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Office of Legal Counsel

Office of the Assistant Attorney General


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MEMORANDUM FOR

STEPHEN R. COLGATE
ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

GERALD E. MCDOWELL
CHIEF
ASSET FORFEITURE AND MONEY LAUNDERING SECTION

From: Randolph D. Moss 
Assistant Attorney General

Re: Payment of Awards in Excess of \$250,000 from the Department of Justice Assets
Forfeiture Fund

This memorandum resolves a dispute between the Justice Management Division ("JMD") and the Asset Forfeiture and Money Laundering Section ("AFMLS") of the Criminal Division regarding whether award payments in excess of \$250,000 may be paid from the Department of Justice Assets Forfeiture Fund for information and assistance leading to a civil or criminal forfeiture. Specifically, we have been asked whether 28 U.S.C. § 524(c) prohibits an award payment in excess of \$250,000. This is a close and difficult question for the reasons explained below. Ultimately, we conclude that although awards for *information* leading to a civil or criminal forfeiture may not exceed \$250,000, the best reading of this statute is one that gives the Attorney General the discretion to pay awards from the Fund in excess of \$250,000 for *assistance* leading to a forfeiture. Under the statute, the two terms must have distinct meanings, but their specific definitions are left, in the first instance, to the reasonable exercise of the Attorney General's discretion. We also conclude that only the Attorney General or one of the four delegees identified in § 524(c)(2) may authorize awards greater than \$250,000 for assistance. We express no view on the policy question whether—contrary to the *Attorney General's Guidelines on Seized and Forfeited Property*—an award greater than \$250,000 should be paid from the Fund. Furthermore, we take no position on whether the actions of an informant in any particular case are best characterized as information or assistance, or whether the case in which this dispute has arisen is an appropriate instance for the Attorney General or her delegees to exercise their discretion to make an award in excess of \$250,000. Because no interpretation of the statute is entirely satisfactory and the question here is exceedingly close, any consideration of awards of more than \$250,000 for assistance calls for caution and special care in determining that the

magnitude of the "assistance" provided is commensurate with the additional amount awarded and that the award promotes important law enforcement objectives.

I. Background

The statute creating the Department of Justice Assets Forfeiture Fund ("the Fund"), codified at 28 U.S.C. § 524 (1994 & Supp. IV 1998), authorizes "the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Fund," at the discretion of the Attorney General. *Id.* § 524(c)(1)(C). Subsection 524(c)(2) limits delegation of the authority to approve payment of awards under § 524(c)(1)(C): "Any award paid from the Fund for information . . . shall be paid at the discretion of the Attorney General or his delegate . . . except that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration." The subsection also places a monetary limitation on awards pursuant to § 524(c)(1)(C): "Any award for information pursuant to paragraph (1)(C) shall not exceed the lesser of \$250,000 or one-fourth of the amount realized by the United States from the property forfeited." *Id.* § 524(c)(2).

The Drug Enforcement Administration ("DEA") has sought approval from the Attorney General (through AFMLS) to award \$1.5 million from the Fund to a DEA informant who played an integral role in a drug trafficking investigation resulting in the seizure and forfeiture of \$89,016,022 by the United States.¹ This request was subsequently referred to JMD for its concurrence, and JMD questioned the legality of the award.

In its first memorandum on this question, JMD took the view that the text of 28 U.S.C. § 524 forbids the payment of any award greater than \$250,000 from the Fund. *See* Memorandum for Michael A. Perez, Director, Asset Forfeiture Management Staff, from Stuart Frisch, General Counsel, Justice Management Division, *Re: Proposed \$1.5 Million Award to Drug Enforcement Administration Confidential Source* (May 12, 2000) ("JMD Memo 1"). In response, AFMLS argued that the statute draws a distinction between assistance and information for purposes of the monetary limitation. In AFMLS's view, the \$250,000 limitation on payments from the Fund is restricted to awards paid for information. Accordingly, the Fund may be used to pay awards in excess of \$250,000 for actions that qualify as assistance. AFMLS further argued that this interpretation gives meaning to the words "\$250,000 or more" in the first sentence of the subsection concerning limitations on delegation of authority to pay awards. Memorandum for Randolph D. Moss, Acting Assistant Attorney General, Office of Legal Counsel, from Gerald E. McDowell, Chief, Asset Forfeiture and Money Laundering Section, *Re: Monetary Limits on Award Payments from the Assets Forfeiture Fund* (June 21, 2000) ("AFMLS Memo"). In a second memorandum, JMD argued that the question whether there is a distinction between

