

USAM (superseded)



---

# United States Attorneys' Manual

## Executive Office for United States Attorneys

### *Title 10*

USAM (superseded)

FOR USE OF ADMINISTRATIVE OFFICER

District: \_\_\_\_\_

Copy No.: \_\_\_\_\_

1985

This Manual is issued by, and remains the property of, the United States Department of Justice

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

SUMMARY  
TABLE OF CONTENTS

10-1.000	<u>INTRODUCTION</u>
10-2.000	<u>PERSONNEL</u>
10-3.000	<u>OPERATIONAL EXPENSES</u>
10-4.000	<u>PROCUREMENT/PROPERTY MANAGEMENT</u>
10-5.000	<u>SPACE MANAGEMENT/PHYSICAL SECURITY</u>
10-6.000	<u>COMMUNICATIONS</u>
10-7.000	<u>LEGAL COMPUTER SYSTEMS</u>
10-8.000	<u>COLLECTIONS</u>
10-9.000	<u>EQUAL OPPORTUNITY PROGRAM</u>
10-10.000	<u>LAW ENFORCEMENT COORDINATING COMMITTEE PROGRAM</u>

---

MARCH 28, 1984

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-18  
DATE OF TRANSMITTAL: September 10, 1986  
DATE OF TEXT: July 31, 1986  
EFFECTIVE DATE OF TEXT: January 22, 1987

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following chapter of Title 10.

USAM 10-9.000 EQUAL OPPORTUNITY PROGRAM

The following sections are new: 10-9.101-.103; 10-9.211, 10-9.231-.233; 10-9.300-.370 and 10-9.400. The following sections contain new material: 10-9.120; 10-9.200, .210, .220-.221, .230, .240-.241, .250-251, and .270.

USAM 10-2.832 Training Sources

The third paragraph of Section 10-2.832 A. has been revised to include additional specialized training conferences.

**INSTRUCTIONS TO MANUAL HOLDERS**

Insert this highlights page in front of Title 10.

**REMOVE:**

Ch. 9, pp. i-ii, 1-10  
Ch. 2, pp. 187-188

**INSERT:**

Ch. 9, pp. i-ii, 1-18  
Ch. 2, pp. 187-188

Record: This transmittal on Form AAA-10

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-24  
DATE OF TRANSMITTAL: June 24, 1986  
DATE OF TEXT: June 1, 1986  
EFFECTIVE DATE OF TEXT: July 25, 1986

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following section of Title 10.

USAM 10-6.310 Relations with Congress

This section has been changed to reflect current procedures governing Congressional liaison.

**INSTRUCTIONS TO MANUAL HOLDERS**

Insert this highlights page in front of Title 10

**REMOVE:**

Ch. 6, pp. 11-12

**INSERT:**

Ch. 6, pp. 11-12a

**Record:** This transmittal on Form AAA-10

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

SB  
6-5-86

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-21  
DATE OF TRANSMITTAL: April 15, 1986  
DATE OF TEXT: April 1, 1986  
EFFECTIVE DATE OF TEXT: May 8, 1986

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following section of Title 10.

USAM 10-3.000 OPERATIONAL EXPENSES

Section 10-3.310 entitled, Appraisers and Masters has been revised to further expand on the procedure for payment of special masters. This change is in accordance with the new guidelines on special masters issued by the Office of the Attorney General, see USAM 1-16.000.

**INSTRUCTIONS TO MANUAL HOLDERS**

Remove:

Ch. 3, pp. 17-18

Insert:

Ch. 3, pp. 17-18a

Record this activity on Form AAA-10.

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

SB  
6-5-86

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-19  
DATE OF TRANSMITTAL: March 20, 1986  
DATE OF TEXT: December 31, 1985  
EFFECTIVE DATE OF TEXT: April 21, 1986

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-5.210 Policy  
USAM 10-5.220 Priority Assignment of Parking Spaces  
for Employee Owned Vehicles

These sections have been revised to include parking spaces for handicapped employees.

USAM 10-5.300 PHYSICAL SECURITY  
USAM 10-5.310 General  
USAM 10-5.315 PROMIS Computer Security Standards

Section 10-5.315 is a new section and sets out PROMIS Computer Security Standards. Section 10-5.310 adds a reference to new section 10-5.315.

USAM 10-5.450 Elements of Plan--Automated Data Processing (ADP)  
Security

This is a new section.

The following sections have been renumbered:

USAM 10-5.430	<u>Elements of Plan--Tax Return Information</u>
USAM 10-5.460	<u>Elements of Plan--Identification of</u> <u>Deficiencies and Remedies</u>
USAM 10-5.470	<u>Dissemination of Plan</u>

**INSTRUCTIONS TO MANUAL HOLDERS**

Remove:

Ch. 5, pp. i-ii, 1-16

Insert:

Ch. 5, pp. i-ii, 1-22

Record this activity on Form AAA-10.

USAM (superseded)



SB  
24-11-86

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-17  
DATE OF TRANSMITTAL: March 1, 1986  
DATE OF TEXT: December 31, 1985  
EFFECTIVE DATE OF TEXT: March 24, 1986

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following section of Title 10.

USAM 10-7.000 LEGAL COMPUTER SYSTEMS

This section has been revised in full.

INSTRUCTIONS TO MANUAL HOLDERS

Remove:

Ch. 7, pp. i, 1-<sup>9</sup>~~12~~

Insert:

Ch. 7, pp. i, 1-12

Record this activity on Form AAA-10.

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

24-11-86  
JB

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-15  
DATE OF TRANSMITTAL: January 14, 1986  
DATE OF TEXT: December 17, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following section of Title 10.

USAM 10-2.621 Removal of an Assistant U.S. Attorney

The second and third paragraphs of this section have been revised to further clarify the procedures to be followed when contemplating the removal of an Assistant United States Attorney.

USAM 10-2.623 Other Disciplinary Actions Against an Assistant United States Attorney

The first paragraph has been revised to include "The Deputy Attorney General or the ..."

INSTRUCTIONS TO MANUAL HOLDERS

Remove:

Ch. 2, pp. 127-128

Insert:

Ch. 2, pp. 127-128

Record this activity on Form AAA-10.

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

24-10-85  
SB

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-14  
DATE OF TRANSMITTAL: November 29, 1985  
DATE OF TEXT: August 1, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.130 Nepotism

This section has been changed to reflect citation changes.

USAM 10-2.150 Part-Time Career Employment

Changes in 10-2.150 are necessary due to the issuance of a Department of Justice Order, 1340.1, Part-Time Career Employment Program, dated December 6, 1984, which provides specific guidelines that organizations must follow to establish a Part-Time Career Employment Program. (Reference memorandum to all United States Attorneys, dated July 8, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.188 Identification Documents

Section 10-2.188 implements OBD order 2610.1, Identification Documents for Employees and Contractors of the Offices, Boards and Divisions, dated March 8, 1985. (Reference memorandum to all United States Attorneys, dated June 14, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.421 Attorney and Non-Attorney Position Description Numbers

This section establishes a new number, P129TPU8, to track utilization of Assistant United States Attorney positions. (Reference memorandum to all United States Attorneys, dated June 12, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

INSTRUCTIONS TO MANUAL HOLDERS:

REMOVE:

Ch. 2, pp. 3-4, 13-14, ~~80~~<sup>81</sup>-84

INSERT:

Ch. 2, pp. 3-4, 13-14f,  
81-84

RECORD THIS ACTIVITY ON FORM AAA-10.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

4-10-88

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-12  
DATE OF TRANSMITTAL: November 29, 1985  
DATE OF TEXT: August 1, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.643 Performance Appraisal System for Attorneys Who Are Not Covered by the Performance Management and Recognition System

The performance appraisal program for Assistant U.S. Attorneys is being changed to require the definition of three levels of performance in order to bring the program into compliance with Office of Personnel Management regulations and Department of Justice guidelines.

USAM 10-2.644 Performance Appraisal System for Non-Attorneys Who Are Not Covered by the Performance Management and Recognition System

Section 10-2.644 is being updated to reflect the current definition applicable to overall ratings.

The titles of the above sections have been changed due to recent legislation renaming Merit Pay as the Performance Management and Recognition System. (All changes to the above are referenced in memorandum to all United States Attorneys, dated March 25, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.645 Performance Appraisal--Merit Pay Employees

This section has been renamed, Performance Appraisal--Performance Management Recognition System (PMRS) Employees, and the material contained in this section has been deleted. This section is now reserved pending issuance of Department of Justice Order.

USAM 10-2.651 The Attorney General's Awards

Section C, The John Marshall Award, has been changed to redefine the seven applicable areas of achievement.

**INSTRUCTIONS TO MANUAL HOLDERS:**

**REMOVE:**

Ch. 2, pp. 131-144

**INSERT:**

Ch. 2, pp. 131-144

**RECORD THIS ACTIVITY ON FORM AAA-10.**

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-11  
DATE OF TRANSMITTAL: November 29, 1985  
DATE OF TEXT: August 16, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.910 Attendance and Leave

Section 10-2.910 has been revised to state that all Presidentially-appointed United States Attorneys no longer accrue annual or sick leave. (Reference memorandum to all United States Attorneys, dated May 30, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.914 Leave Without Pay and  
USAM 10-2.932 New Enrollments and Changes

Sections 10-2.914 and 10-2.932 have been changed to incorporate regulations issued by the Office of Personnel Management which eliminate free health benefits coverage for federal employees who continue their enrollment under the Federal Employees Health Benefits (FEHB) program while in a nonpay status. (Reference memorandum to all United States Attorneys, dated June 19, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.912 Sick Leave

This revision details an employee's monetary obligation for salary monies received while on advanced sick leave in the event the employee leaves the federal service prior to returning to a duty status. (Reference memorandum to all United States Attorneys, dated March 4, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA).

INSTRUCTIONS TO MANUAL HOLDERS:

REMOVE:

Ch. 2, pp. 206a-216  
225-228

INSERT:

Ch. 2, pp. 206a-216a  
225-228

RECORD THIS ACTIVITY ON FORM AAA-10.

USAM (superseded)



UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

SB  
4-10-86

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-10  
DATE OF TRANSMITTAL: November 29, 1985  
DATE OF TEXT: August 21, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.521 Assistant United States Attorneys

This change incorporates into the existing section two new policies regarding the effective date of Assistant U.S. Attorneys (AUSA) administrative pay increases (API). Specifically, USAM 10-2.521 has been revised to state that Assistant U.S. Attorneys' API dates will be adjusted to accommodate time spent in a non-pay status, such as leave without pay or a break in service. (Reference memorandum to all United States Attorneys, dated February 15, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.542 Forms or Correspondence Mailed Directly to Payroll Office

This section has been changed to incorporate information which has been requested by the Justice Employee Data Service Center in order for employees to receive credit for FICA withholdings paid in another federal agency during a calendar year. Also, Section 10-2.542 has been revised to reflect a change in the Direct Deposit Sign-up Form, SF-1199A (Revised July 1984) which, effective August 1, 1985, is to be used for both new savings allotments and changes to savings allotments. (Reference memorandum to all United States Attorneys, dated April 18, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

**INSTRUCTIONS TO MANUAL HOLDERS**

Remove: Ch. 2, pp. 103-104,  
111-112

Insert: Ch. 2, pp. 103-104a,  
111-112a

**RECORD THIS ACTIVITY ON FORM AAA-10.**

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-9  
DATE OF TRANSMITTAL: November 1, 1985  
DATE OF TEXT: August 16, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.512 Court Appointed United States Attorneys

The incorporation of Bluesheet 10-2.512, dated July 22, 1985, changes the pay policy for compensation of court-appointed United States Attorneys.

USAM 10-2.511 U.S. Attorneys

This section has been changed to delete references to U.S. Attorneys paid at Executive Level IV. (Reference memorandum to all U.S. Attorneys, dated May 30, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

**INSTRUCTIONS TO MANUAL HOLDERS**

Remove: Ch. 2, pp. 99-100

Insert: Ch. 2, pp. 99-100

RECORD THIS ACTIVITY ON FORM AAA-10.

---

Supersedes Bluesheet USAM 10-2.512 (BS #10.005)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-8  
DATE OF TRANSMITTAL: November 1, 1985  
DATE OF TEXT: August 16, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.655 Quality Step Increase

The incorporation of Bluesheet 10-2.655, dated May 28, 1985, clarifies the criteria which must be met for an employee to be considered for a quality step increase (QSI) and to detail the documentation needed to nominate an employee for a QSI. The section also re-establishes a minimum time period that an employee must serve in a position prior to being nominated for a QSI; specifically, 120 days.

USAM 10-8.110; 10-8.111; and 10-8.112 Judgment Policy

Bluesheet 10-8.110-.112, dated April 13, 1985, adds new sections to 10-8.110 Judgment Policy.

USAM 10-3.530 Advances to Non-Department of Justice Personnel

Bluesheet 10-3.530, dated January 7, 1985, adds new material to section 10-3.530, entitled Payment for Travel Expenses.

---

Supersedes Bluesheets USAM 10-2.655 (BS #10.004);  
USAM 10-3.530 (BS #10.001); USAM 10-8.110-.112 (BS #10.003)

Title 10, Transmittal 10-B-8

**INSTRUCTIONS TO MANUAL HOLDERS:**

**Remove:**

Ch. 2, pp. 144a-146

Ch. 3, pp. 35-38

Ch. 8, pp. i, 1-6

Bluesheets USAM 10-2.655, dated 5/28/85,  
USAM 10-3.530, dated 1/7/85, and  
USAM 10-8.110-.112, dated 4/13/85

**Insert:**

Ch. 2, pp. 144a-146a

Ch. 3, pp. 35-38

Ch. 8, pp. i, 1-8

**RECORD THIS ACTIVITY ON FORM AAA 10**

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
TRANSMITTAL NUMBER: 10-B-7  
DATE OF TRANSMITTAL: July 31, 1985  
DATE OF TEXT: May 1, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards and Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

**INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL**

Please record receipt of this material on Form C-10, and distribute per Form B.

**HIGHLIGHTS**

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-2.312, Certification Procedures

The Personnel Management Staff has had its authority to examine for Paralegal Specialist positions, GS-9 to GS-12, for Victim/Witness Assistance and Law Enforcement Coordinating Committee Program positions extended to February 28, 1986. (Reference memorandum to all U.S. Attorneys, dated April 1, 1985, from Richard L. DeHaan, Director, Office of Administration and Review, EOUSA.)

USAM 10-2.315, Veterans Readjustment Appointments

This section is being revised to reflect provisions of Public Law No. 98-543, "Veterans' Benefits Improvement Act of 1984." This law extends the authority for Veterans Readjustment Appointments through September 30, 1986, and raises the maximum appointment grade level from GS-7 to GS-9. (Reference memorandum to all U.S. Attorneys, dated December 17, 1984, from Richard L. DeHaan.)

USAM 10-2.330, Temporary Non-Attorney Employment

This section has been amended to direct offices needing additional temporary non-attorney workyear allocations to submit their request, in writing, to the Director, Office of Administration and Review. (Reference memorandum to all U.S. Attorneys, dated April 1, 1985, from Richard L. DeHaan.)

USAM 10-2.331, Types of Temporary Non-Attorney Employment

Temporary appointments may now be made and extended, with Executive Office approval, in one year increments for a total of up to four years of service. Previously temporary appointments could not be for more than a total of two years of service without the approval of the Office of Personnel Management. In addition, temporary appointments may now be made at the GS-12 level and below. Previously these types of appointments were limited to grades at the GS-7 level and below. This authority does not apply to JJ, 1040, 30-day emergency, VRA, handicapped, or term appointments. (Reference memorandum to all U.S. Attorneys, dated April 1, 1985, from Richard L. DeHaan.)

USAM 10-2.342, Youth Opportunity Campaign

This section has been amended to permit U.S. Attorneys' offices to determine the financial eligibility of Youth Opportunity Campaign (YOC) program applicants when they cannot be obtained from local State Employment Service Offices. OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs has been included in the revised Appendix and Form Index. (Reference memorandum to all U.S. Attorneys, dated February 21, 1985, from Richard L. DeHaan.)

APPENDIX TITLE 10--FORM INDEX

This revision includes an updated Appendix and Form Index for Title 10.

INSTRUCTIONS TO MANUAL HOLDERS:

Remove: Ch. 2, pp. 51d-70a

Appendix pp. 1-10  
and Forms

Insert: Ch. 2, pp. 51d-70a

Appendix pp. 1-10  
and Forms

RECORD THIS ACTIVITY ON FORM AAA 10

2-10-86 JB

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE: 10  
 TRANSMITTAL NUMBER: 10-B-5  
 DATE OF TRANSMITTAL: February 20, 1986  
 DATE OF TEXT: January 27, 1986  
 EFFECTIVE DATE: February 24, 1986

To: Appropriate Administrative Personnel  
 Offices of U.S. Attorneys, Offices, Boards and Divisions  
 Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
 Executive Office for U.S. Attorneys

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS

The enclosed transmittal consists of revisions to the following sections of Title 10.

USAM 10-3.550 First Class Transportation

This section has been revised to reflect a change in the delegation of authority to approve first class travel to the Director, Executive Office for U.S. Attorneys.

USAM 10-3.560 Relocation

Section 10-3.560 has been revised to further clarify the eligibility requirements to receive relocation expenses and explains the new policy affecting relocation expenses which goes into effect March 1, 1986. (Reference memorandum to all United States Attorneys, dated January 27, 1986, from William P. Tyson, Director, Executive Office for U.S. Attorneys, re: Relocation Expenses.)

Bluesheet USAM 10-3.560, dated December 13, 1984, has been incorporated into Section 10-3.560.

Supersedes Bluesheet  
 USAM 10-3.560 (TM# 10.024)



**INSTRUCTIONS TO MANUAL HOLDERS:**

Remove

Ch. 3, pp. 39-40  
Bluesheet 10-3.560, dated  
12/13/84

Insert

Ch. 3, pp. 39-41

**RECORD THIS ACTIVITY ON FORM AAA-10**

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE 10  
TRANSMITTAL NO. 10-B-4  
DATE OF TRANSMITTAL: July 23, 1985  
DATE OF TEXT: April 1, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards & Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS:

The enclosed transmittal consists of revisions to the following chapter of Title 10.

USAM 10-4.350 Permanent Issue of Accountable Personal Property  
This section incorporates bluesheet 10-4.350 dated July 31, 1984.

USAM 10-4.418 Maintenance of Attorney-Client Information  
This section incorporates bluesheet 10-4.418 dated July 20, 1984.

INSTRUCTIONS TO MANUAL HOLDERS:

Remove

Ch. 4, TOC, pp. i-iii  
Ch. 4, pp. 45-~~56~~ <sup>46</sup>  
Ch. 4, pp. 53-57

Insert

Ch. 4, TOC, pp. i-iii  
Ch. 4, pp. 45-46a  
Ch. 4, pp. 53-58

Remove bluesheet 10-4.418 dated July 20, 1984, and bluesheet 10-4.350 dated July 31, 1984, from your Manual.

Record this activity on Form AAA-10.

Supersedes TM #10.016  
and TM #10.017

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

FORM FOR RECORDING INSERTION  
OF MANUAL TRANSMITTALS  
TITLE 10--EOUSA

NUMBER	CHAPTER(S)	DATE OF TEXT	INSERTED BY	DATE
B-1	10-2.000	Jan. 31, 1985	USAM Staff, EOUSA	9/16/85
B-2	10-2.000	May 1, 1985	USAM Staff, EOUSA	9/16/85
B-3	10-2.000 10-9.000	April 1, 1985	USAM Staff, EOUSA	9/16/85
B-4				
B-5				
B-6				
B-7				
B-8				
B-9				
B-10				
B-11				
B-12				
B-13				
B-14				
B-15				
B-16				
B-17				
B-18				
B-19				
B-20				

Request Manual Transmittals from your Administrative Officer  
For use of Manual holders  
FORM AAA-10

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE 10  
TRANSMITTAL No. 10-B-1  
DATE OF TRANSMITTAL: March 15, 1985  
DATE OF TEXT: January 31, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards & Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

HIGHLIGHTS:

The enclosed transmittal consists of revisions to Chapter 2 of Title 10.

USAM 10-2.310 General Information for Non-Attorney Positions

This section has been amended to include information on pre-employment interviews.

USAM 10-2.932 New Enrollments and Changes

This section has been changed to incorporate information and procedures to be used in connection with a new provision in the Federal Employees Health Benefits Program.

USAM 10-2.941 Introduction

This section has been changed to reflect an amendment to the Social Security Act.

Revisions to the Table of Contents, pg. vii.

INSTRUCTIONS TO MANUAL HOLDERS:

Remove:

Ch. 2, TOC, pg. vii, dated 10/19/84

Ch. 2, pp. 35-36, dated 4/3/84  
37-38, dated 5/25/84

Ch. 2, pp. 225-226, dated 4/13/84  
227-228, dated 5/25/84  
229-230, dated 11/28/84  
230a-232, dated 10/19/84

Insert:

Ch. 2, TOC, pg. vii,  
dated 1/31/85

Ch. 2, pp. 35-38, dated 1/31/85

Ch. 2, pp. 225-232, dated  
1/31/85

RECORD THIS ACTIVITY ON FORM AAA-10.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE            10  
TRANSMITTAL No.            10-B-2  
DATE OF TRANSMITTAL:    May 31, 1985  
DATE OF TEXT:              May 1, 1985

To:    Appropriate Administrative Personnel  
      Offices of U.S. Attorneys, Offices, Boards & Divisions  
      Department of Justice

      for distribution to Manual Holders of Title 10

From:    U.S. Attorneys' Manual Staff  
      Executive Office for U.S. Attorneys

---

INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

      Please record receipt of this material on Form C-10, and  
      distribute per Form B.

HIGHLIGHTS:

      The enclosed transmittal consists of revisions to  
      USAM 10-2.311, entitled Merit Promotion Plan. This section  
      has been amended to include revised citations.

