faculty member of the Attorney General's Advocacy Institute.

### **3-4.536 Grade and Pay Retention**

United States Attorneys' offices shall make reasonable efforts to place employees covered by grade or pay retention into a position at his/her former grade level. As long as an employee is entitled to grade and/or pay retention, he/she is to be considered automatically and noncompetitively for all vacant positions which are: under the same appointing authority; within the commuting area; and at the former grade level or any intervening grade level.

To the extent practicable, the position's qualification requirements may be waived upon recommendation by the United States Attorney provided there is evidence that the employee would be able to perform fully the duties of the new position within 90 days.

### **3-4.550 Pay Administration (General)**

Other reference(s): 5 C.F.R., Part 550; USAP 3-4.550.001 and 3-4.550.002

**A. Overtime.** United States Attorneys and the Director, EOUSA, or designees, are authorized to approve overtime subject to availability of overtime budget, subject to the limitations below.

Pursuant to 5 C.F.R. § 550.111, approval of overtime must be documented in writing by a person authorized to do so. United States Attorneys and the Director, EOUSA, may redelegate, in writing, overtime approval authority to appropriate officials, e.g., to the Administrative Officer or to supervisors delegated authority to approve Time and Attendance records.

United States Attorneys are NOT authorized to approve overtime premium pay or compensatory time, other than compensatory time for religious purposes and compensatory time off for travel, for attorney personnel. Assistant United States Attorneys are professionals and should expect to work in excess of regular hours without overtime premium pay.

Overtime compensation earned while in travel status will be controlled for nonexempt General Schedule (GS) employees 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.

**B. Compensatory Time.** It is the policy of the Executive Office for United States Attorneys (EOUSA) that employees must use earned compensatory time, but not earned compensatory time off for travel or for religious purposes, prior to using annual leave.

**C. Time and Attendance Reports.** Unless an exception is specifically authorized by the Director, EOUSA, only the United States Attorney may sign his/her own Time and Attendance report, as certifying official.

### 3-4.610 Group Dismissals (Administrative Leave)

A. With the noted exception, the Director, EOUSA, and United States 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. (NOTE: This authority is not delegated for dismissal of groups of employees in the Washington, D.C. Metropolitan area; that authority is retained by the Justice Management Division).

**B. Emergency Situations.** With the noted exception, the Director, EOUSA, and United States 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 United States 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.

In the event of a prolonged breakdown of essential building services, the United States 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 if a group of employees are dismissed, other employees also must be dismissed.

### 3-4.620 Flexible Work Options

Other reference(s) DOJ Human Resources Order 1200.1, Subchapter 6-2, Flexible Work Options Program; USAP 3-4.620.002, Flexible Work Options.

**A. Policy.** Although not an employee entitlement, supervisors and managers may make effective use of Flexible Work Options to best accomplish the work of the office.

**B. Authority.** Each United States Attorney, and the Director, Executive Office for United States Attorneys, is authorized to establish staff hours of duty and work locations of their respective offices which may include use of any of the following Flexible Work Options:

- 1) Flexible Work Schedules, i.e., varying the starting and ending time of the workday from the standard hours of 9:00 a.m. to 5:30 p.m., Monday through Friday;
- 2) Compressed Work Schedules, i.e., completing an 80-hour pay period in less than 10 work days;
- 3) Job Sharing, i.e., two or more employees sharing one full-time position;
- 4) Telecommuting, i.e., working from a satellite location; and
- 5) Part-Time Work Schedules, i.e., a work schedule of 32 to 64 hours per pay period.

Authority to establish hours of duty and work location may be delegated to the lowest practicable supervisory level.

**C. Employee Eligibility.** Each employee is eligible for one or more Flexible Work Options to the extent that participation promotes the overall effectiveness of the office. United States Attorneys or the Director, Executive Office for United States Attorneys, may exempt individual employees and categories of employees from one or more Flexible Work Options where the work must be performed at designated times and locations or is otherwise incompatible with the provisions of one or more Flexible Work Options.

### 3-4.630 Absence and Leave

Other Reference(s): APHIs/Personnel/Chapter 296 #5; Chapter 630 #s 1-4; Chapter 890 #4; DOJ Order 1630 #1B; 5 C.F.R., Part 630

**A. General.** See USAP 3-4.630.003.

**B. Excused Absences (Also known as Administrative Leave).**

Unless specified otherwise, authority to approve excused absences for individual employees:

- in excess of one hour must be approved by a higher-level supervisor (such as the First Assistant United States Attorney or the United States Attorney); and
- in excess of eight hours must be approved by the Director, EOUSA.

Unless specified otherwise, authority to approve excused absences for groups of employees:

- up to eight hours to close an activity for 1) reasons specified in DOJ Order 1630, 2) hot or cold working conditions, or 3) adverse weather conditions, must be approved by the United States Attorney; and
- all other group absences must be approved by the Director, EOUSA.

**1. Voting and Registration.**

- United States Attorneys or their designees are authorized to administer procedures and leave limits to be followed for employees who wish to register and vote in local, state or national elections.
- 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 of 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, however, it may not be authorized for studying for or taking bar exams.

**4. Official Time for Employee Representational Functions.** The Director, EOUSA, and United States 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.

**5. Attendance at Events Without Charge to Leave .** Excused absence may be granted in limited circumstances when an event:

- Is directly related to the office's mission;
- Will enhance the professional development or skills of the employee in his/her current position; or
- 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.

**C. Funeral Leave.** The Director, EOUSA and United States Attorneys, or their designees, are authorized to grant funeral leave for funerals of certain military members in accordance with the provisions of 5 C.F.R.

**D. Leave Without Pay (LWOP).** The Director, EOUSA, and United States 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. *See* USAP 3-4.630.003.

### **3-4.720 Affirmative Employment Programs— Upward Mobility Program**

Other reference(s): APHIs/Personnel/Chapter 296 #5; Chapter 315 #1; Chapter 720 #1; 5 C.F.R., Part 720

It is the policy of United States Attorneys' offices (USAOs) to effectively utilize their personnel resources by increasing the opportunities of lower-level employees to attain their full employment potential. To that end, the following Upward Mobility Program, which consists of three components (career and educational counseling, basic skills training, and job restructuring) has been developed. The Upward Mobility Program is designed to supplement the Merit Staffing Plan. For further information see the EOUSA Resource Manual at 64.

### **3-4.731 Personnel Suitability**

Other reference(s): APHIs/Personnel/Chapter 300 #7; Chapter 732 #s 1 & 3; Chapter 792 #2; 5 C.F.R., Part 731

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.

### **3-4.734 Financial Disclosure Requirements**

Other reference(s): APHI/Personnel/Chapter 296 #5; 5 C.F.R., Parts 734 and 2634

**A. Public Financial Disclosure Report (SF-278).** Title I of the Ethics in Government Act of 1978, as amended, requires covered employees, all United States Attorneys, Assistant United States Attorneys who are in authorized-for-pay supervisory or Senior Litigation Counsel positions, and Schedule C employees, to file a Public Financial Disclosure Report (Standard Form 278, Rev. 1/94) within 30 days after assuming their covered position. Reports must be filed each May 15 for the preceding calendar year, and within 30 days after the employee leaves his or her covered position for the period between the last annual report and the date employment is terminated (*see* 5 C.F.R. §§ 2634.201 and 202). Reports are not required from employees who serve 60 days or less (*see* 5 C.F.R. § 2634.204). Anyone who files a Public Financial Disclosure Report more than 30 days after its due date, including any extensions which have been granted, shall pay a late filing fee of \$200 (*see* 5 C.F.R. § 2634.704).

**B. Confidential Financial Disclosure Reports (SF-450)** Effective June 10, 1994, United States Attorneys were redelegated the authority to act as Deputy Designated Agency Ethics Officials for the review and certification of Confidential Financial Disclosure Reports filed by reporting individuals within their district.

Title I of the Ethics in Government Act of 1978 as amended, requires employees occupying positions in which they exercise significant judgement on matters that have an economic effect on the interests of a non-Federal entity to file a Confidential Financial Disclosure Report (Standard Form 450). This includes duties involving contracting, procurement and the administering of grants (*see* 5 C.F.R. § 2634.904). Reports must be filed 30 days upon entering a covered position and annually by October 31. The reporting period for a New Entrant is the preceding 12 months from the date of filing and the annual reporting period is the preceding 12 months ending September 30 (or any portion thereof not covered by a new entrant report) (*see* 5 C.F.R. § 2634.908). Reports are not required from employees who serve less than 60 days. The Office of Government Ethics has approved the Department's use of a conflict of interest certification as an alternative method to filing the report for all line Assistant United States Attorneys.

**C. Teaching and Lecturing.** Employees should be cautious to avoid any conflict of interest with their position and to ensure that no interference with the performance of their official duties occurs.

**D. 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. The Office of Legal Counsel (OLC), Executive Office for United States Attorneys, should be contacted whenever questions arise.

**E. Gifts Received from Foreign Governments** . In accordance with Justice Property Management Regulations (JPMR) § 128-49.201, each United States Attorney's office is required to submit to the Executive Office, Attention: Facilities Management and Support Services, by January 11 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.

**3-4.752 Adverse Actions**

Other References: Human Resources Order DOJ 1200.1, Chapter 3-1, Discipline and Adverse Actions

Adverse actions, especially those actions relating to Assistant United States Attorneys, are sensitive issues that must be closely coordinated with the Executive Office for U.S. Attorneys, General Counsel's office.

**Assistant United States Attorneys.** The authority to issue, propose, and decide, as appropriate, adverse actions against Assistant United States Attorneys is shown below. This authority may not be redelegated.

Action	Delegated Authority to Issue
Written Reprimands	Director, EOUSA, or designee, Principal Deputy Director, EOUSA, Counsel to the Director, EOUSA, United States Attorneys, and First Assistant United States Attorneys
Suspensions (14 Days or less)	<b>Proposals:</b> Director, EOUSA, or designee, Principal Deputy Director, EOUSA, Counsel to the Director, EOUSA, United States Attorneys, and First Assistant United States Attorneys <b>Decisions:</b> Director, EOUSA, or designee, Principal Deputy Director, EOUSA, Counsel to the Director, EOUSA, and United States Attorneys
Suspensions (15 Days or more), Reductions in Grade/Pay, Removal	<b>Proposals:</b> Director, EOUSA, or designee, Principal Deputy Director, EOUSA Counsel to the Director, EOUSA, and United States Attorneys <b>Decisions:</b> Director, EOUSA, or designee, Principal Deputy Director, EOUSA, and Counsel to the Director, EOUSA

**Non-Attorney Staff.** The authority to issue, propose, and decide, as appropriate, adverse actions against non-Assistant United States Attorney staff is delegated to each U.S. Attorney and to the Director, EOUSA. This authority may be redelegated as shown below:

Action	Delegated Authority to Issue
Written Reprimands	Immediate Supervisor
Suspensions, Reductions in Grade/Pay, Removal	<b>Proposals:</b> Immediate Supervisor <b>Decisions:</b> Second-Level Supervisor

If the immediate supervisor and/or second-level supervisor have a conflict with the pending action, the proposal and deciding stages of the action should be raised to the next higher level management official.

Questions relating to the level at which actions should be initiated must be directed to the Executive Office for U.S. Attorneys, General Counsel's Office.

### 3-4.771 Grievances

Other References: Human Resources Order DOJ 1200.1, Chapter 3-2, Agency Grievance Procedure

Authority to receive, refer to an appropriate organizational level, and issue decisions on employee grievances is delegated to each United States Attorney and the Director, Executive Office for United States Attorneys. This authority should be redelegated to the lowest practicable supervisory level.

If the immediate supervisor lacks the authority to resolve the grievance, the grievance must be referred to the next level management official within the district or the Executive Office for U.S. Attorneys.

### 3-4.830 Retirement

Other reference(s): APHIs/Personnel/Chapter 830 #1; Chapter 831 #s 1, 2, 4, 5, and 6; Chapter 990 #s 1, 7 and 10; OPM Operating Manual, The CSRS and FERS Handbook for Personnel and Payroll Offices; 5 C.F.R., Parts 831, 835, 837, 838, 841, 842, 843, 844, 845 and 846

## EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

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- 3-5.100 Equal Employment Opportunity (EEO) Policy**
  - 3-5.101 Policy Statement on Persons with Disabilities**
  - 3-5.102 Policy Statement on Disabled Veterans**
  - 3-5.103 Policy Statement on Sexual Harassment**
  - 3-5.104 Implementation of Affirmative Employment Programs**
  - 3-5.105 Training**
  - 3-5.120 EEOC Responsibilities**
  - 3-5.130 Racial/Ethnic Codes**
  - 3-5.150 Employees With Disabilities**
  - 3-5.200 Processing Complaints of Discrimination**
  - 3-5.210 Who May File a Complaint**
  - 3-5.211 General Guidance on Filing Discrimination Complaints**
  - 3-5.800 Prevention of Sexual Harassment Contact Persons**
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### **3-5.100 Equal Employment Opportunity (EEO) Policy**

It is the policy of the United States Attorneys' Offices (USAOs) and the Executive Office for United States Attorneys (EOUSA) to provide equal opportunity in employment on the basis of merit and to prohibit discrimination because of race, color, religion, sex, age, national origin, disability (physical or mental), sexual orientation or reprisal.

Moreover, the USAOs and the EOUSA wholeheartedly incorporate into this policy the Attorney General's key objectives in the area of equal employment opportunity by:

- Fostering an environment in the USAOs and the EOUSA in which cultural diversity is valued and understood;
- Achieving work force diversity wherever under-representation of minorities, women, and person with disabilities exists; and using innovative approaches to more fully integrate minorities, women and persons with disabilities throughout the USAOs and the EOUSA;
- Holding supervisors and managers strictly accountable for EEO implementation; and
- Providing a work environment that is free of discrimination and harassment; and ensuring that the programs designed to address allegations of discrimination or harassment are responsive to employees' needs and that employees who elect to use such programs are protected from retaliation or reprisal.

Our goal is to promote the full realization of equal employment opportunity through a continuing affirmative action program that will eliminate discrimination based on factors irrelevant to job performance. To achieve this goal, positive action will be taken by management at all levels to: (1) reexamine periodically our personnel policies and methods, recruiting efforts, training programs, as well as management practices, in order to implement necessary changes for the diversification of our work force, and (2) eradicate any internal practice or procedure which denies equality of opportunity to any group or individual on any basis other than merit and fitness. Through affirmative action, opportunities will be provided for all persons to compete equally for employment and advancement to their highest levels of proficiency where individual skills and training are fully utilized.

The continuing support of all staff members will be required for the achievement of the desired results.

### **3-5.101 Policy Statement on Persons with Disabilities**

The USAOs and the EOUSA reaffirm their commitment to recruit and hire qualified persons with disabilities. The USAOs and the EOUSA will continue to promote equal employment opportunity by working to eradicate all non-merit factors of employment that would adversely affect disabled persons.

To accomplish this goal, all levels of management must:

- Ensure that personnel and other internal practices and procedures are executed equitably, and do not deny opportunities to any group of individuals based on non-merit and non-fitness factors;
- provide opportunities that will allow persons with disabilities the chance to compete on an equal basis for advancement to their highest level of proficiency; and
- Ensure that all complaints of discrimination filed by persons with disabilities are handled in a manner so as to eliminate fear of reprisal.

### **3-5.102 Policy Statement on Disabled Veterans**

The USAOs and the EOUSA affirm the policy to recruit and hire qualified disabled veterans, specifically those disabled veterans who are thirty percent (30%) or more disabled. The USAOs and the EOUSA will continue to promote equal employment opportunity by working to eradicate all non-merit factors of employment that would adversely affect disabled veterans.

To accomplish this goal, all levels of management must:

- Ensure that personnel and other internal practices and procedures are executed equitably, and do not deny opportunities to disabled veterans based on non-merit and non-fitness factors;
- Provide opportunities that will allow disabled veterans the chance to compete on an equal basis for advancement to their highest level of proficiency; and
- Ensure that all complaints of discrimination filed by disabled veterans are handled in a manner so as to eliminate fear of reprisal.

### **3-5.103 Policy Statement on Sexual Harassment**

It is the policy of the USAOs and the EOUSA to prohibit sexual harassment in their offices. Sexual harassment is unacceptable conduct in the workplace and will not be condoned. Personnel management within the USAOs and EOUSA shall be free from prohibited personnel practices, as outlined in the provisions of the Civil Service Reform Act of 1978. All employees shall avoid conduct which undermines these principles.

Sexual harassment is a complex and sensitive issue. It is a form of employee misconduct which undermines the integrity of the employment relationship. Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended. In accordance with the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, (29 C.F.R. §1604.11), unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment debilitates morale and interferes in the work productivity of its victims and other employees. Therefore, behavior of this nature will not be tolerated.

### **3-5.104 Implementation of Affirmative Employment Programs**

In an effort to assist the USAOs and the EOUSA in the implementation of their Affirmative Employment Programs, the Equal Employment Opportunity (EEO) staff develops the plans, procedures and regulations necessary to carry out these programs. The EEO staff prepares the following plans:

- The Affirmative Employment Plan for Minorities and Women;
- The Disabled Veterans Affirmative Action Plan;
- The Affirmative Employment Plan for Disabled Individuals.

*See generally* the EOUSA Resource Manual at 67.

### **3-5.105 Training**

Periodically the EEO staff sponsors specialized training conferences which are offered to both attorney and non-attorney personnel. See the EOUSA Resource Manual at 68.

### **3-5.120 EEOC Responsibilities**

*See* the EOUSA Resource Manual at 69.

### **3-5.130 Racial/Ethnic Codes**

*See* the EOUSA Resource Manual at 70.

### **3-5.150 Employees With Disabilities**

It is the policy of the USAOs and the EOUSA to provide equal opportunity for persons with disabilities in all of its programs. This includes training programs, such as workshops and seminars sponsored by the USAOs and the EOUSA, where persons with disabilities who attend may require special accommodations. Effective May 1, 1984, the following statement should be included in all announcements of training sponsored by the Executive Office or any district office:

The EOUSA makes every effort to assure that its training programs are readily accessible to persons with disabilities. Any official nominating a disabled individual for training should contact the office sponsoring the training at least ten (10) working days in advance of the nomination to discuss any special provisions needed to accommodate the disabled nominee(s), e.g., sign language interpreters for the hearing impaired, etc.

### 3-5.200 Processing Complaints of Discrimination

The EOUSA processes two types of complaints that involve allegations of discriminations:

1. Individual and class complaints of employment discrimination and reprisal prohibited by Title VII of the Civil Rights Act of 1964, as amended (discrimination on the basis of race, color, religion, sex, and national origin); the Age Discrimination in Employment Act, (discrimination on the basis of age when the aggrieved individual is 40 years of age or older); the Rehabilitation Act (discrimination on the basis of mental or physical disability); the Equal Pay Act (sex-based wage discrimination) and Department of Justice policy (sexual orientation).
2. Mixed case complaints which are complaints that contain an allegation of employment discrimination related to or stemming from a personnel action that can be appealed to the Merit Systems Protection Board (MSPB).

Both types of complaints are handled in two phases -- the informal complaint stage and the formal complaint stage.

**A. Informal Complaint.** Before a formal complaint may be filed, employees or applicants for employment who feel they have been discriminated against because of race, color, religion, sex, age, national origin, disability (physical or mental), sexual orientation, or reprisal must bring the matter to the attention of an EEO Counselor within 45 calendar days after the action in question. It is the EEO Counselor's responsibility to attempt to resolve the problem informally within 30 calendar days. If the counseling has not been completed within 30 calendar days, the Counselor must notify the complainant, in writing, on the 30th day of the complainant's option either to continue the counseling process or file a formal complaint within 15 calendar days after the notice of final counseling interview has been received by the complainant.

If the matter is a mixed case complaint, the EEO Counselor will explain that the complainant must select either the EOUSA or the MSPB to formally process the complaint or appeal. The EEO Counselor will inform the complainant that attempting an informal resolution does not preclude filing a formal appeal with the MSPB, but that the time limit for filing the appeal with the MSPB remains unchanged. The EEO Counselor will also explain that mixed case complaints are processed in a shorter time frame than Title VII complaints, and mixed case appeals from the EOUSA are to the MSPB instead of EEOC.

Complainants may go directly to an EEO counselor or may call the EEO staff, EOUSA for assignment of a counselor.

**B. Formal Complaint.** If the complainant is not satisfied with the informal resolution, he/she may then file a formal complaint of discrimination. The complaint must be specific, in writing, and must be submitted to the EEO Assistant Director, Executive Office for United States Attorneys, Equal Employment Opportunity Staff, 10th and Pennsylvania Avenue, N.W., Room 1630, Washington, D.C. 20530, within 15-calendar days from the date the complainant receives the Notice of Final Interview.

If the matter is a mixed case complaint, the complainant must submit a letter acknowledging that the EOUSA is the only forum where the mixed case complaint has been filed.

The complaint is considered filed on the date mailed (post-marked) or on the date of delivery when the complaint is presented (hand delivered) to the EEO staff.

The EEO Assistant Director shall send a written acknowledgment of receipt of the complaint to the complainant, and advise the complainant of all administrative rights and of the right to file a civil action, including the applicable time limits for such filing.

### **3-5.210 Who May File a Complaint**

A complaint of discrimination may be filed by an applicant or any employee. Allegations of discrimination may be based on race, color, religion, sex, age, national origin, disability (physical or mental), sexual orientation, or reprisal. (With reference to age, the aggrieved person must be at least 40 years of age at the time of the matter giving rise to the complaint of discrimination.) The employee has the right to be represented at all levels of the complaint process by a representative of his/her choice.

### **3-5.211 General Guidance on Filing Discrimination Complaints**

**Guidance on filing discrimination complaints can be found in the EOUSA Resource Manual at 72 et seq.**

Responsibilities of the Complainant	EOUSA Resource Manual at 72
Dismissal and Appeal of Complaints	EOUSA Resource Manual at 73
Withdrawing Complaints	EOUSA Resource Manual at 74
Investigation of Individual Employment Discrimination Complaints	EOUSA Resource Manual at 75
On Completion of Investigation	EOUSA Resource Manual at 76
Department of Justice Final Agency Decision	EOUSA Resource Manual at 77
Appeals from the Final Agency Decision	EOUSA Resource Manual at 78
Payment of Costs	EOUSA Resource Manual at 79
Retention of Personnel Records Relative to EEO	EOUSA Resource Manual at 80
Complaint Processing	

#### **Processing Allegations of Discrimination or Harassment Because of Sexual Orientation**

Precomplaint Counseling	EOUSA Resource Manual at 81
Formal Complaints of Discrimination	EOUSA Resource Manual at 82
Complaint Adjudication Officer (CAO) Review and Decision	EOUSA Resource Manual at 83
Remedies and Relief	EOUSA Resource Manual at 84
Representation and Official Time	EOUSA Resource Manual at 85

#### **Class Action Complaints**

Filing of Class Complaint	EOUSA Resource Manual at 86
Acceptance, Rejection or Cancellation of a Class Complaint	EOUSA Resource Manual at 87
Notification and Opting Out	EOUSA Resource Manual at 88
Evidence Concerning the Complaint and Opportunities for	EOUSA Resource Manual at 89
Informal Resolution	EOUSA Resource Manual at 90
Hearing	EOUSA Resource Manual at 91

Notification of Class Members of Decision  
Corrective Action

EOUSA Resource Manual at 92  
EOUSA Resource Manual at 93

**Age Discrimination in Employment Act (ADEA) Complaints**

EOUSA Resource Manual at 94

Mixed Case Complaints

EOUSA Resource Manual at 95

Investigation of Allegations of Discrimination on the Basis

EOUSA Resource Manual at 96

Disability in Federally Conducted Programs

**3-5.800 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 Prevention of Sexual Harassment Contact Persons. Managers must make decisions and appointing a Contact Person who is a member of management would tend to blur the two functions.

The coordinator for the Prevention of Sexual Harassment Program in the USAOs and the EOUSA is the Legal Counsel's office.

## ATTORNEY AND SUPPORT STAFF TRAINING

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### **3-6.010 Office of Legal Education**

#### **3-6.100 Attorney and Staff Training—Generally**

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### **3-6.010 Office of Legal Education**

The Office of Legal Education (OLE) administers two institutes: The Attorney General's Advocacy Institute (AGAI) and the Legal Education Institute (LEI). AGAI and LEI provide continuing legal education to federal attorneys and support staff. AGAI serves Department attorneys while LEI trains Department attorneys and all other federal agency attorneys and support staff from United States Attorneys' offices (USAOs) and the Department Litigating Divisions. Training courses and seminars are certified for continuing legal education credit, accredited in all states with mandatory continuing legal education requirements and funded by OLE.