¹ This \$89 million equals half of the total amount seized in the investigation. The other half was retained by a foreign government taking part in the investigation.

information and assistance under § 524(c)(2) does not need to be reached because the facts of the case at issue do not implicate any potential distinction between the two terms. See Memorandum for Michael A. Perez, Director, Asset Forfeiture Management Staff, from Stuart Frisch, General Counsel, Justice Management Division, *Re: Proposed Legal Distinction Between Provision of "Information" and Provision of "Assistance" with Respect to Proposed \$1.5 Million Award to Drug Enforcement Administration (DEA) Confidential Source (June 6, 2000)* ("JMD.Memo 2"). Our Office has been asked to resolve this dispute.

II. Discussion

Subsection 524(c)(1) establishes the Fund and makes it "available to the Attorney General without fiscal year limitation for [specified] law enforcement purposes." Among the specified purposes of the Fund is "the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Fund." 28 U.S.C. § 524(c)(1)(C). Subsection 524(c)(2) places a limitation on the use of the Fund for purposes described in paragraphs (c)(1)(B)² and (c)(1)(C):

Any award paid from the Fund for information, as provided in paragraph (1)(B) or (C), shall be paid at the discretion of the Attorney General or his delegate under existing departmental delegation policies for the payment of awards except that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for information pursuant to paragraph (1)(B) shall not exceed \$250,000. Any award for information pursuant to paragraph (1)(C) shall not exceed the lesser of \$250,000 or one-fourth of the amount realized by the United States from the property forfeited.

Thus, the statutory language permits payments from the Fund for "information or assistance" leading to a forfeiture, but appears to place certain limitations on the delegation of the authority to pay awards and on the amount of awards paid for "information."

We have considered several interpretations of this statute. An ideal reading of the provision would give effect to all of its words based on their ordinary meanings and would produce sensible results. *Moskal v. United States*, 498 U.S. 103, 108 (1990) ("In determining the scope of a statute, we look first to its language . . . giving the words used their ordinary meaning.") (internal citations and quotation marks omitted); *United States v. Menasche*, 348 U.S.

² Paragraph (c)(1)(B) authorizes the payment of awards for "information or assistance directly relating to violations of the criminal drug laws of the United States or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of the Internal Revenue Code of 1986." This paragraph is not implicated by this dispute because the award at issue is proposed to be paid pursuant to paragraph (1)(C).

528, 538-39 (1955) ("The cardinal principle of statutory construction is to save and not to destroy. . . . It is our duty to give effect, if possible, to every clause and word of a statute.") (quoting *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937), and *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)) (internal citations and quotation marks omitted); *Armstrong Paint & Varnish Works v. Nu-Enamel Corp.*, 305 U.S. 315, 333 (1938) ("[T]o construe statutes so as to avoid results glaringly absurd, has long been a judicial function."). No such ideal reading is possible here, however, because of the interpretive ambiguities created by the interaction between § 524(c)(1)(C), which authorizes the Attorney General to pay awards for "information or assistance leading to a civil or criminal forfeiture" and § 524(c)(2), which limits awards paid pursuant to paragraph (1)(C), but refers to awards paid from the Fund "for information." (Emphasis added.)