INSTRUCTIONS TO MANUAL HOLDERS:

Remove:

      Ch. 2, pp. 37-52

Insert:

      Ch. 2, pp. 36c-52 (Dated 5/1/85)

RECORD THIS ACTIVITY ON FORM AAA-10.

# UNITED STATES ATTORNEYS' MANUAL TRANSMITTAL

AFFECTING TITLE                    10  
TRANSMITTAL NO.                    10-B-3  
DATE OF TRANSMITTAL:            June 27, 1985  
DATE OF TEXT:                      April 1, 1985

To: Appropriate Administrative Personnel  
Offices of U.S. Attorneys, Offices, Boards & Divisions  
Department of Justice

for distribution to Manual Holders of Title 10

From: U.S. Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

---

## INSTRUCTIONS TO ADMINISTRATIVE PERSONNEL

Please record receipt of this material on Form C-10, and distribute per Form B.

### HIGHLIGHTS:

The enclosed transmittal consists of revisions to the following chapters of Title 10.

USAM 10-2.800 TRAINING AND CONTINUING EDUCATION

This section incorporates bluesheet 10-2.800 and 10-9.160 dated April 30, 1984.

USAM 10-2.810 Attendance at Meetings

This section has been revised. Currently, USAM 10-2.810 does not give the United States Attorneys the authority to pay for expenses that are incurred when attending professional meetings such as bar association meetings. The Department, however, interprets professional meetings to include bar association meetings, and often will pay the related expenses incurred by employees while attending such meetings.

USAM 10-9.150 Handicapped Employees

This section incorporates bluesheet 10-2.800 and 10-9.160 dated April 30, 1984. Section 10-9.160 has been renumbered 10-9.150.

INSTRUCTIONS TO MANUAL HOLDERS:

Remove:

Ch. 2, pp. 181-182

Ch. 9, TOC p. i

Ch. 9, pp. 1-10

Insert:

Ch. 2, pp. 181-182

Ch. 9, TOC p. i

Ch. 9, pp. 1-10

Remove bluesheet 10-2.800 and 10-9.160 dated April 30, 1984,  
from your Manual.

Record this activity on Form AAA-10.

USAM (superseded)



USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DETAILED  
TABLE OF CONTENTS  
FOR CHAPTER 1

	<u>Page</u>
10-1.000 <u>INTRODUCTION</u>	1
10-1.100 PURPOSE OF THE TITLE	1
10-1.200 DISTRIBUTION AND DISCLOSURE	1
10-1.300 REVISION AND MAINTENANCE	2

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-1.000 INTRODUCTION

10-1.100 PURPOSE OF THE TITLE

This Title to the United States Attorneys' Manual was prepared by the Executive Office for U.S. Attorneys as a guideline and resource book for administrative practices relating to U.S. Attorneys' offices. It is designed to be the repository of administrative information for U.S. Attorneys and their administrative personnel. While not meant as a substitute for the directives system and other Departmental communications relating to administration, this Title is intended to contain, either directly or by use of reference, relevant administrative information required by a U.S. Attorney's office.

This Title will serve as a repository where statements of administrative policy and/or guidance are collected and organized as they are issued. Thus, subsequent to its issuance, this Title should continue to reflect administrative policy and procedures as they evolve.

This Title, as all the other Titles of the United States Attorneys' Manual, is intended to be comprehensive. When the materials in this Title conflict with earlier statements issued by the Executive Office or the Department at large, this Title shall control, except for pronouncements of the Attorney General. Should there arise a situation in which a Departmental policy statement predating this Title relates to a subject not specifically addressed by the Title, the prior statement controls, but this situation should be brought to the attention of the Manual staff, Executive Office for U.S. Attorneys.

For an explanation of the numbering system of this Title, see USAM 1-1.320.

The appendix to Title 10 contains copies of forms cited in this Title.

10-1.200 DISTRIBUTION AND DISCLOSURE

This Title, like all Titles of the United States Attorneys' Manual, is United States government property. It is issued to be used in conjunction with official duties and must be returned to the appropriate Administrative Officer prior to leaving the Department. It is the Administrative Officer's responsibility to ensure that this occurs. If proper property management techniques are applied to this Title, there

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

should be no need to request a new copy when one employee possessing a copy leaves the U.S. Attorney's office and a new employee enters on duty to take his/her place.

This Title is releasable pursuant to the Freedom of Information Act.  
See USAM 1-5.130.

Proper distribution of this Title is as follows: all U.S. Attorneys; their office libraries; all Supervisory Assistant U.S. Attorneys; key administrative personnel such as administrative officers (and administrative assistants in larger offices), accounting clerks, docket clerks, and collections clerks; and key support staff supervisors with a copy of the index to all Assistant U.S. Attorneys.

This Title, as all others, is published by the Executive Office and is distributed in bulk to the Administrative Officer of each U.S. Attorney's Office. These persons receive all binders and inserts as well, and distribute them according to "District Distribution of U.S. Attorneys' Manual," Form B.

The requisition of additional partial sets, binders, or other missing items should follow the same procedure as a request for a new set.

#### 10-1.300 REVISION AND MAINTENANCE

For a fuller description of this area, see USAM 1-1.500.

In order to keep this Title current, documents titled "Manual Transmittals" (composed of additional or replacement Manual pages for this Title) will be mailed to the Administrative Officer responsible for in-house distribution.

That person should acknowledge receipt of the Transmittal by filling out "Form for Recording Receipt of Manual Transmittals" (Form C) before distributing these materials per Form B.

Each holder is responsible for inserting these Transmittals, per the directions on the covering memorandum accompanying the transmittal, and filling out "Form for Recording Insertion of Manual Transmittals" (Form A). Initially, this Title is sent complete with guide cards and binders and only Form C need be completed.

When a communication affecting this Title is issued, before it is sent to the U.S. Attorneys, it will be sent to the Executive Office for U.S. Attorneys for review, comment, and ultimate inclusion into this

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Title. Once the affected portions of the Title have been identified, the communication will be printed by the Executive Office on light blue paper (except for pronouncements of the Attorney General, which are printed on white paper, as are pronouncements of the Deputy Attorney General), and sent to all U.S. Attorneys' offices in sufficient quantity to be included in all copies of this Title. These communications should be inserted by all holders of the Title in a place adjacent to the affected area. After this communication has been reviewed by the Attorney General's Advisory Committee of U.S. Attorneys and approved by the Associate Attorney General, it will be included in a transmittal revising the affected area. All these "temporary" communications are to be considered authoritative, and have a life span of five months. If not incorporated into the Title within this period of time, they should be discarded, except for whitesheets issued by the Attorney General or Deputy Attorney General, which do not expire.

The United States Attorneys' Bulletin, a bi-weekly publication of the Executive Office includes information which should be utilized by holders of the United States Attorneys' Manual to determine whether their copies of the Manual are current. The odd-numbered issues of the Bulletin publish a listing of all bluesheets and whitesheets in effect. Manual-holders should refer to these listings to determine if they have received all updating material for the Manual. By referring to these indices, it can be determined if one's copy of this or any other Title is up-to-date.

USAM (superseded)



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-2.210	<u>U.S. Attorneys</u>	14
10-2.211	Appointment Forms	14
10-2.220	<u>Assistant U.S. Attorneys</u>	15
10-2.221	Recruitment	15
10-2.222	Preparation and Submission of Forms for Assistant U.S. Attorney Applicants	18
10-2.223	90-Day Temporary Appointment Waiver	25
10-2.224	Preparation of Forms	27
10-2.225	Appointment Forms	28
10-2.230	<u>Special Assistant U.S. Attorneys</u>	28
10-2.231	Justification and Supporting Information for the Appointment	30
10-2.232	Forms Required in Support of Appointments	32
10-2.233	Security Checks Required	33
10-2.234	Oath of Office	34
10-2.240	<u>Sabbatical Program</u>	35
10-2.250	<u>Cross Designation of Federal Prosecutors as State and Local Prosecutors</u>	
10-2.300	NON-ATTORNEY RECRUITMENT AND HIRING	36
10-2.310	<u>General Information for Non-Attorney Positions</u>	36
10-2.311	Merit Promotion Plan	38
10-2.312	Certification Procedures	52
10-2.313	Reinstatement	54
10-2.314	Transfers and Reassignment	54
10-2.315	Veterans Readjustment Appointments	55
10-2.316	Details	56
10-2.317	Priority Placement of Employees Entitled to Grade/Pay Retention Benefits	58
10-2.320	<u>Employment Forms and Procedures: Non-Attorney Personnel</u>	59
10-2.330	<u>Temporary Non-Attorney Employment</u>	62
10-2.331	Types of Temporary Non-Attorney Employment	62
10-2.332	Forms and Procedure	64
10-2.340	<u>Student Employment</u>	65



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-2.341	Volunteer Student Employment	65
10-2.342	Youth Opportunity Campaign	68
10-2.343	College-Work-Study Program	70a
10-2.344	Summer Student Assistant Program	73
10-2.345	Comprehensive Employment and Training Act (CETA)	76
10-2.400	POSITION MANAGEMENT AND CLASSIFICATION	77
10-2.410	<u>Duties</u>	77
10-2.411	United States Attorneys	77
10-2.412	Assistant and Special Assistant United States Attorneys	78
10-2.413	Paralegal Specialists (GS-950)	78
10-2.414	Legal Technicians (GS-986)	80
10-2.415	Legal Clerks (GS-986)	80
10-2.416	Secretaries (GS-318)	81
10-2.417	Administrative Officers and Assistants	82
10-2.420	<u>Positions Descriptions and Classifications</u>	82
10-2.421	Attorney and Non-Attorney Position Description Numbers	82
10-2.422	Procedure for Submission	83
10-2.423	Classification	86
10-2.424	Classification Appeals	87
10-2.425	Designation and Justification of Supervisory Assistant United States Attorneys	88
10-2.426	Designation of Non-Attorney Supervisory Positions	89
10-2.430	<u>Position Management and Review</u>	91
10-2.440	<u>Vacancy Control</u>	94
10-2.450	<u>Allocation of Positions</u>	94
10-2.460	<u>Organization</u>	97
10-2.461	Executive Office for United States Attorneys (Organizational Chart)	97
10-2.462	Official Duty Station	99
10-2.500	COMPENSATION AND PAY	99
10-2.510	<u>Standard Compensation</u>	99
10-2.511	United States Attorneys	99
10-2.512	Court-Appointed United States Attorneys	99

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-2.513	✓ Supervisory Assistant United States Attorneys	100
10-2.514	✓ Assistant United States Attorneys	101
10-2.515	✓ Special Assistant United States Attorneys	101
10-2.516	Support Staff	101
10-2.517	Merit Pay	102
10-2.520	<u>Salary Increases</u>	103
10-2.521	Assistant United States Attorneys	103
10-2.522	Non-Attorney Promotions	104
10-2.523	Within-Grade Salary Increases	105
10-2.524	Retroactive Pay Increases and Promotions	107
10-2.530	<u>Overtime and Compensatory Leave</u>	107
10-2.531	Authority	107
10-2.532	Payment of Overtime	108
10-2.533	Time Spent in Training as Hours of Work Under FLSA	110
10-2.534	Compensatory Leave	110
10-2.540	<u>Payroll</u>	111
10-2.541	Time and Attendance Reports	111
10-2.542	Forms or Correspondence Mailed Directly to Payroll Office	112
10-2.543	Substitute Checks	112
10-2.544	Supplemental and Manual Checks	114
10-2.545	Other Problems	115
10-2.546	Erroneous Payments	115
10-2.547	Justice Earnings Statement	115
10-2.600	EMPLOYEE MANAGEMENT RELATIONS	116
10-2.610	<u>Employee Grievances</u>	116
10-2.611	Authority and Scope	116
10-2.612	Employee Rights	118
10-2.613	Grievance Procedures	119
10-2.614	Performance Rating Grievances by Non-Attorneys	121
10-2.615	Performance Rating Grievances by Assistant United States Attorneys	122
10-2.620	<u>Discipline and Adverse Action</u>	126
10-2.621	Removal of an Assistant United States Attorney	127
10-2.622	Removal of a Veteran Assistant United States Attorney	127

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-2.623	Other Disciplinary Actions Against an Assistant United States Attorney	128
10-2.630	<u>Labor Management Relations</u>	128
10-2.631	Authority	128
10-2.632	Rights of Employee	128
10-2.633	Procedures	129
10-2.640	<u>Employee Performance</u>	129
10-2.641	Probationary or Trial Period for New Employees	129
10-2.642	Probationary Period for Supervisors and Managers	130
10-2.643	Performance Appraisal System for Attorneys Who are Not Covered by Merit Pay	132
10-2.644	Performance Appraisal System for Non-Attorneys Who are Not Covered by the Merit Pay System	136
10-2.645	Performance Appraisal--Merit Pay Employees	139
10-2.650	<u>Awards</u>	141
10-2.651	The Attorney General's Awards	142
10-2.652	The Director's Awards	143
10-2.653	[RESERVED]	144a
10-2.654	[RESERVED]	144a
10-2.655	Quality Within-Grade Increase	144a
10-2.656	Special Achievement Awards	146
10-2.657	Other Awards	148
10-2.658	Senior Litigation Counsel	148a
10-2.659	Public Service Awards	151
10-2.660	<u>Standards of Conduct</u>	151
10-2.661	Misconduct	152
10-2.662	Financial Disclosure Report	152
10-2.663	Participation by DOJ Employees in Outside Cases	153
10-2.664	Outside Activities	154
10-2.665	Teaching and Lecturing	155
10-2.666	Civic Organizations, Professional Boards and Committees	155
10-2.667	Pro Bono Work	156
10-2.668	Gifts Received from Foreign Governments	156
10-2.669	Post-Government Employment Restrictions	157
10-2.670	<u>Office Hours of Operation</u>	179

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10-- EOUSA

		<u>Page</u>
10-2.671	Hours of Duty	179
10-2.672	Flexitime	179
10-2.700	[RESERVED]	181
10-2.800	TRAINING AND CONTINUING EDUCATION	181
10-2.810	<u>Attendance at Meetings</u>	181
10-2.820	<u>Attorney Training</u>	182
10-2.821	Attorney General's Advocacy Institute	182
10-2.822	Training Outside the AGAI	184
10-2.823	Training Resources Lending Library	184
10-2.824	Executive Development	185
10-2.830	<u>Non-Attorney Training</u>	186
10-2.831	Identification of Training Needs	186
10-2.832	Training Sources	187
10-2.833	Supervisory Training	190
10-2.840	<u>Upward Mobility Program</u>	191
10-2.850	<u>Authorization and Payment</u>	195
10-2.851	Authority to Approve Training	195
10-2.852	Completion of Training Request	197
10-2.853	Cancellation of Training	206
10-2.900	EMPLOYEE BENEFITS	206a
10-2.910	<u>Attendance and Leave</u>	206a
10-2.911	Annual Leave	207
10-2.912	Sick Leave	211
10-2.913	Holidays	213
10-2.914	Leave Without Pay	215
10-2.915	Administrative Leave	216
10-2.916	Court Leave	218
10-2.917	Absence Without Leave	219
10-2.918	Maternity Leave	220
10-2.919	Military Leave	221
10-2.920	<u>Federal Employees Group Life Insurance</u>	222
10-2.921	Introduction	222
10-2.922	New Enrollments	223
10-2.923	Waivers	223
10-2.924	Designation of Beneficiary	224
10-2.925	Conversions	224a
10-2.926	Retirement & FEGLI	225

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-2.930	<u>Health Benefits</u>	226
10-2.931	Introduction	226
10-2.932	New Enrollments	226
10-2.933	Retirement and FEHB	228
10-2.934	Conversion Rights	228
10-2.935	Open Season	229
10-2.940	<u>Retirement</u>	229
10-2.941	Introduction	229
10-2.942	Designation of Beneficiary	230a
10-2.943	Optional Retirement	230a
10-2.944	Disability Retirement	230a
10-2.945	Discontinued Service Retirement	231
10-2.946	Deferred Annuity	231a
10-2.947	Refunds	232
10-2.948	Deposit or Redeposit	232c
10-2.949	Application Procedure	233a
10-2.950	<u>Unemployment Benefits</u>	233a
10-2.951	Introduction	234
10-2.952	Determination	234
10-2.953	Employer Responsibilities	235
10-2.954	Occupational Safety and Health Program	236
10-2.955	Incident Investigations	238
10-2.956	Occupational Safety and Health Committee [Reserved]	239
10-2.957	Occupational Safety and Health Training [Reserved]	239
10-2.958	Recordkeeping and Reporting Requirements [Reserved]	239
10-2.960	<u>Workers' Compensation</u>	239
10-2.961	Introduction	239
10-2.962	Jurisdiction	239
10-2.963	Application Procedure by Employee	239
10-2.964	Employer Responsibilities	240
10-2.970	<u>Death Benefits</u>	244
10-2.971	Possible Benefits	244
10-2.972	CSRS Survivor's Annuity	245
10-2.973	OFEC Death Benefits	245
10-2.974	Health Benefits	246
10-2.975	Unpaid Compensation	246
10-2.976	Responsibilities of the Employing Office	246
10-2.977	Responsibilities of the Personnel Office	247

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.000 PERSONNEL

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

10-2.100 EMPLOYMENT AND SEPARATIONS (GENERAL)

10-2.101 Authority to Hire

Authority to hire employees has not been delegated to the U.S. Attorneys. The appointing authority for attorneys and law students has been delegated by the Associate Attorney General to the Director of the Executive Office. The Personnel Officer, Executive Office, is the appointing authority for non-attorneys, except law students. No commitment shall be made to an applicant prior to the receipt of approval from the appropriate appointing authority.

10-2.110 Oath of Office

All employees are required to execute an oath of office (SF-61) upon appointment. See 5 U.S.C. §§2903, 3331. The head of the Executive Office is authorized to administer personally and to delegate authority to administer the oath of office. The U.S. Attorneys and Personnel Officer are delegated such authority by the Director. This authority may be redelegated in writing. In addition, the following individuals are authorized to administer the oath of office:

- A. Federal judges (28 U.S.C. §459);
- B. United States magistrates (28 U.S.C. §636);
- C. Clerks and deputy clerks of the U.S. courts (28 U.S.C. §953); and
- D. Other individuals authorized by local law to administer the oath (i.e., notaries public, state judges, etc.).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The "date of appointment" is normally the date upon which the new employee enters on duty. It is not the date of the appointment letter. If an employee is transferring from another federal agency without a break in service, the date of appointment is on the immediately preceding Sunday if the employee enters on duty on Monday. The date of appointment need not coincide with the date the oath is administered.

The new employee must sign the SF-61, Appointment Affidavit, which must then be signed by the individual administering the oath and submitted to the Personnel Office, Executive Office. No employee can be paid until the Personnel Office receives the SF-61. The SF-61 for all new employees must be received by the Personnel Office not later than the second Thursday of the pay period in which an employee enters on duty in order to insure that the new employee receives his/her initial pay check on time.

10-2.120 Movement from Competitive to Excepted Service

The standard memorandum set forth below, Notice to Competitive Applicants or Employees Proposed for Appointment to Excepted Service Positions, must be prepared and presented to any competitive applicant or employee proposed for appointment to a position in the excepted service.

The two most common examples of an excepted service position in the offices of the U.S. Attorney are Assistant U.S. Attorneys and "Schedule C" secretaries. (Please note that all attorney positions in the government are excepted.)

Appointments cannot be made until the employee has been properly advised in writing that, upon acceptance of the excepted position, he/she will lose the job protection rights afforded competitive service employees under 5 U.S.C. §7501 (Adverse Action Statute).

The memorandum, signed by the applicant, must be submitted with the appointment request to the Executive Office for U.S. Attorneys:

Re: Notice to Competitive Applicants or Employees Proposed for Appointment to Excepted Service Positions.

Office of Personnel Management regulations provide that a competitive service applicant or employee, proposed for an excepted appointment may not be appointed until he/she is advised in writing that acceptance of the excepted appointment will take the employee out of the competitive service while

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

he/she occupies the position. This requirement is for the purpose of clearly notifying the employee that, upon acceptance of the excepted position, he/she will lose the job protection rights afforded competitive service employees under 5 U.S.C. §7501.

This is to advise you that the position of \_\_\_\_\_ [title] in the office of the U.S. Attorney, \_\_\_\_\_ [district] Department of Justice, is an excepted position. Your appointment to this position will be an excepted appointment since the position cannot be filled by the competitive process. Your acceptance of this excepted appointment will result in your voluntarily leaving the competitive service. If this condition of employment is acceptable to you, please so indicate by signing the following statement and returning this notice to the Executive Office for United States Attorneys.

I have read and understand this information and voluntarily relinquish my competitive position. In accepting this appointment, I understand that I am leaving the competitive service.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

10-2.130 Nepotism

5 U.S.C. §3110 restricts the employment of relatives on a temporary or permanent basis in the same agency.

Specifically, any person who has authority to appoint or promote, or to recommend the appointment or promotion of employees supervised by him/her, may not advocate a relative's appointment, promotion, or advancement anywhere in the Department of Justice. See 5 U.S.C. §3110(b). The term relative includes the following relationships: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepdaughter, stepson, stepbrother, stepsister, half brother or half sister. While this does not mean that relatives cannot work in the same office, care should be taken to ensure that the provisions described above are met. The Personnel Management Staff, Executive Office for U.S. Attorneys, should be advised whenever relatives are employed or are about to be employed by the same office.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Member-of-family restrictions apply to summer and student employment as well. See 5 C.F.C. §§213.3101(b), 338.202(a). The sons and daughters of Department of Justice employees normally cannot be appointed to summer or student positions. Also, the above requirements of 5 U.S.C. §3110 must be met.

10-2.140 Reemployed Annuitants

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

All requests for the appointment of a reemployed annuitant must include a memorandum of justification. Such appointments are for periods of up to six months. Requests for approval of extensions of the appointments of reemployed annuitants should be forwarded to the Personnel Management Staff, Executive Office, at least one month prior to the proposed effective date.