#### **3-6.100 Attorney and Staff Training—Generally**

Further guidance on these issues is available at USAM 3-4.410 ("Training"), and EOUSA Resource Manual 9 ("Audio/Video Tape Lending Library").

## LAW ENFORCEMENT COORDINATING COMMITTEE/VICTIM-WITNESS

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3-7.100 History and Overview

3-7.200 Structure

3-7.210 Membership

3-7.211 Subcommittees

3-7.212 Reporting Requirements

3-7.300 Guidelines for Victim and Witness Assistance -- Introduction

3-7.320 Responsibilities

3-7.330 Procedures

3-7.340 Emergency Victim and Witness Programs

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### **3-7.100 History and Overview**

The creation of the Law Enforcement Coordinating Committee was an attempt to move past territorial and jurisdictional concerns of federal, state, and local law enforcement entities, open the lines of communication, and make the most efficient use of law enforcement resources. Using the findings of a bi-partisan task force on violent crime, a program was designed which would be housed in a central location and be responsive to the unique needs of a specific area. The United States Attorneys' offices were selected as the most logical entity to house such a program because it represents the federal government's interests in local matters, and in most cases the United States Attorney represented strong community leadership, active support of law enforcement, and provided access to the leadership in Washington D.C., factors which would prove essential to the success of the program.

On July 21, 1981, the Attorney General of the United States issued an order instructing every United States Attorney to establish a Law Enforcement Coordinating Committee (LECC) to respond to the need for better communication between federal, state, and local law enforcement agencies. The LECCs are not only responsible for improving communications, but also for providing training, facilitating cooperative efforts by acting as a liaison between the United States Attorneys' offices and the community. This new program, LECC, would have the ability to identify specific training and resource needs of the district and locate available resources to fill those needs. Districts also have LECC Subcommittees which consist of relevant LECC agency officials working on specialized tasks, such as drug enforcement or white collar crime, see USAM 3-7.211.

As set forth in the Victim and Witness Protection Act of 1982, the Crime Control Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, and pursuant to the *Attorney General Guidelines for Victim and Witness Assistance 2000 ("AG Guidelines")*,

the federal government must ensure that innocent victims of all crime have their rights upheld, have their dignity and privacy respected, and are treated with fairness. During the prosecution stage of the process, it is the United States Attorneys' offices, through their Victim-Witness Coordinators ("VWCs"), that are responsible for compliance with these mandates.

### **3-7.200 Structure**

The LECC and Victim Witness Programs are under the overall direction of the Deputy Attorney General. United States Attorneys from 14 districts make up the LECC and Victim-Witness Subcommittees of the Attorney General's Advisory Committee of United States Attorneys. These subcommittees provide input to the Attorney General on law enforcement and victim-witness matters. Additionally, a group of 16 LECC and Victim-Witness Coordinators serve on the Coordinators' Advisory Committee to provide input to the subcommittees and their chairpersons upon request.

Each individual district's LECC and Victim-Witness Programs are under the supervision of the United States Attorney. The LECC and Victim-Witness Coordinators may assist in managing local operations and coordinating activities within their district as directed by the United States Attorney.

### **3-7.210 Membership**

LECC members represent a broad range of multilevel government law enforcement agencies. In some of the larger districts, the full LECC may consist of several hundred individuals. Federal agency members include the FBI, DEA, IRS, INS, ATF, the U.S. Customs Service, Postal Inspection Service, U.S. Marshals Service, Fish and Wildlife Service, Park Service, federal agency inspectors general, and the military. State agencies generally include state police; state attorneys general and inspectors general; the National Guard; tax, banking, and insurance regulators; conservation officers; and state criminal justice planning agencies. Local government agencies provide members from district or prosecuting attorneys' offices, city and rural police departments, sheriffs' departments, county inspectors, and town constables. Private groups, such as banking and insurance security personnel, may also belong to the committee. Even foreign law enforcement groups, such as the Royal Canadian Mounted Police, can be a part of the LECC in border districts. The United States Attorney must ensure that full and fair representation is accorded all state and local law enforcement interests.

### **3-7.211 Subcommittees**

Subcommittees serve as the operational core of most LECC activity. They address specialized areas of district law enforcement needs and are made up of personnel with appropriate interest and expertise. An Assistant United States Attorney or other high level federal or nonfederal official may head the subcommittee.

### **3-7.212 Reporting Requirements**

In accordance with the *Attorney General Guidelines for Victim and Witness Assistance 2000*, the Director, Office for Victims of Crime (OVC), has the statutory responsibility for

monitoring Justice Department compliance with the *AG Guidelines*. (42 U.S.C. § 10603(c)(3) (A)). Since 1982, each United States Attorney has reported to the Attorney General, through the OVC Director, on the status of their *AG Guidelines* compliance efforts in the annual Best Efforts Report. The responsible official, in preparing the annual "Best Efforts" Report shall include an account of practices and procedures which have been adopted (and are in actual use in each of their respective offices) to provide the services to victims mandated under federal law during the preceding fiscal year. See, *Attorney General Guidelines for Victim and Witness Assistance 2000*, Article II.

### **3-7.300 Guidelines for Victim and Witness Assistance -- Introduction**

The first Federal victims' rights legislation was the Victim and Witness Protection Act of 1982 (VWPA). Congress amended and expanded upon the provisions of the 1982 Act in subsequent legislation, primarily the Victims of Crime Act of 1984, the Crime Control Act of 1990, the Victims Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, and the Victim Rights Clarification Act of 1997.

The VWPA instructs the Attorney General to develop and implement guidelines for the Department of Justice consistent with the purposes of the Act. In conformance with the Congressional directive, the Attorney General promulgated the *Attorney General Guidelines for Victim and Witness Assistance* on July 9, 1983 which were revised and reissued on May 1, 1995. These Guidelines set forth the procedures that officials should follow in responding to the needs of victims and witnesses. The foundation for the *AG Guidelines* is the Federal victims' rights laws. This most recent version of the *AG Guidelines* were promulgated on January 30, 2000.

### **3-7.320 Responsibilities**

Responsibility for implementing the prosecution-related provisions of the *Attorney General Guidelines* within the Department resides with the 93 United States Attorneys and litigating components, with each United States Attorney and/or Assistant Attorney General as the responsible official for cases in his/her district in which charges have been instituted. The United States Attorney and/or Assistant Attorney General is required to designate the individual or individuals to carry out victim-witness services in his or her office.

Specifically, each United States Attorney's office is responsible for providing the following assistance and/or information:

- A. Information, Notice and Referrals
- B. Consultation with a government attorney
- C. A separate waiting area
- D. Notification to victims and witnesses employers and creditors
- E. Victim Privacy
- F. Logistical Information
- G. Limited Testing of Defendants in Sexual Assault Cases
- H. Right to make statement about pretrial release in an interstate domestic violence, stalking, or violation of protective order case

- I. Closed Circuit Televising of Court Proceedings in Change of Venue Cases Allocation Statements to the Court
- J. Sentencing Proceedings
- K. Victim Impact Statements

*See, Attorney General Guidelines for Victim and Witness Assistance 2000, Article IV.B.*

Responsibility for technical assistance to United States Attorneys' offices in implementing the *AG Guidelines* lies with the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.

Responsibility for monitoring compliance with the Guidelines and provisions of the Victim and Witness Protection Act of 1982, the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, resides with the Director, Office for Victims of Crime (OVC), Office of Justice Programs (OJP).

### **3-7.330 Procedures**

Pursuant to Articles I and II of the *AG Guidelines* each United States Attorney:

- A. Shall designate one or more persons specifically for the purpose of carrying out the provisions of the Guidelines;
- B. Should include implementation of and evaluation of adherence or nonadherence with the victims' rights and witnesses' services provisions set forth in the *AG Guidelines* in the annual work plans and performance appraisals of each appropriate federal employee;
- C. Shall ensure that employees whose responsibilities include contact with crime victims and witnesses receive a copy of the *AG Guidelines* and attend a one hour training session concerning the *AG Guidelines* and victims' and witnesses' rights within 60 days of assuming these responsibilities;
- D. Should coordinate the provision of victim-witness services between the United States Attorneys' offices and other organizational components of the Department, i.e., investigative agencies within the Department; and with state and local law enforcement officials including tribal police officials in Indian Country and victim assistance and compensation service providers;
- E. Shall report annually to the Attorney General on the "Best Efforts" they have made in ensuring that victims of crime are accorded their rights. United States Attorneys may comply with this requirement by the filing of their annual report on victim and witness assistance with the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.

### **3-7.340 Emergency Victim/Witness Programs**

The Office for Victims of Crime (OVC) has established a special fund through a reimbursable agreement with the Executive Office for United States Attorneys to provide emergency assistance and services to victims of federal crimes when needed services are unavailable through other sources.

The Federal Crime Victim Assistance Fund (FCVAF), derived from the Victim of Crime Act (VOCA) funds, is designed to assist federal crime victims with services of an immediate nature. These services include, but are not limited to, transportation costs for victims to participate in judicial proceedings, emergency shelter, temporary housing, crisis intervention, and other services necessary to effectively respond to emergency needs of federal crime victims. The FCVAF is intended to be used when no other resources are available and state compensation efforts have been exhausted. To apply for FCVAF funds, districts should contact the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys.

Another tool in the prosecution of cases involving witnesses who have a perceived threat of danger in relation to testifying is the Emergency Witness Assistance Program (EWAP). This program, is available to witnesses who are going to testify in cases, but have a reservation about testifying, not an actual threat. Threats should be treated seriously in connection with the United States Marshal's Service and local law enforcement.

The purpose of EWAP is to provide the United States Attorneys' offices with the flexibility to address a critical need: assistance to witnesses on an emergency basis to ensure their well being and that witnesses will be available for trial, other court proceedings, or activities on an ongoing case. The program also addresses a witness's or prospective witness's physical, mental or emotional reservations about participating in a specific matter before or after he or she has agreed to cooperate with, testify or be available for, the government.

Each district has an implementation plan which further describes the uses of the funds.

**FINANCIAL MANAGEMENT**

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### **3-8.100 Operational Expenses**

The Director of the Executive Office for United States Attorneys is the official responsible and accountable for the appropriation of the Offices of the United States Attorneys. Each United States Attorney has been delegated authority to manage the funds/budget of his/her office within certain limitations. That delegation is normally administered through the Administrative Staff of the Office of the United States Attorney.

Financial expenditures should remain consistent with the delegations of each office and within the guidelines and regulations set forth by the various statutes and the Department of Justice.

### **3-8.130 Expenditures and Obligations Under the Anti-Deficiency Act**

Cross reference(s): USAM §§ 3-8.100 et seq.; 3-8.300 et seq.; 3-8.600 et seq.; 4-1.310; 4-1.410; 4-1.600; 4-10.100; 5-5.230; 5-12.111; 5-12.613; 6-6.130; 6-5.322.

The Anti-Deficiency Act (Act) states that: 1) the government may not make or authorize an expenditure exceeding an appropriation; or 2) involve the government in a contract for money before an appropriation is made, unless authorized by law. 31 U.S.C. § 1341(a). This means that you may not contract or obligate the United States Attorneys' appropriation for services to be performed outside of the current fiscal year, absent explicit statutory authority.

You should be particularly mindful of this restriction if you are contemplating entering into any consent decree. Please ensure that the terms of the consent decree DO NOT obligate the government to expend funds beyond your office's litigation budget or beyond the current fiscal year. If you ever need an exception to this restriction, you must consult with and obtain prior approval from the Executive Office for United States Attorneys (EOUSA) before executing the agreement.

Such a consultation will give EOUSA the ability to review the feasibility and legality of such expense and an opportunity to consult with Department of Justice officials and Congress to obtain approval.

This restriction does not apply to your delegated authority to settle civil cases up to \$1,000,000 paid out of the Judgment Fund. See 28 C.F.R. § 0.168.

### **3-8.210 Depositions**

Depositions should be taken whenever possible, to reduce expenditures. Depositions should be taken before notarial officers or other officer authorized for administering oaths.

United States Attorneys are authorized to incur the necessary expenses of taking depositions. If a salaried federal court reporter is used, the reporter is entitled to compensation for the production of transcript only (attendance fees may not be paid). Payment of an attendance fee would be considered a violation of the prohibition against dual compensation. 5 U.S.C. Sec. 5533. The salaried federal reporter is not controlled by the court-reporting law (see 28 U.S.C. Sec. 753) as to charges for work not regulated by that statute. Payment to stenographers for services should be in accord with prevailing local rates.

Stenographic and notarial charges related to depositions for indigent persons are paid by the Department of Justice only in cases of fact witnesses.

Depositions to be taken in a foreign country must be channeled through the Department of State in the same manner as subpoenaing a witness who resides in a foreign country to appear in court. Authorization can be obtained to pay for the services of interpreters and stenographers if none are available in the embassy or consulate, upon approval of the Deputy Director, Financial Management Staff, EOUSA.

The Office of International Affairs in the Criminal Division, or the Office of Foreign Litigation in the Civil Division, should be consulted in the case of depositions to be taken in the United States at the request of a foreign court.

If foreign witnesses are to be examined on the premises of the diplomatic or consular mission, arrangements should be made in advance with the Special Authorization Unit, Justice Management Division (JMD), to provide advance authority to the consular official to reimburse these witnesses in the same manner as those appearing in federal courts.

Deposition expenses of experts who will not be government witnesses must be paid as a litigative expense of the United States Attorneys' office.

### **3-8.215 Translation Services**

Expenses incurred by foreign embassies on behalf of the United States Attorneys' offices (USAOs) are handled by the Office of International Affairs (OIA), Criminal Division, or the Department of State through the embassy of the foreign country involved. In some instances, requests to OIA for translation services may be performed locally, without the involvement of the Department of State. The Criminal Division currently holds translation contracts (Antiquariat Literary Services, Inc. and Diplomatic Language Services, Inc.) which are administered by a professional linguist who serves as the Division Language Services Administrator.

Information relating to translation services should be obtained from OIA, Criminal Division..

### **3-8.220 Extradition Expenses**

The Criminal Division, Office of International Affairs, will provide specific guidelines, and suggestions, as well as the necessary clearances for all extradition proceedings.

All other information relating to extradition should be obtained from EOUSA, as well as the other relevant sections of other titles of the United States Attorneys' Manual.

### **3-8.230 Foreign Counsel**

United States Attorneys have authority to incur expenses to hire foreign counsel. Contact the Financial Management Staff, EOUSA, for assistance.

### **3-8.232 Foreign Witnesses**

Consular officials will normally serve subpoenas on American citizens (including American Nationals who, while not citizens, owe permanent allegiance to the United States, as well as alien residents, who have been lawfully admitted for permanent residence in the United States, although not citizens) residing abroad, except in those countries (such as Switzerland) which prohibit foreigners from serving legal documents. In these cases, the Office of International Affairs in the Criminal Division or the Office of Foreign Litigation in the Civil Division should be consulted, as appropriate.

American citizens are entitled to compensation for travel and expenses in these cases. When the testimony of the employee of a foreign government is contemplated, it is imperative that the attorney submit a request directly to the Office of International Affairs in the Criminal Division, or the Office of Foreign Litigation in the Civil Division, prior to communicating with the witness or the foreign government. The appropriate office will request the Department of State to obtain the approval of the foreign government involved.

Payment for subsistence, witness fees, and actual cost of travel, for both American and foreign citizens, is fixed by 28 U.S.C. Sec. 1821.

### **3-8.240 Payment of Travel Expenses of Defendant and Counsel to Attend Depositions Taken at the Instance of the Government**

18 U.S.C. Sec. 3503(c) specifies that whenever a deposition is taken at the instance of the government, the court may direct that the expenses of travel and subsistence for the defendant and his/her attorney for attendance at the deposition be paid by the government. In those instances where the United States Attorney's Office is the prosecuting office and is directed by the court to pay such costs, the expenses will be considered to be litigative expenses chargeable against the United States Attorneys' appropriation. Defendant and his/her counsel will be reimbursed for "reasonable expenses", i.e., only those expenses for which a government employee traveling under government travel regulation would be reimbursed.

### **3-8.250 Interpreters**

The Court Interpreters Act of 1978 requires the Director, Administrative Office of the U.S. Courts to "establish a program to facilitate the use of interpreters in courts of the United States." The Administrative Office of the U.S. Courts will prescribe standards for interpreter qualifications and will certify the qualifications of individuals who may serve as interpreters in bilingual proceedings and in proceedings involving persons whose hearing is impaired.

All costs for interpreter services necessary to enable a party to comprehend the proceedings in the courtroom or in chambers, to communicate with counsel in the immediate environs of the courtroom in connection with ongoing judicial proceedings and to communicate with the presiding judicial officer are payable from funds appropriated to the judiciary. Interpreter services required by a criminal defendant to whom the government furnishes representation under the Criminal Justice Act are payable from funds appropriated to support that Act.

The United States Attorney is generally chargeable only for interpreter services necessary to interpret the testimony of prospective government witnesses in the investigative stage. When the case goes to trial, those trial related interpretive expenses, can be requested from the Special Authorization Unit (FEW appropriation). Although testimony situations are the most common occasion for the use of interpreters, interpreters may also be engaged for services necessary to determine the course of litigation. They may be paid for, or provided transportation, facilities, equipment or materials as necessary and appropriate to satisfy the United States Attorney's requirements.

Interpreters are required to execute a written oath as prescribed by Administrative Office of the U.S. Courts. The rate of compensation should be fixed by agreement with the interpreter before the interpreter renders the service required by the United States Attorney. Rates of compensation should correspond to rates paid by the court. The Administrative Office of the U.S. Courts regulation (Sec. 1.72) currently permits the

presiding judicial officer to fix reasonable compensation according to the prevailing rates at the location where the designated interpreter regularly works.

It is the responsibility of investigative agencies to pay the costs to translate and transcribe recordings of foreign language telephone conversations obtained under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. Secs. 2510 to 2520.

### **3-8.280 Payment of Expert Witnesses Appointed by the Court Under Federal Rules of Evidence**

Federal judges are allowed to appoint expert witnesses to assist the court in the performance of its duty on a particular case or proceeding under Fed. R. Evid. 706. The court may either appoint an expert of its own choosing or one agreed upon by both parties. The expert's deposition may be taken by any party and he/she may be called to testify by the court or any party.

**A. Criminal Proceedings and Civil Condemnation Proceedings.** The compensation of expert witnesses appointed by the Court under Fed.R.Evid. 706 is treated as a litigative expense chargeable to the litigating agency of the government. 58 COMP.GEN. Sec. 259 (1979). In those instances where the Department of Justice is the litigating agency, the expenses of the court-appointed expert witness are payable from the appropriation "Fees and Expenses of Witnesses."

**B. Civil Proceedings.** Fed.R.Evid. 706 provides that in other civil actions, the compensation of court-appointed experts shall be paid by the parties in such proportions and at such times as the court directs. Any compensation charged to the Department of Justice will be paid from the appropriation "Fees and Expenses of Witnesses."

**C. Authorization and Payment Procedures.** When the expert is appointed by the court, the United States Attorney should submit to the Justice Management Division an OBD-47 accompanied by a copy of the court order appointing the expert witness under Fed.R.Evid. 706.

**D. Exclusion Under Fed.R.Evid. 706.** The appointment of expert witnesses for an indigent defendant in criminal cases or in civil habeas corpus cases is not provided under Fed.R.Evid. 706. In such instances, the Criminal Justice Act authorizes the court-appointed defense attorney to hire an expert witness on behalf of indigent defendant. The expenses of the expert will be paid by the Administrative Office of the U.S. Courts from funds appropriated for the implementation of the Criminal Justice Act.

### **3-8.300 Phasing Down United States Attorney Operations During a Lapse in Appropriations**

In the event there arises a situation in which an appropriation of funds may not be available for operation of the Department of Justice, the United States Attorneys' offices will proceed under the guidelines set forth below, in compliance with the Antideficiency Act, 31 U.S.C. Sec. 1341. The Antideficiency Act, as construed by the Attorney General, provides that, in the absence of appropriation, no obligation can be incurred except for the protection of life and property, the orderly suspension of operations or as otherwise authorized by law.

### **3-8.311 Lapse in Appropriations—Notification**

In the event of an impending lapse in appropriations, the Assistant Attorney General for Administration will notify all Department personnel of pending furloughs and phasing down operations. The EOUSA will then contact each United States Attorney with more specific information and instructions and will keep them aware of any more current information available from the JMD and the Office of Management and Budget and specific provisions of the Congress.

### **3-8.312 Lapse in Appropriations—Excepted/Non-Excepted Personnel**

Upon notification of a pending lapse in appropriations, the United States Attorney shall identify employees who are necessary to sustain legal operations as defined in USAM 3-8.321. At the instance of a lapse in appropriations, only those employees necessary to sustain the legal operations defined in USAM 3-8.321 shall be permitted to continue working. All other employees may only remain in duty status to the extent necessary to facilitate an orderly phase down of non-emergency activities. The United States Attorneys shall identify the individual employees who are considered excepted and shall notify each employee of his/her status, in the event of a lapse in appropriations. The United States Attorney has authority to recall individual employees as the need arises and to substitute furloughed employees for non-furloughed employees if the furloughed employees are able to assume the case load designated as "emergency." The United States Attorney does not have the authority to recall employees because of the financial hardships they may be suffering.

### **3-8.313 Lapse in Appropriations—Furloughs**

Any employees designated non-excepted will be furloughed upon a lapse in appropriations. During this time the employee will be in a non-pay, non-duty status. The employee will be notified by his/her supervisor or through some other communication channel when to return to work. Reduction-in-force procedures (5 C.F.R. Part 351) will be followed whenever an employee must be furloughed for more than 30 days.

### **3-8.314 Travel During a Lapse in Appropriations**

All travel directly relating to criminal and civil litigation will continue. All other travel, although previously authorized, will be cancelled, upon a lapse in appropriations. Any employee on travel when a funding lapse occurs should immediately contact his/her superior. If time is needed to seek a continuance or the employee is involved with a matter that poses a life or property constraint, see USAM 3-8.321, he/she will receive further instructions from his/her superior. In all other cases, the employee will be required to return home. Return travel and per diem/subsistence incurred in returning are authorized.

### **3-8.315 Payment of Fees and Expenses of Witnesses During a Period of Lapsed Appropriations**

Use of witnesses, and any obligations incurred as a result, are authorized in accordance with legal operations as defined in USAM 3-8.321.

### **3-8.321 Legal Operations—Matters to be Continued During a Lapse in Appropriations**

All litigation and investigations which are essential to the protection of life and property are to continue.

**A. Criminal Matters.** These should continue without interruption as an activity essential to the safety of human life and the protection of property.

**B. Civil Matters.** Civil litigation will be curtailed or postponed, to the extent that the Courts will permit such an approach without harm to the interests of the United States. In the event that such an approach is not possible, civil litigation will continue without interruption as an activity essential to the protection of property.

### **3-8.400 Appraisers and Masters**

The Department of Justice pays for the compensation of special masters or appraisers the fees and expenses set by the court, but it reserves the right to refuse payment of unusual or unreasonable fees and/or expenses. United States Attorneys may authorize reasonable compensation.

United States Attorneys may authorize payment of reasonable compensation for special masters, guardians ad litem, or appraisers appointed by the court as the result of an action brought by the United

States. Vouchers for compensation and expenses of such individuals must be supported by copies of the order making the appointment and fixing compensation and expenses. Justice Management Division Form OBD-47, "Request and Authorization for Fees and Expenses of Witnesses," will be used. The attorney should note on the form that it is being used for a special master. The division administrative officer will forward the OBD-47 to Financial Operations Services, and administrative officers for United States Attorneys' Offices, and to the U.S. Marshal's Office for that district.

Fees and expenses of land commissioners will not be paid by the Department. Land commissioners appointed pursuant to Rule 71A, Federal Rules of Civil Procedures are payable from funds appropriated to the judiciary.