The first possible reading is that the statute distinguishes between *information* and *assistance*, that the limitations in subsection 524(c)(2) apply exclusively to awards for *information*, and that the statute places no restrictions whatsoever on awards from the Fund for *assistance*. Subsection 524(c)(1)(C) seems to authorize payments from the Fund for two distinct types of services by informants: the provision of information *or* the provision of assistance. Terms connected by the word "or" are commonly understood to be distinct alternatives that should ordinarily be treated separately. See *Garcia v. United States*, 469 U.S. 70, 73 (1984) ("Canons of construction indicate that terms connected in the disjunctive . . . be given separate meanings."); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("[T]erms connected by a disjunctive must be given separate meanings unless the context dictates otherwise."). See generally 1A Norman J. Singer, *Sutherland on Statutory Construction* § 21.14 (5th ed. 1992 & Supp. 2000) (observing that "or" usually separates terms that are used in the alternative and that the terms generally must be read to have different meanings in order to avoid redundancy). The limitations in subsection 524(c)(2) refer exclusively to awards for *information* as provided in paragraphs (1)(B) and (C). Thus, under this interpretation, the statute would place a \$250,000 limit on awards for *information*, but no monetary limit on award payments for *assistance* leading to a civil or criminal forfeiture. Furthermore, the limitation on delegation, stating that the authority to pay awards for information may be approved by the Attorney General or a delegate, except that the authority to pay an award of \$250,000 or more "shall not be delegated to any person other than [listed officials]," would apply only to awards for information. As a consequence, awards of any amount could be paid for *assistance*, and the power to approve such awards presumably could be delegated under the Attorney General's statutory authority, 28 U.S.C. § 510 (1994), to any officer or employee of the Department.

This interpretation, however, would be seriously flawed. It would give no meaning to the words "or more" in the limitation on delegation. Under § 524(c)(1)(C), *no* awards for information could exceed \$250,000. Thus, a provision concerning delegations of authority to pay awards for information of \$250,000 *or more* would have no effect. This would be contrary to the fundamental canon of statutory interpretation that an interpretation must give effect, if possible, to every clause and word of a statute. *Menasche*, 348 U.S. at 538-39; see also 2A *Sutherland* § 46.06 ("A statute should be construed so that effect is given to all its provisions, so that no part

will be inoperative or superfluous . . .”). Moreover, while the statute would purport to limit the officials to whom the Attorney General could delegate the authority to pay awards for information, it would not restrict at all the delegation of authority for awards for assistance that might be greater than \$250,000.

The second possible understanding of the statute, alluded to by JMD in its submissions,³ is to read “information” in subsection 524(c)(2) to mean both information *and* assistance. Under this theory, the entirety of subsection 524(c)(2)—the limitation on the Attorney General’s delegation of the authority to pay awards of \$250,000 or more *and* the limitation that awards not exceed \$250,000—would apply to awards for assistance as well as information. Thus, any awards over \$250,000 would be prohibited under § 524(c)(2).

This alternative approach presents one of the same problems as the previous reading: the phrase “or more” would be inoperative.⁴ If no award can be paid over \$250,000 for information *or* assistance, there is no purpose in delegating the authority to pay awards over \$250,000 for information *or* assistance. The words “or more” are meaningless. In addition, reading “information” in subsection 524(c)(2) to mean “information and assistance” renders the word “assistance” in subsection 524(c)(1)(C) meaningless. If the word “information” captured the concepts of information *and* assistance, there would have been no need to include the word “assistance” at all; it would be mere surplusage. Because of the strong presumption in favor of giving meaning, if possible, to every word of a statute, we are reluctant to endorse this interpretation.

The legislative history of the statutes creating and governing the Fund provides no particular support for either of these two approaches, nor does it suggest that Congress intended the surplusage that those interpretations would require us to accept. There is no evidence that Congress considered the relationship between information and assistance in section 524(c), and to the extent the legislative history discusses the monetary limitation on awards or the delegation of authority to pay awards over \$250,000 at all, it is ambiguous. The Fund was first created by the

³ JMD ultimately declines to take a position on whether the monetary limitation in § 524(c)(2) applies solely to awards for information under this statute, and argues instead that any potential distinction between information and assistance under the statute is not implicated by the facts of this case. However, JMD’s submissions suggest arguments in favor of applying the \$250,000 limitation to awards for both assistance and information. See JMD Memo 1, at 5; JMD Memo 2, at 1 n.2, 2 n.3. We address these arguments here.