The salaries of reemployed annuitants are reduced by the amount of their annuities. No deductions are made from their pay for retirement, FICA, life insurance, or health benefits. Annuitants who have been reemployed on a continuous basis for at least one year are eligible for a supplemental annuity upon their resignation. Reemployed annuitants may be separated with no appeal rights at any time by the Associate Attorney General (attorneys) or Assistant Director, Personnel Management Staff, Executive Office (non-attorneys).

10-2.150 Part-Time Career Employment

Part-time employment is employment of any permanent employee under an excepted or competitive appointment on a part-time work schedule of 16 to 32 hours per week in a position at grades GS-1 through GS-15 or equivalent. A part-time employee is counted against the full-time equivalent (FTE) work year personnel ceiling.

A. Policy

It is the policy of the Executive Office for U.S. Attorneys and the Offices of the U.S. Attorneys to provide part-time permanent employment

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

B. Purpose

In accordance with the Part-Time Career Employment Act of 1978 and Departmental guidelines, the purpose of the Part-Time Career Employment Program is to allow talented workers who might not otherwise be available for employment to enter the work force. The Part-Time Career Employment Program also provides the opportunity for current permanent employees to convert from full-time schedules to part-time schedules.

Part-time employment may be used to allow an employee to ease into retirement; to gradually return to the work force after a period of absence; or to pursue personal goals, such as completing an education.

Job sharing is a method of staffing which allows an office to offer employment opportunities to more than one individual while utilizing only one position. Each job sharer may work from 16 to 32 hours a week; however, the total time worked by both employees may not exceed 40 hours a week. Although job sharers normally split the hours of a full-time position equally, this is not an absolute requirement. A variety of different work scheduling arrangements can be used. For instance, one job sharer can work in the mornings and the other in the afternoon or job sharers could alternate days. Job sharers may alternate weeks; however, when job sharers alternate weeks each job sharer may work no more than 32 hours a week and must have at least one hour of work regularly scheduled in each of the two weeks of the bi-weekly pay period. The work schedule of the job sharers may overlap but this is not recommended due to the increased costs an office would incur for space, furniture, and equipment for both employees during the overlap. (See DOJ Order 1340.1, Appendix 2.)

C. Responsibilities

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

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- a. Issuing appropriate instructions on the implementation and administration of the program;
  - b. Reviewing program achievements;
  - c. Responding to Departmental and OPM reporting requirements; and
  - d. Monitoring the program for compliance with Departmental and OPM policy guidance.
3. Administrative Officers are responsible for administration of the program within their offices by:
- a. Monitoring employment statistics, such as size of work force, turnover rate and workload fluctuations to determine if it may be desirable to establish a part-time position;
  - b. Monitoring patterns of overtime utilization to determine if the work could be more appropriately performed by utilizing a part-time worker instead of paying overtime rates;
  - c. Ensuring that all sources are considered when advertising part-time vacancies in order to actively include women, minorities and handicapped individuals; and
  - d. Performing administrative tasks in support of the program.

D. Limitations:

The following limitations are applicable under the Part-Time Career Employment Program.

1. An office shall not abolish any position occupied by a full-time employee to make the duties of the position available to be performed on a part-time basis.
2. Employees who are employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.
3. Tours of duty of 33 to 39 hours per week for part-time career employees cannot be authorized. Tours of duty of 33 to 39 hours cannot be counted toward the goals of the Part-Time Career Employment Program. However, unexpected increases in workload may require an

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

office to increase temporarily an employee's tour of duty. An increase above 32 hours is permitted for a maximum of two consecutive pay periods.

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

E. Part-time Employment Practices:

1. Requests to Convert to Part-time Tours of Duty

An employee currently employed on a full-time permanent appointment who is interested in converting to a part-time tour of duty should be directed to submit a written request for a conversion to a part-time work schedule to the U.S. Attorney or his/her designee.

The written request must include the proposed tour of duty and the specific reason(s) why the employee desires part-time employment. The employee may also include a recommendation on how the excess work may be performed. The U.S. Attorney, or his/her designee, should take the following into consideration when evaluating a request for conversion to part-time employment: 1) the workload of the office; 2) the ability to retain a trained employee, even if on a part-time basis; and 3) the impact of the conversion on the morale of the office.

The Administrative Officer is to inform the employee of the effect that converting to a part-time schedule will have on leave accrual rates, health and life insurance, holiday pay, and other items outlined in DOJ Order, 1340.1, Appendix 1, dated December 6, 1984.

If the decision is to allow the employee to convert to a part-time work schedule, the Administrative Officer is to submit to the Director, Office of Administration and Review, EOUSA, a memorandum detailing the nature of the request and the employee's name, title, and tour of duty so that adjustments can be made to personnel ceiling records. An SF-52, Request for Personnel Action, also is to be submitted to the Personnel Management Staff. Item C, Personnel Action Requested, of the SF-52 is to indicate "Change in Work Schedule." Districts are to specify the tour of duty, i.e., the days and hours the employee is scheduled to work, in Section I, Remarks by Requesting Office, of the SF-52.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

If the request is denied by the district, the employee is entitled to a response. The response may be made orally or in writing.

2. Review of Vacant Positions

Each Office is to review vacant or newly allocated full-time permanent positions for feasibility of filling them on a part-time basis. The review shall consider workload fluctuation, size of work force, turnover rate, and patterns of overtime.

Each SF-52, Request for Personnel Action, submitted to hire an attorney or non-attorney candidate on a full-time basis is to contain the following remark in section I, Remarks by Requesting Office, of the SF-52: "This position has been reviewed for the feasibility of being filled on a part-time basis."

If a position is to be filled on a part-time basis, each office should publicize the part-time opportunity as widely as possible. Publicity for non-attorney positions should include at a minimum the local Federal Job Information Center and local and state employment offices. It is recommended that qualified minority, women, and handicapped persons be considered for both attorney and non-attorney part-time employment opportunities.

F. Reporting Requirements:

The Executive Office will solicit reporting information on April 1 and October 1 of each year to meet the Departmental reporting dates of May 1 and November 1 of each year. Each district will be required to report the following:

1. Number of positions reviewed for feasibility of converting to a part-time tour of duty;
2. Number of conversions from full-time to part-time tours of duty;
3. Number of vacant positions filled on a part-time basis; and
4. Number of new positions established as part-time positions.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.160 Employee Orientation

A. Policy

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

B. Purpose

The purpose of the orientation program is to assist new employees in adjusting readily to their jobs and work environment and in becoming familiar with the functions on the Executive Office for U.S. Attorneys, the Offices of the U.S. Attorneys, and the organizational unit to which they are assigned.

C. Responsibilities

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

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

3. The Personnel Office is responsible for:

a. The general intent of the orientation program;

b. Keeping administrative officers and supervisors fully abreast of changing personnel policies and practices which may affect employees by means of memoranda, letters, teletypes, and training sessions; and

c. Providing guidelines and assisting the administrative officers and supervisors in the implementation of a well planned and organized program.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.161 Orientation Program Requirements and Procedures

An orientation interview should be conducted as soon as or immediately after the employee enters on duty. The orientation interview is usually conducted in two phases. The first phase, conducted by administrative personnel, involves presenting an Orientation Kit, DOJ-398, to the new employee and explaining the material in the kit. The second phase is usually conducted by the new employee's immediate supervisor. This phase involves greeting the employee and discussing with him/her the new job and work environment, and office policies and procedures.

Listed below is material which, in addition to the Orientation Handbook, is to be included in the Orientation Kit for permanent and temporary appointments.

<u>Title</u>	<u>Form Number</u>	<u>Usage*</u>
Appointment Affidavit	SF-61	<u>3/</u>
Authorization for Purchase and Request for Change United States Series EE Savings Bonds	SF-1192	<u>3/</u>
Certification of Membership in the Civil Service Retirement System	SF-105	<u>1/</u>
Declaration of Appointee	SF-61B	<u>3/</u>
Department of Justice Employee Locator Information	DOJ-233	<u>3/</u>
Designation of Beneficiary, Civil Service Retirement System	SF-2808	<u>1/</u>
Designation of Beneficiary (FEGLI)	SF-2823	1/
Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee	SF-1152	<u>3/</u>

\* The above forms, as noted under "Usage," apply as follows:

- 1/ - Permanent or Term appointments;
- 2/ - Time-limited appointments of one year or less; and
- 3/ - Permanent or Term appointments and time-limited appointments of one year or less.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

<u>Title</u>	<u>Form Number</u>	<u>Usage*</u>
Earned Income Credit Advance	W-5	<u>3/</u>
Payment Certificate		
- State and/or City Employee's Withholding Exemption Certificates		<u>3/</u>
- Nonresident Forms		
Employee's Withholding Allowance Certificate	W-4	<u>3/</u>
Federal Employees' Group Life Insurance Program	SF-2817-A	<u>1/</u> and/or <u>2/</u> if eligible
Federal Facts 2 - Political Activity		<u>3/</u>
Federal Facts 3 - The Civil Service Retirement System		<u>1/</u> and/or <u>2/</u> if eligible
Federal Facts 5 - The Federal Merit Promotion Policy		<u>1/</u>
General Schedule of Annual Pay Rates	OF-281	<u>3/</u>
Health Benefits Registration Form	SF-2809	<u>1/</u>
Health Enrollment Information Guide and Plan Comparison Chart (Current)	BRI 41-331	<u>1/</u> and/or <u>2/</u> if eligible
Life Insurance Coverage	SF-2817	<u>1/</u>
Medicare for Federal Employees	SSA Publication No. 05-10033	<u>1/</u>
Race and National Origin Identification	SF-181	<u>3/</u>

\* The above forms, as noted under "Usage," apply as follows:

- 1/ - Permanent or Term appointments;
- 2/ - Time-limited appointments of one year or less; and
- 3/ - Permanent or Term appointments and time-limited appointments of one year or less.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Title</u>	<u>Form Number</u>	<u>Usage*</u>
Request by Employee for Allotment of Pay for Credit to Savings Account with Financial Organization	SF-181	<u>3/</u>
Request by Employee for Payment of Salary or Wages by Credit to Account at a Financial Organization	SF-1198	<u>3/</u>
Self-Identification of Reportable Handicap	SF-256	<u>3/</u>
Standards of Conduct (28 C.F.R. Part 45)		<u>3/</u>
Standard Schedule of Disciplinary Offenses and Penalties	DOJ-373	<u>3/</u>
Statement of Physical Ability for Light Duty Work	SF-177	<u>3/</u>
Statement of Prior Federal Civilian and Military Service	SF-144	<u>3/</u>

The aforementioned forms and kit folders may be obtained through normal supply channels from the General Services Administration Store (GSA) or from the Department's Warehouse. You should refer to Department of Justice Orders OBD 2730.1B and OBD 2730.2 which detail the location of such materials.

#### 10-2.162 Role of Administrative Personnel

According to the particular functional organization of the individual office, the administrative officer, administrative assistant, or personnelist should instruct the new employee in the responsibilities and functions of the office as well as the relationship of the employee's work

---

\* The above forms, as noted under "Usage," apply as follows:

- 1/ - Permanent or Term appointments;
- 2/ - Time-limited appointments of one year or less; and
- 3/ - Permanent or Term appointments and time-limited appointments of one year or less.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

to that of his/her co-workers. This phase of the orientation should accomplish the following:

A. Explain the rights and obligations provided the new employee under regulations, legislation, and other pertinent guidelines;

B. Explain employment benefit programs, as applicable, such as health benefits or leave accrual, and any registration/election procedures;

C. Include an explanation of the administrative practices and procedures of the office; and

D. Introduce the new employee to his/her first-line supervisor.

10-2.163 Role of the First-Level Supervisor in Orienting the New Employee

Each first-level supervisor should develop a plan for introducing new employees to their jobs and work environment. Supervisors should begin job introduction by accomplishing the following:

A. Explain the work of the office by describing its function and organization and the relationship of the employee's work to that of his/her co-workers:

1. Explain how the employee's position fits in the organization;

2. Introduce the employee to his/her second-level supervisor and to co-workers.

B. Describe the arrangement of office and available facilities:

1. Show the employee the layout of the office;

2. Show the employee the location of the restroom facilities, health unit, credit union, water fountain, bulletin board, snack bar/coffee shop, parking lot, and public telephone.

C. Explain what is expected of the employee by discussing office practices and procedures:

1. Hours of work and pay days;

2. Punctuality and leave procedures;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. Lunch periods;
4. Proper use of telephone;
5. Office etiquette regarding smoking, dress, etc.;
6. Employee suggestion program;
7. Grievance procedure; and
8. Training and career development opportunities.

D. Discuss the employee's duties, responsibilities, and related aspects of the job:

1. Have available an up-to-date position description of the employee's duties and discuss them;
2. Explain the performance appraisal system including work plans, probationary appraisals, progress reviews, and annual appraisals;
3. Stress safe working habits and procedures to follow in the event of injury;
4. Encourage the employee to ask questions; and
5. Assign the employee a definite work area.

When the orientation is completed, the employee should be taken to his/her worksite. The supervisor should develop a clear working relationship with the employee and attempt to maintain an open-door policy which will assist in determining the employee's progress in his/her job, the need for training, promotion, or any other action that should be taken.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.170 Separations--Resignations

Resignations are separations in response to employee request. Although employees can be asked to resign, their resignations cannot be demanded. Employees are free to resign at anytime. However, they are encouraged to give reasonable notice to allow for a replacement or work adjustment. Employees may withdraw their resignations at any time before the effective date. The withdrawal must be allowed unless there is a valid reason for denying it (i.e., administrative disruptions or the hiring of a replacement). Such denials should be documented.

A resignation becomes effective at the close of business on the last day of the employee's active duty. Terminal leave is not authorized. An employee who announces that he/she is resigning or has resigned should be asked to complete Part IV of the SF-52, Request for Personnel Action. It is important that the statement of reasons for resigning be specific as this information may be necessary to determine entitlement for unemployment compensation. See USAM 10-2.950.

A. The following should be submitted to the Personnel Office with resignations as appropriate:

1. SF-52, Request for Personnel Action;
2. SF-2810, Notice of Change in Health Benefits Enrollment (if employee has Health Benefits);
3. SF-2821, Agency Certification of Insurance Status (if employee has life insurance); and
4. SF-2819, Notice of Conversion Privilege (if employee has life insurance).

B. The following should be submitted to the Payroll Office:

1. SF-2802, Application for Refund of Retirement Deductions, if employee wishes such a refund.

If an employee is transferring to another part of the Department or is being converted to another position within the office, no resignation

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

papers should be submitted. If an employee is transferring to another federal agency, Form SF-52, showing the proposed effective date, should be submitted.

An employee who leaves the district due to separation or reassignment should also complete Form OBD-123, Employee's Clearance Record. The entire form is to be completed by the office of the U.S. Attorney. The Personnel Programs Unit will provide current names and phone numbers of clearance officials upon request. Clearance officials must be contacted if there is any question as to whether the employee has government property or other items.

Every effort is to be made to clear separating employees. The following procedures are to be followed for each of the four general categories of government property, records, and financial indebtedness when the employee is unable to clear an item.

A. Property (No Monetary Value). The employee shall submit a memorandum explaining the circumstances which precluded the return of the item of property. The memorandum and OBD-123 must be submitted to the clearance official for review and coordination with the Board of Survey.

B. Property (Monetary Value). The employee shall submit a memorandum explaining the circumstances which prevent return of the item. The memorandum and OBD-123 must be submitted to the clearance official for coordination with the Board of Survey. If the employee is leaving federal service, the U.S. Attorney's office shall contact the clearance official telephonically so that the Justice Employee Data Service (JEDS) can be advised to cancel any existing check mailing authorization so that the final salary check will be routed to the designated agent. The U.S. Attorney's office is to hold the check until the property is returned or the check's release is authorized by the Board of Survey.

C. Government Transportation Requests (GTRs). A memorandum is to be prepared by the employee in accordance with OBD Order 2200.1A, (November 14, 1977). The memorandum and OBD-123 are to be submitted to the Accounting Section, Justice Management Division.

D. Cash. If the employee does not make repayment or submit a voucher covering the indebtedness (other than a travel advance), the U.S. Attorney's office will immediately notify the clearance official so that necessary steps may be taken to reduce the employee's check. The office will submit a statement concerning the employee's indebtedness, any statement the employee wishes to make, and the OBD-123 to the clearance official for coordination with the Board of Survey. If an employee fails

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

to repay a travel advance, the procedures described in OBD-2200.1A (November 14, 1977), paragraph 9.22-.24 are to be applied.

Copies of the OBD-123 reflecting that all items have been cleared shall be maintained by the U.S. Attorney's office for three years from the date of the employee's separation. They are not to be sent to the Executive Office.

10-2.171 Reassignment/Removal of Assistant U.S. Attorneys

New Presidentially-appointed U.S. Attorneys are permitted to choose their own chief assistants and supervisory Assistant U.S. Attorneys. Persons holding such positions will normally be reassigned to another position within the office.

Authority to remove Assistant U.S. Attorneys has been delegated by the Attorney General to the Associate Attorney General. See 28 C.F.R. §0.19(a)(1); and USAM 10-2.620, infra.

10-2.180 Personnel Security Regulations

10-2.181 Designation of Sensitive Positions

The following positions within U.S. Attorneys' offices are "sensitive":

- A. Assistant U.S. Attorneys;
- B. Paralegal Specialists, GS-950;
- C. Legal Technicians, GS-986;
- D. Legal Clerks, GS-986, who are assigned as secretaries to attorneys;
- E. Secretaries, GS-318; and
- F. Administrative Officers, GS-341, and related positions.

Other positions may be designated "sensitive" based on local conditions under the guidelines of Department of Justice Order 2610.2 (August 18, 1978).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The cover sheets of all position descriptions must indicate in block 12 that the position is "non-sensitive" or "critical" (i.e., sensitive).

10-2.182 Requirements for Non-sensitive and Law Student Positions

Employees assigned to non-sensitive positions and all law student employees must have an FBI name and fingerprint check completed prior to entry on duty. An NACI (National Agency Check with Written Inquiries) will be initiated by the Personnel Office for all permanent employees and temporary employees on appointments of more than 6 months.

In order that these checks can be completed, an SF-85, Data for Non-sensitive or Noncritical-Sensitive Position, and 3 Fingerprint cards must be submitted to the Personnel Office with the appointment requests for non-sensitive positions. Use SF-86 for all law student positions.

Despite the lengthiness of the process, name and fingerprint clearances are required before any applicant may enter on duty unless all of the following conditions are met:

- A. The position is non-sensitive, as defined in Department of Justice Order 2610.2 (August 18, 1978);
- B. The appointment is for 30 days;
- C. It is an extreme emergency; and
- D. The Security Office approves of the action.

A memorandum requesting the waiver of the name and fingerprint checks must be forwarded to the Personnel Office with the appointment request. The Personnel Office will secure the approval of the Department's Security Office.

10-2.183 Requirements for Sensitive Positions--Non-Attorneys

Non-attorney employees assigned to sensitive positions must have an FBI name and fingerprint check completed prior to entry on duty. Four copies of the SF-86, Security Investigation Data for Sensitive Position, a CSC-329-A, Authority for Release of Information, for each school attended since high school, and 3 Fingerprint cards must be submitted to the Personnel Office with the appointment requests for all sensitive positions.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

All of these forms must have original signatures. In addition, either a full-field investigation must be conducted or a request for a waiver of the pre-appointment investigation requirements must be approved prior to entry on duty. Please note that these requirements apply to current employees reassigned from non-sensitive positions to sensitive positions as well as to applicants to be employed in sensitive positions.

The "Waiver Work Sheet," Form USA-194, dated 7/80, is to be used in lieu of memoranda requesting waivers of pre-appointment background investigations. Districts are responsible for completing the following items:

- A. Name of applicant; Block 1;
- B. Employing organization; Block 2;
- C. Proposed EOD date; Block 3;

D. Vouchering: Every effort must be made to contact the applicant's current and former employers (at least for the past five years). If the applicant has no employment history, appropriate school officials should be contacted. In addition, a minimum of three references or associates who are well acquainted with the applicant must be contacted; Block 6;

E. Justification: Include a brief statement signed by the U.S. Attorney or designee specifying why it is necessary to hire the applicant prior to completion of the pre-appointment background investigation and stating that the waiver is in the national interest; Block 7.

Form USA-194-A, Inquiry for Suitability of Applicants, is to be used to collect the information necessary to complete item 6, "Vouchering", on Form USA-194. The Security Office will not approve the waiver request if there is any derogatory information or if the applicant's references or former employers are unable to recommend the applicant for a sensitive position.

In the absence of an approved waiver, the background investigation must be completed prior to the applicant's entry on duty into the sensitive position. Employees may not have access to classified information until after the full-field background investigation has been completed and an appropriate security clearance granted. Access to sensitive Department of Justice information should be kept to a minimum until the district has been notified by the Personnel Officer that the background investigation is completed and the suitability determination is made.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The Associate Attorney General has imposed special requirements on "Schedule C" secretaries. Because the FBI conducts their investigations, the same security forms used for Assistant U.S. Attorneys must be submitted. Applicants for these positions who are not Department of Justice employees will be placed on a temporary appointment not to exceed 90 days pending completion of the background investigation. They will be requested to sign a standard letter (AAG-7) acknowledging that they have been informed of the temporary appointment, their employment benefits, and the consequence of not receiving a complete and favorably adjudicated background investigation within 90 days. See USAM 10-2.221.

10-2.184 Security Clearances--Access to Classified Information

National Security information, commonly referred to as classified information, is any information the unauthorized disclosure of which could be prejudicial to the national security interests of the United States. See Exec. Order No. 11652. A completed full-field investigation does not authorize access to classified information. To have access to classified information, every employee must be granted the appropriate clearance by the Department's Security Officer. Before clearance can be granted, the employee must have been the subject of a full-field background investigation by the FBI or Office of Personnel Management.