### **3-8.420 Court Reporters**

As provided in 28 U.S.C. Sec. 753, each district court shall appoint one or more salaried court reporters who shall attend each session and record verbatim all proceedings in open court, and all other proceedings as specified by statute, rule, order of the court or as requested by any party to the proceedings. EOUSA interpretation of the statute requires that every word in criminal proceedings be recorded, including closing arguments. It is suggested that, in districts where it is not the practice to record proceedings in full, application should be made to the court to take corrective measures insuring compliance with the statute.

The salaried reporter is entitled to receive, in addition to salary, such fees for transcripts as may be prescribed from time to time by the court with the approval of the Judicial Conference. These fees are collectible from the parties, including the United States. The Department of Justice is not financially responsible for any part of a transcript furnished to: the court; opponent counsel; to persons proceeding in forma pauperis; nor for the reporter's travel expenses except that, on approval of the court, the cost of the original and copies may be apportioned among the persons to whom they are furnished. If the government requires daily transcripts, any additional expenses involved in providing more rapid delivery must be borne by the reporter. The only exception to this is in rural areas, where the court reporter may need to hire reporters from outside the community area to help produce hourly, daily, or expedited transcripts. In such instances, the reporter may bill the ordering party for the subsistence costs of other reporters or auxiliary personnel. The costs are authorized up to the amount of travel subsistence that a government employee may be reimbursed for the same travel. An attendance fee for auxiliary personnel is not billable to the ordering party. Court Reporter Manual, Chapter XX at 10.

### **3-8.430 Employment of Independent Reporters**

Departmental appropriations are not available for payment of court reporters fees for recording court proceedings. If the salaried reporter is unable to report on court proceedings, the matter of obtaining additional reporters is a consideration for the court.

### **3-8.440 Employment of Additional Reporters in Lands Cases**

In view of the difficulty of obtaining the services of a salaried court reporter in Lands Commissioner cases, and because Department of Justice appropriations may not be used for additional reporters, the Director of the Administrative Office of U.S. Courts has advised that, in special cases when the salaried court reporter is unavailable to report these hearings, it will authorize the appointment of a temporary court reporter for that purpose. In such cases, the United States Attorney should request that the judge secure authority for appointment from the Administrative Office for U.S. Courts.

### **3-8.450 Grand Jury Reporting**

Grand jury reporting may be performed by an employee of the United States Attorney's Office (Fed. R. Crim. P. Rule 6(d)) or by a commercial reporter engaged for the purpose. The salaried federal court reporter may report grand jury proceedings, but he/she may only be paid for transcripts produced, not for time worked; payment to a salaried federal court reporter for time worked would be considered a violation of the statutory prohibition against dual compensation. 5 U.S.C. Sec. 5533.

### 3-8.510 Transcripts

It is the policy of the Executive Office for United States Attorneys that hourly, daily, or expedited transcripts should not be ordered unless absolutely necessary. All orders for hourly or daily transcripts must be expressly authorized in advance by the United States Attorney or First Assistant United States Attorney, and documentation of such authorization must accompany all payment vouchers for hourly or daily transcripts.

Ordinarily, only one transcript should be purchased in any case, except Court of Claims cases or depositions. Any decision by the United States Attorney to order more than one transcript must be based on absolute necessity for the availability of funds. Transcripts should only be purchased as required, for heads of the legal divisions of the Department of Justice and their assistants, United States Attorneys and their assistants, and other attorneys assisting in the case. Other government agencies interested in obtaining transcripts should make arrangements for purchase directly from their own appropriations. No Department of Justice funds are available for payment of transcript furnished to the court, either at its request or that of the government. The official copy in the files of the clerk of the court should be used by the court in these cases.

### 3-8.520 Expenses Incurred on Behalf of Indigents

Following is a listing of expenses which may be incurred for persons proceeding in forma pauperis, and the responsibility for such expenses.

**A. Fact Witnesses.** Costs relating to subpoena and fees of indigent defendants witnesses are the responsibility of the Department of Justice and payable at the rates prescribed for witnesses pursuant to 28 U.S.C. Sec. 1821.

**B. Expert Witnesses.** Expert witnesses called by the defense and necessary to the adequate defense of an indigent person are paid from funds appropriated for the implementation of the Criminal Justice Act by the Administrative Office of the U.S. Courts. These expenses are authorized on Form CJA-21 after certification by counsel for the indigent defendant and approval by the presiding court or magistrate. Experts called by the court are paid by the Administrative Officer of the U.S. Court. The Department of Justice will pay for expert witness fees and expenses for expert witnesses appearing on behalf of the government. United States Attorneys have authority to employ an expert witness appearing on behalf of the government.

**C. Mental Examinations for Indigent Persons.** Expenses for examinations under 18 U.S.C. Sec. 4244 to determine a defendant's mental competency to stand trial are always the responsibility of the Department of Justice. Expenses for examinations to determine a defendant's mental responsibility at the time of the alleged offense are paid by the Administrative Office of the U.S. Courts except when the request is made by the United States, in which case the Department of Justice is responsible. See Department of Justice Order 2110.20A (February 1999).

**D. Depositions.** Expenses for travel and subsistence of a defendant and defendant's counsel for attendance at a deposition taken pursuant to Rule 15(c) Fed.R.Crim.P. are payable by the prosecuting agency. The purpose of such a deposition is to preserve evidence for the prosecution, and all costs should be assigned to the prosecuting agency regardless of the availability of funds appropriated for the Criminal Justice Act. (Decision of Administration Counsel, Department of Justice, November 26, 1975.) The United States Attorney may authorize such expenses in a similar fashion as other litigation expenses.

Fees and expenses for depositions of fact witnesses, including the cost of recording and transcribing the proceeding, for indigent persons shall be paid by the Department of Justice in the same manner as expenses and fees for fact witnesses testifying in court. See above. Fees and expenses for depositions of expert witnesses of the indigent defendant are paid by the Administrative Office of the U.S. Courts. 39 COMP.GEN. 133.

### **3-8.540 Notary Expenses of Employees**

Officers and employees of the Department of Justice who are required to serve as notaries public in connection with the performance of public business may be allowed their expenses under the following conditions:

- A. Performance of notarial duties must have been ordered as part of the duties of the employee.
- B. If the individual first qualified as a notary for a personal purpose, and subsequently was required to serve officially, such percentage of his/her expenses shall be paid as the official use of his/her authority bears to the use of the notarial powers, the individual certification being acceptable as to percentage.
- C. The expense of obtaining commissions includes bond premiums, official seal, etc.
- D. Payments subsequent to initial qualifications are limited to actual expenses of maintaining notarial authority.
- E. Funds available for personal services or general administrative expenses for the fiscal year in which the expense was incurred shall be used.
- F. Receipts are only required for amounts in excess of \$15.

Procedures for reimbursement of qualification expenses are established in Department of Justice Order 2110.7A (July 15, 1975). Payments are made by use of SF-1164, Claim for Reimbursement for Expenditures on Official Business.

### **3-8.550 Expenses Requiring Prior Authorization**

Litigative expenses are defined in OBD Order 2100.1A (April 6, 1976), as "those which result directly from actions of the courts or have a direct connection with the prosecution of a case." They include court reporting, filing, fees, interpreters, consultants, advertising legal notices, transportation of evidence, special masters, and advisory reports from experts who will not serve as witnesses (e.g., appraisals). United States Attorneys may incur litigative expenses without specific authorization from the Executive Office for United States Attorneys.

Administrative expenses which the United States Attorneys may approve include the purchase of supplies (as approved under established procurement instruments), employee travel, overtime, and changes to telephone service (except complete system overhaul).

### **3-8.560 Out-of-Pocket Litigative Expenses**

In 38 COMP.GEN. 343, the Comptroller General ruled that when Congress has specifically authorized a particular government agency or corporation to undertake litigation in the pursuance of its duties and responsibilities, i.e., the agency can "sue or be sued", the out-of-pocket expenses incurred in prosecuting or defending such actions will be properly chargeable to the appropriations of that agency or corporation, even though the Department of Justice may prosecute or defend any litigation in which the agency or corporation becomes involved.

Further, those government agencies that lack Congressional authorization to institute suit or defend against legal actions (e.g., Farmers Home Administration) are also prohibited by the Comptroller General from using their appropriation to pay for litigative services. These agencies must rely upon the Department of Justice to act in their behalf and, as a result, all out-of-pocket expenses relating to the litigation are properly chargeable to the United States Attorneys' appropriation as litigative expenses.

Out-of-pocket expenses are generally defined as those expenses incurred for Services provided by a private vendor (i.e., persons or firms outside the federal government) which are directly related to conducting the litigation at hand.

### 3-13.310 Comprehensive Retention Schedule

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, 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. Includes case files closed by the 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))

- C. Physical examinations of plaintiffs, witnesses, or defendants in contemplation of testimony in court.
- D. Expenses of examining prisoners to determine sanity as provided in 18 U.S.C. Sec. 4244-8, including competency to stand trial exams, and employment of psychiatrists, hospital expenses incident thereto, and testimony.
- E. Expenses of Interpreters for Government Witnesses (trial expenses).

### **3-8.623 Chargeable to Legal Divisions of the Department of Justice**

Expenses chargeable to the Legal Divisions include:

- A. Litigation expenses in cases for which a division has assumed direct responsibility; and
- B. Foreign counsel in extradition cases.

### **3-8.624 Chargeable to United States Courts**

- A. Lands Commissioners;
- B. Interpreters, except for government witnesses; and
- C. Expenses authorized on behalf of indigent defendants.

### **3-8.625 Chargeable to Other Agencies**

Costs to translate and transcribe recordings obtained under authority of Title III.

### **3-8.630 Certifying Officers**

Vouchers involving expenses of the United States Attorneys' Offices must be certified by an authorized certifying officer of that office before submission for payment. 31 U.S.C. Sec. 82b.

Certifying officers are held responsible for the existence and correctness of the facts stated on vouchers and their supporting papers, the legality of the proposed payment, and the correctness of computations. 31 U.S.C. Sec. 82c, f.

There should be a minimum of two certifying officers in each United States Attorney's office. Revocation of an existing or nomination of a new certifying officer requires approval of the Deputy Director, Financial Management Staff, EOUSA. The Deputy Director, Financial Management Staff should be notified of any changes to certifying officers and completed forms should be on record. SF-210 should be executed by each United States Attorney and by any person nominated to be a certifying officer. This form should be sent to the Executive Office for approval. Upon receipt of authority from the Executive Office, the nominee may begin to certify.

### **3-8.640 District Budgets (Allowances) and Operating Plans**

All United States Attorneys' districts are issued either resource allowance categories (9 categories in district/OCDE) or financial operating plans. These allowances/operating plans are issued to the United States Attorney in the district and it is his/her responsibility to manage the district operation within the approved resource levels. Each fiscal year, Financial Operation Guidelines will be issued that detail the requirements and policy pertaining to the Financial Allowances and Operating Plans of the Offices of the United States Attorneys including any limitations on funds transfer or use.

A Report of Obligations Incurred is due to the Executive Office on the seventh day of January, April, July and October of each year. The report provides information on resource consumption by allowance category or object class code and requires the United States Attorney to present a narrative justification for unusual spending trends.

### **3-8.700 Travel Authority**

Travel is governed by standardized government travel regulations as supplemented by the Department of Justice Order 2200.11(d) (January 31, 1994).

#### *Travel Authorization*

United States Attorneys may authorize their own travel (except foreign and first class) as well as that of their subordinates anywhere within the United States by common carrier; personal vehicle (auto or airplane); or car rental, either commercial or through the General Services Administration. In accordance with DOJ Order 2200.4(g), this authority is extended only to field component heads who report directly to senior component officials in Washington, D.C.

The United States Attorneys may redelegate their authority to approve travel to a position that is a higher level than the traveler. In addition, the United States Attorney may authorize non-federal travel to be reimbursed by a non-federal entity only after the Executive Office for United States Attorneys, Legal Council considers ethics issues and/or travel reimbursement and approves the reimbursement from the non-federal entity.

#### *Per Diem and Actual Subsistence*

The United States Attorneys may also authorize per diem and actual subsistence to designated and non-designated high-rate areas, and other official miscellaneous expenses such as official telephone calls charged by commercial communication services or hotel. The United States Attorneys are delegated authority to authorize, in cases of emergency, local travel expenses and the use of cash in excess of \$100 for commercial transportation, i.e., bus, subway and taxi fares.

Effective May 1, 1997, the General Services Administration, the Department of State, and the Per Diem, Travel and Transportation Allowances Committee of the Department of Defense, have amended the travel regulations to permit agencies to authorize actual subsistence reimbursement up to 300 percent of per diem, for travel within or outside the Continental U.S. and in foreign countries. This authority may be exercised for travel circumstances in which actual subsistence up to 150 percent of per diem was formerly authorized. (See pp. 24,431-24,437 of the May 5, 1997, Federal Register and pp. 30,280-30,297 of the June 3, 1997, Federal Register).

In accordance with the Federal Travel Regulations, Part 301-8.1(b), the United States Attorneys may redelegate their authority to approve actual subsistence two levels below their position, subject to the following requirements:

1. Requests for Actual Subsistence must be justified in writing and sent to the District Administrative Office. The justification must explain why meals or lodging could not be obtained within the GSA per diem rate schedule. Requests should be received and approved prior to the departure travel date. On occasion, a hotel may charge a traveler a higher rate without notice, but this is the exception rather than the rule. If approved, actual subsistence must be noted on the travel authorization form along with the justification.
2. The conditions warranting authorization of actual subsistence are:
  - Travel assignments involving special or unusual circumstances, meetings, conferences or training sessions, where lodging and meals are procured at a pre-arranged place.
  - Travel to an area where the applicable maximum per diem allowance is generally adequate, but subsistence costs have escalated for short periods of time because of special functions or events.
  - Affordable lodging accommodations are not available or cannot be obtained within a reasonable commuting distance of the employee's temporary duty station and, transportation costs to commute to and from the less expensive lodging facility consume most or all of the savings.
  - The employee, because of special duties of the assignment, necessarily incurs unusually high expenses in the conduct of official business.
3. All redelegations must be in writing, submitted to the Assistant Director, Resource Management and Planning, and granted to a position title rather than an individual.

### **3-8.720 Payment for Travel Expenses**

Reimbursement for employees are paid by the district through the Accounts Payable Travel Module System (A/P TRAV). All travel expenses must be authorized by the United States Attorney or delegated official and approved by an official designated by the United States Attorney. The designated official is responsible for certifying to the correctness of the voucher and the propriety of payments.

Advance of travel funds may be obtained from the districts administrative office through the issuance of a "draft" from the A/P TRAV System. Government non-card holders should complete the Standard Form 1038, application for Advance of Funds Application and Account when making a request. Government contract-issued charge card holders may be authorized a minimal travel advance through the use of ATMs that accept the government charge card.

Advances should not be given to non-Department of Justice personnel. Exceptions may be made for state and local officials in cases where there is no money in the state or local budgets to pay or the travel.

### **3-8.730 Foreign Travel**

The Executive Office requires at least two weeks advance notification of proposed foreign travel. Definite dates of travel do not need to be provided for purposes of this notification; however, the approximate period of time in travel status must be indicated so that an estimate of per diem expenses can be computed. Two weeks advance notification is required so that necessary coordination can be accomplished with the Department and with the Department of State.

In order to insure that the international ramifications of proposed foreign travel are fully considered, each travel proposal must receive the consent of the Criminal Division. The Executive Office also requires the consent of that section of the organization having general supervisory responsibility over the type of case to which the travel pertains. If preliminary contact has been made with either organization, this request should indicate the name(s) of individuals who are familiar with the proposed travel.

All official foreign travel by employees occupying Executive Schedule and Senior Executive Service positions must be authorized by the Deputy Attorney General. See DOJ Order 2200.11(d), Section 301-1.4(c).

### **3-8.740 First Class Transportation**

First class transportation may only be authorized by the Deputy Director, Financial Management Staff, EOUSA, in accordance with the criteria established in Federal Travel Regulations, Section 301-3.3. All requests for first class transportation must be submitted in advance to the Executive Office. United States Attorneys should complete a First Class Authorization Request for review and approval. First class travel should only be requested for the reasons allowed under Federal Travel Regulations, Section 301-3.3, or when it can be shown that first class accommodations will result in overall savings to the government based on economic considerations such as additional subsistence costs that would be incurred while awaiting availability of less-than-first-class accommodations. In most instances, United States Attorneys should only request first class travel after all other efforts have been made to obtain regular coach fare for the intended trip.

### **3-8.800 Relocation**

The Federal Travel Regulations allow the Department of Justice to authorize payment of relocation services and related expense reimbursements for employees who are being transferred in the best interest of the government. The authority to approve relocation expenses is vested in the Assistant Director, Resource Management and Planning (RMP), Executive Office for United States Attorneys, and is not redelegable. Previously, articulated policy has limited this standard to the following circumstances:

1. A managerially directed relocation, or
2. A relocation effected for the health and/or safety of an employee, or

3. A relocation necessitated by the inability to staff a position with a qualified applicant from within the local commuting area.

Payments of relocation costs will not be considered when the employee has requested the transfer for his/her own benefit.

Payments of relocation costs also will not be considered unless the United States Attorney shows evidence that every effort was made to find applicants from the local area.

The cost of relocation expenses which are approved by the Assistant Director, RMP, will be assessed against individual districts, through a combination of reduced financial allowances and workforce levels.

The General Services Administration (GSA) Employee Relocation Services Contract is available to Department employees through the GSA Federal Supply Schedule, Contract Number GS-23F-752H under your delegated procurement authority. The contractors are: Prudential Relocation, Cendant Mobility (previously known as PHH Home Equity), and Associates Relocation Management Company, Inc. This service cannot be obtained without prior approval of an employee's relocation from RMP. For more details, please refer to the Financial Management Handbook, Section 6.5.

### **3-8.900 Law Enforcement Coordinating Committee (LECC) Expenses**

Expenses of LECC operations should be applied to the appropriate allowance category (i.e., travel, supplies, equipment, etc.).

When a district is planning to hold an LECC training program on asset forfeiture and equitable sharing, the expenses may be reimbursable from the Asset Forfeiture Fund. Requests to hold asset forfeiture training funded from the Asset Forfeiture Fund requires approval of the LECC/VW Staff, EOUSA. In order to have district funds replenished, it is necessary to report the costs to EOUSA on the quarterly report on asset forfeiture. When multi-district LECC and/or Victim Witness Coordinator meetings are held, the costs of the meeting can be shared by all of the participating districts.

### **3-8.990 District Office Conference Guidelines**

District office conferences shall be conducted and reasonably funded in a consistent fashion nationwide. Agenda subjects shall directly relate to the mission of United States Attorneys' offices, and attendance limited to district employees and individuals of specific expertise to the agenda subjects. A copy of the agenda should be forwarded to the Director, EOUSA at least 30 days prior to conference commencement. Office conferences should not be scheduled for the first quarter of a fiscal year and, to the maximum extent possible, should be held in the second half of the fiscal year. Conferences should be limited to one and a half days in length with lodging, if required, provided for the evening of the first day.

Attendance at conferences should be closely scrutinized. When considering invitations to individuals from outside the district, care should be taken to include only those who have a specific expertise and are to participate directly in the agenda.

A conference site should be selected which minimizes common carrier transportation expense, and results in lowest overall cost to the government if such expenses are being reimbursed to employees. For districts with branch offices, this would generally require holding the conference in close proximity to the largest office.

Office conferences should be funded through savings from other allowance/financial areas. Authorization for working meals requires approval by the Deputy Director, Financial Management Staff, EOUSA.

# 3-9.000 FINANCIAL LITIGATION POLICY

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## 3-9.100 Introduction

The United States Attorneys' offices handle most financial litigation matters for the United States. The Executive Office for United States Attorneys appreciates this and recognizes that the Department's financial litigation goals will be achieved in large measure by United States Attorneys and their Financial Litigation Unit personnel.

Chapters 9 - 12 have been developed by the Financial Litigation Staff, Executive Office for United States Attorneys, to assist United States Attorney personnel in their day-to-day financial litigation work and to enable them better to collect civil and criminal debts due the United States and victims of crime in a timely, aggressive, efficient and effective manner. It contains policy which will ensure the efficient and effective performance of financial litigation work. It sets forth policy for (1) the handling of claims referred by the various federal agencies for litigation and enforced collection, and (2) the collection of criminal fines, restitution, penalties, assessments, court costs and appearance bond forfeitures. Portions of this material, particularly *Civil Postjudgment Financial Litigation Activity* (USAM 3-10.200), also apply to the handling of any non-tax money judgments obtained by Assistant United States Attorneys outside of the Financial Litigation Unit, but for which Financial Litigation Unit personnel have been assigned collection responsibility. The collection of tax judgments is not addressed in this chapter.

The Department of Justice places a high priority on improvement of government-wide debt collection efforts. In connection with this priority, the Department of Justice has emphasized that the role of United States Attorneys is to litigate vigorously and to enforce the collection of debts due the United States. Prompt and effective action is necessary if debtors are to respect the Department's ability and authority to collect these debts. Prompt and effective action is also important to prevent the statute of limitations from expiring on claims and to ensure public confidence in the institutions of government.

### **3-9.110 Enforcement Responsibility**

Each United States Attorney is responsible for conducting, handling, or supervising such litigation or other actions as may be appropriate to accomplish the satisfaction, collection or recovery of judgments, fines, penalties and forfeitures imposed in the district. However, an Assistant Attorney General, or delegate of the litigating division which has jurisdiction of the case in which such judgment, fine, penalty or forfeiture is imposed, may notify the United States Attorney in writing that the division will assume enforcement responsibilities. 28 C.F.R. § 0.171(a).

### **3-9.120 Designation of Assistant United States Attorney Responsible for Financial Litigation**

The importance attached to financial litigation by the Department of Justice is reflected in the requirements of 28 C.F.R. § 0.171(b), which reads:

Each United States Attorney shall designate an Assistant United States Attorney, and such other employees as may be necessary, or shall establish an appropriate unit within [the] office, to be responsible for activities related to the satisfaction, collection, or recovery, as the case may be, of judgments, fines, penalties, and forfeitures (including bail-bond forfeitures).

See also the EOUSA Resource Manual at 101.

### **3-9.130 Standards for Debt Collection Action**

Statutory limitations on the activities of private collection agents and agencies are found in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. These limitations do not apply to activities undertaken by United States Attorneys' offices to enforce collection of debts due the United States. Nevertheless, whenever specific activities by private collection agents are limited by statute, and such activities are analogous to those of United States Attorneys' offices, the statutory limitations should be followed. All financial litigation action by Department of Justice personnel should meet the highest ethical and professional standards.

### **3-9.140 Financial Litigation Staff, Executive Office for United States Attorneys**

See the EOUSA Resource Manual at 102.

### **3-9.141 Financial Litigation Program Managers**

See the EOUSA Resource Manual at 103.

### **3-9.142 Financial Litigation Assistance Program**

See the EOUSA Resource Manual at 104.

### **3-9.150 Outreach and Training**

See the EOUSA Resource Manual at 105.

### **3-9.200 Reporting and Management -- Financial Litigation Plan**

Each United States Attorney's office must have in place a Financial Litigation Plan for the current fiscal year. The Financial Litigation Staff will provide a "Model Plan" to be customized by each United States Attorney's office to reflect its specific procedures and qualitative goals in financial litigation.

### **3-9.211 Reporting and Management -- Establishing Quantitative Goals**

The Assistant United States Attorney responsible for financial litigation shall establish and provide to the United States Attorney and the Financial Litigation Staff quantitative goals for the Financial Litigation Unit for each fiscal year. Goals should be established for the following categories: cash recoveries; net effective rates of collection; total net accounts receivable; and cost to collect.

### **3-9.212 Compliance Checklist**

The Financial Litigation Staff prepares an annual Compliance Checklist which monitors the district's compliance with its Financial Litigation Plan. The Assistant United States Attorney responsible for financial litigation must certify the accuracy of the information contained in the Compliance Checklist.

### **3-9.220 Case Tracking System**

All Financial Litigation Units should have and make full use of an automated tickler system. Such system will serve to ensure that all required financial litigation activity and any necessary follow-up is performed in an efficient and timely manner.

### **3-9.230 Financial Litigation Records**

Debt Collection Records, whether maintained as separate files or in the civil or criminal case files when appropriate, should include all applicable records, including the following: Claims Collection Litigation Reports (CCLR); Certificates of Indebtedness; Conflict of Interest forms; satisfactions of judgment or certificates of discharge; court and related documents, including financial statements, consent judgments, Abstracts/Notices of Lien, pleadings, orders, status reports, and briefs; notes from telephone conversations and meetings; settlement agreements; 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. These files should also contain any records maintained by private counsel participating in the Department's Private Counsel program and which are turned over to the United States Attorney at the completion of financial litigation efforts. This information shall be retained in the file when it is shipped to the Federal Records Center.