⁴ It is also worth noting that, under both of the first two interpretations, the provision concerning the delegation of authority to pay awards would have extremely limited application, since it would apply only to awards of exactly \$250,000. It seems to us unlikely that Congress would have made the effort to limit the delegees who may pay awards of exactly \$250,000, if awards lower than that can be made by anyone the Attorney General designates and awards higher than that are prohibited.

Comprehensive Forfeiture Act of 1984, Pub. L. No. 98-473, tit. 2, § 310, 98 Stat. 2040, 2052, which authorized payment of awards "for information or assistance leading to a civil or criminal forfeiture . . . at the discretion of the Attorney General." The 1984 statute included a provision very similar to the existing restrictions, except that the limitation on the delegation of authority to make award payments for information was set at \$10,000, and the absolute limit on awards for information was set at \$150,000.⁵ The 1984 version, like the current statute, did not specifically refer to any limitation on delegations or the amount of payment for awards for assistance. In discussing this section, the Senate Judiciary Committee report stated:

Under new subsection (j), the amounts realized in profitable forfeitures would be deposited in a Drug Assets Forfeiture Fund which would be available, through the appropriations process, for payments, at the discretion of the Attorney General for four specified purposes. These purposes [include] . . . payments for information or assistance relating to a drug investigation or leading to a forfeiture of drug assets Reward payments from the fund in excess of \$10,000 must be authorized by either the Attorney General, Deputy or Associate Attorney General, Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. These awards also may not exceed a maximum of \$150,000 or, in the case of a reward in a forfeiture case, the lesser of \$150,000 or one quarter the amount realized by the United States in the forfeiture action.

S. Rep. No. 98-225, at 217 (1983), reprinted in 1984 U.S.C.A.N. 3182, 3400. While it could be argued that "[t]hese awards" in the last sentence refers to awards for both information *and* assistance, we do not find this to be a clear expression of congressional intent. It is ambiguous at best, and we believe it to be an insufficient basis for an interpretation rendering the words "or more" and "assistance" meaningless.⁶

⁵ The 1984 provision read:

Any award paid from the fund for information concerning a forfeiture . . . shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay an award of \$10,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for such information shall not exceed the lesser of \$150,000 or one-fourth of the amount realized by the United States from the property forfeited.

Id.

⁶ The Assets Forfeiture Amendments Act of 1988, which amended the limitation provision in subsection 524(c)(2) to read as it does today, provides no insight as to whether Congress intended for the limitations to reach awards for assistance, or only awards for information.

We therefore turn to, and endorse, a third interpretation that gives meaning to all of the words of the statute and squares with a sensible understanding of Congress's purposes. We read § 524(c) to mean that the Attorney General has discretion to make payments greater than \$250,000 for *assistance* leading to a civil or criminal forfeiture, but that she may only delegate the authority to approve awards of \$250,000 or more to the persons set forth in the statute. This reading gives effect to the words *information* and *assistance* in § 524(c)(1)(C). Furthermore, by contemplating that awards for *assistance* may exceed \$250,000, it opens the possibility that the words "or more" in § 524(c)(2) may have some meaning. That possibility can be realized if the limit in the delegation provision ("the authority to pay an award of \$250,000 or more shall not be delegated to any person other than [the enumerated officials]") means that the authority to pay *any award* of \$250,000 or more shall not be delegated to anyone other than those persons enumerated in the statute. Since awards for information are held to a \$250,000 cap, the awards of \$250,000 or more referred to in the delegation provision are those awards without such a cap, *i.e.*, awards for assistance.