Requests for clearances must be submitted by the U.S. Attorney to the Personnel Office, Executive Office. Requests may be made by telephone, but must be confirmed by a memorandum or teletype from the U.S. Attorney. Each request must identify:

- A. The employee requiring a clearance;
- B. The level of clearance required (confidential, secret, top secret); and
- C. The reason for requesting the clearance.

The Personnel Office will review the request and forward it to the Security Programs Staff, Justice Management Division.

Offices will be advised by telephone when a clearance has been granted. Written approval will be forwarded later. No employee is to have access to classified material until the appropriate clearance has been granted.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The Personnel Office must be advised when an employee who has been granted a clearance no longer needs it or resigns. The cancellation of an individual's clearance in no way jeopardizes that person's eligibility for receiving future security clearances.

10-2.185 Access to Sensitive Compartmented Information (SCI)

Requests for employees to have special access to Sensitive Compartmented Information (SCI) must be submitted pursuant to the provisions of Department of Justice Order 2660.3 (June 6, 1979).

The following memorandum shall be used when requesting special access to SCI. It must be signed personally by the U.S. Attorney and sent to the Personnel Office, Executive Office for U.S. Attorneys. If classification is warranted by the information contained in items 4 and 5, it should be appropriately marked at the top and bottom center of the pages and handled accordingly.

SUBJECT: Special Access to Sensitive Compartmented Information  
TO: Department Security Officer  
FROM: United States Attorney

Pursuant to the Provisions of Department of Justice Order 2660.3, "Procedures For Requesting Special Access To Sensitive Compartmented Information," dated June 6, 1979, the following information/justification is provided in requesting special access to Sensitive Compartmented Information (SCI):

- (1) Name of Nominee: \_\_\_\_\_
  - (2) Nominee's Social Security Number: \_\_\_\_\_
  - (3) Special Access(es) Required: \_\_\_\_\_
  - (4) Case/Assignment Necessitating Access to SCI: \_\_\_\_\_
- 
- (5) Specific Compartmented Material to Which the Nominee Must Have Access: \_\_\_\_\_
-

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The above-named individual has been granted a TOP SECRET clearance based on a Full-Field Background Investigation dated \_\_\_\_\_.

I certify that there is a clear and compelling need for the individual to have special access to the SCI cited above.

I understand that at the completion of the above-captioned case/assignment, this office will advise the Special Security Center that special access(es) is no longer required and arrangements will be made to effect the necessary formal debriefing.

\* \* \*

The Personnel Office will forward the request to the Security Programs Staff which will take the necessary action to obtain access to SCI.

Full-field background investigations that are more than five years old must be updated before access to SCI can be granted. (The Personnel Office should be contacted to obtain the date of the most recent background investigation.) The Office should allow at least 6-8 weeks for a full-field background investigation to be updated.

The employee must update and complete the following forms before he/she can obtain access to SCI if the background investigation is more than 5-years old:

Non-Attorney

SF-86, Security Investigation Data for Sensitive Position, and original and three copies, all with original signatures.

FD-258, Fingerprint Card, three originals.

CSC-329A, Authority for Release of Information, one for each school attended (since the most recent full-field background investigation was completed).

Attorney

Same

Same

DAG-67, Authority to Release Information.

DOJ-488, Tax Check Waiver (Individual).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The Security Programs Staff will contact the employee when access to SCI has been approved and arrange for the employee to be appropriately indoctrinated. After the employee has been so indoctrinated, he/she may have access to SCI material.

The Security Programs Staff must be advised when an employee who has been authorized to have access to SCI:

- A. No longer requires such access in the performance of his/her duty;
- B. Announces his/her plans to resign from the Department;
- C. Is reassigned within the Department to a position that does not require SCI access;
- D. Has a change in his/her personal status such as marriage or divorce. Unauthorized absences and arrests with the exception of traffic tickets must also be reported; or
- E. Indicates an intention to travel outside the United States.

10-2.186 Grand Jury Reporters

Due to the sensitive nature of grand jury proceedings, all grand jury reporters and persons associated with the reporters in preparing grand jury minutes are subject to a security check.

Before any official salaried federal court reporter or any contract or free-lance reporter may take testimony before a grand jury, the U.S. Attorney's office must submit Form USA-168, Personnel Information Sheet for Grand Jury Reporting, and two sets of fingerprints to the Director, Security Programs Staff, Justice Management Division, and await advice before engaging the reporter. The same procedures should be used for any persons associated with the reporter in turning out grand jury minutes.

If the contract of a grand jury reporter or person associated with one has lapsed for more than one year, a new security check must be completed before proceeding with the hearing. In all other cases, a new name and fingerprint check should be completed every five years.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.187 Foreign Travel Security Briefing

Due to the significant increase in the number of United States government employees traveling to Communist-controlled countries, the Interdepartmental Committee on Internal Security (ICIS) has developed a standardized defensive security briefing to be provided to each individual who anticipates traveling to a Communist-dominated country.

This briefing memorandum, USA-211, dated July 1981, must be provided to any regular or contract employee of the Department traveling to Communist countries, either on government business or for personal reasons. These procedures are required regardless of the sensitivity of the employee's current position or level of access to classified information. If the employee has access to Sensitive Compartmented Information (SCI), he/she will be given an SCI Defensive Security Briefing by the Department's Security Programs Staff in lieu of this briefing. The district is responsible for contacting the Department's Security Office prior to the employee's travel to request the SCI briefing.

The USA-211 can be obtained from the Department's warehouse.

10-2.188 Identification Documents

Pursuant to OBD Order 2610.1, dated March 8, 1985, it is the policy of the Department of Justice (DOJ) that each permanent employee and certain temporary employees be issued an identification card (ID) designating him/her as an employee of the Department. IDs are issued by the Security Staff, Justice Management Division. IDs for employees of the Offices of the U.S. Attorneys shall be processed as detailed below. IDs for employees of the Executive Office for U.S. Attorneys will be handled by the Personnel Management Staff.

A. Credentials

A credential is a permanent ID issued to eligible employees and bears facts and information required to establish purpose and authority in the performance of duty. A credential is also used to gain access to various DOJ facilities.

1. Eligibility

Permanent employees, i.e., anyone with an appointment longer than one year, who meet one of the following criteria will be issued a credential:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- a. U.S. Attorney.
- b. Assistant U.S. Attorney.

Note that an Assistant on a 91-day appointment is not eligible for a credential.

c. Personnel who frequently visit other Department elements or federal agencies and require special identification.

d. Other professional, administrative and technical personnel, as necessary.

2. Request for Credentials

- a. Request Memorandum

The Administrative Officer is to forward to the Director, Security Staff, a signed, typewritten memorandum requesting that a credential be issued. Form OBD-232, Request for Permanent and Temporary Identification Documents, is not to be used. A separate memorandum is required for each employee. The memorandum must include the following:

(1) First name, middle name, and last name of the employee as it should be typed on the credential card;

(2) Position title, pay plan, occupational code and grade, if applicable, as shown on the employee's SF-50, Notification of Personnel Action;

(3) Name of the office to which the employee is assigned i.e., Office of the U.S. Attorney for the Northern District of Alabama;

(4) Eligibility category pursuant to A.1. of this section.

(5) A copy of the attorney's permanent appointment letter, signed by the Director, Office of Attorney Personnel Management, or certification thereof. For non-attorney personnel, the name and fingerprint check clearance dates and the date the Background Investigation was initiated should be provided. If the name check, fingerprint check, or

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

background investigation was (were) waived by the Security Staff, the waiver date(s) should be provided.

(6) The mailing address to which the credential is to be sent; and

(7) The name and telephone number of a contact person.

b. Photographs

Attached to each request for a credential should be two precut 1 3/8" wide by 1 7/8" long grey/neutral background, full face, front bust, color photographs for each person. Male employees are to wear a suitcoat or sports coat and necktie, female employees are to wear comparable, suitable attire. The name of the person appearing in the photographs should be printed on the reverse side.

3. Submission

The request for a credential is to be mailed directly to the Security Staff, Justice Management Division, Attention: Physical Security Group, Room 6525, Washington, D.C. 20530.

4. Processing and Issuance

Credentials will be forwarded via certified mail to the Administrative Officer for issuance approximately three weeks after receipt by the Security Staff. A Form JMD-141, Credential Card Receipt, a case and plastic sheet for cold lamination will be enclosed. The employee is to sign the credential, and sign and date the JMD-141. The white copy of the JMD-141 is to be returned to the Security Staff. Please note the credential must be signed before laminating and laminated before issuing to the employee.

B. Permanent ID Cards

A permanent ID card is issued for an employee to gain access to various DOJ facilities.

1. Eligibility

Permanent employees, not eligible for credentials, are eligible for ID cards.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. Request for Permanent ID Cards

a. Request

Form OBD-232, Request for Permanent and Temporary Identification Documents, may be used to request an ID, or the Administrative Officer may forward to the Director, Security Staff, a signed, typewritten memorandum requesting that a permanent ID be issued. A separate memorandum is required for each employee. If a memorandum is used it must include the following:

(1) First name, middle name, and last name of the employee;

(2) Position title, pay plan, occupation code and grade as shown on the employee's SF-50, Notification of Personnel Action;

(3) Name of the office to which the employee is assigned, i.e., Office of the U.S. Attorney for the Northern District of Alabama;

(4) The date the name and fingerprint checks cleared and the date the Background Investigation was initiated. If name check, fingerprint check or background investigation was (were) waived by the Security Staff, the waiver date(s) should be provided.

(5) The mailing address to which the ID is to be sent; and

(6) The name and telephone number of a contact person.

b. Photographs

Attached to each request for a permanent ID should be two precut 1 1/4" x 1 1/4" gray/neutral background, full face, front bust, color photographs for each person. The name of the person appearing in the photographs should be printed on the reverse side.

3. Submission

The request is to be mailed to the Security Staff, Justice Management Division, Attention: Physical Security Group, Room 6525, Washington, D.C. 20530.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Processing and Issuance

a. Approximately four to five weeks after receipt, the Security Staff will mail an ID card, without the photograph, to the Administrative Officer for the employee's signature. The signed card should be returned to the Security Staff at the aforementioned address.

b. The Security Staff will process the card and mail it to the Administrative Officer for issuance with Form JMD-461, Identification Card Receipt. The blue copy of JMD-461 is to be returned to the Security Staff.

C. Temporary ID Cards

1. Eligibility

A temporary ID is issued only to temporary employees whose official duty station is in the Washington metropolitan area or to temporary employees of the Offices of the U.S. Attorneys who visit the Washington area for an official reason, such as training, and require access to DOJ facilities.

2. Request for Temporary ID

a. Request Memorandum

The Administrative Officer is to forward to the Director, Security Staff, a signed, typewritten memorandum requesting that a temporary ID be issued. A separate memorandum is required for each employee. The memorandum must include the same information as that outlined for a permanent ID plus the following:

- (1) Expiration date of the employee's appointment;
- (2) The date the need for the card will expire; and
- (3) The reason for the card.

Form OBD 232 may be used as described in section B.2.a.

b. Photographs

No photographs are required for temporary IDs, but the employee will be required to show, some type of photo

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

identification, i.e., valid drivers license, to pick up the temporary DOJ ID.

3. Issuance

A temporary ID card will be issued directly to the employee in Washington, D.C.

D. Replacement Credentials and IDs

A new ID or credential should be requested when an employee's is damaged or worn. Moreover, a new ID or credential is required when an employee changes his/her name, position, district, or if there is a physical feature change. Procedures set forth in sections A.2.a., B.2.a., or C.2.a. should be followed, except a request for replacement should additionally specify the reason the replacement is needed. The original ID or credential is to be returned to the Security Staff when the replacement is received.

E. Return of Credentials and IDs

Any employee separating from the Executive Office is to return his/her credential or ID and the document's case to the Personnel Management Staff. Any employee separating from an Office of the U.S. Attorney is to return his/her credential or ID and the document's case to the Administrative Officer who is to forward same to the Security Staff with a memorandum requesting cancellation, termination date of employment and reason for termination. Temporary IDs issued in Washington, D.C., are to be returned directly to the Security Staff in Washington, D.C. No ID or credential is to be retained for any reason.

If an employee does not have his/her ID card or credential, a notarized affidavit must be submitted to the Security Staff, stating the reason for not having one.

10-2.200 ATTORNEY RECRUITMENT AND HIRING

10-2.210 United States Attorneys

10-2.211 Appointment Forms

A. When a U.S. Attorney is appointed, the following forms must be submitted to the Director, Executive Office for U.S. Attorneys:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. SF-2823, Designation of Beneficiary (1152/2808);
2. SF-61, Appointment Affidavits;
3. SF-61B, Declaration of Appointee;
4. SF-177, Statement of Physical Ability for Light Duty Work;
5. DOJ-233, Employee Locator Information;
6. SF-2817, Life Insurance Election;
7. SF-2809, Health Benefits Registration Form;

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

8. SF-256, Self-Identification of Medical Disability;
9. OBD-86, Work Experience in the Federal Government;
10. DD-214, Military Service.

B. The following forms must be submitted directly to the Payroll Office:

1. W-4, Employee's Withholding Allowance Certificate;
2. State Tax Forms;
3. SF-1192, Savings Bonds (per employee's request);
4. SF-1198, Allotments (per employee's request).

C. If the U.S. Attorney is reappointed or was serving in the office in another capacity immediately prior to being appointed U.S. Attorney, only the SF-61 need be submitted. If the new U.S. Attorney was an employee of the Department of Justice (but not the office), submit:

1. SF-61;
2. DOJ-233;
3. New tax forms, if appropriate.

If the U.S. Attorney is court appointed, a copy of the court order must also be submitted.

10-2.220 Assistant United States Attorneys

10-2.221 Recruitment

U.S. Attorneys are authorized to recruit and screen applicants and to submit nominations of attorneys to serve as Assistant U.S. Attorneys.

It is important that each applicant be questioned about any dealing with the Internal Revenue Service in the past years, other than routine yearly tax submissions. In the event of any such dealings with the IRS, the applicant should furnish a letter to the Attorney General explaining in detail what occurred. This letter should be included with the application papers submitted to the Executive Office. Applicants should

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

also be questioned concerning indebtedness, including unpaid student and VA loans. An applicant with any disputed debts should submit a letter of explanation to the Attorney General. In addition, former employers or professional associates should be contacted to ascertain the quality of the applicant's work and his/her suitability for employment.

Affirmative action recruiting is an integral part of the overall recruiting efforts of each U.S. Attorney's office. It is the policy of the Department of Justice to provide a quality opportunity for all attorneys and law students who may wish to apply for positions in U.S. Attorney offices. All applications for appointment as an Assistant U.S. Attorney must be reviewed to insure that affirmative action has been taken.

A. Pre-Entry on Duty of Assistant U.S. Attorney Applicants Being Re-Assigned within the Department of Justice: This includes attorneys assigned to the offices, boards and divisions of the Department of Justice and Assistant U.S. Attorneys accepting employment with another U.S. Attorney's office. The guidelines and information contained in USAM 10-2.221 and 10-2.222 apply, and the following forms are required:

1. FORM USA-191 (Attorney Applicant Data Sheet);
2. FORM SF-52 (Request for Personnel Action);
3. FORM DOJ-479 (Employment Review Committee Questionnaire).

B. Special Notes:

1. Salary: Most of the problems are encountered with requesting starting salaries. The following is the rule unless stated otherwise.

a. From office, boards and divisions: The attorney will have the salary increased to nearest \$100.00 (i.e., attorney is presently a GS-13/2 (\$33,116). You would request a starting salary of \$33,200).

If the attorney is due for a scheduled step-increase within a month of the reassignment, then request that upon reassignment that the salary be included (i.e., GS-13/2, due for step increase to GS-13/3 in April and the reassignment is March. Request a starting salary of \$34,200).

If the attorney is due for promotion, have the attorney notify the EOUSA in writing from his/her present superiors that

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

he/she is eligible for and would be promoted had he/she stayed with the present employer. It is not always granted, but it will be considered.

b. From U.S. Attorney's Offices: The starting salary will be the same as he/she is making at the time of reassignment unless he/she is due for an annual administrative pay increase. Have the U.S. Attorney, where the Assistant U.S. Attorney is being reassigned from, include the evaluation and the recommended increase and then have your U.S. Attorney either concur or explain.

2. Travel Expenses: See USAM 10-3.560, Relocation. This section explains in detail the procedures.

C. Preparation and Submission of Form for Law Clerk Applicants: For the purposes of this type of appointment, a law clerk is an applicant submitted against an authorized Assistant U.S. Attorney position. This applicant has completed law school, but has not been admitted to the bar.

1. The paperwork to support a law clerk appointment is the same as that required when submitting papers for an Assistant U.S. Attorney position. Additional comment is to be made on the FORM USA-191 "Applicant is scheduled to take the \_\_\_\_\_ State Bar Exam on \_\_\_\_\_ and it is expected that he/she will receive the results on \_\_\_\_\_." If the applicant has already taken the bar exam, then just report the date he/she will receive the results.

2. A law clerk will not be allowed to enter on duty until such time as he/she has taken the bar and the FBI background investigation has been completed and is adjudicated favorably. The Department does not desire to have law clerks on duty studying for bar exams. Therefore, this restriction is not negotiable.

3. 90-day temporary appointments for law clerks are treated the same as for Assistant U.S. Attorneys. However, if a law clerk is appointed to a 90-day temporary appointment and is admitted to the bar prior to the completion and favorable adjudication of the FBI background investigation, the only necessary action is the execution of a new oath of office as an Assistant U.S. Attorney. He/she remains in a temporary status until such time as the appointing letter for an excepted appointment is authorized. When the law clerk is admitted to the bar and executes the new oath as an Assistant U.S. Attorney, he/she must provide your office with documented proof by completing a FORM DJ-54 (Department of Justice Attorney's Bar Affidavit).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Law clerks are appointed as GS-11/1. When they are authorized to become Assistant U.S. Attorneys, their salaries are adjusted to the next \$100 figure. Special note is made here to remind you that judicial law clerks who become applicants have in many instances delayed action to either prepare or take their bar exams. In cases where the applicant is a judicial law clerk and could qualify for a higher starting salary than a GS-11/1, the GS-11/1 is strictly adhered to until such time as the applicant is admitted to the bar. Be alert to submitting recommendations to have the salary adjusted in cases where it is clear that the applicant should receive more than the normal adjustment to the nearest \$100 figure.

5. The appointing letter authorizing a law clerk to enter on duty includes the statement "It is understood that the appointee must become a member of the bar within the first nine months of his/her service in the Department in order to retain his/her position."

10-2.222 Preparation and Submission of Forms for Assistant U.S. Attorney Applicants

A list of the following forms is required (original only unless specified otherwise):

A. Required at all Times:

1. FORM USA-191 (Attorney Applicant Data Sheet);
2. STANDARD FORM-171 (Personal Qualifications Statement);
3. FORM SF-52 (Request for Personnel Action);
4. FORM DOJ-479 (Employment Review Committee Questionnaire);
5. FORM DJ-54 (Attorney's Bar Affidavit);
6. STANDARD FORM SF-86 (Security Investigation Data for Sensitive Position), Original and Three Copies;
7. FORM DAG-67 (Authority to Release Information);
8. FORM DOJ-488 (Tax Check Waiver - Individual);

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

9. FORM FD-258 (FBI Fingerprint Card-USDAG01AZ), Three Originals.

B. Required when situation dictates (in addition to the above):

1. Letter to Attorney General explaining dealings with the IRS (See USAM 10-2.221);

2. Letter to Attorney General explaining any debts owed (See USAM 10-2.221);

3. Salary memorandum when additional information needs to be furnished to justify starting salary;

4. Copy of law school transcript if it has been less than three years since the applicant graduated from law school.

C. Required when requesting 90-day appointment (in addition to the above):

1. FORM AAG-7 (Memorandum of Understanding)

2. Letter request from U.S. Attorney including justification for the requested appointment to include:

a. Vouchers from any current employer and former employers for at least the last five years and a minimum of three references or associates.

The following is an explanation of the forms requested above:

A. Required at all times:

1. FORM USA-191 (Attorney Applicant Data Sheet)

The Executive Office extracts data from this form for use in the preparation of other forms required in the Departmental hiring process. The Employment Review Committee utilizes this form to extract data for its records and the form is ultimately filed in the Attorney Hiring Office for the Department of Justice. Particular note should be made of the following questions:

a. Current salary (grade, if government): This information is necessary to determine the per annum salary the



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

the applicant will be authorized consistent with the guidelines for setting salaries of Assistant U.S. Attorneys. The salary listed on the Form-191 and Form-171 should be the same. If not, you must explain any differences. Make certain that the U.S. Attorney and the applicant are in agreement as to the amount.

b. Have current supervisor and professional associates been contacted: If answered no, please explain. In some instances, the applicant does not desire such contact until he/she feels there is reasonable assurance that a job offer will be made.

c. Recommended salary: Each October, after the government-wide salary increase is made known, the Executive Office provides each U.S. Attorney with a memorandum entitled "Hiring and Promotion of Assistant U.S. Attorneys;" the first paragraph is headed "Starting Salaries of Assistant U.S. Attorneys." Each applicant should provide information as to present salary and other qualifications to be considered. The U.S. Attorney should take those into consideration in arriving at the recommended salary. It is suggested that, where questions still exist, the Staff Assistant for Attorney Hiring, Executive Office for U.S. Attorneys, be contacted to resolve such questions. In most cases, the problems can be resolved not only for the U.S. Attorney but for the applicant as well. This practice is encouraged.

d. Proposed date for E.O.D.: This is the date you hope the applicant can start work in your office. Please take the time to determine a reasonable answer to this question. Such dates as "ASAP" or impossible dates, inconsistent with the time required for approval of the appointment, leave the Executive Office without sufficient information to assist you in maintaining your staffing level. Remember, if you allow only two months from the submission of your applicant until authorization for appointment, you are allowing for the minimum time necessary. It could take longer if the background investigation requires additional time. Although you cannot always recruit and submit applicants three months in advance, it is suggested whenever possible.