Presentence Investigation Reports and other asset investigation reports, such as credit reports and tax returns, may be maintained separately but must be secured in a manner which limits access to authorized personnel. This information must be destroyed before sending the case file to the Federal Records Center.

### **3-9.240 Report to United States Attorney on Accomplishments**

See the EOUSA Resource Manual at 106.

### **3-9.250 Use of Media**

See the EOUSA Resource Manual at 107.

## 3-10.000 CIVIL FINANCIAL LITIGATION ACTIVITY

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- 3-10.120 Nationwide Central Intake Facility
- 3-10.130 Claims Collection Litigation Report
- 3-10.141 Returning Deficient Referrals
- 3-10.142 Acknowledgment of Referral
- 3-10.150 Precomplaint Demand
- 3-10.160 Filing Complaint
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- 3-10.180 Civil Compromise Policy
- 3-10.200 Civil Postjudgment Financial Litigation Activity -- Perfecting the Judgment
- 3-10.220 Bill of Cost
- 3-10.230 Notice of Entry of Judgment to Client Agency
- 3-10.240 Postjudgment Demand
- 3-10.300 Installment Payment Plans
- 3-10.310 Default on Installment Payment Plan
- 3-10.400 Receipt of Payments by United States Attorneys' Offices
- 3-10.420 Return of Certain Bankruptcy Cases to Agencies for Collection
- 3-10.500 Enforced Collections
- 3-10.510 Discovery to Determine Ability to Pay
- 3-10.520 Federal Debt Collection Procedures Act Tools
- 3-10.530 Offset
- 3-10.540 Depriving Debtors of Their Residence
- 3-10.600 Transfers
- 3-10.620 Assists
- 3-10.700 Terminating Civil Postjudgment Collection Action -- Suspension of Collection Action
- 3-10.720 Returning Case to Agency for Surveillance
- 3-10.730 Returning Case to Agency as Uncollectible

### **3-10.120 Nationwide Central Intake Facility**

Commencing on October 1, 1990, all federal agencies are required to refer claims when the principle amount is \$1,000,000 or less for litigation or debt enforcement to the Department of Justice through the Nationwide Central Intake Facility. The Nationwide Central Intake Facility acknowledges receipt of the claim, provides a limited review of the Claims Collection Litigation Report (CCLR) for compliance with the Federal Claims Collection Standards, and forwards the information to the appropriate United States Attorney's office for litigation. Federal agencies are not required to send the following types of cases to the Nationwide Central Intake Facility: anti-trust cases; environment and natural resources cases; tax cases; fraud cases; interagency claims; renewal of judgment lien only cases; and if the agency is seeking

Department of Justice concurrence on an agency's proposal to suspend or terminate action to collect a claim.

In cases where time is of the essence in securing the government's position, the agency may send a referral directly to the United States Attorney's office with a copy of the CCLR to the Nationwide Central Intake Facility. If the Financial Litigation Unit receives a referral package directly from an agency, or they are requested to enforce a civil judgment from another division within the United States Attorney's office that has not been previously docketed by the Nationwide Central Intake Facility, Financial Litigation Unit personnel shall provide data on the referral by completing and mailing the "Nationwide Case Initiation Sheet" to the Nationwide Central Intake Facility.

### **3-10.130 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. Agencies are required to provide certain information to the Department of Justice 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 convey this information.

Unless an exception has been granted by the Financial Litigation Staff, agencies are required to provide a completed CCLR with each claim they refer. See 4 C.F.R. § 105.2. United States Attorneys' offices are responsible for ensuring that CCLRs comply with the requirements set forth in Federal Claims Collection Standards. These requirements should be addressed with local agency representatives when claims are referred without the CCLR, or when the CCLRs provided are inadequate. The Deputy Director, Legal Programs, should be advised of any problems which cannot be resolved or continue to persist at the local level.

Some information requested on the CCLR may be superfluous to a particular agency's claim 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 by the agency should be noted throughout the CCLR.

The Federal Claims Collection Standards also provide that once a claim has been referred to the Department of Justice, the referring agency shall refrain from having any contact with the debtor and shall direct the debtor to the United States Attorney on any matters concerning the claim. The Standards further provide that the United States Attorney shall be immediately notified by the referring agency of any payments which are received from the debtor subsequent to referral of a claim. See 4 C.F.R. § 105.1(d).

For further information on the review of claim referral packages, see the EOUSA Resource Manual at 108.

### **3-10.141 Returning Deficient Referrals**

If the CCLR or accompanying claim referral package is deficient and the deficiency cannot be expeditiously resolved 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 United States Attorney presently declines to litigate and enforce collection of the claim. See the EOUSA Resource Manual at 109.

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. Agencies are required to refer claims to the Department of Justice as early as possible, consistent with aggressive agency collection action and should be well within the period for bringing a timely suit against the debtor. 4 C.F.R. § 105.1(a).

### **3-10.142 Acknowledgment of Referral**

As soon as it is determined that the CCLR and accompanying referral package is complete, the claim shall be opened in the United States Attorney's office collection tracking system. The Acknowledgement of Referral portion of the Nationwide Central Intake Facility Claim Acknowledgement/Closing Notification form must be returned to the Nationwide Central Intake Facility. Additionally, an acknowledgment letter shall be promptly sent to the referring agency to notify the agency that the claim has been received, the name of the contact at the United States Attorney's office handling the case, and the United States Attorney's office case number.

### **3-10.150 Precomplaint Demand**

Agencies which document their compliance with the Federal Claims Collection Standards in the CCLR will have fulfilled the pre-filing notice requirements of Executive Order No. 12988 on Civil Justice Reform dated February 1996, and the United States Attorney's office should not send another prejudgment demand letter. Further delay in filing a complaint post-referral will usually not be warranted and may be counterproductive.

### **3-10.160 Filing Complaint**

Pursuant to an Office of the Inspector General finding made during a Fiscal Year 1990 United States Attorney's offices 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 immediately declined. See USAM 3-10.141.

Financial Litigation Unit personnel are not required to "perform collection actions which should have been undertaken by any other agency." 4 C.F.R. § 102.1. Claims are referred to United States 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. Although a limited amount of skiptracing incident to litigation may be undertaken, if substantial effort is needed to locate the debtor prior to filing suit, then the case should be returned to the agency for skiptracing.

In cases where federal law authorizes the United States to enforce a state court judgment (i.e., Public Health Service cases), the United States Attorney's office may register the judgment with the clerk of the court and enforce it accordingly.

### **3-10.170 Prejudgment Agreements to Pay**

If, after the government files the complaint, the debtor contacts the United States Attorneys' office, acknowledges the debt, and requests to enter into an installment payment plan, then the debtor shall be required to complete and sign a Form OBD-500, Financial Statement, or similar statement of financial disclosure. If the financial disclosure information reveals the debtor's ability to pay the debt in full, then the United States Attorney's office should require the debt to be paid in full. If an installment payment plan is justified based upon a review of the Financial Statement and other credit information, the debtor shall then be required to execute a consent judgment and that judgment shall be immediately entered 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.

Once a determination has been made by the United States Attorney to pursue a claim, the government's interests should be promptly secured. Given that the debtor has been provided ample opportunity to arrange for payment of the debt prior to referral, it is counterproductive for the United States Attorney to provide further opportunity for payment without first securing the government's interests. Accordingly, the use of confess-judgment notes (sometimes referred to as "Cognovit notes") or promissory notes containing an agreement for judgment are 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. If full payment is not received within the 30 day period, the executed consent judgment shall be immediately entered with the court and enforced collection efforts initiated.

The United States 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 district's Financial Litigation Plan.

In addition to obtaining a consent judgment, Financial Litigation Unit personnel should ensure that installment payment terms are set forth within the body of a separate written payment plan or letter of agreement signed by the debtor. If the terms for repayment are included in the consent judgment, such consent judgment shall also provide for future modification of the terms upon a change in the debtor's economic circumstances. 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 satisfied in the shortest period of time possible. Updated financial information should be obtained from the debtor and reviewed at least every year.

### **3-10.180 Civil Compromise Policy**

A compromise is an agreement to accept less than the total amount owing in principal, interest, and administrative costs in civil cases. Criminal cases (with the exception of bail bond forfeitures) cannot be compromised. Compromises are accepted only when it is not in the best interest of the government to pursue the full amount of the debt. Pursuant to Title 4, Code of Federal Regulations (C.F.R.), Section 103.2, the factors to consider include: (1) the debtor's inability to pay the full amount within a reasonable time; or (2) the refusal of the debtor to pay the claim in full and the government's inability to enforce collection in full within a reasonable time by enforced collection proceedings.

Pursuant to 28 C.F.R., Part O, Subpart Y, Civil Division Directive 14-95, compromises must be approved by a supervisory Assistant United States Attorneys.

A claim or judgment should only be compromised with agency approval. Whenever a claim is compromised, the full compromised debt should 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.

Following payment of a compromised amount, the Financial Litigation Unit shall promptly send the client agency a notice of compromise and a closing letter. The letter will document for the agency the reason(s) why the claim was compromised and inform it of the total amount recovered.

### **3-10.200 Civil Postjudgment Financial Litigation Activity -- Perfecting the Judgment**

Immediately following expiration of the 10-day automatic stay after entry of the judgment (whether by default, stipulation, court determination, or by the referral of a judgment from another district), see Fed. R. Civ. P. 62(a), immediate action shall be taken to perfect the judgment as a lien in accordance with the Federal Debt Collection Procedures Act. See 28 U.S.C. § 3201.

Special care should be taken to ensure that the judgment is perfected as a lien by filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of § 6323(f) of the Internal Revenue Code of 1986. A lien should be filed in accordance with state law filing requirements and should be filed in any state where the debtor owns real property.

### **3-10.220 Bill of Cost**

Upon entry of a judgment, the Financial Litigation Unit should present a Bill of Cost to the Clerk of the United States District Court. See 28 U.S.C. § 1920.

The amount of any costs taxed by the clerk shall be included in the letter notifying the agency of entry of judgment. 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.

### **3-10.230 Notice of Entry of Judgment to Client Agency**

The client agency shall be promptly notified of the entry of the judgment. Upon request, the Financial Litigation Unit shall provide a copy of the judgment to the agency. The letter of notification should contain the necessary information to enable the agency to update properly their records and maintain accurate account 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.

### **3-10.240 Postjudgment Demand**

Immediately following expiration of the 10-day automatic stay after entry of the judgment, see Fed. R. Civ. P. 62(a), 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 follow-up. If full payment or an appropriate offer to repay is not received by this date, enforced collection proceedings shall be immediately initiated.

### **3-10.300 Installment Payment Plans**

An installment payment 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. Establishment of an installment payment plan shall not be considered unless and until a financial statement has been fully completed and signed by the debtor. Under no circumstances shall an installment payment 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 payment plan would be appropriate and, if so, to ensure that the maximum monthly payment amount is obtained and the judgment is liquidated at the earliest possible date.

See also the EOUSA Resource Manual at 110.

### **3-10.310 Default on Installment Payment Plan**

"Default" is defined as the debtor's failure to make a payment within five days of the payment due date agreed to and established in the written installment payment 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 United States Attorney's office will proceed to execute on the judgment without further notice.

### **3-10.400 Receipt of Payments by United States Attorneys' Office**

All payments made by a debtor in a civil case, including prejudgment settlements, are to be made payable to the United States Department of Justice and deposited through the Direct Deposit (Lockbox) System or the Direct Deposit Program (Debtor Statement Program).

All judgments in payment status, other than bankruptcy cases, see USAM 3-10.420, shall be retained by the United States Attorney's office until fully satisfied. This policy does not affect in any way the return of uncollectible judgments to the agencies for surveillance or the return of marginal cases if payments will never meet the requirements of USAM 3-10.300.

### **3-10.420 Return of Certain Bankruptcy Cases to Agencies for Collection**

A policy different from that set forth above, at USAM 3-10.400, has been established for certain bankruptcy cases under chapters 11, 12 and 13 of title 11, in which there is a confirmed plan which provides for payment 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 payment 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 measures may 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 their 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 the trustee as well, in writing that the referring agency will be monitoring the debtor's account, that all future payments should be directly sent to the referring agency, and warn the debtor of the consequences of his or her failure to maintain the payment schedule.

### **3-10.500 Enforced Collections**

When a debtor fails to respond to the postjudgment demand letter or to cure a default on the terms of an established payment plan, immediate steps shall be taken to initiate enforced collection proceedings. The rights and remedies available to the United States, and exemptions available to the debtor, under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, should be considered in determining the most efficient and effective means to satisfy the judgment.

### **3-10.510 Discovery to Determine Ability to Pay**

Full use shall be made of those discovery methods provided for in the Federal Rules of Civil Procedure whenever financial information is not voluntarily provided 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 through discovery shall be thoroughly reviewed and a determination made on how to proceed to enforce the judgment.

### **3-10.520 Federal Debt Collection Procedures Act Tools**

The Federal Debt Collection Procedures Act provides the exclusive civil procedures the United States must utilize for prejudgment and postjudgment debt recovery. Enforcement of unpaid debts shall be aggressively pursued in accordance with the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308.

### **3-10.530 Offset**

Offset of a debtor's federal tax return, federal salary, or federal administrative benefit should be undertaken whenever permitted by law.

### **3-10.540 Depriving Debtors of Their Residence**

Approval of the United States Attorney should be obtained prior to executing upon a debtor's residence. Normally, execution on a 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 or real property should not result in the debtor's family becoming a public charge.

### **3-10.600 Transfers**

Civil postjudgment debts should not be transferred to another district simply because the debtor resides in another district. The nationwide enforcement provision of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3004(b), can be used to enforce collection in another district. A debt should be transferred to another district if it is in the best interests of the United States to do so (e.g., state law preclude the United States from using the Federal Debt Collection Procedures Act enforcement provisions).

### **3-10.620 Assists**

Instances will arise when a Financial Litigation Unit requires the assistance of another United States Attorneys' office to help collect on a judgment. For example, an "assist" might be needed when: (1) 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; (2) there are multiple debtors on one debt and they reside in other districts; or (3) to obtain essential information necessary to utilize Federal Debt Collection Procedures Act provisions.

The Financial Litigation Unit requesting an "assist" shall provide the following: (1) specific instructions on the assistance needed; (2) all documents necessary to accomplish the goal of the assist requested; and (3) informing the assisting district when the balance of the debt changes. Primary record keeping and reporting responsibility will remain with the office requesting the assist.

### **3-10.700 Terminating Civil Postjudgment Collection Action -- Suspension of Collection Action**

In some instances the prospect of 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. With the approval of the Assistant United States Attorney responsible for financial litigation, collection action on such judgments may be suspended.

Updated financial information on suspended civil debts should be obtained and a re-evaluation of the debtor's ability to pay should be made at least once every six 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.

### **3-10.720 Returning Case 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 over time, and the effectiveness of those judgment enforcement remedies available under the Federal Debt Collection Procedures Act.

When the judgment is presently uncollectible but has future collection potential, and the United States Attorney is not in a better position than the agency to keep the matter under surveillance, the judgment should be returned to the agency for surveillance. The transmittal letter returning the judgment to the agency for surveillance shall advise the agency that if the debtor's financial situation improves or an enforcement action becomes practical, the agency should re-refer the case to the United States Attorney for legal action. The letter should also inform the agency of the date on which the judgment lien will expire and request that the United States Attorney be notified in writing six months prior to that date if the agency wishes to have the judgment lien renewed.

### **3-10.730 Returning Case to Agency as Uncollectible**

A judgment case should be closed by the United States Attorney's office whenever current financial information reveals that the 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 resources required to keep the case in an open status. The transmittal letter to the agency closing the case as uncollectible should include the same information as required in USAM 3-10.720. Additionally, the Financial Litigation Unit shall inform the agency that if the agency writes off the debt and a 1099 is issued to the debtor, then the agency must notify the United States Attorney's office to ensure the lien is released.

# 3-11.000 PAYMENT PROCESSING INTERNAL CONTROLS

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## 3-11.100 Introduction

This policy meets the guidelines on internal control systems published by the Office of Management and Budget in Circular A-123, as amended June 21, 1995.

Internal controls for payments received by United States Attorneys' offices is mandated by the Federal Financial Managers' Integrity Act of 1982 (Pub.L. 97-258), specifically 31 U.S.C. § 3512(c)(1), which states that ". . . the head of each executive agency shall establish internal accounting and administrative controls that reasonably ensure that . . . all assets are "safeguarded against waste, loss, unauthorized use, and misappropriation . . ." Proper internal controls are established by ensuring that a complete separation of duties is maintained between those persons who initially receive payment instruments (i.e., checks, money orders, cashier's checks, or cash), those persons who verify deposits, and those persons recording entries to individual debtors' records.

Procedures for complying with FMFIA are found in thirteen United States Attorneys Procedures (USAP). These USAPs are as follows:

- USAP 3-11.100.001 Overview
- USAP 3-11.110.001 Definitions
- USAP 3-11.120.001 Standards for Internal Financial Control-Employee Responsibilities
- USAP 3-11.120.002 Branch Office Procedures
- USAP 3-11.130.001 Receipt of Payments
- USAP 3-11.132.001 Exception Register (USA-247A) Preparation
- USAP 3-11.134.001 Receipt, Conversion, and Security of Cash
- USAP 3-11.141.001 Electronic Funds Transfer
- USAP 3-11.143.001 Indirect Payments
- USAP 3-11.145.001 Application of Payments for Civil Debts
- USAP 3-11.146.001 Application of Payments for Criminal Debts
- USAP 3-11.147.001 Reconciliation of Monthly Bank Statement

Procedures for retention of documents related to the internal controls process are found in USAP 3-11.310.001.

**3-12.000**  
**COLLECTION OF CRIMINAL**  
**MONETARY IMPOSITIONS**

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- 3-12.100**      **Role of the Executive Office for United States Attorneys**
  - 3-12.200**      **Responsibilities of the United States Attorneys**
  - 3-12.210**      **Appearance Bond Forfeiture Judgments**
  - 3-12.220**      **Asset Forfeiture Judgments**
  - 3-12.300**      **Enforcement of Criminal Debts During Appeal**
  - 3-12.320**      **Enforcement of Criminal Debts During Incarceration**
  - 3-12.330**      **Fines and Restitution Imposed as Conditions of Probation**
  - 3-12.340**      **Liens Against the Defendant's Property**
  - 3-12.350**      **Enforcement Proceedings**
  - 3-12.360**      **Waiver of Interest and Penalties**
  - 3-12.400**      **Suspense of Criminal Collection Activity**
  - 3-12.411**      **Suspense of Criminal Fines -- Deportation**
  - 3-12.412**      **Suspense of Criminal Fines -- Payment is Not Immediate**
  - 3-12.413**      **Suspense of Criminal Fines -- Stay of Enforcement**
  - 3-12.414**      **Suspense of Criminal Fines -- Criminal Debt is Uncollectible**
  - 3-12.415**      **Suspense of Criminal Fines -- Defendant is Unlocatable**
  - 3-12.420**      **Approval Necessary to Suspend Collection Action**
  - 3-12.510**      **Remission -- Uncollectible Fines**
  - 3-12.520**      **Remission of Special Assessments**
  - 3-12.600**      **Efforts for Victims of Crime**
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**3-12.100 Role of the Executive Office for United States Attorneys**

The Executive Office for United States Attorneys (EOUSA) is responsible for establishing policies and procedures for the collection of criminal fines which includes fines, assessments, penalties, interest, restitution, bail bond forfeitures, and court costs in criminal cases. See 28 C.F.R. §§ 0.22 and 0.171. The Criminal Division of the Department of Justice remains responsible for establishing policy concerning the imposition of criminal fines. See the EOUSA Resource Manual at 111.

### **3-12.200 Responsibilities of the United States Attorneys**

The United States Attorneys are responsible for the enforcement of judgments, fines, penalties and forfeitures imposed in their respective districts. However, the Assistant Attorney General for any litigating division which has jurisdiction over a case may assume such enforcement responsibilities if she or he so notifies the United States Attorney in writing. Numerous functions relating to the collection of criminal fines are assigned to the Attorney General by statute; these are now delegated to the United States Attorneys. See 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). 28 C.F.R. § 0.171.

For further information, see the EOUSA Resource Manual at 112.

### **3-12.210 Appearance Bond Forfeiture Judgments**

All forfeited appearance bonds should be moved to judgment and collected as expeditiously as possible pursuant to Rule 46 of the Federal Rules of Criminal Procedure.

### **3-12.220 Asset Forfeiture Judgments**

If a money amount is stated in the Final Order of Forfeiture, but the defendant has no known assets, the Financial Litigation Unit does not open a collection case. In asset forfeiture cases the Financial Litigation Unit performs a recording function rather than a financial litigation function. Any further monitoring of an asset forfeiture money judgment case must be done outside of the EOUSA case tracking system.

### **3-12.300 Enforcement of Criminal Debts During Appeal**

Unless the court orders a stay of the criminal imposition as part of the criminal judgment, or provides for other than immediate payment of the fine or restitution, the government should execute on the defendant's property as soon as practicable after sentencing.

If the court orders a stay, or the defendant requests a stay, the government should file a motion requesting the defendant deposit the entire money amount in the court's registry (or in the alternative a bond to guarantee its payment), an order restraining the defendant from transferring or dissipating assets, or require the defendant to submit to an asset examination.

### **3-12.320 Enforcement of Criminal Debts During Incarceration**

United States Attorneys should make every effort to enforce criminal debts that are due during the period of the defendant's incarceration, including coordination of Inmate Financial Responsibility Program payments with the Bureau of Prisons' case worker. Incarceration alone is not justification for placing a debt in suspense.

### **3-12.330 Fines and Restitution Imposed as Conditions of Probation**

Collection procedures for fines and restitution that are conditions of probation vary according to the statute under which they are imposed. Caution should be exercised when collecting a criminal judgment imposed prior to November 11, 1987, as the applicable enforcement statutes are significantly different from current law.

Enforcement efforts on any debt owed by an offender under the supervision of the United States Probation Office should be coordinated with that office.

### **3-12.340 Liens Against the Defendant's Property**

In every restitution case where the victim is other than a federal agency, a notice of lien must be filed by the United States in accordance with 18 U.S.C. § 3613. In cases involving only fines or restitution owed to a federal agency, a notice of lien must be filed if the total amount of those debts exceeds \$500. Upon satisfaction of the debt, a Release of Lien should be filed or sent to the defendant.

### **3-12.350 Enforcement Proceedings**

The provisions of USAM 3-10.500 relating to the enforcement of civil debts, also apply to criminal debt collection. Special attention should be given to enforcing criminal debts for offenses committed prior to November 11, 1987, as the applicable statutes have since been modified. Criminal debts for convictions on or after April 24, 1996, can be enforced under federal or state law or "by all other available and reasonable means." 18 U.S.C. § 3664(m)(1)(A)(i).

### **3-12.360 Waiver of Interest and Penalties**

Interest and late payment penalties for criminal fines and restitution may be waived by the United States Attorney if reasonable efforts to collect them are not likely to be effective. The waiver of interest and penalties should only be considered after the principal amount of the debt has been paid.

### **3-12.400 Suspense of Criminal Collection Activity**

Prior to placing a criminal debt in suspense, liens must be filed to comply with USAM 3-12.340. Criminal debts that are no longer enforceable (e.g., fines over 20 years old or special assessments over five years old) should not be placed into suspense. 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. 18 U.S.C. § 3565(h), repealed. The obligation to pay a special assessment ceases five years after judgment, and as such, the special assessment should be closed. See 18 U.S.C. § 3013.

All criminal debts placed in suspense as uncollectible or because the defendant is unlocatable must be periodically reviewed 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 or 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.

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 promptly removed from suspense and collection action initiated.

Information on the coding of suspense action is available in the United States Attorney's office system operations manual.

### **3-12.411 Suspense of Criminal Fines -- 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 3-12.510, should be considered.

### **3-12.412 Suspense of Criminal Fines -- Payment is Not Immediate**

When the court orders other than immediate payment of a criminal debt, the debt should be suspended until due.