We recognize that this interpretation requires us to employ a somewhat unusual understanding of the word "except" in the first sentence of § 524(c)(2).⁷ Commonly, the phrase that follows the word "except" is as an exception to the phrase that precedes it. In other words, the exception here ("except that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than [the enumerated officials]") is most naturally understood as an exception to the category of awards described immediately prior to the word "except" ("[a]ny award paid from the fund for information . . . shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards"). As we have discussed above, however, this reading of the statute would limit the delegation provision to awards for information and render the phrase "or more" meaningless. The best way to give effect to the words in the statute is to understand the language that follows the word "except" to be an additional limitation on all awards paid from the Fund, rather than an exception to the category of awards paid from the Fund for information.⁸

⁷ "Any award paid from the Fund for information, as provided in paragraph (1)(B) or (C), shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards, *except* that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration." (Emphasis added.)

⁸ We also recognize that this interpretation leaves a gap in the delegation provision of the statute. Under our preferred interpretation, the first part of the first sentence ("Any award paid from the Fund for information . . . shall be paid at the discretion of the Attorney General or his delegate") provides for a delegation to pay awards less than \$250,000 for information and the second part of the sentence ("except that the authority to pay an award of \$250,000 or more shall not be delegated to any person other than [the enumerated officials]") provides for a delegation to pay awards of \$250,000 or more for information or assistance. There is no provision in the

Congress could sensibly have intended this result. It could have understood *assistance* to involve, under some circumstances, greater effort or risk than the provision of *information* and to justify, under those circumstances, awards exceeding \$250,000. But to promote accountability and to ensure that these large awards were truly merited, Congress could have restricted the approval authority, in those cases, to the highest officials of the Department.

As JMD points out in its submission, this approach is at odds with both *The Attorney General's Guidelines on Seized and Forfeited Property* ("Guidelines") and a section-by-section analysis of the 1988 amendments that was sent to federal prosecutors by Attorney General Richard Thornburgh on November 16, 1988, expressly stating that awards for both information and assistance should not exceed \$250,000. JMD Memo 1, at 5; JMD Memo 2, at 2 n.3. It is true that an award for assistance over \$250,000 would constitute a departure from the Attorney General's *Guidelines*, which state that "[a]ny award pursuant to 28 U.S.C. § 524(c)(1)(C) shall not exceed the lesser of \$250,000 or one-fourth the amount realized by the United States from the property forfeited." *The Attorney General's Guidelines on Seized and Forfeited Property* § VII(F)(5) (1990). These *Guidelines*, however, were not intended to have the force of law, but rather to assist the Attorney General and her delegates in exercising their discretion under the statute. *Guidelines*, § I ("These Guidelines are not intended to create or confer any rights, privileges or benefits on prospective or actual claimants, defendants or petitioners. Likewise, they are not intended to have the force of law."). In an exercise of discretion, the Attorney General issued guidelines setting the limit for monetary awards for *assistance* to match the statutorily mandated limit for awards for *information*. The *Guidelines* are subject to alteration as appropriate: "The Deputy Attorney General or his designee may issue supplementary and interpretive guidance to address issues that arise under these Guidelines." *Id.* § III(C). These guidelines govern internal agency procedures with respect to the administration of the Department of Justice Assets Forfeiture Fund. As such, they merely establish guidelines for the exercise of the Department's discretion; they are not a binding limitation on the Attorney General's authority. See *Aulenback, Inc. v. Federal Highway Administration*, 103 F.3d 156, 169 (D.C. Cir. 1997) ("[A]gencies do not develop written guidelines to aid their exercise of discretion only at the peril of having a court transmogrify those guidelines into binding norms.") (citation and internal quotation marks omitted); *Western Radio Services Co. v. Espy*, 79 F.3d 896, 901 (9th Cir.) (Forest Service Manual providing guidelines for exercise of Forest Service's prosecutorial

statute concerning the delegation of the authority to pay awards less than \$250,000 for assistance. We believe the Attorney General may delegate the payment of such awards for assistance pursuant to her general delegation authority. 28 U.S.C. § 501 ("The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice any function of the Attorney General."). We acknowledge, however, that it seems unusual that Congress would include a specific provision addressing delegations of the power to pay awards less than \$250,000 for information, without accounting for delegations to pay awards of the same amount for assistance. Notwithstanding this weakness in our interpretation, we believe it to be the best of the three possible options.