2. Standard Form-171 (Personal Qualifications Statement)

This form is used to extract information to assist in determining a starting salary. Particular attention should be made to the following:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

a. Enter exact information and corrections as requested. Inclusive dates for employment is where most of the errors are encountered.

b. For the purposes of determining a starting salary, please insure that the applicant enters the correct salary he/she is presently making and this salary should be that salary entered on the FORM USA-191. Many times they do not correspond, and lead to phone calls to get it resolved. It is important that the two are the same.

c. There are times when the present salary the applicant is drawing will be increased after submission of his/her papers. In such cases, please have applicant furnish written circumstances from his/her present employer which reflect the increased salary (i.e., state legislation passed increase to be effective at a later date).

d. For applicants from other government agencies, it is useful to know the exact date of the last promotion and the effective date for the next step increase. To preclude a wrong interpretation, have the applicant enter in detail in Block 35 the date of the last promotion and the date of the next due step increase.

e. Under Block 13, please call to the attention of the U.S. Attorney the information entered here before (s)he indicates a requested starting salary. Many times the applicant will enter a sum much lower than what the U.S. Attorney is requesting. At other times, the applicant will list a salary that will not be approved. The applicant and the U.S. Attorney should go over this before submission of any paperwork.

3. Form SF-52 (Request for Personnel Action). This form normally is well executed in the field and only a few items are worthy of special attention in its preparation:

a. Item-4 (Social Security Number): This is the most important number you will list. Make sure that it agrees with the number the applicant has provided, both on the SF-171 and the SF-86.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

b. Item-A (Kind of Action Requested): Always list "EXCEPTED APPOINTMENT."

c. Item-G (Requested By): Enter the full name of the U.S. Attorney. The U.S. Attorney is not the approving official on this document.

d. Item-H (For Additional Information-Call): List that individual who can discuss attorney hiring, not the person who typed the form. Please provide an up-to-date phone number. The Senior Staff Assistant utilizes this reference for calls concerning attorney hiring.

e. Item-I (Request Approved By): Leave this item blank. This information will be provided after the forms arrive in the Executive Office.

f. Item-27 (Position Title and Number): Enter position description number in accordance with USAM 10-2.421.

4. Form DOJ-479 (Employment Review Committee Questionnaire)

Some explanation to assist in completing this form is highlighted in the areas where the Executive Office has had the most questions from U.S. Attorneys.

a. Number of people interviewed. Generally, you should not include interviews conducted more than six months prior to date of preparation of form. If you do include interviews beyond six months, please explain why.

(1) Please list the number of people interviewed in each category:

WHITE MALES _____	WHITE FEMALES _____
BLACK MALES _____	BLACK FEMALES _____
HISPANIC MALES _____	HISPANIC FEMALES _____
ASIAN-AMERICAN MALES _____	ASIAN-AMERICAN FEMALES _____
AMERICAN-INDIAN MALES _____	AMERICAN-INDIAN FEMALES _____

b. Number of people given serious consideration. Please list as stated above. If you fail to give serious consideration to a female or a minority, explain why.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

c. Characteristics of attorneys hired during six months prior to date of submission of this applicant or applicants.

d. What efforts, if any, did you make to obtain applicants for this position and what special qualifications, if any, are necessary for this position? Be specific; do not provide general recruiting information.

e. List by number your present allocation, the number of Assistant U.S. Attorneys on board, and the number of pending applications, by the above categories.

With this information, the Executive Office will be better prepared to state your case. The Senior Staff Assistant will assist you on this form when requested.

5. Form DJ-54 (Attorney's Bar Affidavit)

The importance of this form is not only that it is required to complete Department requirements, but the Executive Office needs a separate one for each state in which the applicant is a member of the bar.

Please have the applicant complete this form with exact information. Applicant should include it as an attachment to this form if he/she is not presently in good standing or if there are questions from the individual bar associations pending at the time of submission.

6. Standard Form SF-86 (Security Investigation Data for Sensitive Positions)

Please go over this form with the applicant and watch the following:

a. Make sure all questions are answered completely.

b. Make sure applicant signs and dates the original and each of the three (3) copies.

c. Make sure applicant includes not only the complete addresses for both employment and residency, but also the zip codes.

d. Too many applicants fail to list complete names and addresses of relatives as requested. This can lead to a couple weeks of delay in getting the background request started.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

e. If the applicant is not sure of any of the information requested, have him/her furnish all the information along with an explanation on a separate sheet which can be appended to the SF-86.

7. Form DAG-67 (Authority to Release Information)

This form will be returned to you if not signed and dated.

8. Form DOJ-488 (Tax Check Waiver-Individual)

This form causes more trouble and delay than all other forms combined. The Tax Reform Act of 1976 requires that the form be completed and signed not more than 60 days before being presented to the IRS in request for release of the information. Please look at the years at the bottom of the form and adjust to the present year. This 60-day period is stated in the Act, and cannot be changed without amendment to the Act.

9. Form FD-258 (FBI Fingerprint Card-USDAGOLAZ)

Type complete identification in the blocks provided. Too many times the cards are received in the Executive Office without the name of the applicant on them. To preclude further delay in the processing:

a. Check each form to make sure it includes all information requested.

b. Check that you have included three (3) cards.

When all the forms are checked and ready for submission, mail them to the Director, Executive Office for U.S. Attorneys, Room 1619 Main Justice, 10th and Constitution Avenue, Washington, D.C. 20530, Attn: Staff Assistant for Attorney Hiring, not to the Personnel Office. By sending them to the Director, they will reach the Senior Staff Assistant immediately upon receipt in the Department and action will begin on the application the same day.

B. Required when situation dictates:

1. When the applicant has any dealings with the IRS that have reflected late submission and fines and/or outstanding questions,

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

applicant prepare a personal letter to the Attorney General and attach it to the paperwork being submitted with the application. Indications are that U.S. Attorneys are not screening applicants to determine need, which leads to long delays in making the final decision for appointment.

2. When the applicant has known bad debts, especially unpaid student and VA loans, have applicant prepare a personal letter to the Attorney General and attach it to the paperwork being submitted with the application.

3. Salary memorandum should be prepared when:

a. It is a normal practice of your office to have the U.S. Attorney communicate special circumstances to justify a starting salary; or

b. The U.S. Attorney is requesting a starting salary beyond the guidelines provided.

4. Copy of law school transcript is required and used to gain an insight into the qualifications of the applicants who have not been out of law school more than three years. If the applicant does not have one available, then so indicate with the note that it will be forwarded upon receipt.

C. Required when requesting 90-day appointment:

1. Form AAG-7 (Memorandum of Understanding)

10-2.223 90-Day Temporary Appointment Waiver

There are certain circumstances where Department policy allows for an Assistant U.S. Attorney applicant to have the background investigation waived for the purpose of appointing them for a 90-Day Temporary Appointment.

A. Criteria for requesting:

1. Applicant is unemployed.

2. Applicant has outstanding qualifications and experience and may accept another position where the waiting time is not a problem

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

or where there is a shorter waiting period in processing a background investigation.

3. When there has been a sufficient reduction in the district staff below the proper efficiency level.

B. Documentation required:

1. Memorandum from the U.S. Attorney describing the purpose of the request, utilizing one of the above criteria.

2. Vouchers from any current and former employers by the U.S. Attorney for at least the last five years and a minimum of three references or associates.

3. It is essential for the U.S. Attorney to ensure that the applicant is aware of the specific conditions stated in the Memorandum of Understanding, especially concerning ineligibility for certain employee benefits. Additionally, the U.S. Attorney's office and the applicant should understand that during the period of the temporary appointment, the applicant has no access to classified information and sensitive information will be available on strictly a "need-to-know" basis. The applicant, by execution of the Memorandum of Understanding, agrees to safeguard any such information which comes to the applicant's attention.

C. Special Notes:

1. The Executive Office will take the necessary steps to get name and fingerprint requests from the FBI as part of the normal request for a background investigation.

2. If after submission of an applicant for processing it is later determined the existence of a need to request a 90-day temporary appointment, it should be understood that if sufficient time has elapsed to have partial information from the FBI and if, in the determination of the head of the Executive Office, sufficient problems exist, then the chances of having the request approved are limited.

3. An applicant for law clerk is eligible to have the same type of waiver. The provisions that govern law clerk appointments continue to apply.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2:224 Preparation of Forms

For your information, upon receipt of papers to support the application of all Assistant U.S. Attorneys, the Senior Staff Assistant will check the forms for completeness and perform the following:

A. Request the FBI to conduct a full-field background investigation. The SF-86, DAG-67, DOJ-488 and 3 OBD-258 Fingerprint Cards are attached to a request prepared by the Executive Office to ask the FBI to conduct the investigation. This package is delivered by hand to a representative of the FBI Background Investigation Office, to initiate the investigation process.

B. Submit the remaining forms to the Deputy Director, for screening, determining the starting salary, assuring that necessary affirmative action has been taken, and then authorizing submission to the Employment Review Committee (ERC).

C. Once the ERC approves, the paperwork is filed to await completion of the full-field background investigation.

D. When a background investigation begins, the U.S. Attorney concerned is so notified in writing by the Deputy Director. The U.S. Attorney is advised that upon successful completion of the background investigation, and when approved by the Associate Attorney General, a letter will be sent advising that the applicant may enter on duty.

E. When the background investigation is completed and forwarded to the Executive Office, it is adjudicated. If favorable, and no further investigation is needed, a letter is prepared for the signature of the Associate Attorney General authorizing the entry on duty of the applicant and stating the approved per annum salary.

F. Upon signature by the Associate Attorney General, the Executive Office contacts the U.S. Attorney and relays the information contained in the authorization letter.

G. A copy of the authorization letter from the Associate Attorney General is attached to the paperwork submitted to the Personnel Office of the Executive Office to await submission of additional paperwork and the oath from the applicant.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.225 Appointment Forms

A. When an Assistant U.S. Attorney reports to work, the following forms must be submitted to the Personnel Office:

1. SF-61, Appointment Affidavits (See USAM 10-2.110);
2. SF-177, Statement of Physical Ability for Light Duty Work;
3. DOJ-223, Employee Locator Information;
- \*4. SF-2817, Life Insurance Election;
- \*5. SF-2809, Health Benefits Registration Form;
6. SF-256, Self-Identification of Medical Disability;
7. OBD-86, Work Experience in the Federal Government;
8. DD-214, Military Service (if applicable);
9. SF-61B, Declaration of Appointee;
10. SF-1152, SF-2808, and SF-2823, Designation of Beneficiary, per employee's request; and
11. SF-181, Race and National Origin Identification.

B. The following must be submitted to Payroll Office:

1. W-4, Employee's Withholding Allowance Certificate;
2. Local tax forms;
3. SF-1192, Savings Bonds (per employee request); and
4. SF-1198, Allotments (per employee request).

\* Do not submit for federal employees transferring from other agencies. If the employee is transferring from another DOJ activity (except the FBI), submit only the SF-61 and DOJ-233.

10-2.230 Special Assistant United States Attorneys

The Attorney General may appoint attorneys to assist U.S. Attorneys pursuant to the authority given him/her in 28 U.S.C. §543. The Executive

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Office for U.S. Attorneys is the management office charged with administering the Special Assistant U.S. Attorney program, hereinafter referred to as the "program," for the Department of Justice. Requests for appointments to Special Assistant U.S. Attorneys, if approved, are appointed by letter signed pursuant to the direction of the Associate Attorney General. Pursuant to Pub. L. 98-94, military attorneys with regular appointments (as well as reservists) in the Judge Advocate General Corps (JAGC) are authorized to accept an appointment as Special Assistant Attorneys.

Consult USAM 9-11.352 for the procedures to follow in appointing a non-Department of Justice government attorney for appearance before a grand jury.

Within the Executive Office, the Deputy Director is assigned responsibility of the program while the administrative responsibility is assigned to the Senior Staff Assistant.

The program consists of two definite types of appointments:

A. Without compensation (other than that which the appointee is receiving under his/her existing appointment):

B. With compensation:

1. Compensation at a daily rate based on 260 possible working days in any one given civil service work year.

2. Compensation based on a per annum salary.

The administrative organization of the program consists of six main steps from requesting the appointment through administering the oath of office to the appointee:

A. Format for Requesting Appointment:

1. Preferred: Letter; memoranda; telex;

2. Special Situation: Telephone (followed by one of the three above preferred formats).

Note: The originator of a request for an appointment under this program must obtain the concurrence of the official from where the attorney is assigned, if other than from his/her own organization.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.231 Justification and Supporting Information for the Appointment

A. Without compensation:

1. Brief description of the need for the appointment with identification of the case or cases involved.

2. Requested effective date of the appointment and the length.

3. Note: Normally, the appointments are effective from one month to increments of months up to one year with extensions as required under the same incrementation. Appointments will be terminated only at the end of a month and not on any other day.

B. With compensation:

1. Compensated at a Daily Rate: When the Special Assistant will be compensated at a daily rate, the U.S. Attorney should provide a brief description for the need of the appointment with identification of the case or cases involved; requested effective date of the appointment and the length; number of working days required during the appointment; salary to be compensated for on a daily basis, while actually working.

2. Note: It is understood that the number of working days will be estimated. If an appointment becomes effective and it is determined that additional working days are required, then a simple follow-up request for the additional working days can be made and the Executive Office will prepare the SF-52. The appointee will be notified by telephone if and when approved.

3. Note: The salary determination is based on the per annum salary of the appointee at the time of resignation from the U.S. Attorney's office divided by 260 (i.e., resigned at a per annum then reduced to \$115.00 which would be the daily rate of pay while actually working. If the cents amount is 50 or more it is taken to the next higher dollar amount, otherwise it is reduced to the full dollar amount.

4. Exception: When a retired annuitant is appointed under this program, use the per annum salary at the time of resignation minus the daily rate of annuity (e.g., retired at \$42,000. Divide by 260 just as above and get the daily rate). However, the cents amount

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

remains. In the case where the daily rate comes to \$165.38, it would stay at \$165.38. Next take the per annum annuity from the retired pay-assumption: per annum retired pay is \$30,495.30 divided by 260 = \$117.49. So the net pay for this appointee would be \$165.38 - \$117.49 = \$47.89. The retired annuitant must provide a copy of his/her latest cost of living increase statement to preclude the overpayment and later recoupment that could prove a hardship. If a person is recently retired, he/she should make an estimated annuity rate. When the correct annuity rate is determined, a correction will have to be entered. The appointee should understand this.

Specific information should include: Date of birth; social security number; date of resignation; date of retirement (if applicable); salary at time of resignation; salary at time of retirement (if applicable); and anniversary date. Note: The Executive Office prepares the SF-52 and needs this information.

5. Compensation on a per annum basis: Appointments, compensated on a per annum basis are utilized to signify full-time versus a particular number of working days. They are usually for increments of three months or more up to and including one year. Specific information needed includes those items listed above.

6. Special note: It becomes very important for resigning attorneys to be given the opportunity for a break in service if they wish to request payment of their unused leave, to draw out of their retirement pay and to terminate their life insurance and health benefits. A break of three working days is the minimum necessary.

7. Inclusion of an restrictive language when applicable: Appointments to assist in civil cases are routinely made upon request. However, agency attorneys (particularly regulatory agencies) are not normally authorized to appear before grand juries when assisting on criminal cases. The restrictive language that will appear as an alert is as follows:

"However, you are not authorized to present matters to a grand jury or to be present during proceedings before a grand jury." Exceptions to the above can be granted in accordance with guidelines contained in USAM 9-2.162.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.232 Forms Required in Support of Appointments

The following attorneys require no forms to be submitted when requesting an appointment under this program (without compensation):

- A. U.S. Attorneys;
- B. Assistant U.S. Attorneys;
- C. Attorneys from offices, boards and divisions, Department of Justice; and
- D. Military attorneys with appointments who are members of the Judge Advocate General Corps (JAGC).

The following attorneys require submissions of forms to support requests for name and fingerprint checks from the FBI and, when applicable, full-field background investigations:

- A. Attorneys from other government agencies;
- B. Attorneys from state and local governments;
- C. Former members of the Department of Justice who have been resigned for over one year; and
- D. Attorneys from the private sector.

Forms required for name and fingerprint check:

- A. Three copies of OBD-258 (USDAGOIAZ) Fingerprint Card; and
- B. One copy of either the Standard Form SF-171 (Personal Qualifications Statement); or Standard Form SF-86 (Security Investigation Data for Sensitive Position).

Forms required for full-field FBI background investigation:

- A. Three copies of OBD-258 (USDAGOIAZ) Fingerprint Card;
- B. Original and three copies of Standard Form SF-86 (Security Investigation Data for Sensitive Position);
- C. One copy of DAG-67 Form (Authority to Release Information);
- D. One copy of DOJ-488 (Tax Check Waiver-Individual).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

For those attorneys who will be appointed on a full-time, per annum compensated basis and who have never been with the Department of Justice, submit the same package that would be submitted as listed under USAM 10-2.122.

10-2.233 Security Checks Required

Security checks are not required for the following types of attorneys (without compensation):

- A. U.S. Attorneys;
- B. Assistant U.S. Attorneys;
- C. Attorneys from offices, boards and divisions, Department of Justice;
- D. Members of the Judge Advocate General Corps (JAGC);

Security checks are required for the following types of attorneys (without compensation):

A. State, county and local attorneys appointed under the cross-designation of federal and local prosecutors: These attorneys require a full-field background investigation from the FBI. The first three months of an appointment can be made on the basis of a name and fingerprint check by the FBI and the appointment can be extended to one year after completion and favorable adjudication of the investigation.

B. Attorneys from other government agencies: An FBI name and fingerprint check is requested before the attorney may enter into an appointment under this program.

C. Note: The Executive Office will determine, on a case by case basis, if an FBI full-field background investigation will be required for appointments beyond the initial three month duration.

Security checks are not required for the following types of attorneys (without compensation):

A. Former U.S. Attorneys who have been resigned from the Department of Justice for less than one year;

B. Former Assistant U.S. Attorneys who have been resigned from the Department of Justice for less than one year; and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Attorneys from offices, boards and divisions, Department of Justice who have been resigned for less than one year.

Security checks are required for the following types of attorneys (without compensation):

A. All former attorneys employed by the Department of Justice who have been resigned for over one year: If the appointment is for three months or less, an FBI name and fingerprint check is required. If for a longer period of time, the Executive Office will make a determination whether an FBI full-field background investigation is required.

B. All attorneys appointed who have never been in the Department of Justice: They will be required to have an FBI full-field background investigation and the initial three months of the appointment will be on the basis of an FBI name and fingerprint check.

10-2.234 Oath of Office

Appointments under this Program require the appointee to take the oath of office and each appointment letter will contain the following language:

"Please execute the required oath of office at your earliest convenience."

Execution of the oath of office is finalized with the completion of the Standard Form SF-61 (Appointment Affidavits) and the original is submitted to the Executive Office to be filed in the individual's Official Personnel Folder or Special Assistant File, if not assigned to the Department of Justice.

When a Special Assistant U.S. Attorney, who is being paid on an intermittent basis, reports to work, the following forms must be submitted to the Personnel Office:

- A. Appointment Affidavit (See USAM 10-2.110);
- B. DOJ-233, Employee Locator Information;
- C. SF-256, Self-Identification of Medical Disability;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- D. SF-181, Race and National Origin Identification;
- E. OBD-86, Work Experience in the Federal Government; and
- F. SF-61B, Declaration of Appointee.

The following must be submitted to the Payroll Office:

- A. W-4, Employee's Withholding Allowance Certificate; and
- B. Local Tax Forms.

10-2.240 Sabbatical Program

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

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

To be eligible, an Assistant U.S. Attorney will normally have at least 5 years experience with the office of the U.S. Attorney and have expressed the intent to remain with the office at least 2 years after completion of the sabbatical. Of course, the law school must agree to the specific Assistant as well as the courses to be taught.

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



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Normally, positions will be filled by the detail of employees. As such, the Assistant U.S. Attorney's and professor's pay, allowances, privileges, rights, seniority, and other benefits are preserved within their respective organizations. The professors will be appointed as Special Assistant U.S. Attorneys (see USAM 10-2.230, supra).

10-2.250 Cross Designation of Federal Prosecutors as State and Local Prosecutors

Assistant U.S. Attorneys may be appointed as special state or local prosecutors by the Director, Office of Attorney Personnel Management, Department of Justice, pursuant to the Intergovernmental Personnel Act of 1970 (5 U.S.C. §§3371-3376) and the appropriate state and local government code. Under the Intergovernmental Personnel Act, assignments are authorized upon the request from or with the concurrence of a state or local government, and with the consent of the employee concerned. See 5 U.S.C. §3372(a). The period of assignment under the Act may not exceed two years. An Assistant U.S. Attorney assigned as a state or local prosecutor is deemed, during the assignment, to be either: 1) on detail to a regular work assignment; or 2) on leave without pay.

Requests for permission to accept an appointment as a special state or local prosecutor should be forwarded to the Assistant Director for Legal Services, Executive Office for U.S. Attorneys. Each request should include: 1) the name of the Assistant U.S. Attorney; and 2) the full name of the state or local office to which the Assistant is to be assigned; 3) the length of the assignment; 4) the reason for the assignment (the particular case or cases); 5) the name of the county, parish or other jurisdiction in which the non-federal authority will carry; 6) the acknowledgement that no foreseeable conflict of interest exists between the state and federal prosecutors' offices as a result of the assignment; and 7) whether the Assistant U.S. Attorney intends to be on official duty while acting as special state or local prosecutor, or on leave without pay.

10-2.300 NON-ATTORNEY RECRUITMENT AND HIRING

10-2.310 General Information for Non-Attorney Positions

I. Methods for Filling Non-attorney Positions.

When filling a permanent non-attorney position, a variety of methods which can be pursued simultaneously should be considered, including:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A. Merit Promotion Plan Announcement.