### **3-12.413 Suspense of Criminal Fines -- Stay of Enforcement**

If a criminal case is on appeal and the defendant is granted a stay of enforcement by the court pursuant to Fed. R. Crim. P. 38, all criminal debts should be suspended until the stay is lifted.

### **3-12.414 Suspense of Criminal Fines -- Criminal Debt is Uncollectible**

The criminal debts of a defendant may be placed in suspense if the financial information obtained on the defendant within the last 180 days (such as a financial statement, credit report or third party information) indicates the defendant has no ability to pay or has the ability only to 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. Nominal payments shall still be accepted despite the debt being placed in suspense.

### **3-12.415 Suspense of Criminal Fines -- Defendant is 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) a policy established by the United States Attorney when the total criminal debts imposed against a defendant are less than \$100,000; and (2) at least three skiptracing efforts are completed when the total criminal debts imposed against a defendant are \$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 case being placed in suspense.

### **3-12.420 Approval Necessary to Suspend Collection Action**

Each United States Attorney's office must establish written guidelines for approving the suspension of collection. The following are recommended guidelines, subject to the approval of the United States Attorney:

- For criminal debts imposed totalling less than \$100,000, senior support staff in the Financial Litigation Unit may approve the suspension of collection.
- For criminal debts imposed totalling \$100,000 or more, the Assistant United States Attorney responsible for financial litigation must approve the suspension of collection.

### **3-12.510 Remission -- Uncollectible Fines**

Upon the petition of the government showing that reasonable efforts to collect a fine are not likely to be effective, the court may remit all or part of the unpaid portion of the fine. 18 U.S.C. § 3573. Each United States Attorney should develop a written district policy for the remission of uncollectible fines to guide the Financial Litigation Unit in preparing petitions for remission. Where there is a reasonable belief that a fine will never be collected, a petition for remission of all or part of the fine is preferable to placing it in suspense.

### **3-12.520 Remission of Special Assessments**

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. Assessments are at times imposed against indigent defendants, including undocumented aliens who are about to be deported. In such cases, where there is no likelihood that the assessment will be paid, the government should petition to remit uncollectible special assessments at the time of sentencing.

In those cases where the convicted person (1) has no assets to satisfy the assessment, (2) is not sentenced to a fine, restitution or other monetary penalty, and (3) 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. The absence of assets can be evidenced by the need for court appointed counsel or based on information from the border patrol in the case of an undocumented alien.

### **3-12.600 Efforts for Victims of Crime**

In compliance with the Mandatory Victims Restitution Act of 1996, Pub. L. 104-132, Section 209, on July 24, 1996, the Attorney General issued the following guidelines for enforcement of restitution orders, which are restated in Article V of the *Attorney General Guidelines for Victim and Witness Assistance 2000*:

Orders of restitution imposed under the Mandatory Victims Restitution Act must be enforced to the fullest extent of the law. Restitution owed to victims of crimes is a critical part of the criminal judgment. The Financial Litigation Units in the United States Attorneys' offices should take all steps possible to help ensure that this money is collected and that victims of crime are fully compensated for their losses. All prosecutors and Victim-Witness Coordinators must support the mission of criminal debt collection.

Absent a court-ordered stay on appeal, a defendant who fails to pay restitution that is due immediately or defaults on a payment plan should be aggressively pursued for collection of the debt. In anticipation of an eventual revision to USAM § [3-12.400], the following guidelines should be followed:

In order to guarantee enforcement to the fullest extent of the law, a lien should be filed by the United States in all cases where restitution is ordered and not immediately paid. Additionally, discovery of the debtor's assets should be pursued, including, but not limited to: reviewing the presentence report for asset information; requesting a financial statement from the debtor or completed interrogatories regarding assets and liabilities or, in the case of an incarcerated debtor, consulting with the assigned case manager regarding assets and liabilities; inquiring whether any victims have information about the debtor's assets; requesting asset information from the prosecutor and case agent; and, researching on-line property locator services available to the FLU.

In cases where the United States Attorney's office has reason to believe that the debtor might have assets based on the inquiries and research set forth above or other information, a credit report should be obtained and, where practicable, the deposition of the defendant or other parties who may have knowledge of the debtor's assets should be conducted.

If it is discovered that a defendant who has defaulted on payment of restitution has the ability to pay, a default hearing under 18 U.S.C. 3613A, or resentencing pursuant to 18 U.S.C. 3614, should be considered. All enforcement remedies, including those under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, should be pursued, including garnishment of the debtor's wages, execution of the debtor's nonexempt property and filing of a fraudulent transfer action.

Enforced collection remedies should only be used against debtors under the supervision of the probation office after consultation with that office. Additionally, while the new law provides the government the ability to reach substantial assets of a criminal defendant, the government must be cautious about seizing a debtor's residence if family members would be left homeless. For this reason, approval of the United States Attorney is required prior to executing upon a criminal debtor's residence. USAM § 3-10.540.

Financial Litigation Unit efforts to collect restitution for nonfederal crime victims should be pursued at least as aggressively as the collection of fines and restitution to federal agencies. These efforts can, however, be minimal if the victim is willing and financially able to pursue collection in its own behalf. In many cases, corporate or nonfederal government victims may be in a better position to pursue enforcement than the United States Attorney's office and they should be encouraged to do so, thus freeing up resources in the United States Attorney's office to concentrate on other needy victims.

## **3-13.000 PROCUREMENT/PROPERTY MANAGEMENT**

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- 3-13.100 Delegation of Procurement Authority (DPA)**
  - 3-13.200 Property Management**
  - 3-13.232 Use by United States Attorney Offices of Forfeited Vehicles and Other Property**
  - 3-13.240 Seized Property**
  - 3-13.300 Office Files**
  - 3-13.310 Comprehensive Retention Schedule**
  - 3-13.250 Evidence**
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### **3-13.100 Delegation of Procurement Authority (DPA)**

United States Attorneys are delegated procurement authority by the Director, Procurement Services Staff (PSS), Justice Management Division (JMD) in accordance with Federal Acquisition Regulations (FAR), Title 48 Code of Federal Regulations (CFR) Part 13 and the Justice Acquisition Regulations (JAR).

United States Attorneys may redelegate this procurement authority to other individuals provided the redelegation states that the authority may not be further redelegated. When the United States Attorney redelegates this authority, a copy of the redelegation and the certificate of completion of the requisite training, (40 hours Simplified Acquisitions Course) shall be provided to the Director, PSS, JMD. Upon receipt, PSS will issue a Certificate of Appointment as a Contracting Officer for the United States of America to the individual(s) to whom this authority is redelegated.

For further information on this topic, and guidance on printing regulations, see the EOUSA Resource Manual at 113.

### **3-13.200 Property Management**

The Federal Property Management Regulations (FPMRs) CFR, Title 41, Chapter 101, and the Justice Property Regulations (JPMRs) Chapter 128-1 govern and guide Federal agencies in the acquisition, utilization management, and disposal of real and personal property. Property management includes inventory; accountability of property; excess property; loss or stolen property; and disposal of damaged property.

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**Further Guidance on Property Management can be found in the EOUSA Resource Manual**

Property Management Definitions	EOUSA Resource Manual at 114
Property Management Responsibilities	EOUSA Resource Manual at 115
Property Management -- Physical Inventories	EOUSA Resource Manual at 116
Property Management -- Conducting Physical Inventories	EOUSA Resource Manual at 117

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### **3-13.232 Use by United States Attorney Offices of Forfeited Vehicles and Other Property**

Title 40 U.S.C. Section 304(h) authorizes a federal agency to retain forfeited property for official use. Title 28 U.S.C. Sec. 881(e)(1) also allows the Attorney General to retain forfeited property for official use. Title 40 U.S.C. Section 304(i) allows the government to apply to the court to order delivery of forfeited property "to any other agency which requests and in his judgment should be given such property," and, if the government prevails in the forfeiture action, the court "should . . . order delivery accordingly."

All requests for official use by any United States Attorney's Office of any type of forfeited property shall be submitted to the Assistant Director, Facilities Management and Support Services, EOUSA for prior approval. This includes any vehicle or other property which may presently be utilized without prior approval. For further guidance, see the EOUSA Resource Manual at 186.

### **3-13.240 Seized Property**

All seized property is the responsibility of the U.S. Marshal's Service and should be in its custody at all times.

The United States Attorney should, upon request, furnish the U.S. Marshal with information as to the probable disposition date of cases in which seized property is involved, and the reasons for delays in termination.

### **3-13.250 Evidence**

Normally, United States Attorneys' offices (USAOs) should not have custody of evidence. Under most circumstances, evidence should remain in the custody of the investigating agency. When evidence is required in court the agencies handling the case, or other representative of the investigating agency, should bring the evidence and retain custody until the material is introduced as evidence, at which point it becomes the responsibility of the United States Marshal, the Clerk, and the Court.

Timely arrangements shall be made with the United States Marshals Service (USMS), or other agencies subject to the court's policy, for the storage of all evidence pending its formal disposition by court order, except drugs. If the evidence involves drugs or drug paraphernalia, such evidence will remain in the custody of the federal agent in charge of the case, who will ensure the integrity of the evidence is secured and all evidence is present at the court proceeding.

#### Documentary Evidence

Generally, the only occasion when evidence might be stored in the USAO is when documentary evidence, secured under a grand jury subpoena, is delivered into the custody of the United States Attorney. As long as such documentary evidence is needed, it should be kept under appropriate security arrangements. As soon as there is no further need for the evidence, such as when a determination is made that evidence will not be introduced and is unnecessary, it should be returned to the owner. Exhibits and abandoned or unclaimed property, in connection with litigation, which the USAO cannot return to its lawful owner, should be turned over to the USMS for disposal.

If additional space is needed to store such evidence, the usual procedures for procurement of space should be followed.

#### Physical Evidence

USAOs may be authorized storage of physical evidence under exceptional circumstances and for such short periods of time as necessary to present the evidence to the court or grand jury.

When accepting the custody of evidence is justified, USAOs shall, as a minimum, initiate the following procedures:

- (1) Establish and maintain a permanent log of evidence transferred to and from their custody;
- (2) Issue, as well as require, receipts for evidence transferred to and from their custody;
- (3) Ensure all evidence is stored in secure facilities.

#### Sensitive High-Risk Physical Evidence

Storage of sensitive high-risk physical evidence, such as weapons, drugs, cash, negotiable instruments, or any other dangerous or valuable items, in USAOs is strongly discouraged. However, under exceptional circumstances storage may be allowed in areas and containers which have been approved by the Executive Office for United States Attorneys (EOUSA) and meet the following conditions:

- (1) A one-time written request by the United States Attorney to EOUSA with full justification for the need to establish a sensitive high-risk storage area is approved by the Director, EOUSA;
- (2) Written certification by the District Office Security Manager that the proposed storage area and containers meet EOUSA's sensitive high-risk physical evidence storage standards will satisfy interim certification requirements. Completion of a one-time, on-site security survey by the Security Programs Staff (SPS), EOUSA is required prior to final certification of the area;
- (3) A written agreement between the USAO and the Special Agent-in-Charge or appropriate supervisory official of the investigative agency, requiring the storage of sensitive high-risk physical evidence. The agreement will state the USAO will not assume custody of the evidence, but will only provide storage facilities which will allow the agency to retain complete custody of, and full control over, access to the sensitive high-risk physical evidence;
- (4) A one-time review and approval by SPS of the office's operational and administrative procedures for the storage of sensitive high-risk physical evidence to ensure compliance with EOUSA guidelines.

Under no circumstances will the storage of explosives, high quantities of ammunition, flammable devices, or chemicals be allowed.

### **3-13.300 Office Files**

The records and files of all United States Attorneys' offices should be maintained in current and orderly manner, and shall be disposed of in accordance with the General Records Schedules issued by the National Archives and Records Administration (NARA), or the comprehensive retention schedule for United States Attorneys' records (USAM 3-13.310). Non-record materials, e.g., obsolete forms, publications, extra copies of correspondence and duplicate copies may be destroyed without disposition authority.

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#### **Further guidance on these issues can be found in the EOUSA Resource Manual**

Docket Records	EOUSA Resource Manual at 119
Case Files	EOUSA Resource Manual at 120
Maintenance of Attorney-Client Information	EOUSA Resource Manual at 121
Closing Notice for Case Files	EOUSA Resource Manual at 122
Designation of Permanent (Historical) Cases	EOUSA Resource Manual at 123
Preparing Records for Transfer to the Federal Records Center	EOUSA Resource Manual at 124

### 3-13.310 Comprehensive Retention Schedule

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, 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. Includes case files closed by the 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 | <p>Case files involving sentences of 10 years or less (including no sentence 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.</p> | <p>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)))</p>  |
| 5 | <p>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.</p>       | <p>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, CLOSE CASE(S) INVOLVING SENTENCES THAT END IN THE YEAR ____ . CASES (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)))</p> |
| 6 | <p>Case files involving life sentences not selected as significant.</p>  | <p>Transfer separately to the FRC one year after case is closed. Destroy 65 years after case is closed, or one year after death of</p>  |

offender, whichever is sooner. (N1-118-89-2(2))

- |  |   |   |
|--|---|---|
| 7 Outstanding fugitives 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 <i>may</i> , 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 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 <i>new</i> 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 <i>may</i> , based on space constraints, <i>and</i> 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 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))

9 Environment and National 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

Transfer to the FRC on year after case is closed. Destroy 25 years after case is closed. (NC1-118-84-2(1))

title evidence,  
correspondence,  
exhibits, trial  
data, and related  
papers.

1 0	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. (NC1-118-84-2(2))	
1 1	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))	
1 2	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))	
1 3	Grand jury records, including special grand juries created by statutes	Includes minutes, dockets, notes, shorthand notes on proceedings and transcripts of proceedings, documentary	Transfer to the FRC one year after closing. Destroy 10 years after closing. (NC1-118-83-1(2))

dated 1889 and later. NOTE. Excludes those filed as part of a criminal case file, which receives the same disposition as the case to which it relates.

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.

1 Closed grand jury . Destroy when three  
 4 ignoramuses years old. (344-  
 (duplicated). T91(1))  
 (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 possible 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.)

1 Financial *Debt collection* Transfer to the FRC one  
 5 litigation records which are year after close of  
 records. separately from debt collection case.  
 litigation case Destroy six years after  
 files. May include close of debt  
 collection case. (N1-

claims collection 118-89-3(1))  
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.

1	<i>Automated data base</i>	Erase automated
6	<i>information,</i>	information from the
	containing data	data base six years
	extracted from the	after close of the debt
	case file and any	collection case file.
	data generated or	(N1-118-89-3(2))
	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.

1 7	<i>Payment process files</i> 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))
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1 8	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))
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1 9	Second offense cards	When maintained. Destroy when 15 years old. (346-S45(7))
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2 0	Docket records, e.g., Forms USA-115, Criminal Complaint and Court Proceedings Record; and	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))
2 1	USA-116, Civil Claim and Court Proceedings Record.	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. (NC1-118-93-2(2))
2 2		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))
2 3		Grand and petit jury witness dockets.	May be transferred to the FRC one year after case is closed. Destroy five years after case is closed. (346-S45(10))
2 4	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 FRC after one year. Destroy when 10 years old. (346-S45(14))
2 5	Alphabetical index cards.	When maintained on criminal, civil and complaints files.	Destroy 10 years after close of case. (NC1-118-78-1(5))
2 6	Statistical records, e.g., Form	Duplicate copies of statistical files and records of the	May be transferred to the FRC one year after the date of the

USA-5, Monthly Statistical Report of U.S. Attorney.	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.	report. Destroy five years after the date of the report. (346- S45(16))
2 Files of 7 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 hearing, docket sheets, notes and related materials. 1940 - March 31, 1947.	Destroy immediately. (347-223(1))
2 Copies of 8 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))
2 Case files 9 and general records	Includes copies of official circulars and replies thereto,	Destroy immediately. (348-66(1))

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.

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.

- |   |   |  |   |
|---|---|--|---|
| 3 | Records   | Includes copies of   | Destroy immediately.  |
| 0 | pertaining to the arrest, detention, internment of alien enemies during World War II. | 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 thereto related thereto. 1941 - 1945. | (352-87(1))   |
| 3 | Federal   | Individual case  | PERMANENT. Delete   |
| 1 | Prosecutor's Management Information System  | information.   | from U.S. Attorneys' office files two years after close of case and after pertinent |

	(PROMIS) for all U.S. Attorney offices except the District of Columbia.	information has been printed. Offer printed records to NARA for permanent retention when 10 years old. (NC1-60- 83-8(2b(1)))
3 2	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. (NC1-60-83-8(2b(2)))
3 3	Core data sent to EOUSA which is consolidated and incorporated into the Docket and Reporting Data Base.	PERMANENT. Offer year and 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. (NC1-60- 83-8(2b(3)))
3 4	PROMIS for the U.S. Attorney, District of Columbia only.	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. (NC1-60- 83-8(2a))
3 5	Docket and Reporting Data Base, Executive	Criminal and civil master files, the collections master file, and the
		PERMANENT. Offer year end master file and necessary documentation to NARA

Office for  
U.S.  
Attorneys  
only.

transaction log  
file.

annually. Release of  
criminal investigatory  
records contained in  
the system is subject  
to provisions of 36  
CFR 1256.18. (NC1-60-  
83-8(1))

<b>Areas Served</b>	<b>Federal records center</b>	<b>Areas served</b>	<b>Federal records center</b>
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.  Texas, Oklahoma, Arkansas, Louisiana, and New Mexico.  Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota.  Nevada except Clark County, California except southern California, and American Samoa.	Federal Records center 2312 East Bannister Rd. Kansas City, MO 64131  Federal Records Center P.O. Box 6216 Fort Worth, TX 76115  Federal Records Center Bldg. 48 Denver Federal Center P.O. Box 25307 Denver, CO 80255  Federal Records Center 1000 Commodore Dr. San Bruno, CA 94066
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 Winebago St. St. Louis, MO 63118		

<b>Areas Served</b>	<b>Federal records center</b>	<b>Areas served</b>	<b>Federal records center</b>
Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.	Federal Records Center 380 Trapelo Rd. Waltham, MA 02154	Arizona, Clark County, Nevada, and southern California (counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Orange, Los Angeles, Riverside, Inyo, Imperial, and San Diego).	Federal Records Center 24000 Avila Rd. Laguna Niguel, CA 92677
New York, New Jersey, Puerto Rico and the Virgin Islands.	Federal Records Center Military Ocean Terminal Building 22 Bayonne, NJ 07002	Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).	Federal Records Center 6125 Sand Point Way Seattle, WA 98115
Delaware, Pennsylvania, and U.S. Court records for Maryland, Virginia, and West Virginia.	Federal Records Center 5000 Wissahicken Ave. Philadelphia, PA 19144	Illinois, Wisconsin, Minesota, and U.S. Court records for Indiana, Michigan, and Ohio	Federal Records Center 7358 South Pulaski Rd. Chicago, IL 60629
North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.	Federal Records Center 1557 St. Joseph Ave. East Point, GA 30044	Indiana, Michigan, and Ohio, except for U.S. Court records.	Federal Records Center 3150 Bertwynn Dr. Dayton OH 45439

### **3-13.321 Standardized Forms**

*See the EOUSA Resource Manual at 127.*

### **3-13.400 Reporting and Transcription Services**

Pursuant to the Federal Acquisition Regulation (FAR), contracts for reporting services for grand jury sessions and/or depositions will be competed and awarded using a Blanket Purchase Agreement (BPA) if the requirements do not exceed \$100,000 per fiscal year. For all requirements that exceed \$100,000 and for special conditions where the awarding of a BPA is not feasible, requirements and an OBD-186, should be forwarded to Procurement Services Staff (PSS), JMD, for the awarding of a formal contract. District personnel should review their Delegation of Procurement Authority (DPA) for guidance.

*See also the EOUSA Resource Manual at 128.*

### **3-13.410 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. *See the EOUSA Resource Manual at 129.*

### **3-13.500 Motor Vehicle Management -- Acquisition of Leased Government Vehicles**

USAOs have been delegated authority to acquire leased motor vehicles from their local GSA Fleet Management Office. Code of Federal Regulations 101-38.103 authorizes use of only Class II compact sedans. Mini vans and 4X4 sport utility vehicles may only be acquired if special needs exist; i.e., weather or transportation of large parcels that will not fit in a compact sedan. Because these vehicles are more expensive than the Class II compact sedans, special needs must be documented.

If a vehicle is not available from your local GSA Fleet Management Office, the vehicle may be available through the Department of Justice Commercial Lease Program. Requests for vehicles unavailable from the local GSA Fleet Management Office must be submitted in writing to the Executive Office for United States Attorneys, Attention: Assistant Director, Facilities Management and Support Services (FMSS).

Funding for leased vehicles comes from the district's travel budget. *See the EOUSA Resource Manual at 150 for further discussion.*

### **3-13.512 Motor Vehicle Management -- References**

- A. 41 C.F.R. Subpart 101-26.501-9 Centralized Motor Vehicle Leasing Program
- B. 41 C.F.R. Subpart 101-38.101 Acquisition of Motor Vehicles
- C. 41 C.F.R. Subpart 101-38.103 Mandatory Provisions Affecting the Acquisition and Use of Motor Vehicles.
- D. 41 C.F.R. Subpart 101-38.3 Official Use of Government Motor Vehicles
- E. 41 C.F.R. Subpart 101-39.2 GSA Interagency Fleet Management System Services
- F. Executive Order 13043, dated April 16, 1997, Federal Employees Use of Seat Belts While on Official Business.

### **3-13.520 Motor Vehicle Management -- Internal Control of Vehicles -- Logging Requirements**

Each district that has motor vehicles will establish necessary procedures to maintain logs on the use of government vehicles 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)

### **3-13.530 Official Use of Government Vehicles Between Residence and Place Of Employment**

Employees of the United States Attorneys' Offices and the Executive Office for the United States Attorneys, are not authorized under government regulations (41C.F.R. 101-6) 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. *See* the EOUSA Resource Manual at 130 for guidance on authorized uses of government vehicles. *See also* the EOUSA Resource Manual at 151 (using state license plates on official government vehicles).

President Clinton on April 16, 1997 issued Executive Order 13043, mandating the policy that each Federal employee occupying any seating position of a motor vehicle on official business, whose seat is equipped with a seat belt, shall have the seat belt properly fastened at all times when the vehicle is in motion. *See* the EOUSA Resource Manual at 154.

# 3-14.000 SPACE MANAGEMENT

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3-14.100	Policy
3-14.110	General Description
3-14.111	Additional Space
3-14.112	Release of Space
3-14.200	Parking Space

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## 3-14.100 Policy

41 C.F.R. Part 101-17, Assignment and Utilization of Space provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration (GSA). Authority for acquisition, relocation, alteration or release of space has been delegated to EOUSA, not United States Attorneys. To acquire, relocate, or release space requires approval of the Assistant Director, Facilities Management and Support Services, EOUSA.

Space Allocation Standards (SAS) have been approved by EOUSA and GSA, effective October 8, 1998. The standards included in this space allocation standard shall apply to all new space requests submitted after October 8, 1998, and to those pending space requirements where the lease contracting process has not yet been started and/or the amount of square footage a United States Attorney's office (USAO) is to be assigned has not yet been approved and finalized by General Services Administration (GSA). These standards shall not be applied to existing USAO space assignments unless the relocation of the entire office is planned. The text of these standards can be found in the EOUSA Resource Manual at 158 et seq.

**Limitations:** 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.

### **3-14.110 General Description**

The office of the United States Attorney functions within the court basically as an independent law firm whose sole client is the United States Government. The United States 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 United States Attorney's space requires public access to the reception area. All perimeter space beyond this point should be secured for access of United States Attorney personnel and authorized visitors.

### **3-14.111 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 United States Attorneys, should be contacted. Written justification for the request should be provided, addressing additional personnel authorized, overcrowded or insufficient space to house presently authorized staff, or the lack of support space.

### **3-14.112 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 United States Attorneys, immediately.

### **3-14.200 Parking Space**

The Federal Property Management Regulations (FPMR) CFR Title 41, Chapter 101-20.104(1)(2)(3) states, "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 United States Attorneys' offices. Parking for employee owned vehicles will be provided whenever possible consistent with the following criteria:

1. Official Government owned or leased vehicle(s)
2. Handicapped employee(s)
3. United States Attorney
4. United States Attorney discretionary space
5. Paid Supervisory Assistant United States Attorneys only
6. Senior Litigative Counsel Attorneys
7. Administrative Officer
8. Operational space
  - District Headquarters office
  - Branch office
  - Unstaffed Branch office with frequent use justified.