discretion is not binding on the Service's authority.), *cert. denied*, 519 U.S. 822 (1996). The statute itself places no legal limitation on the amount of an award for assistance. Accordingly, the Attorney General is free to revise the *Guidelines* or make exceptions as appropriate.⁹

Similarly, we are not persuaded by the section-by-section analysis issued by the Attorney General on November 16, 1988, which described the 1988 amendment as "rais[ing] the maximum award for information or assistance leading to drug-related or racketeering-related forfeitures from \$150,000 to the lesser of \$250,000 or one-fourth of the amount realized from the forfeiture." Memorandum to Federal Prosecutors, from Dick Thornburgh, Attorney General, *Re: Anti-Drug Abuse Act of 1988* (Nov. 16, 1988), Section-by-Section Attachment, at 29. JMD correctly observed that the "[l]ong-continued contemporaneous and practical interpretation" of a statute by the executive officers charged with administering the statute is given great weight by courts in determining the meaning of an ambiguous statute. *See 2B Sutherland* § 49.03. We do not believe, however, that this section-by-section analysis is the type of long-continued contemporaneous interpretation to which the courts would give such weight. The section-by-section portion of the memorandum was described by Attorney General Thornburgh himself as a "quick reference" summary, issued after the bill was passed by Congress and two days before the President signed it into law, and it did not attempt to grapple with textual difficulties of this confusing provision. Memorandum to Federal Prosecutors at 1. Accordingly, we do not find the memorandum to be sufficient to control our interpretation of this statute.

JMD argues that even if, as we have found, there is a distinction between information and assistance in subsection 524(c)(1)(C), that difference is not implicated by the facts of this particular investigation. They contend that the services provided by the informant in this case cannot be characterized as anything other than the provision of information. AFMLS, in contrast, takes the position that the informant in this case provided assistance "in addition to the mere provision of information," and thus, the Attorney General may exercise her discretion to make an award from the Fund in excess of \$250,000. AFMLS Memo at 3. Such assistance, according to AFMLS, included general guidance to the DEA throughout the course of the investigation, identification of key personnel in a large drug trafficking organization, explanation of how specific money laundering schemes worked, identification and assistance with tracing illegal drug money, and the provision of testimony deemed essential for prosecutorial purposes. JMD counters that all of these services should be characterized as the provision of *information*, not *assistance*. Otherwise, all provision of information would also qualify as assistance and there would be no basis for placing a monetary limit on the amount of the award for information only.¹⁰

⁹ Because the *Guidelines* governing the payment of awards from the Fund were issued by the Attorney General in the exercise of her discretion under the statute, the Attorney General should make appropriate revisions or exceptions to the *Guidelines* to pay such awards if an award of more than \$250,000 is to be approved by a delegee rather than the Attorney General herself.

¹⁰ JMD acknowledges that there may be a category of assistance that would not also qualify as information, such as wearing a recording device or setting up a rendezvous, but

Section 524 does not include definitions of the terms *information* or *assistance*, nor does the legislative history of the 1984 act or the 1988 amendments elucidate what Congress intended by use of these terms. Accordingly, we believe it lies within the reasonable discretion of the Attorney General and her delegees to define these terms and to distinguish between them in the first instance.¹¹ Of course, the distinction between information and assistance that Congress has drawn in this statute must be recognized. "Assistance" must be defined as something more than or different from "information." The two terms could not be defined such that "assistance" would include all acts that constitute "information," thereby removing awards for information from the \$250,000 limitation set forth in the statute. Congress intended these terms to refer to distinct alternatives, and it subjected only one of those alternatives—awards for information—to the

suggests that no such assistance was provided here. JMD Memo 2, at 3 n.4.