Used to fill positions with applicants currently employed by the federal government in competitive positions or with applicants who have reinstatement rights (these are "status" applicants). These procedures are also used to promote current employees under certain circumstances.

B. Office of Personnel Management Certification.

Used to fill positions with applicants who are not current competitive employees or who do not have reinstatement rights. Under certain circumstances, the Office of Personnel Management (OPM) will establish special registers for legal clerks. Assistance in this area should be sought from the Personnel Office, Executive Office for U.S. Attorneys.

C. Former Peace Corps, Vista and Action volunteers may be non-competitively appointed up to one year after they have completed their voluntary service. They must meet the qualification standards, including any written test requirements for the position. However, the test can be administered noncompetitively.

D. Former employees of the U.S. Senate and the U.S. House of Representatives, who have served for at least three years and former employees of the U.S. Courts who have served at least four years as a secretary or law clerk to a justice or judge are eligible for non-competitive employment under the provisions of the Ramspeck Act if they were separated involuntarily and without prejudice. They must have passed any examination required for the position and be appointed within one year of their involuntary separation. If such an appointment is contemplated, the Personnel Office, Executive Office for U.S. Attorneys, should be contacted for procedural guidance.

E. Non-competitive appointment of reinstated or transferred employees.

No Merit Promotion Plan advertisement or OPM certification is needed if you fill a position with a status eligible whose former grade was at or higher than the top grade of the position you are filling. Status eligibles can be found in voluntary applicant supply files maintained by U.S. Attorneys' offices or kept by the OPM area office.

F. Special appointment authorities for the handicapped.

G. TAPER appointments for positions for which OPM has no register of tested eligibles.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Action to fill a vacant position may begin as soon as it is known that the incumbent is leaving. However, the new employee may not enter on duty until the former employee has resigned and written approval is received from the Executive Office.

## II. Pre-employment Interviews

Interviews may be conducted prior to filling non-attorney positions. The following information is provided as guidance to be used when conducting interviews.

### A. General Information.

Pursuant to FPM Chapter 332, Appendix I, the following guidelines are provided for use and consideration when conducting interviews:

1. Travel time and cost to the applicant should be kept to a minimum;
2. Applicants must be eligible for appointment;
3. Travel in excess of 250 miles round trip is considered unreasonable;
4. Applicants should receive reasonable advance notice of the need for an interview;
5. Notice regarding the effect of non-appearance for an interview must be communicated;
6. Travel outside the commuting area may be made only when the level of the position being filled is above the clerical level; and
7. Alternate arrangements should be made when appearance for an interview is considered unreasonable.

Normally, agencies are not allowed to pay for pre-employment interviews; however, the Executive Office has been delegated the authority to pay for pre-employment interviews at grades GS-10 through GS-13 for unique positions. Part B explains in detail the type of positions covered by this authority and procedures required for its use.

### B. Paid Interviews.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The Director, Executive Office for U.S. Attorneys, or his designee, has sole responsibility to approve the payment of travel expenses for pre-employment interviews. This authority will remain in effect until superseded.

1. Limitations.

This authority may not be used in the following situations:

a. To pay travel or subsistence expenses for the purpose of interesting or persuading prospective employees to accept government positions;

b. To pay for pre-employment interviews for the purpose of defraying the cost of travel to a designated place to enter on duty as a government employee (3 Comp Gen 373);

c. To advance travel funds for pre-employment interviews; and

d. For entry-level positions, except in rare cases, e.g., Research Chemist at the Ph.D level.

2. Position Coverage.

In order to use this authority the duties of the position must be so unique that an interview is necessary for a final determination of the applicant's qualifications. The determination that a position is "unique" is based on the position's complexity and whether it is one of a kind not simply within the organization but within the government.

3. Applicant Eligibility.

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Procedures.

Requests to use this authority must be submitted, in writing, to the Director, EOUSA, through the Personnel Officer, and must include the following information:

- a. A copy of the position description reflecting the title, series, and grade of the position;
- b. Any selective or quality ranking factors appropriate to the position;
- c. A brief explanation of why the office is unable to complete a review of an applicant's qualifications without an interview;
- d. A brief explanation of how the position meets the criterion of unique;
- e. Proposed number of applicants to be interviewed and location from which applicant is traveling;
- f. Location of interview; and
- g. Type of travel requested and estimated amount of money required for each applicant.

If the request is approved, the office may contact the applicant(s) to arrange an interview. Since interviews under this authority are for the purpose of determining qualifications, a declination of an interview will be considered a declination of the position. Upon completion of all interviews each office must provide the following information to the personnel office:

- a. Actual number of applicants interviewed;
- b. Results of each interview (e.g., selection, non-selection, declination);
- c. Type of travel used;
- d. Actual amount of money spent for each applicant; and
- e. Location from which applicant actually traveled.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.311 Merit Promotion Plan

A. Policy: It is the policy of the Executive Office for U.S. Attorneys (EOUSA) and the offices of the U.S. Attorneys to utilize employee skills and potential to the fullest in filling vacancies and to select, assign, and promote employees solely on the basis of job-related criteria and without regard to race, color, creed, age, national origin, sex, nondisqualifying physical handicaps, politics, membership in employee organizations, marital status, or personal favoritism or patronage. The procedures outlined below apply to all competitive service positions in the offices of the U.S. Attorneys and EOUSA effective April 1, 1984.

B. Responsibilities:

1. The Personnel Officer is responsible for:

a. Determining that any action to fill a vacancy is consistent with the provisions of this plan.

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

c. Advising and assisting the offices of the U.S. Attorneys on competitive procedures, qualifications, and general recruitment/placement actions.

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

e. Taking the necessary action to fill vacancies within the EOUSA and Administrative Officer positions in the offices of the U.S. Attorneys.

The Director, Office of Administration and Review, EOUSA, may delegate any of these responsibilities to the offices of the U.S. Attorneys.

2. U.S. Attorneys are responsible for:

a. Insuring that no personal favoritism or preselection is involved in a promotion action and that no promise or guarantee

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

of promotion is made prior to the expressed approval of the Personnel Office, EOUSA.

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

c. Insuring that all available and interested candidates are given the opportunity for application and consideration.

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

e. Preparing and submitting the total package of documentation relating to the action to the Personnel Office for approval.

United States Attorneys may delegate any of these responsibilities to appropriate employees in the district.

Consideration should be given to delegation of authority to administer this plan to one responsible individual in the organization (i.e., the Administrative Officer).

C. Covered Personnel Actions: This plan applies to all promotions, unless specifically excluded by paragraph D below, and to the following actions:

1. Reassignment, transfer, or demotion to a position with known promotion potential greater than that of the position last held except as permitted by reduction-in-force procedures.

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

3. Transfer to a position which is both of a higher grade and has more promotion potential than the position currently held.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

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

6. Temporary promotions of over 120 days. Prior service under all details to higher-graded positions and temporary promotions during the preceeding 12 months counts toward expiration of the 120-day limit. The following conditions apply to temporary promotions:

a. Temporary promotions must be for a definite period of one year or less but may be extended for a definite period not to exceed one additional year, subject to prior approval of the Personnel Office.

b. Requests for additional extensions must be submitted to the Personnel Office 30 days in advance of the proposed effective date.

c. A temporary promotion may be made permanent without further competition provided the temporary promotion was originally effected under competitive procedures and the advertisement of the vacancy clearly stated that the temporary position may be made permanent at a later date.

d. A temporary promotion may not be used for the purpose of training or evaluating an employee in a higher-graded position.

7. Term promotions unless an exclusion under paragraph D applies.

D. Personnel Actions Not Covered: The competitive procedures of this plan do not apply to:

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



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. Reassignments with more promotion potential in a RIF situation. This provision would apply only to those employees whose positions have been identified for abolishment, and only after affected employees have been so notified.

3. Repromotion to a nontemporary competitive service position or grade from which an employee was demoted without personal cause and not at the employee's request.

4. Career promotions, which are promotions without current competition when at an earlier stage an employee was selected from a civil service register or under competitive promotion procedures for a position with a career ladder. Career ladders for all positions must be documented. See paragraph E below.

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

6. A temporary promotion or detail to a higher graded position of 120 days or less.

7. An action taken as a remedy for failure to receive proper consideration in a competitive promotion action.

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

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

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

11. A career ladder promotion following noncompetitive conversion of a cooperative education student.

12. Transfer to a higher graded position provided the candidate's current position has the same or higher promotion potential.

13. A position change made permanent from a temporary or term promotion, to a higher grade job provided the action was originally made under competitive procedures and it was represented to all competitors that it may lead to a permanent assignment.

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

15. Reinstatement to a position at a grade no higher than one's last nontemporary competitive service position regardless of previous promotion potential.

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

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

18. Any personnel action as directed by the Department of Justice, the Office of Personnel Management, the Merit Systems Protection Board, or other organization having the authority to impose a decision upon the EOUSA.

19. Reassignment to a position with more promotion potential in a reduction-in-force situation. This provision applies only to employees whose positions have been identified for abolishment and only after the affected employees have been notified.

E. Career Ladder Positions. Once an employee is selected for a career ladder position, he/she may be promoted without further competition to the journeyman level indicated for the position, provided:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. The original appointment to the career ladder position was made after competition under merit promotion procedures or other appropriate means, such as selection from a civil service certificate.

2. All candidates interviewed for the career ladder positions were informed of the promotion potential of the position.

3. The employee meets qualification and time-in-grade requirements for the higher grade position.

4. The employee has demonstrated his/her ability to perform more difficult and responsible duties at the higher grade level.

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

Positions covered are:

<u>Series</u>	<u>Title</u>	<u>Entry Level</u>	<u>Journeyman Level</u>
GS-304	Information Receptionist	GS-3	GS-4
GS-305	Mail and File Clerk	GS-2	GS-4
GS-986	Legal Clerk--whose primary responsibility is docketing.	GS-4	GS-5
	Legal Clerk--whose primary responsibility is to provide legal clerical support to one or more attorneys.	GS-4	GS-6
Note: Clerk-Typist, GS-322-3, and 4 and Clerk-Stenographer, GS-312-3, 4 and 5, may be used as trainee positions in lieu of Legal Clerk, GS-986-4 and 5 as appropriate.			
GS-203	Personnel Clerk	GS-4	GS-6
GS-203	Personnel Assistant	GS-6	GS-7
GS-201	Personnel Specialist	GS-5	GS-12

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

GS-322	Clerk-Typist (Word Processing)	GS-2	GS-5
GS-312	Clerk-Stenographer (Word Processing)	GS-3	GS-5
GS-343	Management Analyst--whose primary responsibility is to assist PROMIS System Manager.	GS-5	GS-9
GS-343	Computer Programmer--whose primary responsibility is to assist PROMIS System Manager.	GS-7	GS-9
GS-986	Legal Clerk--whose primary responsibility is debt collection.	GS-5	GS-9

Career ladders for other positions will be established by the Personnel Officer, or designee, at the time the positions are established. These career ladders must be documented in the individual's Official Personnel Folder.

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

1. OPM certificates of eligibles;
2. Veterans readjustment appointments; or
3. Reassignment, lateral transfer, reinstatement, or voluntary demotion of a status applicant into a position with no known promotion potential or a position having no higher promotion potential than one's existing or most recent position. Selection of a candidate who is eligible for noncompetitive placement can be made at any point regardless of vacancy announcement opening or closing dates.

In addition, supervisors have the right to select or not select from among the best qualified candidates referred.

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

H. Areas of Consideration:

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

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

b. GS/GM-13: All the offices of the U.S. Attorneys and the Executive Office for U.S. Attorneys; and

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

2. The area of consideration for positions at the GS-12 level and below may be broadened to include either all Department of Justice activities or all federal activities in the commuting area or region in order to obtain more qualified applicants if it is anticipated that distribution within the minimum area of consideration will not generate a sufficient number of qualified applicants.

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

I. Locating Candidates:

1. Merit Promotion Vacancy Announcements will be posted on bulletin boards throughout the minimum area of consideration and may be distributed to other federal activities in the commuting area.

2. Vacancy announcements, for which the area of consideration is Department-wide, will be prepared by the Personnel Office.

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- a. Announcement number and date;
  - b. Area of consideration;
  - c. Title, series, grade(s), and number of positions;
  - d. Location of the position;
  - e. Deadline for acceptance of applications;
  - f. Duties;
  - g. Qualification requirements;
  - h. Evaluation methods used;
  - i. Promotion potential;
  - j. Instructions for applying;
  - k. Whether the position is supervisory or managerial and, if it is, a one-year probationary period is required before any initial appointment to a supervisory or managerial position becomes final (see 5 C.F.R. §§315.901-909); and
  - l. Whether or not relocation expenses will be authorized in the event selection is made of a candidate who applies from outside the commuting area. See paragraph I.6.
4. A vacancy announcement will be open for at least:
- a. 10 calendar days--GS-12 and below; and
  - b. 14 calendar days--GS/GM-13 and above.
5. Applications must be received, if submitted in person, or postmarked, if submitted by mail, prior to close of business on the closing date, unless otherwise specified in the announcement.
6. It is Executive Office policy that relocation expenses are authorized for employees whose transfer/movement to different geographical areas are determined to be in the interest of the government. However, there is no automatic entitlement to reimbursement of relocation expenses upon an employee's change of his/her post-of-duty; reimbursement of such expense is conditioned upon sound judgment and on affirmative management determination that the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

transfer/movement is, in fact, "in the interest of the government" and is not primarily for the convenience or benefit of the employee. In making determinations as to whether a transfer/movement is or is not "in the interest of the government," the following guidelines will apply:

a. Management-directed transfer/movements are determined to be in the interest of the government and accordingly payment of relocation expenses is authorized.

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

c. Selection stemming from announced vacancies: In general, relocation expenses are normally authorized for an employee whose transfer/movement results from competitive selection pursuant to a merit promotion announcement. However, payment of relocation expenses is not automatic in such cases and generally will not be authorized where one or more of the following conditions/factors exist:

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

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

(3) Relocation to accompany spouse: It has been determined that it is not in the interest of the government

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

to move an employee at government expense where the employee is relocating to accompany his or her spouse and where the spouse's employer will or has covered the costs.

The provisions of sub-paragraphs c(1) through c(2) may be waived to permit the payment of relocation expenses in cases of extreme hardship or in light of the totality of the situation. Written requests for such waivers are to be directed to the Personnel Officer and must include full justification/reasons why such waiver(s) should be granted. Further, in view of recent Comptroller General decisions, the following statement must be included on all vacancy announcements for purposes of alerting prospective applicants to the fact that they are not automatically entitled to payment of relocation expenses:

Relocation expenses may or may not be authorized. The determination of entitlement to the payment of such expenses will be made in accord with guidance contained in USAM 10-2.311.

7. Supervisors may refer employees for promotion consideration. This is in accordance with the supervisor's responsibility to assist in and further the development of employees. However, supervisory referrals may be used only to supplement names obtained by other methods of locating candidates; the employees referred must meet the same requirements and be evaluated by the same means as other employees under consideration.

8. Employees of the Department of Justice desiring relocation to geographical areas outside the commuting area of their duty stations should contact in writing the heads of the offices in which they are interested. They should specify the types of positions and grades in which they are interested and include current SF-171's, Personal Qualifications Statements, and OBD-35s, Supervisory Evaluations of Performance. Such employees must be given for a reasonable period of time full consideration for any appropriate vacancies for which they qualify.

9. Applications from non-Department of Justice applicants may be accepted at the discretion of individual offices and maintained in applicant supply files. Applications from the files may be used to supplement the candidates generated by Merit Promotion advertisements and other methods.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10. Offices must ensure that employees within the area of consideration who are absent for legitimate reasons (i.e., on detail, on leave, at training courses, or in the military service) receive appropriate consideration for promotion.

J. Qualification Standards:

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

2. Selective placement factors applying to specific positions or groups of positions may be established if they are essential to successful performance in the position to be filled. The need for such requirements must be clearly demonstrated in the position description and must be approved in advance by the Personnel Office, EOUSA.

3. To be eligible for consideration for supervisory positions, candidates must meet the supervisory qualification standards published in OPM Handbook X-118 in addition to any specific subject matter knowledge and skill requirements. It is necessary to outline in the Notice of Vacancy the following minimum qualification requirements:

a. First level supervisory positions.

(1) Ability to motivate, train, and work effectively with subordinates who have a variety of backgrounds and training;

(2) Ability to accomplish the quality and quantity of work expected within set limits of cost and time;

(3) Ability to plan own work and carry out assignments effectively;

(4) Ability to communicate with others effectively both orally and in writing in working out solutions to problems or questions relating to the work;

(5) Ability to understand and further management goals as these affect day-to-day work operations; and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

(6) Ability to develop improvements in or design new work methods and procedures.

b. Supervisory positions at second and higher levels.

In addition to the abilities required for first-level supervisory positions, candidates for supervisory positions at second and higher levels must possess, or have the potential to develop, the following:

(1) Ability to deal effectively with individuals or groups representing widely divergent backgrounds, interests and points of view;

(2) Ability to adjust work operations to meet emergency or changing program or production requirements within available resources and with minimum sacrifice of quantity or quality of work;

(3) Ability to establish program objectives or performance goals and to assess progress toward their achievement;

(4) Ability to coordinate and integrate the work activities of several organizational segments or several different projects;

(5) Ability to analyze organizational and operational problems and develop timely and economical solutions; and

(6) Ability to represent the activity both within and outside the organization or agency and to gain support for the agency's program goals.

K. Evaluation and Ranking: The Federal Merit Promotion Policy requires that selection for advancement be made from among the best-qualified candidates. Therefore, job-related evaluation criteria that go beyond the standards for determining basic eligibility are used to permit the meaningful, objective ranking of eligible candidates. Identification of critical elements of the position may aid in the development of evaluation criteria. The following factors will be used in the evaluation of eligible candidates.

1. Experience: Appropriateness of experience will be determined in terms of the position to be filled. Length and recency of

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

experience may be considered if it can be clearly shown to be an important aspect for the particular job to be filled and if it is an indicator of potential to perform in a superior manner in the position to be filled. In no case will credit be given for more than five years of specialized experience beyond that required to meet minimum OPM qualifications.

2. Performance Appraisal: Every effort must be made to obtain a performance appraisal completed during the past year for each applicant. Form OBD-35 must be used for all employees covered by this plan. Appraisal forms from other agencies may be accepted for applicants from other organizations. Only those factors (and the corresponding ratings on those factors) which are specifically relevant to the requirements of the position to be filled are to be considered when evaluating the performance appraisal.

3. Training and Education: Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled will be considered only to the extent that they are clearly job-related or clearly provide evidence of learning ability where this is a requirement for successful performance in the job.

4. Awards: Employees' achievements (i.e., awards and letters of commendation) that earned them special recognition will be assessed in terms of the requirements of the job to be filled.

L. Evaluation and Ranking Procedures:

1. Before carrying out the evaluation and ranking procedures described below, all applications should be reviewed to ensure that the applicants possess all of the following:

- a. Competitive status;
- b. Minimum qualification requirements, including selective factors; and
- c. Time in grade, if applying for a position at GS-6 or above.

2. If there are five or fewer qualified candidates, rating and ranking procedures do not have to be applied. In such cases, all eligible candidates may be referred to the selecting official as the "best qualified" group. See paragraph M below.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. If there are more than five qualified candidates for a position with promotion potential no greater than GS-6, candidates may be rated by either a promotion panel or by an employee designated by the head of the office who is familiar with the evaluation and ranking procedure and is at least one grade higher than the position being filled.

4. Applicants for all work leader or supervisory positions, regardless of grade level, and for all positions at or with promotion potential to the GS-7 level or above, for which there are more than five qualified candidates, must be rated and ranked by the promotion panels.

a. Promotion panels must consist of at least two employees;

b. When possible, members of promotion panels should be at least one grade higher than the position being filled; and

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

5. Based on the factors listed in paragraph K, a numerical rating plan must be developed and all eligible candidates must be assigned a score. When a vacancy is announced at multiple grade levels, different criteria are required for each grade level. In developing the plan, the following factors should be considered:

a. The relative weight to be given each factor. This will vary from position to position;

b. The types of experience, education and training most likely to produce "outstanding" and "good" candidates; and

c. The factors in the performance appraisal relevant to the job to be filled. Writing skills are not relevant for a clerk position and should not be taken into consideration.

6. The evaluator(s) must determine which of the eligible candidates are "best qualified" based on numerical scores, and the basis for such determinations must be documented in the promotion records. The "best qualified" candidates are normally the three to five candidates with the highest numerical scores. There should be a meaningful distinction between those candidates who are in the best qualified group and the remaining candidates. A meaningful distinction is a significant difference in the numerical scores. If

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

the initial rating and ranking exercise defines a best qualified group substantially larger than five candidates, then the rating and ranking criteria should be modified to more closely evaluate the candidates' qualifications.

M. Referral and Selection:

1. When all eligible candidates have been evaluated and ranked, the evaluator(s) is to prepare a USA-196, Promotion Candidate List, listing in alphabetical order the names of the best qualified candidates. If the vacancy was advertised at multiple grade levels, those candidates identified as best qualified for a particular grade level should be grouped separately from those identified as best qualified for other grade levels, or a separate list may be prepared for each grade level. Individual scores are not to be included on the form.

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

3. In cases where rankings do not permit the making of meaningful distinctions between candidates even though the rating and ranking criteria is modified, additional candidates may be listed on the certificate. The reasons for such certification shall be documented in the promotion records.

4. Depending upon the availability of candidates and their qualifications, the number of candidates referred to the supervisor may be less than three.

5. Normally, those applicants referred to the selecting official should be interviewed. If a selecting official chooses to interview some but not all of the referred applicants, the reasons for not conducting interviews must be documented in the promotion records. If typing and/or stenography is required, the applicants may be asked to demonstrate those skills during the interview.

6. The selecting official is not required to fill a vacancy by selecting one of the candidates listed on the promotion certificate. He/she may request readvertisement with an expansion of the area of consideration or initiate additional recruitment efforts to fill the job by some other type of placement action. However, if selection is to be made by competitive procedures, the range of selection is

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

limited to those candidates who have been identified as "best qualified."