**SECURITY  
PROGRAMS MANAGEMENT**

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**3-15.010 Introduction**

Security programs which effectively protect personnel, offices, and investigative and administrative information enable the United States Attorneys' offices (USAOs) to accomplish their mission and goals. The active participation of senior management is critical to the success of these security programs. Security programs management within USAOs comprises three distinct components: the Executive Office for United States Attorneys (EOUSA), the District Office Security Manager (DOSM), and the Domestic Terrorism Working Group of the Attorney General's Advisory Committee.

A. EOUSA provides the following support for USAO security programs:

- Policy and procedural assistance for the implementation of all security programs in accordance with applicable statutes and Executive and Departmental Orders to ensure the unique needs of each office are met.
- General and specialized security training for all personnel responsible for security-related duties.
- Budgetary and facilities management support to facilitate the design, procurement, and installation of all security-related equipments, services, and systems.
- A structured methodology for analyzing the overall security practices of each USAO and determining office-unique security requirements.
- Oversight to identify weaknesses, provide assistance and advice, ensure compliance with all national and Departmental security policies and regulations, and formulate constructive recommendations to improve the overall quality of security programs and support.

B. Each United States Attorney appoints a DOSM, preferably a Supervisory Assistant United States Attorney, to manage all district security programs. As the principal security official for the district, the DOSM advises the United States Attorney on all security matters, and is assisted by other assigned individuals as required. The DOSM is responsible for:

- Analyzing the overall security posture of the district office and recommending necessary security systems, equipment, and services to reduce vulnerabilities and risks.
- Implementing and locally overseeing the physical, information, personnel, computer, and communications security programs, as well as the security education and awareness, loss prevention, and safety and health programs in accordance with current policy.
- Developing the District Security and Occupant Emergency plans.
- Preparing and submitting Urgent and Security Incident Reports.
- Preparing budget estimates for implementing office security programs, and coordinating these and other security requirements with EOUSA.

C. The Domestic Terrorism Working Group, whose membership includes United States Attorneys and Assistant United States Attorneys, is part of the Attorney General's Advisory Committee. The Subcommittee coordinates security-related initiatives and educational efforts with EOUSA.

### **3-15.100 Security Programs**

The DOSM Handbook, which sets forth the requirements and procedures for district security programs and contains copies of applicable security regulations, has been distributed to all USAOs. Refer to the Handbook for more detailed information concerning the following security programs:

### **3-15.110 Personnel Security**

**A. Background Investigations.** All USAO employees must be United States citizens, and require favorably completed background investigations (BIs) prior to entering on duty. Completed BIs are received and initially reviewed by the EOUSA Security Programs Staff. While the Department of Justice (DOJ) Security Officer, Justice Management Division (JMD), has final adjudication authority, attorney and law clerk investigations must also be approved by the Office of Attorney Personnel Management (OAPM). Favorable adjudication may not be granted, or may be delayed, if the BI reveals questionable or potentially derogatory information.

In unusual or emergency circumstances, USAOs may request a waiver for completing the BI prior to entrance on duty by submitting to the EOUSA Personnel Staff: a justification, the results of vouchering inquiries, and security forms completed by the individual. Waiver requests for attorneys and law clerks are forwarded to the OAPM for approval, and those for nonattorneys to the Department Security Officer.

Reinvestigations to update BIs are conducted for employees whose BIs are five years or older. The favorable adjudication of a BI is not commensurate with approval of a national security clearance. Any applicant or employee who may require access to classified information in the performance of their duties must execute Standard Form (SF) 86, Questionnaire for National Security Positions.

**B. National Security Clearances.** USAOs must contact the EOUSA Security Programs Staff to request National Security Clearances when employees require access to National Security Information, which is generally in connection with litigation involving classified information. Clearances for access to

classified information can only be granted if a favorably completed BI is current (i.e., less than five years old), and the employee has a "need-to-know" the information.

Requests for access to Sensitive Compartmented Information (SCI) or Department of Energy "Q" clearances should also be initiated through the Security Programs Staff. SCI is classified information, which concerns or is derived from intelligence sources and methods, and requires strict control in accordance with Intelligence Community directives. Approval for access to SCI includes a required briefing, which must be conducted in an approved Sensitive Compartmented Information Facility. Employees granted access to SCI are required to report all foreign travel, official and personal, to the JMD in advance of their departure by submitting a completed DOJ Form-504, Notification of Foreign Travel. "Q" clearances for access to restricted information concerning nuclear weapons matters are authorized only by the Department of Energy pursuant to provisions of the Atomic Energy Act of 1954. Most departments and agencies require written certification from the Department Security Officer to confirm the national security clearances of USAO personnel attending meetings or conferences at which classified information will be discussed. USAOs should contact the EOUSA Security Programs Staff two weeks in advance, which will in turn request certification be forwarded by the Department Security Officer, JMD.

When an employee's need for access to classified information no longer exists, the USAO should advise the Security Programs Staff that the clearance may be cancelled. Employees should be formally debriefed from SCI and Q programs.

### **3-15.120 Information Security**

Information security involves the control and safeguarding of Limited Official Use (LOU) information and National Security information (NSI). Other departments and agencies entrust LOU information and NSI to the USAOs during investigations and litigation. It is important that USAOs protect LOU information and NSI, and any materials developed using such information, in the same manner as the originators. All LOU information and NSI must be protected to prevent disclosure to individuals not authorized access to the information.

**A. Limited Official Use (Sensitive) Information.** Departmental policy defines LOU information, also referred to as "sensitive," and establishes procedures for its protection. LOU information includes, but is not limited to grand jury information, informant and witness information, investigative material, Federal tax and tax return information, Privacy Act information, and information which can cause risk to individuals or could be sold for profit. The information should be labeled or identified by placing the caveat "Limited Official Use" on the first page, by a notation in a covering memorandum, or by affixing an LOU label or cover sheet to the material to ensure recipients are aware the information requires protection. Provided the USAO has minimum physical security safeguards in place, sensitive information may be stored, when not in use, in locked offices, desks, or cabinets. Secure telephone and facsimile equipment should be used whenever possible to protect sensitive information, particularly investigative, informant, witness, or Title III information.

**B. Tax and Tax Return Information.** Although Federal tax and tax return information is generally regarded as LOU information, Internal Revenue Code § 6130 and Departmental policy establish safeguards beyond those mentioned above. Access to tax and tax return information will be limited to the United States Attorney, Assistant United States Attorneys and support staff assigned to the particular case. When in use, the information may be kept in the Assistant United States Attorney's office provided the office is locked when the Assistant United States Attorney is not present. To the maximum extent possible, tax information must be kept separate from other information. Where separation is impractical, such files or containers should be clearly labeled to indicate they contain tax return information. If tax documents cannot be

personally transmitted, the material shall be transmitted, double-wrapped, by U.S. Postal Service registered mail, with a return receipt to be signed by the addressee or authorized designee. The interior wrapping or envelope shall be marked "**LIMITED OFFICIAL USE, TO BE OPENED BY ADDRESSEE ONLY.**"

The receipt and disclosure of all tax information shall be recorded in a tax information log, which also reflects the chain of custody. A record must be kept of tax information received, including copies. Tax logs must be retained for five years from date of receipt or date of any disclosure, whichever is longer. When the information is no longer needed, original tax information must be returned to the Internal Revenue Service within 90 days or shredded. When tax information, including magnetic media, is not in use, it must be secured in a locked filing cabinet, locked room with restricted access, or GSA approved security containers with access restricted to authorized individuals to prevent its unauthorized access or disclosure.

Access to tax returns and return information must be restricted to persons whose duties require access or to whom disclosures may be made under provisions of the law. The Internal Revenue Code (IRC 6103) permits the disclosure of returns and return information to officers and employees of federal agencies for the administration of federal non-tax criminal laws. The disclosures are subject to restrictions imposed by IRC sections 6103(I)(1) through (I)(6). Students and volunteers should not be allowed access to tax data.

Tax data obtained through the ex parte court order process should be used in cases which involve a non-tax federal criminal violation. If a determination is made not to pursue the criminal violation and civil enforcement is proposed, the data should be removed from the case file prior to the civil proceedings.

Unless specifically authorized by the IRC, USAOs are not permitted to allow access to federal tax information to agencies, representatives or contractors. The information may be disclosed only to employees who have a need for the information. Tax data should be clearly labeled "**FEDERAL TAX INFORMATION**" or "**FEDERAL TAX DATA**" to allow an office to identify and protect it. Boxes and folders should also be labeled.

All USAO employees with access to Federal Tax information must be thoroughly briefed on security procedures and instructions requiring their awareness and compliance. Periodic reorientation sessions should be conducted. USAO employees with access to Federal tax information must be advised, at a minimum, annually of the provisions of Section 7213(a) of the IRC which makes unauthorized disclosure of Federal returns or return information a crime which may be punishable by a \$5000 fine, five years imprisonment, or both, as well as the costs of prosecution. In addition, applicable employees must be advised annually of the provisions of Section 7431 of the IRC which permits a taxpayer to bring suit for civil damages in a United States district court for unauthorized disclosure of returns and return information.

Copies of tax information not made public during the course of judicial or administrative proceedings should be destroyed by shredding. Ex parte information (certified documents and copies) must be shredded or returned to the IRS Disclosure office. The disposition of the material must be recorded. Magnetic tapes containing tax information may not be made available for reuse or released for destruction without first being subjected to electromagnetic erasing.

### **C. Grand Jury Information.**

**Access to Grand Jury Material** - Access to grand jury material shall be restricted to the Assistant United States Attorneys (AUSAs) assigned to the case and those personnel deemed necessary by the AUSA to carry out the official duties related to the grand jury activities. The AUSA is responsible for ensuring each person permitted access to the grand jury material is aware of the secrecy requirements associated with the material. Grand jury material in use should be safeguarded from unauthorized disclosure by

turning face down or covering when unauthorized persons are present. The material should be locked in storage containers when not in use.

**Storage of Grand Jury Material** - Grand jury material shall be stored in a manner which reasonably ensures only authorized persons have access to the material. Grand jury material containing classified national security information must be handled, processed and stored in accordance with 28 CFR Part 17. Grand jury material containing other types of sensitive information such as Federal tax return information, witness security information, and other types of highly sensitive information which have more stringent security requirements shall be stored and protected pursuant to security regulations governing such information and special security instructions provided by the organization originating the information.

**Transmission of Grand Jury Material** - Grand jury material transmitted outside a USAO shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope which contains the address of the sender and the addressees authorized access to the grand jury material. The inner cover shall be conspicuously marked "Grand Jury Information: To Be Opened By Addressee Only." The outer cover shall be sealed, addressed, return addressed and bear no indication the envelope contains grand jury material. When the size, weight or nature of the grand jury material precludes the use of envelopes or standard packaging, the material used for packaging or covering shall be of sufficient strength and durability to protect the information from unauthorized disclosure or accidental exposure.

Grand jury material may be transmitted through reliable mail and courier services. Couriers and other personnel employed in these services shall be unaware of the contents of the material transmitted due to the wrapping procedures implemented; and therefore, do not require a background investigation for this purpose.

When an AUSA, in consultation with the DOSM, determines the greater sensitivity of, or threats to, grand jury material necessitates a more secure transmission method, the material may be transmitted by: U.S. Postal Service registered mail, return receipt requested; an express mail service approved for the transmission of national security information; or hand-carried by the AUSA or their designated representative.

**Grand Jury Court Reporters** - USAOs must ensure contracts with grand jury court reporters contain current security requirements. Grand jury court reporters must be cleared and approved by SPS, EOUSA, with a favorably adjudicated name and fingerprint check at a minimum. These clearances must be updated every five years. See DOSM Handbook, Chapter 11.

Grand jury court reporters must protect grand jury information and materials in their custody from disclosure to unauthorized individuals. At a minimum, material must be secured and stored in an alarmed facility with locked entrances and exits during non-working hours. Office automation equipment, such as word processors or personal computers, may be used to process grand jury information provided the equipment is used in a dedicated, standalone mode and the information is unclassified. During the non-working hours, diskettes and removable hard drives must be secured in approved containers. Equipment having fixed hard drives must be secure to preclude access by unauthorized individuals such as unescorted cleaning persons. Service personnel must be escorted at all times when working on or around processing equipment.

Grand jury court reporters must ensure grand jury information does not remain on storage media and all storage media, including fixed hard drives, is removed from the equipment before being moved from the contractor facility for maintenance, servicing, or final disposition. All removable storage media becomes the property of the government and fixed hard drives must be made available to the government for sanitizing.

For the Guidelines for Handling Documents Obtained by the Grand Jury, see the EOUSA Resource Manual at 156.

**D. National Security (Classified) Information.** NSI, which is also referred to as "classified information," concerns national defense and foreign relations matters. National and Departmental policies prescribe requisite procedures for marking, handling, storing, and transmitting NSI. Refer to Paragraph 3-15.100, B, for guidance on requesting national security clearances.

The following three classification levels for NSI indicate information sensitivity and the potential damage to United States national security if the information is disclosed to unauthorized individuals:

- TOP SECRET (TS) could cause "exceptionally grave damage,"
- SECRET (S) could cause "serious damage," and
- CONFIDENTIAL (C) could cause "damage."

Classified documents must be clearly marked to indicate their level, authority, and duration of classification. When not in use, classified documents and computer media on which NSI is stored must be locked in security containers ("safes"). Classified documents must be accounted for, and when no longer required, returned to the originating agency or destroyed by shredding in an approved "cross-cut" shredder.

NSI must not be processed on EAGLE or PRIME computers. Classified information must be processed and stored, following special procedures, on standalone or laptop computers.

Classified information must not be discussed or transmitted by commercial telephone or facsimile. Secure telephone (STU-III) and/or secure facsimile, keyed to the appropriate classification level, *must* be used to discuss or transmit classified information. SECRET and CONFIDENTIAL material may be sent by United States Postal Service registered or express mail, return receipt requested. TOP SECRET material cannot be mailed from office to office, but may be hand-carried by an employee possessing a TOP SECRET clearance. Any classified material which is mailed or hand-carried must be double-wrapped.

The Classified Information Procedures Act (P.L. 96-456, 94 Stat. 2025) is invoked for some cases involving NSI. In such cases, the Department Security Officer appoints a special Court Security Officer to assist the Federal Judiciary, the defense, and the USAO. EOUSA provides funding for additional security resources and equipment for such cases.

### **3-15.130 Computer Security**

The computer security program is mandated by the Computer Security Act of 1987 (P.L. 100-235), and involves the safeguarding of information in electronic or magnetic media form and of the systems used to electronically process that information. The program focuses on the security of the PRIME Computers, word processing equipment, the EAGLE system, personal computers, laptop computers, and the information these systems store and process. This information is primarily case-related, although some administrative records relate to personnel and budgetary functions. Procedural guidance should be developed which sets forth basic computer security safeguards such as separation of functions, safety considerations, and access control and protection of USAO computer systems and equipments from misuse or computer-related crime.

Each computer system which processes sensitive or classified information must be certified and accredited. A risk analysis must be conducted for each system, and computer security and contingency plans, which allow for the continuation of automated processing in the event of natural disaster or system damage, must be prepared. Additionally, computer security software which encrypts data, protects communications, and detects viruses must be installed. The System Manager, or other responsible party, certifies that contingency and computer security plans are complete, and that safeguards are in place. The United States Attorney, or senior designee, accredits the systems by acknowledging and accepting any residual risk associated with operating the systems as configured.

### 3-15.140 Communications Security

Communications security (COMSEC) involves the protection of voice, data, and facsimile signals during transmission. Rapidly advancing technology and the ease with which communications systems can be monitored and exploited by criminal elements or hostile intelligence services presents a serious challenge to the legal and law enforcement community. The Type 1, Secure Telephone Unit-Third Generation (generally referred to as the STU-III) was developed in response to National Security Decision Directive 145 (1983) which mandated the production of a reliable, cost-efficient secure telephone, which could also function as a normal telephone instrument and be provided to each Federal employee whose duties entailed the discussion of *sensitive* and/or *national security (classified) information*.

The STU-III program is fully supported by the Attorney General and the Director, EOUSA. All USAOs have been furnished STU-IIIs and secure facsimile equipment in order to provide a secure means to exchange sensitive and classified information concerning ongoing cases with other USAOs, Department components, and law enforcement entities. Secure telephone and/or secure facsimile equipment *must* be used to discuss or transmit classified information, and *should* be used to protect sensitive information, particularly investigative and informant or witness information.

Each USAO has also been provided at least one TRIAD system consisting of a secure telephone, a secure facsimile machine, and a personal computer which can be used to process sensitive and/or classified information, and directly transmit such information in a secure manner to other Department or law enforcement organizations. The STU-III program has been further expanded with the development of the Type 2 secure telephone unit for installation at state and local government and law enforcement organizations through a Federally-sponsored program.

Within each USAO, the DOSM oversees communications security and the STU-III program, determines USAO requirements for secure telephone and facsimile equipment, and promotes the use of secure communications equipment among district personnel. Primary and Alternate COMSEC Representatives will be appointed to assist the DOSM. The COMSEC Representatives are responsible for day-to-day management of secure communications equipment, maintaining required accounting records, and conducting periodic inventories of COMSEC equipment and material.

### 3-15.160 Reporting Security Incidents and Emergency Security Support

The DOSM is responsible for immediately reporting to EOUSA any situation which: (1) involves possible or actual injury to employees, (2) results in loss of, or damage to, Government assets; or (3) affects or threatens the ability of a USAO to operate. Examples of reportable incidents include: threats to a USAO or its employees, office break-ins, theft or loss of Government property, and discovery of computer viruses.

**Urgent Reports** are submitted to report significant events of interest or concern to the Attorney General and Deputy Attorney General. Such events include bomb threats which directly involve a USAO, threats against USAO personnel, and any natural or man-made emergency which affects the continued operation of an office. *See* USAM 3-18.200.

**Security Incident Reports** are submitted to report all other types of security-related incidents (e.g., bomb threats which do not directly involve a USAO, thefts of personal or Government property, disclosure of sensitive or classified information to unauthorized individuals, and discovery of computer viruses).

Submission of an Urgent or Security Incident Report initiates a variety of corrective or protective measures and should not be delayed pending the development of more detailed information. Follow-up reports may be submitted to provide additional data.

When it is first learned that a threat has been made or may exist against a USAO or an employee of a USAO, three things must be done *immediately*:

- **Notify the local United States Marshal.** When threats warrant such action, the United States Marshals Service (USMS) provides assistance to threatened individuals in the form of personal security briefings, residential security surveys, and armed protective details. The local United States Marshal reports the threat to USMS Headquarters, which compiles all threat-related data and rates the threat High, Medium, or Low to determine if protective services are warranted. The local Marshal has the authority to assign a protective detail for 72 hours, continuances are approved by USMS Headquarters.
- **Notify the local Federal Bureau of Investigation (FBI) office.** The FBI investigates all threats made against Department employees. Upon notification, the FBI initiates an investigation and shares investigative results with the USMS, the USAO, and EOUSA.
- **Submit a report to EOUSA.** Urgent Reports, unless classified, should be submitted to EOUSA by electronic mail to AEX15(URGENT). *See* USAM 3-18.200. Security Incident Reports should be submitted to the Security Programs Staff by facsimile, electronic mail (to AEX13(SECMail)), or telephone.

When threats to an individual or an office develop, EOUSA provides emergency security support to the USAO. The measures taken are proportional to the speed with which Urgent or Security Incident Reports are provided. The Security Programs Staff compiles and coordinates threat-related information with the USMS, the FBI, and other sources to determine the nature of emergency security support required by the USAO or individual to adequately counter the threat. This support may consist of one or more of the following:

- Providing immediate on-site surveys and assistance to the affected district, advice and assistance to threatened individuals on dealing with the threat locally, or assistance in obtaining special deputy status.
- Authorizing, funding, and coordinating the relocation of the threatened individual and/or immediate family members, the immediate installation of residential or automobile alarm systems and/or remote automobile starting devices, or the purchase or temporary lease and installation of other security-related items and equipment.

### **3-15.170 Deputation (Authorization to Carry Firearms)**

The Attorney General and the Deputy Attorney General, as delegated by the Attorney General, may, in appropriate cases, authorize the Director of the United States Marshals Service to deputize United States Attorney personnel on an individual basis as Special Deputy United States Marshals for the limited purpose of carrying firearms for self protection. Such deputations will enable them to possess and carry firearms without violating local, state, and federal laws which may restrict the possession or carrying of firearms. Such deputations expressly exclude law enforcement powers such as the power to arrest for violations of federal law and court-related duties of United States Marshals.

**REQUESTING DEPUTATION.** The deputation of United States Attorney personnel will be determined on an individual basis. Authorization for deputation will be granted only in cases where the Deputy Attorney General or his designee determines that at least one of the following conditions exists:

Threat Made:

- The individual or immediate family members are in imminent danger: a threat of physical harm has been communicated specifically or implicitly, and considering the totality of the circumstances, in the opinion of the investigating agency involved, that the threat is credible.

Threat Posed:

- The individual is assigned duties which bring them in contact with persons involved in certain types of criminal activity (e.g., organized crime, violent crime, illegal drug distribution, etc.) that lead to a reasonable determination by the United States Attorney that the individual or family members are at a significantly increased level of risk and thereby warrants the carrying of a firearm for self-protection.

Individuals requesting deputations as Special Deputy United States Marshals must: furnish their own firearms and ammunition; be responsible for ensuring their firearms are in safe working condition; and obtain and maintain their firearms proficiency and safety training. Firearms must meet United States Marshals Service criteria for qualifying as primary duty weapons.

An individual seeking an initial or renewal of a deputation as a Special Deputy United States Marshal will make a written request to the United States Attorney. Information on how to complete that request, and other related information, can be found in the EOUSA Resource Manual at 132.

**INDIVIDUAL RESPONSIBILITIES.** Individuals authorized to carry firearms as Special Deputy United States Marshals pursuant to this order shall not carry such firearms on their persons while pursuing their official duties in courtrooms or in the United States Attorneys' offices. When not in the office, individuals authorized to carry firearms pursuant to this order shall secure the firearms in a proper location when not carried on their person. Everyone, especially those with young children, is required to comply with the presidential directive to secure their firearms with safety locking devices (gunlocks) and receive proper instruction for the use of approved firearms.

Any individual who is deputized as a Special Deputy United States Marshal, and who carries a firearm pursuant to this order, shall at all times be in full compliance with the provisions and requirements set forth herein and as may be required by the Deputy Attorney General. Individuals who have been deputized are also subject to United States Marshals Service policies and regulations regarding the handling and storage of firearms. The United States Marshals Service "Code of Conduct" requires that weapons be concealed from view when not in use; stored in a secure manner to prevent theft, tampering, or misuse when not being carried; and not be inspected, cleaned, handled, or exchanged in public areas or in the presence of jury members, prisoners, witnesses, protected individuals, family members, or the general public. The United States Marshal in each district may impose additional restrictions, and deputized individuals should contact the local United States Marshal to ascertain if other restrictions apply within their district.

When carrying a firearm, all individuals are required to carry their Department of Justice credentials and United States Marshals Service Form 3A which identifies them as Special Deputy United States Marshals.

**STORAGE OF APPROVED FIREARMS.** Upon entering their official place of business, an individual who has been deputized as a Special Deputy United States Marshal shall, at a minimum, promptly store their approved firearm, **preferably while still holstered and loaded**, in an approved container specifically designed for weapons storage which must be locked to prevent access by unauthorized individuals. Firearms must not be stored with other materials such as cash, evidence, or office files. Firearms shall remain secured until the individual leaves the official place of business.

**DISCHARGE OF FIREARMS.** Individuals deputized as Special Deputy United States Marshals may use approved firearms defensively only. Firearms may be discharged only as a last resort to prevent the loss of life or serious bodily injury when there is imminent danger of such an occurrence. Warning shots are prohibited.

Any deputized individual shall immediately report, in writing, to the United States Attorney the circumstances of any accidental or intentional discharge of an approved firearm not related to firearms

training. The loss or theft of a firearm shall also be immediately reported in writing to the United States Attorney. Upon receipt of a written report regarding the discharge, loss, or theft of a firearm, the United States Attorney shall forward such report to the Deputy Attorney General or designee via the Director of the Executive Office for United States Attorneys. The Deputy Attorney General shall cause any alleged noncompliance with this Order, discharge of a firearm, loss or theft of a firearm, to be investigated as deemed appropriate.