¹¹ Our Office has not been asked, nor do we offer a view, on whether an informant could receive an award of more than \$250,000 exclusively in exchange for his testimony. In defining the terms *assistance* and *information* under the statute, it is important to be aware that courts are divided on whether paying an informant for testimony would run afoul of the antigratiuity statute, 18 U.S.C. § 201 (1994). Compare *United States v. Anty*, 203 F.3d 305, 309 (4th Cir. 2000) (18 U.S.C. § 201(c) does not preclude the government's payment of money to informants "to assist in investigating and prosecuting crimes, by giving truthful testimony"), *cert. denied*, No. 99-9966, 2000 WL 796310 (Oct. 2, 2000); *United States v. Barnett*, 197 F.3d 138, 145 (5th Cir. 1999) ("18 U.S.C. § 201(c)(2) is not violated when prosecutors compensate informants for their cooperation."), *cert. denied*, 120 S. Ct. 1966 (2000); *United States v. Albanese*, 195 F.3d 389 (8th Cir. 1999) (government does not violate 18 U.S.C. § 201(c) when it compensates testifying witnesses for participation in criminal investigation); *United States v. Murphy*, 193 F.3d 1, 9 (1st Cir. 1999) (18 U.S.C. § 201(c) does not apply to government; overruling holding by district court that payment of witnesses for testimony violated antigratiuity statute) *with United States v. Jackson*, 213 F.3d 1269, 1287-88 (10th Cir. 2000) (reserving question whether antigratiuity statute would permit prosecutors to pay cash for favorable testimony), *petition for cert. filed*, (U.S. Aug. 31, 2000) (No. 00-5999); *United States v. Harris*, 210 F.3d 165, 168 (3^d Cir. 2000) (holding that government may pay informants to gather information and testify about evidence, but reserving judgment on whether "the antigratiuity statute allows the government to pay a witness solely or essentially for favorable testimony"); *United States v. Condon*, 170 F.3d 687, 689 (7th Cir.) (reserving question whether antigratiuity statute would permit prosecutors to pay cash for favorable testimony), *cert. denied*, 526 U.S. 1126 (1999). While 18 U.S.C. § 3059B authorizes the Attorney General "[n]otwithstanding any other provision of law" to "pay awards . . . to any individual who assists the Department of Justice in performing its functions," it is unclear the extent to which the provision includes the authority to pay individuals for their testimony. Compare *Anty*, 203 F.3d at 309 ("In authorizing the payment of rewards for information, assistance, and services in the enforcement of criminal statutes, Congress surely must have contemplated payments to informants for assisting both in investigations and by testifying.") *with Harris*, 210 F.3d at 167-68 (citing 18 U.S.C. § 3059B, but reserving question whether government can compensate witness "solely or essentially for favorable testimony").

monetary limitation. Within these constraints, the Attorney General nevertheless has some range of discretion to define the two terms. We do not believe, however, that our Office is best suited to make this initial determination on behalf of the Department. Similarly, we express no view on whether it is appropriate for the Department to exercise its discretion to issue an award in excess of \$250,000 in this case.

III. Conclusion

We believe the preferred construction of the statute is the one that best permits us to give meaning to all the words of the provision. Thus, we conclude that awards may be paid from the Fund at the discretion of the Attorney General for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Fund. The only monetary limitation on the payment of awards from the Fund is that awards for *information* shall not exceed \$250,000 or one-fourth of the amount realized by the United States from the property forfeited. There is no statutory limitation on the amount of awards for *assistance* under § 524(c)(2); the amount of such awards lies within the reasonable discretion of the Attorney General. If the Attorney General chooses to exercise that discretion to pay an award over \$250,000 for assistance, she may exercise that authority herself, or she may delegate the authority to pay such an award only to one of the four persons listed (assuming the *Guidelines* are amended as discussed in n. 9). We express no view on the policy question whether the *Guidelines* should be amended to include awards over \$250,000. Furthermore, the determination of which activities constitute assistance and which constitute the provision of information is left to the reasonable discretion of the Attorney General and her delegates within the constraints discussed above. Our Office offers no view on whether the actions taken by the informant in this case are best characterized as information or assistance. In light of the close question of statutory interpretation presented here and the fact that payment of awards over \$250,000 would constitute a departure from current guidelines, we believe that any decision to pay such an award should be carefully considered to determine that the assistance provided is commensurate with the amount awarded and that the award promotes important law enforcement objectives.