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

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

9. Position changes within the Department involving changes in pay, e.g., promotions, voluntary demotions, reassignment from positions subject to special salary pay rates to positions not subject to such rates, etc., will be made at the beginning of a pay period as opposed to dates within a pay period. Position changes involving pay or a change from one pay plan to another will normally be effective on the first day of the first pay period after the Personnel Officer gives final administrative approval of the action. In those circumstances where a personnel action such as described above also involves a change in supervisors, the effective date will be the first day of the second pay period following final administrative approval by the Personnel Officer, or his/her designee, unless the affected supervisors (gaining and releasing) agree to an alternative date.

N. Information to Candidates:

1. Every applicant who files for consideration under a Merit Promotion Vacancy Announcement is to be notified by the selecting office of the outcome of each consideration received after approval of the action.

2. Upon written request, the Personnel Officer or U.S. Attorney will furnish to any candidate the information specified below:

a. The qualification standards and rating criteria used for the position, including selective placement factors;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- b. Whether the candidate was considered for the position;
- c. Whether the qualification requirements were met;
- d. Whether the candidate was in the group of eligibles from which selection was made; and
- e. The name, title, organizational assignment, and geographic location of the person who was selected for the position.

3. Supervisors are encouraged to discuss with employees the reasons for the employees' nonselection and what they might do to improve their chances for further selection for advancement.

O. Documentation and Records:

1. In addition to the SF-52, Request for Personnel Action, the following documentation must be submitted to the Personnel Office:

- a. Notice of Vacancy (USA-195);
- b. Copies of all applicants' SF-171s;
- c. Copies of performance appraisals;
- d. Rating criteria;
- e. Rating for each applicant;
- f. Signed promotion candidate list (USA-196);
- g. List indicating distribution of Notice of Vacancy; and
- h. USA-209, Employment Monitoring Report for Non-Attorneys.

2. Documentation will be maintained by the Personnel Office in accordance with FPM Chapter 335. Offices may keep a copy of the documentation for two years. Any requests for copies of Merit Promotion announcement documentations should be forwarded to the Personnel Office.

P. Employee Complaints: Employee complaints arising out of the operation of this plan are to be handled in accordance with grievance procedures prescribed in DOJ Order 1771.1B or as appropriate, the equal opportunity procedures prescribed by DOJ Order 1713.4. Nonselection from among a group of properly ranked and certified candidates is not a basis for a grievance. There is no right of appeal to OPM.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

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

#### 10-2.312 Certification Procedures

The normal process for hiring a non-attorney applicant on his/her first permanent appointment is by certification from the U.S. Office of Personnel Management's (OPM) employment registers. Certificates are also used to hire temporary employees under certain circumstances.

The SF-39, Eligibles Request and Certification Form, is the basic form used to request a certificate of eligibles. To avoid delays, it must be completely filled in. The SF-39 and a copy of the position description must be forwarded to the Area Office of the OPM for positions at the GS-15 level and below, except for Paralegal Specialists, GS-950-9/11/12, handling the Victim/Witness Assistance and Law Enforcement Coordinating Committee Programs, as noted below. The OPM will provide a list of names from an existing register. If there is no register, the OPM will either issue authority to hire an employee under a TAPER appointment, or it will conduct a competitive examination after advertising for applicants for the position and then refer the applicants with the highest scores.

If an office has a particular applicant in mind for a specific position, a "name request" can be submitted to the OPM on the SF-39. OPM will refer the applicant if he/she is among those with the highest scores on the register. Name requests do not guarantee that the preferred applicant will be referred for employment or that he/she will be selected. Therefore, it is imperative that no commitment be made to the applicant prior to completion of the certification process and approval by the Personnel Management Staff, Executive Office for U.S. Attorneys (EOUSA).



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

For positions whose qualifications require specialized experience, an office may request that the OPM use selective or quality ranking factors. Selective factors are job related knowledges, skills, or abilities which are in addition to or more specific than those defined in the OPM's Qualifications Handbook. They are "must have" factors. Any applicant who does not have a valid selective factor will be ineligible for the particular position. Quality ranking factors, on the other hand, are job related knowledges, skills, or abilities which may help to identify better qualified applicants. In order for selective and quality ranking factors to be accepted by the OPM, they must be job related, be reflected in the official position description, and be measurable. An SF-39A, Selective Factors and Quality Ranking Factors, should be used to request and justify selective and/or quality ranking factors. If the form is not available and plain paper is used, a format similar to an SF-39A is preferred.

The OPM has delegated to the Personnel Management Staff, EOUSA, through February 28, 1986, the authority to recruit and examine applicants for Paralegal Specialist positions, GS-950-9/11/12, who are to handle the Victim/Witness Assistance and Law Enforcement Coordinating Committee Programs. The Personnel Management Staff will be required to use the same procedures employed by OPM to examine for these positions. All certification requests are to be made on an SF-39, Eligibles Request and Certification Form, and mailed to the servicing personnel management specialist, who will take the necessary action to announce the position. The SF-39 must be accompanied by an SF-39A, Selective Factors and Qualifying Ranking Factors, and position description.

As soon as a list of eligibles is received, each applicant must be contacted by the U.S. Attorney's office. This can be done initially by telephone or with an OF-5, Inquiry as to Availability. Normally, ten days are allowed for the return of the OF-5. All declinations should be confirmed in writing.

When working with the certificates, two rules apply:

1. The Rule of Three. Selections must be made from the top three applicants who have expressed an interest in the position unless the OPM sustains an objection.
2. Veteran's Preference. Preference eligibles (normally veterans) cannot be "passed over" in order to select a non-veteran unless the OPM sustains an objection. (See below.)

If a certificate states that applicants have been self-certified for typing and/or stenography, the U.S. Attorney's office may test all or none of the applicants who express an interest in the position. Testing material must be obtained from the OPM.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A U.S. Attorney's office may file with the OPM or the Personnel Management Staff a request to waive either the Rule of Three or Veteran's Preference. The office must be able to demonstrate that one of the top three interested candidates or the applicant having veteran's preference clearly is not capable of performing the duties of the position. All such cases must be submitted on an SF-62, Statement of Reasons for Passing over a Preference Eligible, in triplicate, stating specifically and clearly the reasons which serve as the basis for filing the objection. The SF-62 must be accompanied by adequate supporting evidence or information, a position description, and the applicant's SF-171, Personnel Qualifications Statement. Reasons cited should be stated in such a way that they can be released to the applicant. All SF-62s should be reviewed by the Personnel Management Staff, EOUSA, prior to submission to the OPM.

When an applicant has been tentatively selected, the certificate and list of eligibles must be completed and returned to the issuing office. All applicants who expressed an interest should be sent a courtesy rejection letter after the appointment has been approved by the Personnel Management Staff, EOUSA. The procedures described in USAM 10-2.320, infra, must be followed to effect the appointment.

#### 10-2.313 Reinstatement

Former competitive employees (career or career-conditional) may be employed without OPM certification. This is called "reinstatement." There is no time limitation on the reinstatement of veterans preference eligibles or former "career" employees. Other persons may be reinstated only within three years of the date of their separation, unless extended by other government service. To be reinstated, the employee must meet the qualification requirements of the position. If separated less than one year, the employee must also meet any time-in-grade requirements. The requirements of the Merit Promotion Plan are also applicable. Reinstated employees who previously served a probationary period are not required to serve new ones.

#### 10-2.314 Transfers and Reassignment

"Transfer" means the movement of a career or career-conditional employee from one agency to another without a break in service of one full work day. Movement within the Department of Justice is a "reassignment," not a transfer. Merit promotion must be followed.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.315 Veterans Readjustment Appointments

Veterans Readjustment Appointments may be used to fill positions at or below the GS-9 grade level. These appointments are designed to permit Vietnam-era veterans to gain needed education and/or training while productively employed. No appointments can be made under this authority after September 30, 1986.

A. Basic Eligibility: To be eligible for appointment, a veteran must meet all of the following conditions:

1. Have served 180 days, some between August 5, 1964, and May 7, 1975;
2. Have received other than a dishonorable discharge;
3. Be a U.S. Citizen;
4. Have completed no more than 14 years of education, except for compensably disabled veterans and veterans discharged because of service-connected disabilities; and
5. Have agreed in writing to pursue a training or educational program during employment under the appointment.

B. Conditions of Appointment: In addition to the requirement for training agreements, the following conditions apply to Veterans Readjustment Appointments:

1. Appointments must be at the GS-9 level or below. For appointments at the GS-4 through GS-9 levels, the veteran must meet the appropriate competitive standards, including passing a written test, if required. The veteran may receive career promotions while serving under this appointment authority.
2. Veterans with compensable service-connected disabilities of 10% or more are entitled to priority in consideration for appointment.
3. Appointments are for a period of two years after which the appointees are eligible for conversion to career-conditional appointments.
4. Appointees whose performance or participation in training or educational programs is unsatisfactory will have their appointments terminated.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Education and Training Requirements: Selectees for Veterans Readjustment Appointments must agree in writing to a developmental program. Developmental activities may include:

1. Planned on-the-job training;
2. Off-job classroom training;
3. Basic or remedial education, or both;
4. High school or high school equivalency; and
5. Education beyond high school.

A written training or education plan must be developed. A copy must be forwarded to the Personnel Office at the time of appointment. The written plan should specify:

1. The veteran's educational or training objectives;
2. The activities the veteran will undertake to fulfill them;
3. The support the office will provide to the veteran; and
4. What constitutes satisfactory participation by the veteran.

10-2.316 Details

A detail is the temporary assignment of an employee to a different position for a brief, specified period. The Office of Personnel Management has imposed the following requirements on details:

A. A detail should be limited to 120-days or less. Longer details must be approved by the Personnel Office, Executive Office, before the 120th day;

B. A detail of more than 30 days must be reported to the Personnel Office on an SF-52, Request for Personnel Action; and

C. A detail of more than 120 days to a higher-graded position or one with known promotion potential must be advertised under the merit promotion plan.

Requests to detail secretaries serving under "Schedule C" appointments, regardless of the length of the detail, must be submitted to

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

Requests for extension of details, including their justification, should be submitted to the Personnel Office at least one month in advance of the effective date. The Personnel Office is authorized to approve extensions within the following parameters:

A. Details in 120-day increments to the same or lower-graded positions for up to 1 year;

B. Details to higher-graded positions for up to one year during "major reorganizations;"

C. Details to higher-graded positions not during major reorganizations for up to 240 days; and

D. No details to unclassified positions beyond 120 days.

Many situations found in U.S. Attorneys' offices are not considered details under the requirements described above. General Schedule employees who are detailed from one position to another without any change in duties, or who are assigned additional duties on a temporary basis, and Assistant U.S. Attorneys are not covered by these requirements.

The Comptroller General (CG) has authorized the awarding of backpay to employees who have been detailed improperly to higher-graded positions for more than 120 days. The following conditions must be met in order for backpay to be awarded:

A. The position to which the employee was detailed must be classified as of the effective date of the detail;

B. The detail must have lasted more than 120 days;

C. All statutory and regulatory requirements for promotion must be met;

D. The claim must be received "within 6 years after the date such claim first accrued" (see 31 U.S.C. §72A); and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

E. Acceptable documentation to substantiate the detail must be submitted.

Claims must be submitted in writing over the signature and address of the employee (or the employee's authorized agent) to the Personnel Office. Each claim must identify:

A. The starting and ending dates of the detail;

B. The title, series, grade, position description number, and organizational location of the position to which detailed; and

C. All supporting information in the employee's possession to show the detail occurred.

The Personnel Office is authorized to adjudicate outstanding claims or to submit doubtful claims to the General Accounting Office (GAO). Claims should not be submitted to the Office of Personnel Management (OPM). However, employees who do not agree with this office's determination may address their concerns to the OPM.

10-2.317 Priority Placement of Employees Entitled to Grade/Pay Retention Benefits

The Civil Service Reform Act of 1978 provides for grade and pay retention benefits for certain employees whose positions are downgraded through no fault of the employee as the result of reclassification or reduction in force. To the extent possible, agencies are required to place employees in positions at the grade of the employees' positions before they were downgraded. (See 5 C.F.R. §536.301(b)(3)).

A U.S. Attorney's office shall make every effort to place a covered employee into a position at his or her former grade level via a program of "priority placement." So long as an employee is entitled to pay or grade retention he or she is to be considered automatically and noncompetitively for all vacant positions at the former grade level of his or her position or at any intervening grade within the commuting area and under the same appointing authority. The employee may be placed in the position noncompetitively and qualification requirements may be waived provided there is evidence that the employee can perform fully the duties of the position within ninety days.

If the employee is not selected noncompetitively, the vacant position may be filled by advertisement, but the covered employee's application is

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

to be considered automatically. If the employee is among the "best qualified" group referred to the selecting official but is not selected, the selecting official must notify the employee in writing of the reasons for nonselection. A copy of the notification shall be included in the Merit Promotion package documentation submitted to the Personnel Office.

If an employee declines a "reasonable offer" of position at a grade equal to or higher than the employee's retained grade or at a rate of basic pay equal to or higher than the employee's retained pay, grade or pay retention benefits will be terminated on the last day of the pay period in which the declination is received. To be considered a "reasonable offer," the following conditions must be fulfilled:

- A. The offer must be in writing and must include an official position description;
- B. The offer must inform the employee that an entitlement to grade or pay retention will be terminated if the offer is declined and that the employee may appeal the reasonableness of the offer as provided below.
- C. The offer must be of tenure equal to or greater than that of the position creating the grade/pay retention entitlement;
- D. The offered position must be full-time unless the employee was part-time in the position from which he or she gained entitlement to grade/pay retention; and
- E. The position is in the same commuting area.

An employee whose grade/pay retention benefits are terminated for declining a "reasonable offer" may appeal the termination to the regional Office of Personnel Management (OPM). The appeal must be filed within 20 calendar days after being notified of the termination and shall state the reason(s) why the employee believes the offer of a position was not reasonable. Decisions issued by OPM are considered final.

Grade retention is terminated when the employee assumes a position at a grade equal to or higher than the employee's retained grade. Pay retention is terminated when the employee receives a rate of basic pay equal to or higher than the employee's retained pay.

10-2.320 Employment Forms and Procedures: Non-Attorney Personnel

A. When an applicant has been tentatively selected for a permanent non-attorney position, the following forms must be forwarded to the Personnel Office, Executive Office for U.S. Attorneys:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. SF-52, Request for Personnel Action, original only. Indicate whom the employee is replacing (vice);
2. SF-171, Personal Qualifications Statement, original only;
3. SF-86, Security Investigation Data for Sensitive Position, original and three copies, all with original signatures, if the position is sensitive;
4. SF-85, Data for Nonsensitive or Noncritical-Sensitive Position, if the position is nonsensitive;
5. CSC-329-A, Authority for Release of Information, one for each school attended since high school;
6. OBD-258, Fingerprint Card, three originals. Be sure that all information is furnished and that the prints are legible;
7. The Merit Promotion Package (if applicable);
8. SF-39, Eligibles Request and Certification, and Candidate Roster (if applicable);
9. Evidence of reinstatement eligibility (if applicable);
10. Request for waiver of pre-appointment investigation, if position is sensitive. Do not delay forwarding other documents while preparing this;
11. USA-209, Employment Monitoring Report for Non-Attorneys.

B. If the employee is a current federal employee or has had a break in service of less than 30 days, an SF-75 should be forwarded to the other agency at the same time that all of the other forms are submitted to the Executive Office. The form must have the following return address:

Department of Justice  
Executive Office for U.S. Attorneys  
Personnel Office  
Washington, D.C. 20530  
Attn: (Name of the Servicing Personnel Clerk)

C. For employees being reassigned from within the Department of Justice, items mentioned above need not be submitted as no additional security check is needed.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. When an employment request is received in the Executive Office, the name and fingerprint checks are immediately initiated. At the same time, the request is reviewed by the Personnel Management Specialist to insure that the appointment is proper. The office will be notified by telephone of any deficiencies so that appropriate action can be taken. No new appointments will be approved until the security check has been completed and the appointment has been approved. No definite commitments should be made to the applicant by anyone in the office until teletyped approval from the Executive Office is received.

E. When the employee reports to work, the following forms must be submitted to the Personnel Office, Executive Office.

1. SF-61, Appointment Affidavits (see USAM 10-2.110);
2. SF-177, Statement of Physical Ability for Light Duty Work;
3. DOJ-233, Employee Locator Information;
4. SF-2817, Life Insurance Election;
5. SF-2809, Health Benefits Registration Form;
6. SF-256, Self-Identification of Medical Disability;
7. SF-181, Race and National Origin Identification;
8. OBD-86, Work Experience in the Federal Government;
9. DD-214, Military Service (if applicable);
10. SF-61B, Declaration of Appointee; and
11. SF-1152, SF-2808, and SF-2823, Designations of Beneficiary, per employee request.

F. The following forms must be submitted to the Payroll Office:

1. W-4, Employee's Withholding Allowance Certificate;
2. Local tax forms;
3. SF-1192, Savings Bonds (per employee request); and
4. SF-1198, Allotments (per employee request);

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

\*Do not submit for federal employees transferring from other agencies. If the employee is transferring from another Department activity (except the Federal Bureau of Investigation) submit only an SF-61 and DOJ-233.

10-2.330 Temporary Non-Attorney Employment

Each fiscal year the Executive Office authorizes temporary non-attorney workyear allocations for the offices of the U.S. Attorneys. Districts are to use these workyear allocations to meet any unforeseen situation that may occur during the year which requires additional clerical or paralegal personnel.

The appointments detailed in USAM 10-2.331, 10-2.332, 10-2.334, and 10-2.335 can be made and applied against the temporary non-attorney workyear allocation.

Requests for additional temporary non-attorney workyear allocations should be submitted in writing to the attention of the Director, Office of Administration and Review, EOUSA, and should justify the need for the request.

10-2.331 Types of Temporary Non-Attorney Employment

The following types of appointments can be used:

A. 30-Day Emergency: For use when a need cannot be met through any other existing authority. Extensions for an additional 30 days must be approved by the Director, Office of Administration and Review, Executive Office.

B. Not-to-Exceed One Year: Appointments under this authority can be made for any period up to one year (*i.e.*, 3 months, 7 months, etc.). Appointments can be made based on applicants certified by OPM from a register or based on an applicant's reinstatement rights. Refer to USAM 10-2.312 and USAM 10-2.313. In addition, applicants can be appointed at the GS-12 level and below provided they meet the qualification requirements for position, including having passed any written test required. When an applicant has not been tested he/she can be tested non-competitively.

These appointments can be extended, in increments of up to one year, for a total period of up to four years under certain circumstances. In all cases, prior Executive Office approval is required. Extensions may be approved provided:

1. The original appointment was made in good faith;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. The extension is required to complete work in which the temporary appointee is engaged; and

3. The position is not continuing (i.e., permanent part-time, seasonal, or one-call intermittent appointments would not be more appropriate).

Prior to filling a position not through certification or reinstatement, local State Job Service Offices and OPM Federal Job Information Centers must be notified of the vacancy. The notice must include the following information:

1. The period during which applications will be accepted;
2. The title, series, grade, and salary of the position;
3. Length of appointment;
4. Qualifications;
5. How to apply, including what forms to use and how to obtain them; and
6. Whom to contact for more information.

A copy of this announcement and listing of where it was sent must be submitted with the pre-appointment papers.

C. Term of Employment: This appointment authority is for use in long-term projects (1-4 years). Applicants must be certified by the OPM from a register or have reinstatement rights. See USAM 10-2.512.

D. 1040-Hour Appointments: The 1040-hour appointment authority is for student employment in a non-clerical capacity at the GS-7 level or below. No written test is required. Employment may not exceed 1,040 hours in a service year.

E. "JJ" Authority: The "JJ" Authority is for law students. It can be made and extended for periods of up to 1 year or until the student graduates, whichever comes first.

Law students employed under this authority outside the Summer Law Assistant Program are paid as follows:

1. First and second year law students at GS-5; and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. Third year law students at GS-7.

10-2.332 Forms and Procedure

A. When an applicant has been tentatively selected for a temporary position, the following forms must be forwarded to the Personnel Office, Executive Office.

1. SF-52, Request for Personnel Action, original only;
2. SF-171, Personal Qualifications Statement, original only;
3. SF-86, Security Investigation Data for Sensitive Position, original and two copies, all with original signatures, for sensitive positions;
4. SF-85, Data for Nonsensitive or Noncritical-Sensitive Position;
5. CSC-329-A, Authority for Release of Information, one for each school attended since high school, if appointment is for six months or more;
6. OBD-258, Fingerprint Card, three originals;
7. SF-39, Eligibles Request and Certification, and Candidate Roster (if applicable);
8. Evidence of Reinstatement Eligibility (if applicable);
9. Copy of teletype approving appointment;
10. Request for waiver of pre-appointment investigation for Sensitive Positions; and
11. USA-209, Employment Monitoring Report for Non-Attorneys.

B. After the appointment has been approved by the Personnel Management Specialist and the security checks have been completed, a teletype approving the appointment will be transmitted. After the teletype has been received, the applicant may enter on duty at which time he/she should submit the following forms to the Personnel Office, Executive Office:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. SF-61, Appointment Affidavits (see USAM 10-2.210);
2. SF-177, Statement of Physical Ability for Light Duty Work;
3. DOJ-233, Employee Locator Information;
4. SF-256, Self-Identification of Medical Disability;
5. SF-181, Race and National Origin Identification;
6. OBD-86, Work Experience in the Federal Government;
7. DD-214, Military Service (if applicable);
8. SF-61-B, Declaration of Appointee.

C. The following forms must be mailed directly to the payroll office:

1. W-4 or W-4E, Employee's Withholding Allowance Certificate; and
2. State and/or local tax forms.

Term Appointees are treated like permanent employees. See USAM 10-2.520.