Any deputized individual who uses their firearm in a shooting incident which results in injury or death will surrender that firearm, upon request, to the appropriate law enforcement authority during the course of the investigation of the incident.

**REVOCATION OF DEPUTATION AND DISCIPLINARY SANCTIONS.** The Deputy Attorney General may upon the recommendation of the United States Attorney or United States Marshals Service revoke the deputation of an individual. The Special Deputy United States Marshal status of an individual shall be subject to immediate review and possible revocation upon the occurrence of any of the following:

- Noncompliance with any part of this Order;
- Noncompliance with the procedures and directives the Deputy Attorney General issued to affect the provisions of this Order;
- The unsafe or unlawful discharge of a firearm by a deputized individual;
- An injury or death results from the accidental discharge of the firearm; and
- Failure of the individual to adhere to recognized standards of safety for the handling of firearms.

Failure of the deputized individual to adhere to any of the provisions of this order or the procedures and directives implementing this order may result in the imposition of formal disciplinary action.

**REPORTING REQUIREMENTS.** The Director of the Executive Office for United States Attorneys shall provide to the Deputy Attorney General or designee a semiannual report listing all deputized United States Attorney personnel, and other such information as requested by the Deputy Attorney General.

### **3-15.180 Occupational Safety and Health Program**

The Director, EOUSA, has overall responsibility for implementing the Occupational Safety and Health Program in accordance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); Executive Order 12196, "Occupational Safety and Health Programs for Federal Employees"; 29 CFR § 1960, et seq., "Basic Program Elements for Federal Employee Occupational Safety and Health Programs"; and Department of Justice Order 1779.2A, "Occupational Safety and Health Program." The Director has designated the Assistant Director of the EOUSA Security Programs Staff as the Safety and Health Manager to administer the Occupational Safety and Health Program for EOUSA and the USAOs. Reports of unsafe or unhealthful working conditions should be directed to the Manager who will investigate the matter, and make every effort to ensure such matters are corrected in a timely manner. If a condition cannot be corrected within the specified time frame, the Manager notifies the Director of the status of corrective efforts, the basis for the delay, and recommends a course of action.

Each United States Attorney shall designate an individual to serve as the district Occupational Safety and Health Coordinator. Coordinators must be afforded appropriate training and their duties incorporated into performance work plans. The Coordinator is responsible for: arranging and participating in annual inspections of district offices; monitoring findings and reports of inspections to confirm that appropriate corrective measures are implemented; reporting to EOUSA any unsafe or unhealthful working conditions; displaying the Occupational Safety and Health Act poster; conducting investigations and

maintaining records of employee or public injuries, property damage, and motor vehicle accidents; and an annual summary of occupational injuries, illnesses, accidents, and property damage.

For further information on investigations and reports, see USAP 3-15.180.001(M).

### **3-15.190 Emergency Planning**

Emergency planning within the USAOs encompasses two areas: 1) local emergency planning efforts which require the development of Occupant Emergency Plans and 2) national security emergency planning efforts which specify courses of action to ensure the continued operation of the Federal Government in the event certain crisis situations occur.

**A. Occupant Emergency Plans.** Federal Property Management Regulations, 41 CFR, §101-20, require that a short-term emergency response program be developed, and that procedures for safeguarding lives and property in Federally-occupied space during specified emergencies be established. Where the USAO is the primary tenant of a Federal building or facility, and the United States Attorney is the Designated Official, it is the DOSM's responsibility, as the United States Attorney's designee, to ensure an Occupant Emergency Plan is developed and coordinated with other occupant agencies. Where the USAO is not the primary tenant, it is the DOSM's responsibility to participate in the development and staffing of the Occupant Emergency Plan. DOSMs may contact the Security Programs Staff or their local GSA office for guidance and assistance in the preparation of Occupant Emergency Plans. In addition to ensuring that an Occupant Emergency Plan is established for each office within the district, the DOSM must ensure that all USAO employees are familiar with applicable emergency procedures. Occupant Emergency Plans should be reviewed and updated annually. DOSMs should ensure that, at a minimum, evacuation drills are conducted on an annual basis.

**B. National Security Emergency Preparedness.** Pursuant to Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," and in accordance with subsequent DOJ Orders, it is Department policy to maintain a high level of readiness in order to respond to any emergency (i.e., natural disaster, military attack, technological emergency, etc.) which seriously degrades or threatens national security and to ensure the continuity of the Department under such conditions. Before, during, and after such emergencies, the Department must maintain both headquarters and field capabilities to perform the following essential uninterruptible functions:

- Provide for Attorney General succession;
- Furnish legal advice to the President, the Cabinet, and the heads of executive branch department and agencies; and
- Respond to law enforcement matters including foreign counterintelligence and domestic security threats.

For the purposes of federal emergency preparedness programs, regions have been established and regional cities have been designated from which field entity emergency efforts will be directed. The United States Attorneys in the regional cities of Boston, New York (Southern District), Philadelphia, Atlanta, Chicago, Dallas, Kansas City (Missouri), Denver, San Francisco, and Seattle are responsible for serving, in their respective regions, as the senior DOJ official and as the senior member of the DOJ Regional Emergency Team which will include representatives from the FBI, the Immigration and Naturalization Service, the Drug Enforcement Administration, the USMS, and the Bureau of Prisons. As senior Regional Team members, these United States Attorneys must ensure that all appropriate DOJ emergency plans are developed, maintained, and, in time of emergency, implemented.

Each regional United States Attorney must designate an individual within their office to serve as the Justice Regional Emergency Coordinator (JREC). The JREC assists the United States Attorney,

coordinates policy implementation and operational readiness planning, and serves as liaison between the Federal Emergency Management Agency and all participating DOJ field components. All DOJ field organizations are required to establish an order of succession through a minimum level of four positions for each staffed office to include a delegation of authority. This information must be provided to the JREC. Interagency emergency preparedness training may be held periodically and may involve participation by certain USAO or other DOJ personnel.

### **3-15.200 District Security Plan**

Each USAO is required to develop a "District Security Plan" which, at a minimum, will include certain required elements. The plan should be reviewed on an annual basis, updated as necessary, and made available to all district employees. Required elements of a District Security Plan are in the EOUSA Resource Manual at 134.

### **3-15.300 Security Education and Awareness**

National and Departmental regulations require that employees be provided both initial and refresher security training. DOSMs should establish regular, ongoing security education and awareness programs to ensure USAO employees are familiar with their security responsibilities and USAO emergency procedures. To assist DOSMs in developing training, EOUSA distributes a wide variety of security education materials including: a quarterly security bulletin and advisory memoranda, videos, posters, pamphlets, and books concerning topics such as secure communications, computer security, bomb threats, mail bombs, workplace violence, and personal safety.

New employees should be afforded general security training during orientation. Refresher training may be accomplished by disseminating security information via electronic mail, in district newsletters, or at regular staff meetings. A number of districts have implemented a "security awareness month" during which mandatory and voluntary training sessions are held covering such issues as office security, computer security, information security, mail bombs, and personal safety. DOSMs should consider requesting guest speakers from the EOUSA Security Programs Staff, the DOJ Employee Assistance Program office, local offices of Federal law enforcement (e.g., FBI, USMS, ATF, United States Postal Inspections Service), the local police department, and community organizations such as the PTA or Neighborhood Watch.



U.S. Department of Justice

Executive Office for United States Attorneys  
Office of the Director

Department of Justice

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March 19, 2001

MEMORANDUM TO: Holders of the United States Attorneys' Manual

FROM:   
Mark T. Calloway  
Director

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

RE: Expungement under 18 U.S.C. Sec. 3607

AFFECTS: Title 3, Section 3-16.110

Please add the following new text at 3-16.110 C:

3-16.110 Case Management Report -- Automated Case Management Systems

- C. Section 3607 of Title 18 permits the court to sentence certain first-time drug possession offenders to a probationary term without a formal adjudication of guilt. Upon the successful completion of the probationary term, the court must discharge all proceedings against the offender and dismiss the action. If the discharged offender was under 21 years of age at the time of the offense, the offender may ask the court for an order expunging all official records of the case, with the exception of a nonpublic record designed to prevent an offender's disposition under 18 U.S.C. Sec. 3607 more than once.

In the event a case is brought which may result in an expungement order, please contact the Case Management Staff at (202) 616-6919 as soon as possible. That staff can provide information on measures which must be taken to assure that records ordered expunged by a court are properly sealed.

## INFORMATION MANAGEMENT

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### 3-16.100 Systems Acquisition Policy Statement

#### 3-16.110 Case Management Reports -- Automated Case Management Systems

#### 3-16.111 Credit for Multi-District Forfeiture Cases

#### 3-16.120 United States Attorneys' Monthly Resource Summary Report

#### 3-16.130 Continuous Case Management Data Quality Improvement Plan

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### 3-16.100 Systems Acquisition Policy Statement

The Executive Office for U. S. Attorneys (EOUSA) and United States Attorneys' offices (USAOs) must insure the integrity, security and efficiency of all information technology (IT) systems procured, developed, and deployed in its offices. Toward that end, the Director, EOUSA shall lead a corporate senior management team chartered to assure all new and major enhanced IT systems are developed, maintained and continuously evaluated in an integrated manner as follows:

1. **Enterprise Architecture (EA) Management:** The institutional blueprint which defines both the business and the supporting technology for the EOUSA and USAOs' current mission, strategic plans, and target operating environments. The EA also defines the roadmap to achieve mission and strategic plan support within the target environment. This blueprint and the acquisition roadmap are to be updated on at least an annual basis.
2. **IT Investment Management:** Using an established, structured process, the selection of new/enhanced IT projects, assuring that each supports mission and user needs. The resulting portfolio of investments shall be evaluated at least semiannually within the context of the USAO enterprise architecture, and reviewed in terms of progress in meeting cost and schedule milestones.
3. **IT Security Management:** The protection of the integrity, confidentiality, and availability of the USAOs' IT assets, resulting in the reduction of the risks of tampering, unauthorized intrusions and disclosures, and disruption of operations. IT security policies and controls shall be established centrally, with the performance of continuous business risk analyses and the implementation, maintenance, monitoring and evaluation of the effectiveness of policies and controls. A comprehensive report shall be delivered at least annually on the state of IT security management.
4. **System Acquisition Management:** The management of major system investments (major system projects) in a manner that increases the probability of promised system capabilities being delivered on time and within budget. Acquisition of major systems shall be done in a rigorous and disciplined manner to reduce the risk of fielding systems that do not perform as intended, are delivered late, or cost more than planned. All major system contracts shall be planned, tracked, and required deliverables monitored for timeliness and quality by the acquisition organization as well as by the technical project manager.

EOUSA shall document and execute systems acquisitions consistent with industry-standard capability maturity model best practices and procedures and in compliance with all legal and regulatory requirements.

### **3-16.110 Case Management Reports -- Automated Case Management Systems**

**A. Local Caseload Management Systems.** Each United States Attorney's Office has a local caseload management system, LIONS, and a local collections management system, TALON. Each United States Attorney is responsible for the completeness and accuracy of these local systems. Information is used locally and is submitted to the Executive Office for United States Attorneys for inclusion in the central caseload management and collections system. In most districts, these systems are also used to track debt collection activities.

Each office has a System Manager who is responsible for day-to-day operation of the computer and for assisting data entry personnel. A User's Manual is provided for each system, which details the information and data entry requirements, as well as monthly submission requirements. The Case Management Staff, Executive Office for United States Attorneys, provides software and user support for the case management and collections systems.

**B. Central Caseload and Collections System.** The United States Attorneys are responsible for reporting their activities to the Attorney General. For that purpose, the Case Management Staff, Executive Office for United States Attorneys, maintains a central caseload and collection management system. This system is used to respond to numerous requests for statistical information and to produce management reports for use within the Department of Justice. The same information is used to produce the United States Attorneys' Annual Statistical Report and to meet the accounting requirements for debts collected by United States Attorneys. Credit is given based on the date information is submitted to the Executive Office. The cut-off date for each fiscal year is September 30.

**C.** Section 3607 of Title 18 permits the court to sentence certain first-time drug possession offenders to a probationary term without a formal adjudication of guilt. Upon the successful completion of the probationary term, the court must discharge all proceedings against the offender and dismiss the action. If the discharged offender was under 21 years of age at the time of the offense, the offender may ask the court for an order expunging all official records of the case, with the exception of a nonpublic record designed to prevent an offender's disposition under 18 U.S.C. Sec. 3607 more than once.

In the event a case is brought which may result in an expungement order, please contact the Case Management Staff at (202) 616-6919 as soon as possible. That staff can provide information on measures which must be taken to assure that records ordered expunged by a court are properly sealed.

### **3-16.111 Credit for Multi-District Forfeiture Cases**

*See the EOUSA Resource Manual at 152.*

### **3-16.120 United States Attorneys' Monthly Resource Summary Report**

The USA-5, United States Attorneys' Monthly Resource Summary Report, and USA-5, Supplement to the Monthly Resource Summary Report, provide a means for reporting the use of personnel resources allocated to United States Attorney offices on a monthly basis. The information collected from this report is used for budget formulation and justification, responding to ad hoc inquiries concerning the allocation of United States Attorney resources to specific programs, and monitoring the allocation of congressionally appropriated resources.

An automated version of the USA-5/5A System has been distributed to all United States Attorneys' offices. It is supported by the Case Management Staff, Executive Office for United States Attorneys. The USA-5 and USA-5A reports are to be submitted no later than the 15th calendar day of the following month to the Central Systems Service, Case Management Staff, Executive Office for United States Attorneys. The cut-off date for each fiscal year is October 15 of the following fiscal year.

### **3-16.130 Continuous Case Management Data Quality Improvement Plan**

The Director, Executive Office for U.S. Attorneys, with the concurrence of the Attorney General's Advisory Committee, issued a Continuous Case Management Data Quality Improvement Plan on May 1, 1996. This program is a major ongoing initiative that, with United States Attorney support, will result in more reliable data used for a wide variety of internal management and public information purposes.

Each United States Attorney ensures the timeliness and quality of case data in USAO systems via a USAO-specific Data Quality Improvement Plan required to contain provisions for assuring all employees receive training on case management system requirements. Since FY97, the United States Attorney also is required to personally certify the accuracy of case data each year as of April 1 and October 1.

**3-17.000**  
**FREEDOM OF INFORMATION**  
**ACT (FOIA) AND**  
**PRIVACY ACT (PA)**

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- 3-17.100 Introduction and Overview of the Freedom of Information Act (FOIA)**
  - 3-17.120 FOIA Operations Within the Justice Department**
  - 3-17.121 Office of Information and Privacy**
  - 3-17.130 Procedure for Requests Under FOIA Received by the United States Attorney's Office**
  - 3-17.131 Specific Processing Procedures in Department of Justice**
  - 3-17.140 Relation to Civil and Criminal Discovery**
  - 3-17.150 Sanctions for Violating FOIA**
  - 3-17.200 Privacy Act (PA)**
  - 3-17.220 Privacy Act Operations Within the Justice Department**
  - 3-17.280 Departmental "(a)(2)" Publications**
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**3-17.100 Introduction and Overview of the Freedom of Information Act (FOIA)**

The Freedom of Information Act, codified at 5 U.S.C. Sec. 552, was enacted in 1966, with an effective date of July 4, 1967. In revising Section 3 of the Administrative Procedure Act of 1946, as amended, it provided, with certain enumerated exceptions, for disclosure to the public of records, files, and other information of federal departments and agencies (hereinafter "agencies") in the executive branch. Since its enactment, the Act has been amended several times. The general presumption is that documents are to be disclosed when someone requests them. *See generally* the EOUSA Resource Manual at 136.

**3-17.120 FOIA Operations Within the Justice Department**

The regulations of the Department of Justice for administration of the Act are published at 28 C.F.R. Part 16, Subpart A.

Requests for access to records under the FOIA should be directed to the component of the Department which maintains the records. Requests for records of United States Attorneys' offices or concerning activities of the United States Attorneys should be immediately forwarded to the Executive Office for United States Attorneys.

Departmental policy is that the originating component of any intra-Departmental document has the final decision on whether or not a document should be disclosed. This means, for example, that the decision to disclose a Federal Bureau of Investigation (FBI) investigative report is to be made by the FBI. Because the Act is designed to provide access to government information, it does not permit the withholding of a complete document where only a portion of it comes within a particular exemption.

### **3-17.121 Office of Information and Privacy**

The Office of Information and Privacy (OIP) was established in the Department of Justice to advise executive branch agencies and organizational units of this Department on questions of policy relating to the interpretation and application of the Freedom of Information Act (FOIA), 5 U.S.C. §552 and to advise this Department on matters relating to the interpretation and application of the Privacy Act of 1974 (PA), 5 U.S.C. § 552a. OIP coordinates the development and implementation of, and compliance with, FOIA policy throughout the Executive Branch and undertakes, arranges, or supports training and informational programs concerning both Acts for Executive Branch agencies and this Department. In addition, OIP is the reviewing authority for administrative appeals of FOIA/PA decisions made by components of the Department of Justice

### **3-17.130 Procedure for Requests Under FOIA Received by the United States Attorney's Office**

Upon receipt of a FOIA request by a United States Attorney's Office, its receipt should be immediately acknowledged and the requester informed that his/her correspondence has been forwarded to the FOIA/PA Unit of the Executive Office for United States Attorneys (EOUSA). A copy of your acknowledgment to the requester and the original request letter should then be forwarded to the Executive Office for United States Attorneys (the responsible "component").

### **3-17.131 Specific Processing Procedures in Department of Justice**

Absent "exceptional circumstances", the FOIA/PA Unit must make an initial determination within 10 working days after the date of official receipt as to whether or not to comply with the request for disclosure, and should immediately (by the close of the 10th working day) notify the requester of the determination, the reasons therefor, and the requester's right to administratively appeal any adverse determination to the Office of Information and Privacy within 30 days after receipt of this initial determination. Components of the Department of Justice shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there exist exceptional circumstances within the meaning of 5 U.S.C. Sec. 552(a)(6)(C).

The Department's regulations provide (28 C.F.R. Sec. 16.4(b)) that the reply letter denying the request, in whole or in part, must be signed by the head of the responsible component (the Director or his/her designee of the Executive Office for United States Attorneys in the case of United States Attorneys' Offices). Such a denial letter must specifically set forth: the exemptions relied upon; how those exemptions were applied in this case; a statement of the requester's right to an administrative appeal and judicial review; the time period for administrative appeal; and, the name and title of the person responsible for the denial.

The Act permits reasonable search and copy fees to be charged to the requester. United States Attorneys' office personnel who become involved in searching for, gathering, copying and forwarding documents and materials to EOUSA for processing, should maintain accurate records of the time and materials expended in such FOIA processing efforts.

A requester who is not satisfied with the disclosure decision has the right to pursue an administrative appeal to the Office of Information and Privacy. OIP must act on an appeal within 30 working days after the date of receipt of the appeal letter subject to a reasonable extension of time for "unusual circumstances," 5 U.S.C. Sec. 552(a)(6)(B). If the appeal is not acted upon within this time frame, or the appeal is ultimately denied, the requester may file a complaint in the United States District Court in the district where the requester resides or has his/her principal place of business in which the records are located, or in the District of Columbia. These civil actions are under the supervision of the Federal Programs Branch, Civil Division.

### **3-17.140 Relation to Civil and Criminal Discovery**

Access to records under the FOIA is entirely independent of discovery under the Federal Rules of Civil and Criminal Procedure; an individual is free to use both means of gathering information.

The Act directs agencies to provide to "any person" any record reasonably described (5 U.S.C. Sec. 552(a)) and not exempt by the Act (5 U.S.C. Sec. 552(b)(1) to (9)). As a general rule, no inquiry is made as to the purpose for which the record is sought.

### **3-17.150 Sanctions for Violating FOIA**

*See the EOUSA Resource Manual at 137.*

### **3-17.200 Privacy Act (PA)**

The Privacy Act of 1974, Pub.L. No. 93-579 (December 31, 1974), the principal provision of which (Section 3), is codified at 5 U.S.C. Sec. 552a, amended by Pub.L. No. 98-477, 98 Stat. 2209 (1984).

The purposes of the Act are, to:

- A. Safeguard an individual's privacy from misuse of federal records;
- B. Grant an individual access to records concerning him/her which are maintained by federal departments and agencies (hereinafter "agencies");
- C. Provide an individual with a limited right to correct inaccuracies in his/her records maintained by agencies;
- D. Provide an individual with a limited right to contest the routine uses and accuracy of these records;
- E. Impose certain administrative/procedural restrictions on agency collection, maintenance, and dissemination of personnel information;
- F. Limit the use by federal, state, and local governmental agencies of the social security number as a personal identifier; and
- G. Establish a two-year Privacy Protection Study Commission to develop recommendations for further legislative-type controls on the recordkeeping practices of federal, state, and local governmental agencies

and private organizations. An "individual" covered by the Act is a citizen of the United States and an alien lawfully admitted to the United States for permanent residence. A "record" subject to the Act is one maintained by a federal agency about an individual, access to which is by name, identifying number, symbol, or other similar identifying particular, including a fingerprint, voice print, or photograph. The phrase "system of records" is defined as a grouping of records. Finally, a "routine use," with respect to disclosure of a record, is one which is compatible with the purpose for which the information was collected.

### **3-17.220 Privacy Act Operations Within the Justice Department**

The regulations of the Department of Justice for administration of the Act are published at 28 C.F.R. Part 16, Subpart D. Subpart E of 28 C.F.R. Part 16 sets out the system of records exempt under Section 3(j) or (k) of the Act.

General Departmental supervisory responsibility over the Act is in the Justice Management Division (JMD) under the direction of that Division's General Counsel. That office, which is designated the FOIA/PA Section, is responsible for receiving and routing to the appropriate office, board, division, or bureau requests to the Department for access and/or correction of records subject to the Act. (Most requests however, are actually routed to a system manager in a particular component of the Department by the requester.) General Counsel JMD is responsible for: monitoring compliance by the Department with the Act; making recommendations to improve such compliance; preparing the Department's annual report under the Act; and performing certain other administrative/management functions under the Act.

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#### **Information on procedures for requests under the Privacy Act can be found in the EOUSA Resource Manual**

Procedure for Request Under the Privacy Act	EOUSA Resource Manual at 138
"Routine Uses" and Exemptions	EOUSA Resource Manual at 139
Systems of Records	EOUSA Resource Manual at 140
Relation to Civil and Criminal Discovery	EOUSA Resource Manual at 141
Judicial Remedies and Penalties for Violating the Privacy Act	EOUSA Resource Manual at 142

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### **3-17.280 Departmental "(a)(2)" Publications**

Section (a)(2) of the Freedom of Information Act requires each agency to "make available for public inspection and copying" the agency's so-called (a)(2) materials, that is, certain final opinions and orders, certain statements of policy and interpretation, and certain administrative staff manuals and instructions to staff. Pursuant to the (a)(2) requirements, the Department of Justice published an index of such material. See 42 Fed. Reg. 15347. Listed therein for the United States Attorneys are the following publications:

- A. The United States Attorneys' Manual;
- B. The United States Attorneys' Bulletin;
- C. Proving Federal Crimes, May 1980 Edition.

**3-18.000**

**GENERAL ACCOUNTING OFFICE  
AUDITS/REPORTING  
REQUIREMENTS/USAO  
SURVEYS/URGENT REPORTS**

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- 3-18.100 United States Attorneys' Offices Surveys**
  - 3-18.110 General Accounting Office -- Authority for Audits**
  - 3-18.120 Procedures Regarding GAO Contacts**
  - 3-18.200 Urgent Reports -- Litigation -- Pending and New**
  - 3-18.220 Urgent Reports -- Notice of Interviews of Subjects of Investigations**
  - 3-18.230 Urgent Reports on Other Matters**
  - 3-18.231 Format for Urgent Reports**
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**3-18.100 United States Attorneys' Offices Surveys**

All surveys, questionnaires, requests for information, or visits from one or more United States Attorneys' Offices (USAOs) by Department of Justice offices, boards, divisions, field offices, bureaus, or United States Attorneys; or by other persons or organizations outside the Department, including the private sector; other U.S. Government offices; Members of Congress or Committees; or the General Accounting Office (GAO) should be submitted to the Executive Office for United States Attorneys (EOUSA) for coordination to conserve the resources and time of USAOs personnel, to prevent unnecessary duplication of research and survey efforts, and to ensure that alternate sources of data are utilized when available. Congressional requests shall continue to be submitted by Congress to the Office of Legislative Affairs, who shall then submit the request directly to EOUSA. GAO requests should go through the Counsel to the Director, EOUSA. All non GAO surveys, questionnaires, requests for information should be submitted to Donna Enos, Office of the Director, EOUSA, for coordination. Please contact the Counsel to the Director, EOUSA, for assistance.

The request for a survey should consist of a list of proposed USAOs to participate, a proposed questionnaire or survey form, detailing the specific information sought and briefly summarizing the background and the litigative, legislative or other purpose for which the information is sought. Whenever possible, questionnaire forms shall be provided for replies by United States Attorneys. Requests for site visits should include: the sites to be visited, the desired dates for the visits, the overall scope and objectives of the audit, the persons or types of persons sought to be interviewed, and the documents or types of documents sought to be reviewed.

The requesting unit and the EOUSA shall cooperate to make any necessary modifications in proposed surveys prior to dissemination and shall request the participation of United States Attorneys. The EOUSA shall request United States Attorneys participation and coordinate the scheduling of visits. The requesting

units shall fully inform the Director, EOUSA, of the results of surveys and provide copies of all written reports and other derivative products.

### **3-18.110 General Accounting Office -- Authority for Audits**

The General Accounting Office (GAO) is part of the legislative branch of the government. It has statutory authority to examine departmental activities and we are obliged to cooperate with that agency. However, certain information may be restricted under law (e.g. grand jury material) or because of the significant risks involved with disclosure. In addition the functions of the Department serve important public interests and should not be interrupted unduly. As a result, we must balance our obligation to honor GAO authority to conduct reviews with our duty to maintain necessary confidences and to conduct effectively our public business.

### **3-18.120 Procedures Regarding GAO Contacts**

Before responding to a GAO request, a USAO should immediately consult with the Counsel to the Director, EOUSA.

### **3-18.200 Urgent Reports -- Litigation -- Pending and New**

The following Urgent Report procedures should be followed for communicating major developments to the Department of Justice in new or pending important cases.

- A. Where a Justice Department litigating division has assumed responsibility for a case, the Department of Justice trial attorney shall notify promptly the appropriate supervisor within that division of any major development in an important case. One week advance notice should be provided to the appropriate supervisor whenever a major case development can be anticipated. A supervisor shall immediately report such information to the appropriate Assistant Attorney General. Upon receipt of the Urgent Report, the Assistant Attorney General shall notify the Associate Attorney General, when appropriate, the Deputy Attorney General and the Attorney General. Urgent Report notification should be made by a memorandum signed by the reporting attorney even where verbal communication has already taken place. Care should be taken to assure that material classified as "confidential" or above, not be transmitted over the EMAIL system but rather be transmitted over a secure STU-III Triad facsimile.
- B. In cases where the United States Attorney's office controls litigation, communication of major developments should be made to the Executive Office for United States Attorneys as soon as possible, and where the development can be controlled, at least one week in advance. Again, communication of an Urgent Report via EMAIL is required even where verbal notice has been given. The Executive Office for United States Attorneys shall assume responsibility for further dissemination of the Urgent Report.
- C. In cases where the United States Attorney's office and a Department of Justice litigating division are jointly involved in litigation, the United States Attorney's office should report major developments to the Executive Office for United States Attorneys via the EMAIL Urgent Report system. Verbal discussion with a litigating division is no substitute for this responsibility.
- D. Suggested criteria for determining what are major developments in important cases are listed below. Please note that this is not an exhaustive list. Also observe that developments can include many steps

other than the filing or settling of a case; even procedural motions can be important enough to report in some instances.

1. Implications cutting across several federal agencies;
2. Large monetary liability at issue;
3. State or local government unit as a party;
4. Involvement of some aspect of foreign relations;
5. High likelihood of coverage in news media, or Congressional interest; and
6. Any serious challenge to Presidential authority or national security concerns.

### **3-18.220 Urgent Reports -- Notice of Interviews of Subjects of Investigations**

It is the policy and practice of the Department of Justice to keep appropriate officials, including the Assistant Attorney General for the Criminal Division or, when appropriate the Assistant Attorney General for the Civil Division, the Associate Attorney General, the Deputy Attorney General and the Attorney General, advised of sensitive criminal or civil investigations particularly those in which public figures or entities are subjects of the investigation. Urgent Reports must be submitted to advise these Department officials upon the initiation of such sensitive investigations. To assure timely communication of information developed during such investigation, the below listed procedures should be followed:

A. This notification procedure shall not interrupt, alter or delay the normal conduct and pursuit of any investigation.

B. If in the course of any federal investigation, it is determined that an interview, grand jury appearance or trial appearance is required of any member of Congress, federal judge, high executive branch official or other nationally prominent public figure, the responsible prosecuting or investigating attorney shall provide advance notice to the appropriate official in the Department of Justice before contacting the public figure. Where a Justice department litigating division has assumed responsibility for the investigation, notice shall be made by a memorandum signed by the reporting attorney. In cases where the United States Attorney's office controls the investigation or where the United States Attorney's office and a Department of Justice litigating division are jointly involved in the investigation, notice shall be made through an EMAIL Urgent Report. The Executive Office for United States Attorneys shall assume responsibility for further dissemination of the Urgent Report. Similar notification should be made in advance of any indictment of such public figures. These procedures do not satisfy other applicable consultative and approval requirements, if any, that may apply.

C. The Urgent Report should be submitted to the Department of Justice as soon as possible, preferably one week before the anticipated event. In the case of an emergency, the information may be communicated orally to the appropriate Assistant Attorney General for further dissemination to the Associate Attorney General, when necessary, the Deputy Attorney General and the Attorney General. Oral notification should be made as much in advance of the event as possible, and should be followed immediately by a memorandum signed by the reporting attorney where a Justice Department litigating division has assumed responsibility for a case or by EMAIL Urgent Report where the United States Attorney's office is involved in the case. Emergencies requiring waiver of the advance notification requirement should be rare as most investigative steps are planned well in advance.

D. To preserve investigative integrity and to avert possible unfair publicity, Urgent Reports should be brief and avoid unnecessary investigative detail. All Urgent Reports will be kept on a limited official use basis.

### **3-18.230 Urgent Reports on Other Matters**

Information falling within the criteria set forth below should be sent by EMAIL/FAX (utilizing a secured machine when appropriate), followed by a written memorandum, for further distribution to the Attorney General, Deputy Attorney General, Associate Attorney General and the appropriate Assistant Attorney General. United States Attorneys' offices will communicate directly to the Executive Office for United States Attorneys. Litigating division staff attorneys will communicate directly to the appropriate supervisor at the Department of Justice. Access to Urgent Reports is strictly controlled and limited to those officials having a need to know.

- A. Emergencies -- e.g., riots, taking of hostages, hijacking, kidnapping, prison escapes with attendant violence, serious bodily injury to or caused by Department personnel;
- B. Allegations of improper conduct by the Department or specific Department employee, a public official, or a public figure; including criticism by a member of Congress, a court, or other senior government officials of the Department's handling of a particular matter;
- C. Serious conflicts with other government agencies or departments;
- D. Issues or events that may be of major interest to the press, Congress or the President; and
- E. Other information so important as to warrant the personal attention of the Attorney General within 24 hours.

### **3-18.231 Format for Urgent Reports**

*See the EOUSA Resource Manual at 143.*

## **3-19.000 WITNESSES**

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- 3-19.100 Regular Witnesses**
- 3-19.111 Expert Witness**
- 3-19.112 Fact Witness**
- 3-19.113 International Witness**
- 3-19.114 Protected Witness**
- 3-19.121 Subpoenas**
- 3-19.124 Advances**
- 3-19.130 Certificate of Attendance and Payment**
- 3-19.200 Witness' Expenses Incurred on Behalf of Indigent Persons**
- 3-19.210 Responsible Payor**
- 3-19.310 Subpoenas for U.S. Citizens and International Witnesses**
- 3-19.312 Witness' Advance -- American Citizens -- Compensation for Necessary Travel to the United States**
- 3-19.320 Foreign Nationals Residing in Foreign Countries -- Obtaining Attendance**
- 3-19.322 Witness Fees for Foreign Nationals**
- 3-19.340 Request for Foreign Counsel**
- 3-19.400 Federal Government Employees as Witnesses (Non-Military) -- Compliance with Subpoenas Duces Tecum**
- 3-19.411 DOJ Employees Under Subpoena**
- 3-19.412 Serving a Subpoena Government Officers, Agents or Employees**
- 3-19.420 Federal Government Employees -- Witness Fees**
- 3-19.421 Federal Government Employees -- Expenses for Travel**
- 3-19.500 Armed Forces Witnesses -- Military Personnel -- Fees and Travel Expenses**
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### **3-19.100 Regular Witnesses**

General assistance on witness matters is available by calling 202-307-1942 or 202-307-1943 or writing to the Simplified Acquisition Services, Attention: Special Authorizations, Procurement Services Staff, Justice Management Division, Suite 1040, National Place Building, Washington DC 20530.

The Department is authorized to pay for compensation of the following witnesses:

#### **3-19.111 Expert Witness**

An expert witness qualifies as an expert by knowledge, skill, experience, training or education, and may testify in the form of an opinion or otherwise. (See Federal Rules of Evidence, Rules 702 and 703). The testimony must cover more than a mere recitation of facts. It should involve opinions on hypothetical situations, diagnoses, analyses of facts, drawing conclusions, etc., all which involve technical thought or effort independent of mere facts.

#### **3-19.112 Fact Witness**

A fact witness is a person whose testimony consists of the recitation of facts and/or events, as opposed to an expert witness, whose testimony consists of the presentation of an opinion, a diagnosis, etc.

#### **3-19.113 International Witness**

An international witness is a witness who resides outside the territory of the United States. They may be citizens of other countries or of the United States. The Department of Justice must observe the laws and regulations of the other countries when contacting these persons.

#### **3-19.114 Protected Witness**

28 U.S.C. Sec. 524. Title V of Pub.L. No. 91-452 and 98-473 authorizes the Attorney General to provide for the security of government witnesses and potential witnesses, and members of their families.

#### **3-19.121 Subpoenas**

Praecipes for subpoenas for witnesses are not required by Rule 17(a), Fed. R. Cr. P., and Rule 45(a), Fed.R.Civ.P. Praecipes for subpoenas should not be prepared unless local rules or practice makes their use mandatory. Any praecipes necessary should be prepared by the United States Attorney or the Assistant in charge of the case.

### **3-19.124 Advances**

Advances to witnesses for lodging, air and ground transportation tickets are available through a Government Travel Account (GTA). The GTA benefits both the witness and the United States Attorney's office by reducing the financial burden of the witness, simplifying travel arrangements, and improving lodging management.

### **3-19.130 Certificate of Attendance and Payment**

Form OBD-3 (Fact Witness Voucher) is a three-part, four copy snap-out form and provides for certification of attendance by the United States Attorney for the regular (fact) witness claim for fees and allowances, and for payment of the claim by the appropriate paying office. Payments are made by the U.S. Marshal for the district in which the trial or hearing is held.

### **3-19.200 Witness' Expenses Incurred on Behalf of Indigent Persons**

Generally, expenses incurred on behalf of indigent persons will be handled in the same manner as expenses incurred on behalf of the government.

Certification of attendance is by a Federal Public Defender, U.S. District Judge, or Clerk of the Court.

For stenographic and notarial charges related to depositions, refer to Depositions, USAM 3-19.800.

Expenses pursuant to a court's order allowing witnesses for an indigent under Rule 17(b) may include those of state or federal guards, etc., in producing prisoners under writs of habeas corpus ad testificandum.

### **3-19.210 Responsible Payor**

The enactment of 18 U.S.C. Sec. 3006A resulted in changes of responsibility for payment of certain expenses of litigation for persons allowed to proceed in forma pauperis.

### **3-19.310 Subpoenas for U.S. Citizens and International Witnesses**

It is important that all United States Attorneys' offices and Department attorneys contact the Office of International Affairs (OIA) prior to contacting United States citizens and Alien residents who are in foreign countries and whose status as United States immigrants is unchanged.

### **3-19.312 Witness' Advance -- American Citizens -- Compensation for Necessary Travel to the United States**

American citizens are entitled to receive compensation for necessary travel to the United States. The Consular Mission can make such payments directly from Department of Justice FEW funds when effecting service of the subpoena, provided Special Authorizations, arranges for disbursing authorizations.

### **3-19.320 Foreign Nationals Residing in Foreign Countries -- Obtaining Attendance**

Since foreign nationals residing in the foreign countries are not subject to the subpoena power of U.S. Courts, their attendance can be obtained only on a voluntary basis. Obtaining testimony from foreign nationals is often a delicate matter, and care must be taken to avoid offending the sovereignty of the foreign country involved.

### **3-19.322 Witness Fees for Foreign Nationals**

The present witness allowances under 28 U.S.C. Sec. 1821 are generally acceptable to foreign nationals. Therefore, payment of the statutory rates, subsistence and actual cost of transportation may be made on the basis of the witness attendance certificate, and Form OBD-47 is not necessary.

### **3-19.340 Request for Foreign Counsel**

After the necessity for such counsel has been approved by the head of the division or office, the United States embassy or consulate in the country involved should be requested to furnish a list of qualified and suitable counsel. As a general policy, consular officers do not recommend a particular attorney with respect to private matters. However, in government cases, consular officers will recognize the government's interest and will be prepared to give information.

### **3-19.400 Federal Government Employees as Witnesses (Non-Military) -- Compliance with Subpoenas Duces Tecum**

Whenever such a subpoena is served on a United States Attorney or any other Department of Justice officer or employee, he/she should proceed in compliance with Departmental policy regarding property management, disclosure of information, and records management.

### **3-19.411 DOJ Employees Under Subpoena**

*See 28 C.F.R. Sec. 16.21 et seq.*

When a subpoena is served on an officer or an employee of the Department by or on behalf of a private litigant, the Federal Rules of Civil Procedure (Rule 45(c)) require that the employee be tendered one day's witness fee plus mileage. Any other service is not legal service under the Rules.

Frequently, the purpose of the subpoena is served by the submission of documentary evidence or other written instrument to the court, instead of by personal appearance. If the substituted type of compliance is accepted by the litigant, it is the policy of the Department of Justice to consider that the fee and the mileage have been earned.

If the officer or employee complies with the subpoena by appearing in court in his/her official capacity, he/she must look to the private litigant for his/her fees and mileage. No charge will be made against annual leave. Any amount received in excess of actual expenses will be forwarded in the same manner as above. See Department of Justice Order 1630.1B (July 22, 1991).

If subpoenaed in his/her private capacity, on behalf of a private party, the Department of Justice employee will look to the litigant for fees and mileage. Such absences are charges to annual leave. All fees and mileage received are retained by the employee.

### **3-19.412 Serving a Subpoena Government Officers, Agents or Employees**

U.S. Marshals have been instructed that expenses of travel and subsistence solely for the purpose of serving subpoenas upon government officers, agents or employees should not be incurred. The United States Attorney may have subpoenas delivered by mail directly to the officer whose attendance is desired, or in the case of agents or other employees, to the head of the office in which they are employed, in sufficient time to enable them to acknowledge the receipt of the subpoenas specified.

Special Agents of the FBI and Federal Government agents generally should not be subpoenaed from distant points unless their testimony is material and there is every reason to believe that there will be no postponement of the trial.

Federal government employees may be secured by the United States Attorney through direct communication (preferable) with witness or subpoena. The employing agency should be requested to supply any necessary travel advance.

### **3-19.420 Federal Government Employees -- Witness Fees**

Federal government employees shall not be paid witness's fees but the period of such service shall be without loss of salary or compensation and shall not be deducted from any authorized leave of absence with pay. See 5 U.S.C. Secs. 5537 and 6322.

### **3-19.421 Federal Government Employees -- Expenses for Travel**

Any officer or employee of the United States or any agency thereof, summoned as a witness on behalf of the United States, shall be paid his/her necessary expenses incident to travel in accordance with the provisions of the Standardized Government Travel Regulations.

### **3-19.500 Armed Forces Witnesses -- Military Personnel -- Fees and Travel Expenses**

The rules governing the payment of fees and travel expenses are the same for military employees as for nonmilitary employees. See USAM 3-19.420.

### **3-19.600 Prisoners as Witnesses**

A federal prisoner serving a sentence may be produced to testify or to be prosecuted in another district only upon a writ of habeas corpus in proper form. (Writs ad testificandum must not be used to produce federal prisoners for examination by United States Attorneys or investigative agencies.)

The marshal serving the writ of habeas corpus and the warden or superintendent having custody of the prisoner must be named in the writ. The marshal of the district in which the prisoner is in custody

should serve the writ or, if this is impossible, the marshal in the issuing district may serve the writ requiring production of the prisoner.

A prisoner (federal, state, or county) in custody only as a material witness may be paid the regular attendance fee if testifying as a witness. Conversely, no attendance fee shall be paid to persons held on charges or already convicted, whether under state or federal law. Further, no mileage or per diem is allowable for any prisoners.

### **3-19.700 Expert Witnesses**

Whenever the U. S. Attorney expects to use expert testimony of any kind, he/she should make every effort to secure government employees in specialized fields from field offices of agencies such as the FBI, Bureau of Standards, Securities and Exchange Commission, Department of Interior, Army Corps of Engineers, Veterans Administration, etc., unless disadvantageous for tactical or strategic considerations. U. S. Attorneys should familiarize themselves with the government facilities available in their localities in order to be prepared when cases arise. There are also instances when certain government agencies in Washington can offer special assistance.

See also the EOUSA Resource Manual at 148 and 149.

### **3-19.713 Interpreters**

The Court Interpreters Act of 1978 requires the Director, Administrative Office of the U.S. Courts (AOUSC) to "establish a program to facilitate the use of interpreters in courts of the United States." The AOUSC will prescribe standards for interpreter qualifications and will certify the qualifications of individuals who may serve as interpreters in bilingual proceedings and in proceedings involving persons whose hearing is impaired. All costs for interpreter services necessary to enable a party to comprehend the proceedings in the courtroom or in chambers, to communicate with counsel in the immediate environs of the courthouse in connection with ongoing judicial proceedings and to communicate with the presiding judicial officer are payable from funds appropriated to the judiciary. Interpreter services required by a criminal defendant to whom the government furnishes representation under the Criminal Justice Act are payable from funds appropriated to support that Act. The United States Attorney is generally chargeable only for interpreter services necessary to interpret the testimony of government witnesses. Although testimony situations are the most common occasion for the use of interpreters, interpreters may also be engaged for services necessary to determine the course of litigation. They may be paid for, or provided transportation, facilities, equipment or materials as necessary and appropriate to satisfy the United States Attorney's requirements.

Interpreters are required to execute a written oath as prescribed by AOUSC. The rate of compensation should be fixed by agreement with the interpreter before the interpreter renders the service required by the United States Attorney. Rates of compensation should correspond to rates paid by the court. The AOUSC regulation (Sec. 1.72) currently permits the presiding judicial officer to fix reasonable compensation according to the prevailing rates at the location where the designated interpreter regularly works.

It is the responsibility of the investigative agency to pay the costs to translate and transcribe recordings of foreign language telephone conversations obtained under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510 to 2520.

### **3-19.714 Payment of Expert Witnesses Appointed by the Court Under Federal Rules of Evidence**

Federal judges are allowed to appoint expert witnesses to assist the court in the performance of its duty on a particular case or proceeding under Fed.R.Evid. 706. The court may either appoint an expert of its own choosing or one agreed upon by both parties. The expert's deposition may be taken by any party and he/she may be called to testify by the court or any party.

**A. Criminal Proceedings and Civil Condemnation Proceedings.** The compensation of expert witnesses appointed by the court under Fed.R.Evid. 706 is payable from the appropriation "Fees and Expenses of Witnesses."

**B. Civil Proceedings.** Fed.R.Evid. 706 provides that in other civil actions, the compensation of court-appointed experts shall be paid by the parties in such proportions and at such times as the court directs. Any compensation charged to the Department of Justice will be paid from the appropriation "Fees and Expenses of Witnesses."

**C. Exclusions Under Fed.R.Evid. 706.** The appointment of expert witnesses for an indigent defendant in criminal cases or in civil habeas corpus cases is not provided under Fed.R.Evid. 706. In such instances, the Criminal Justice Act authorizes the court-appointed defense attorney to hire an expert witness on behalf of an indigent defendant. The expenses of the expert will be paid by the Administrative Office of the United States Court from funds appropriated for the implementation of the Criminal Justice Act.

### **3-19.720 FBI Services**

The FBI laboratory facilities are available for handwriting and typewriting comparisons and other document studies, as well as for studies in chemistry, toxicology, ballistics, hair, fibers, metallurgy, and other related subjects. The FBI is prepared to supply technical assistance and information in the fields of dynamics, electrical engineering, electricity, fluorescence, histology, light, mathematics, mechanical engineering, metallography, mineralogy, and physical chemistry.

To facilitate the assignment of expert witnesses from the FBI laboratory, it is desirable that as much notice as possible be given to the Bureau concerning the date upon which the testimony of the expert witness who has made a laboratory examination will be required.

There are no charges for FBI services.

### **3-19.730 Expert Witnesses -- Name-Check**

In the interest of internal security and the proper handling of the government's litigation, extreme caution should be exercised in the employment of expert witnesses, consultants, etc. In particular, careful consideration should be given to their professional ability, personal character and integrity, and loyalty to the country. If there is any doubt as to the latter, a name-check should be secured from the FBI.

### **3-19.740 Negotiations with Expert Witnesses**

Actual arrangements for expert witnesses must be made by the United States Attorney since he/she alone has the opportunity to explore the local situation. Through judicious negotiation and bargaining with prospective witnesses, the United States Attorney exerts a decided influence on the terms of the final arrangement.

### **3-19.800 Depositions**

Depositions should be taken whenever possible in order to reduce expenditures. This rule should be particularly applied when it is necessary to secure testimony of a witness living more than 100 miles from the place of trial.

Depositions should be taken before notarial officers or other officers authorized to administer oaths. See Rule 28, Fed.R.Civ.P. Depositions before United States Magistrates should be taken only when such other officers are not available.

### **3-19.811 Depositions Taken in a Foreign Country**

Depositions to be taken in a foreign country must be channeled through the State Department, Office of Special Consular Services, Washington, D.C.

### **3-19.812 Depositions at the Request of a Foreign Court**

The Office of International Affairs, Criminal Division, or the Office of Foreign Litigation, Civil Division should be consulted in the case of depositions to be taken in the United States at the request of a foreign court.

### **3-19.820 Payment of Travel Expenses of Defendant and Counsel to Attend Depositions Taken at the Instance of the Government**

As provided in 18 U.S.C. Sec. 3503(c), whenever a deposition is taken at the instance of the government, the court may direct that the expenses of travel and subsistence for the defendant and his/her attorney for attendance at the deposition be paid by the government. A November 26, 1975, Decision of Administrative Counsel (Justice Management Division), Department of Justice, stated that such costs are rightly the responsibility of the prosecution and should be paid by the division or office within the Department responsible for litigating the particular case.

### **3-19.830 Witnesses Under the Rules of Discovery**

Federal Rule of Civil Procedure 26 and Federal Rule of Criminal Procedure 16 allow either party to a suit to subpoena, with the permission of the court, the other party, certain records of the other party, and expert witnesses of the other party, for examination for the purpose of discovering evidence the other party intends to present.

### **3-19.851 Psychiatric Examinations in Tort Cases**

Psychiatric examinations in tort cases, to determine the extent of injuries, require approval in the same manner as other expert witnesses are submitted. These examinations must not take place without written consent of the opposing counsel, or a court order under Fed.R. Civ.P. 35. An examination without written consent or a court order may leave the United States liable for a suit, by the person being examined, for violation of his/her civil rights.

### **3-19.852 Psychiatric Examinations in Criminal Cases**

All psychiatric examinations in criminal cases SHALL TAKE PLACE PURSUANT TO A COURT ORDER. A psychiatric examination which takes place without a court order may leave the United States liable for a suit, by the person being examined, for violation of his/her civil rights.