10-2.340 Student Employment

10-2.341 Volunteer Student Employment

The Civil Service Reform Act of 1978 provides specific 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 voluntary programs are authorized in any U.S. Attorney's office.

A. Program Requirements: The acceptance of voluntary services by the federal government is strictly limited. See 31 U.S.C. §665b. To meet the requirements of the Civil Service Reform Act, the following conditions must be met:

1. Such services can not be used to displace any employee or to staff a vacancy which is normally a part of the work force;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. The educational institution the student volunteer is enrolled in must give its permission;

3. The student volunteer must be enrolled not less than half-time in an accredited high school, trade school, technical or vocational institute, junior college, college, university, law school, or comparable institution. Students are deemed to be enrolled during interims of up to 5 months between school years if they plan to continue their education during the next school year;

4. Such services can not be accepted for periods of more than six months on a full-time basis unless the student is simultaneously working and attending school on at least a half-time basis;

5. Students employed under this authority may not be provided travel, subsistence expenses, or other reimbursements. (CG Decision B-201528, dated May 11, 1981).

B. Outside Employment Restrictions: Student volunteers are required to abide by the standards of conduct for Department of Justice employees pursuant to 28 C.F.R. Part 45, see USAM 1-4.000. Student volunteers should pay particular attention to 28 C.F.R. §45.735-9 which deals with outside employment.

No student volunteer may engage in any outside employment if the activity:

1. Interferes with the proper and effective performance of his or her official duties;

2. Creates or appears to create a conflict of interest;

3. Reflects adversely on the Department of Justice;

4. Will be influenced or appears to be influenced by the volunteer's position at the Department of Justice;

5. Involves assertions contrary to the interests or positions of the United States: or

6. Involves a criminal matter in which the United States (or the District of Columbia government) is a party or has a direct or substantial interest regardless of whether it is a federal, state or local proceeding.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Any student volunteer wishing to engage in outside employment that could create, or appear to create, a conflict of interest, must request permission from the Executive Office for U.S. Attorneys, identifying the name of the outside employer, the general nature of the work, and append thereto comments of the U.S. Attorney for his or her office. The Executive Office for U.S. Attorneys will make a determination as to whether the request is justified under 28 C.F.R. §45.735-9.

C. Agreements: Under the law, the permission of the educational institution is a prerequisite to the acceptance of volunteer services. Accordingly, a written agreement must be signed by the U.S. Attorney, or a designee, and a responsible school official. It must stipulate:

1. The service is with the permission of the school;
2. It is limited by statute to a student enrolled in school;
3. The service is to be without compensation; and
4. The student is not considered a federal employee except for purposes of 5 U.S.C. §81 (workers' compensation) and 28 U.S.C. §§2671-2680 (tort claims).

Inclusion of the following information in the agreement is optional:

1. The responsibilities of the school, the student, and the employer;
2. Whether or not such work is to be creditable for educational purposes;
3. A work schedule, if appropriate;
4. The duration of the service; and
5. The method of timekeeping.

D. Hiring Procedures: After making a tentative selection, the following documents must be submitted to the Personnel Office, Executive Office for U.S. Attorneys:

1. SF-52, Request for Personnel Action;
2. SF-86, Security Investigation Data for Sensitive Positions;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. SF-171, Personal Qualifications Statement;
4. OBD-258, FBI fingerprint card (three originals);
5. Copy of the agreement with the educational institution;
6. SF-181, Race and National Origin Identification;
7. SF-256, Self-Identification of Medical Disability; and
8. USA-223, Volunteer Agreement.

No commitment should be made until specific authority has been received from the Personnel Office.

E. Security Requirements: A name and fingerprint check must be completed on each student volunteer prior to entry on duty. Since student volunteers are not given full-field background investigations, it is important that they not have access to any classified information. Student volunteers must be advised that they are not to discuss outside the office non-public information which comes to their attention.

F. Notification of Appointment and Separation: The Personnel Office must be notified by memorandum upon the appointment of student volunteers. Appointment affidavits are not required. The Personnel Office must also be informed by a SF-52 of the separation of any student volunteer. Include on the SF-52 a statement of the total service in hours or days rendered between the appointment and separation dates. A DOJ-50, Notification of Personnel Action, will be issued.

10-2.342 Youth Opportunity Campaign

The offices of the U.S. Attorneys are continuing participants in the Youth Opportunity Campaign (YOC). Each year, the Executive Office for U.S. Attorneys is allocated a limited number of positions. These positions are then allocated to the individual offices to be used under the Summer Aid Program or the Stay-In-School Program.

A. Summer Aid Program:

These positions are designed to provide clerical jobs for youths from low income families who need income from summer jobs in order to return to school in the fall. Their pay is set at the federal minimum wage. These



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

appointments may be effective after May 12 and must be terminated on or before September 30. During September, Summer Aids may be converted to the Stay-In-School Program (see below).

Applicants for Summer Aid positions are obtained from the local office of the State Employment Service. In those states where there are no State Employment Service offices or where these offices advise that they are unable to provide referrals, referrals may be requested from other social agencies.

B. Stay-in-School Program:

These positions are designed to provide clerical jobs for youths who are enrolled in accredited high schools or institutions of higher education, no higher than the baccalaureate level, and need the earnings to stay in school and for mentally retarded and severely handicapped students.

New appointments to these positions, part-time or intermittent, may be made between September 1 and May 12, inclusive. Student aids may work up to 20 hours per week during the school year and 40 hours during vacation periods. They are paid at the minimum wage, or, if qualified, at salaries equivalent to General Schedule rates up to the GS-4 level.

Appointments under this authority may be made for up to one year and extended for additional periods of up to one year if the conditions for initial appointment are still met. The appointments of student aids in their final year of high school or college will terminate at the end of the last month of their final semester. They will be extended only if they submit evidence that they will be enrolled in another school for the next semester.

Referrals for Stay-in-School Program positions should come from state employment agencies, local high schools, or the placement or financial aid offices at local colleges and universities.

C. Economic Guidelines:

Each year, usually in May, the Office of Personnel Management issues a new set of economic guidelines which is based on the federal poverty income guidelines as determined by the Department of Health and Human Services. Individuals appointed either to the Stay-in-School or Summer Aid Programs, unless mentally retarded or severely handicapped, must meet the financial criteria. These guidelines are forwarded each year to State Employment Security Agencies which, in turn, forward copies to local job

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

service offices. Copies of these guidelines found in FPM Chapter 308, may be secured from the Executive Office for U.S. Attorneys, Personnel Management Staff.

In those instances where applicants for Stay-in-School or Summer Aid Programs are unable to obtain a financial eligibility determination from a State Employment Service office, an applicant may complete an OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs. The OPM Form 1495 must be certified by the Administrative Officer, indicating that the applicant is eligible, and forwarded with the other appointment forms. Instructions on financial criteria which must be evaluated are detailed on the back of OPM Form 1495.

D. Submission Requirements:

The following should be submitted to the Personnel Management Staff, Executive Office for U.S. Attorneys with each request for appointment:

1. DOJ-52, Request for Personnel Action;
2. SF-85, Data for Nonsensitive or Noncritical Sensitive Positions;
3. SF-171, Personnel Qualifications Statement (one original);
4. Three fingerprint cards;
5. Copy of referral from State Employment Agency or OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs; and
6. A position description if the standard position description is not appropriate (Student Aids are paid GW rates only). Refer to USAM 10-2.241.

In order to extend an appointment or to convert a student from the Summer Aid Program to the Stay-in-School Program, only an SF-52, a statement from the school, and the financial determination of eligibility are required. The school statement should confirm that the student is enrolled (or has been accepted for enrollment) on a substantially full-time basis. As a general rule, students pursuing a bachelor's degree should be enrolled for 12 semester hours or the equivalent if the school is on a quarter or unit system. The financial determination should be in the form of a State Employment Service referral or OPM Form 1495 which certifies the appointee still remains eligible for the program. No

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

paperwork is necessary to convert a Stay-in-School employee from part-time to full-time and vice versa.

At the time of appointment, the following should be submitted:

1. SF-61, Appointment Affidavit (refer to USAM 10-2.110);
2. W-4 or W-4e, Federal Income Tax forms;
3. Local and/or State Tax forms;
4. SF-256, Self-Identification of Medical Disability;
5. SF-177, Statement of Physical Ability for Light Work;
6. OBD-86, Work Experience for the Federal Government;
7. DD-214, Military Service (if applicable); and
8. SF-181, Race and National Origin Identification.

#### 10-2.343 College-Work-Study Program

The College-Work-Study Program (CWSP), which is authorized by the Higher Education Act of 1965, as amended, is a federally funded program designed to provide part-time and vacation employment for college and graduate students, including law students, who need the earnings to continue their studies. The Department of Health and Human Services administers this program. Colleges and universities receive grants which are used to pay part of the salaries of students employed on-campus and off-campus in government agencies and non-profit organizations.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The CWSP is an excellent way to augment the staffing of offices at a low cost and with no charge against personnel allocations. The students can perform a variety of duties in either an administrative or law clerk capacity depending upon their qualifications. Students need not be in law or pre-law curriculum. In fact, their assignments do not have to relate to their course of study.

A. Use of Other Work-Study Programs: In addition to the CWSP, there are a variety of state, local, and privately financed work-study programs. Although these programs may be equally worthy, they cannot be used by the U.S. Attorneys' offices. Due to appropriations restrictions, only federally funded programs are eligible.

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

C. The Contract: Normally, a contract setting out the agreement to hire CWSP students is signed by the U.S. Attorney or designee and by a representative of the school. A copy of each contract must be submitted to the Personnel Office, Executive Office, for review prior to appointing any students covered by the contract.

If it is impossible to obtain a contract, the Executive Office must be advised of the circumstances and of the conditions of employment as understood by the office.

D. Hiring Procedures: After making a tentative selection, the following documents must be submitted to the Executive Office:

1. SF-171, Personal Qualifications Statement;
2. SF-86, Security Investigation Data for Sensitive Position (one original and one copy); and
3. OBD-258, FBI fingerprint cards (three originals).

A SF-52 is not required for college work-study students. No commitment may be made to applicants until specific authority to appoint a given applicant has been received from the Executive Office.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

E. Security Requirements: A name and a fingerprint check must be completed on each student prior to entry on duty. Since CWSP students are not given full-field investigations, it is important that they not have access to any classified information. Moreover, students must be advised that they are to keep confidential non-public information that comes to their attention.

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

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

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

I. Office's Salary Contributions: Normally, a U.S. Attorney's office pays 20 percent of the student's salary. If a college asks for a higher reimbursement rate, the office is authorized to agree to pay up to 40 percent of the student's salary. CWSP students are covered by Federal Workmen's Compensation. Therefore, we normally will not reimburse the college for the costs of state workmen's compensation. You are authorized to agree to reimburse the school for the employee's Social Security contributions. Normally, you should not agree to pay the administrative costs of the program to the school.

J. Payments: Payments must be made on a reimbursement basis to the school for services rendered, as students can not be paid directly by the office. The office is responsible for notifying the school of the hours worked by each student. The school should be asked to submit its bill on an agreed-upon basis (bi-weekly, monthly, or quarterly). The following information must be included on each bill:

1. Names of students;
2. Amount paid to each student;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. Number of hours worked by each student; and
4. Total amount billed.

Upon receipt of the bill, the office should complete an OBD-50, Voucher Cover Sheet, indicating accounting classification code 1133, part-time temporary compensation. The OBD-50 and bill are submitted to the Marshal for payment.

K. Notification of Separation: The Executive Office should be notified by memorandum of the separation of a CWSP student.

10-2.344 Summer Student Assistant Program

Each year the Executive Office for U.S. Attorneys conducts a Summer Student Assistant Program for the U.S. Attorneys' offices.

Positions are allocated based on the size of the office, with each district receiving at least one position. Allocations are made in the late fall of the preceding year.

To be eligible, the student assistants must have (a) completed their second year of law school and be eligible to enter their final year of law school; or (b) be in their third year of law school, but not eligible for graduation until at least the end of the fall semester following employment. Students who are the sons or daughters of Department of Justice employees are generally not eligible. See USAM 10-2.130.

Applicants for the program are generated by the Department's Office of Attorney Personnel Management's nationwide announcement to all accredited law schools and through a nationwide announcement published by OPM in a "Summer Jobs" bulletin. The filing deadline for these positions may vary between November 4 and December 15. The filing deadline is the date before which no selections can be made and after which the applicant may not be accepted. Each office will establish a filing deadline based on local needs.

Each district must take affirmative action to recruit men and women of all racial and ethnic backgrounds. Approval will not be given in the absence of clear evidence of affirmative action efforts. All applicants are to be asked to voluntarily complete OPM Form 1386, Background Survey Questionnaire 79-2, in compliance with USAM 10-2.700.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A. All applicants must be formally selected from among those who are "best" qualified. The following suggested rating criteria may be used to determine which applicants are "best" qualified:

1. Law School Record (grade point average): 0-20 points
  - 90%+ -- 20 points
  - 80%+ -- 15 points
  - 75%+ -- 10 points
  - 70%+ -- 5 points
2. Academic Awards or Special Achievements: 0-30 points
  - Order of the Coif 10 points
  - Barrister (Moot Court Award) 10 points
  - Dean's List 5 points
  - Scholarship Based on Scholastic Merit 5 points
  - Other related awards 5 points
3. Legal Research and Writing: 0 to 20 points
  - Law Review 10 points
  - Finalist in Moot Court Competition 10 points
  - Participant in Moot Court Competition 5 points
  - On Moot Court or other Law Journals 5 points
4. Prior Legal Experience: 0 to 20 points
  - 2 points for each month of full time law clerk experience
  - 1 point for each month as a legal secretary, law enforcement experience or investigative journalistic experience.

These rating criteria may be modified to meet local needs. In selecting from among the best qualified applicants, such factors as the quality of a writing sample, ability to discuss and defend the sample, and similar related criteria may be used.

Written documentation of selection procedures, including a copy of the rating criteria used and the applications received, must be maintained in the office for two years. Copies of this documentation should not be forwarded to the Personnel Office, Executive Office.

B. The following must be submitted to the Personnel Office, Executive Office, at any time after the filing deadline, but no later than February 15, for students that the U.S. Attorneys' offices wish to employ:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. SF-52, Request for Personnel Action;
2. SF-171, Personal Qualifications Statement;
3. SF-86, Security Investigation Data for Sensitive Position (two copies);
4. OBD-258, FBI fingerprint cards (three originals);
5. SF-181, Race and National Origin Identification;
6. Supplement to Application - Summer Law Assistant Program;  
and
7. USA-209, Employment Monitoring Report for Non-Attorneys.

If the student is currently employed by the office, it should be noted on the SF-52; new security forms should not be submitted.

Before a final offer of employment can be made to any student, positive telegraphic approval must be received from the Executive Office. Students should be advised that such approval is contingent upon a number of factors, such as the security check, a review of qualifications, and budgetary limitations. It is especially important that the SF-86 be completed. In particular, applicants must list any arrest, detention, or fines no matter what the disposition of the case.

C. Summer student assistant appointees may be brought on at any time after May 13 and must be terminated by September 30. They receive 700-hour appointments as Paralegal Specialists, GS-950-07/01. The following should be submitted when they enter on duty:

1. SF-61, Appointment Affidavits (see USAM 10-2.110);
2. DOJ-223, Employee Locator Information;
3. SF-256, Self-Identification of Medical Disability;
4. SF-177, Statement of Physical Ability for Light Duty Work;
5. OBD-86, Work Experience in the Federal Government; and
6. DD-214, Military Service (if applicable).



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The following forms must be mailed directly to the payroll office:

1. W-4 or W-4E, Employee's Withholding Allowance Certificate;
- and
2. State and/or local tax forms.

10-2.345 Comprehensive Employment and Training Act (CETA)

The Comprehensive Employment and Training Act of 1973 (CETA) is designed to provide job training and economic opportunities for economically disadvantaged, unemployed, and underemployed persons. Funds are provided by the U.S. Department of Labor to state and local governments, and Indian tribes on federal reservations for their use on programs designed to meet their own needs.

CETA enrollees are placed by the sponsoring agency on a short term basis (normally not more than one year) in government agencies and non-profit organizations.

The enrollees' salaries are paid by the sponsor from CETA funds. There is no commitment to hire enrollees on a permanent basis upon completion of their temporary employment.

CETA enrollees can perform a variety of duties, particularly in the clerical and lesser-skilled areas, so long as they do not displace presently employed personnel.

If an office is interested in hosting CETA enrollees, contact the local Department of Labor representative or Office of Personnel Management area office for the name of the CETA sponsor in this area. The CETA sponsor will provide applicants that meet the qualifications requested. A letter of understanding should be executed when an office agrees to host a CETA enrollee. The letter of understanding should delineate the hosting arrangements, including:

1. The number of enrollees covered by the letter;
2. A brief description of the duties to be performed;
3. The number of hours per week authorized;
4. Arrangements for reporting time and attendance;
5. Length of the agreement;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

6. Procedures for removing unsatisfactory employees;
7. Statement that all salaries will be paid by sponsor with CETA funds; and
8. Statement that employment with the office is not federal employment.

After making a tentative selection, the following documents should be submitted to the Executive Office for U.S. Attorneys:

1. SF-86, Security Investigation Data for Sensitive Position (one original and one copy);
2. Copy of the letter of understanding;
3. SF-171, Personal Qualifications Statement; and
4. OBD-258, FBI fingerprint cards (three originals).

A SF-52 is not required for CETA appointees. No commitment should be made until specific authority has been received from the Executive Office.

A name and fingerprint check must be completed on each enrollee prior to entry on duty. Since enrollees are not given full-field investigations, it is important that they not have access to any classified information. Moreover, enrollees must be advised that they are to keep confidential non-public information that comes to their attention.

The Executive Office should be notified by memorandum of the separation of CETA employees.

10-2.400 POSITION MANAGEMENT AND CLASSIFICATION

10-2.410 Duties

10-2.411 United States Attorneys

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' MANUAL  
TITLE 10--EOUSA

U.S. Attorneys and their Assistants in the discharge of their respective duties (28 U.S.C. §547).

It is the duty of each U.S. Attorney, within his/her district, to (a) prosecute 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 his/her 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. §547).

U.S. Attorneys are not covered by the Classification Act of 1949. Consequently, they do not have position descriptions.

Each U.S. Attorney is authorized to designate any Assistant U.S. Attorney in his/her office to perform the functions and duties of the U.S. Attorney during his/her absence from office, or with regard to any matter from which he/she has recused himself/herself, and to sign all necessary documents and papers as Acting U.S. Attorney while performing such functions and duties (see 28 C.F.R. §0.131). See USAM 1-3.510.

10-2.412 Assistant and Special Assistant United States Attorneys

Assistant and Special Assistant U.S. Attorneys are appointed to assist U.S. Attorneys in performing the duties of office. They do not have position descriptions because they are not covered by the Classification Act of 1949. See USAM 1-3.530 and 1-3.540.

10-2.413 Paralegal Specialists (GS-950)

Paralegal Specialists (GS-950) are non-clerical employees who perform those duties traditionally performed by but not reserved to (under the Code of Ethics) attorneys. Their duties may include:

A. Performing legal research on particular issues and cases; compiling and indexing bibliographies of source materials, research notebooks and files on common issues; shepardizing; proofreading; checking citations in briefs and memoranda.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Researching and summarizing factual aspects of cases; analyzing reports, testimony, interviews, files, drafting factual memoranda.

C. Researching and writing pleadings, memoranda of law, trial briefs, appellate briefs; drafting summonses, complaint answers, motion papers, proposed orders, settlements, stipulations, interrogatories, affidavits, etc.

D. Reviewing incoming complaints from agencies and citizens and referring such to investigative or other agency for further action, or summarizing matter with recommendation for action by U.S. Attorney's office; acting as liaison between U.S. Attorney's office and local consumer and federal agencies, referring complaints for action and responding to inquiries; initiating filing suit based on complaints.

E. Assisting in discovery: Preparing necessary documents; drafting interrogatories, subpoenas duces tecum and ad testificandum; organizing and analyzing answers to interrogatories; preparing documents for production for defense counsel; performing legal research regarding discoverability of information and privileges and immunities; preparing papers to defend against demands for discovery.

F. Trial preparation: Organizing abstract and indexing documents; preparing, organizing and indexing exhibits for trial; obtaining, analyzing and preparing documents, confidential information; financial and statistical information, agency records, court records, other public records; prepare summaries, narrative summaries, charts, tables, graphs, visual aids, for use in grand jury and trial; assisting in interviewing witnesses and government expert witnesses for trial; summarizing interviews; suggesting questions for examination.

G. Negotiating settlements of certain cases, subject to supervising attorney's approval; preparing documents to secure default judgments and decrees; monitoring and analyzing compliance reports for conformity with consent decrees.

H. Processing case files for release of information pursuant to Freedom of Information Act and Privacy Act requests.

I. Collections and foreclosures: Initiating all correspondence, demand letters; negotiating payment schedules; drafting pleadings; supervising and managing collections caseload up to trial preparation.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

J. Supervising and managing land condemnation cases from receipt of referral to completion of all documents and pleadings for trial; checking title, sufficiency of tract descriptions; collecting and preparing all documents for trial; assisting in negotiations for settlements.

K. Performing projects of special investigation regarding fraud, corruption, jury tampering, etc.; acting as liaison with government agencies and individuals; preparing reports as necessary.

10-2.414 Legal Technicians (GS-986)

Legal technicians must be familiar with laws, rules, and precedents and apply this knowledge in providing technical support to attorneys. They are responsible for independently determining the appropriate procedure necessary to complete an assignment. Normally, legal technicians specialize in an area such as collections, land condemnation, or foreclosures. They may perform clerical duties. Their technical duties may include:

A. Gathering factual material independently; reading and annotating files and transcripts; reviewing incoming briefs to identify the issue raised.

B. Being responsible for the collections function in the office (i.e., locations of debtors, review of financial statements, determination of ability to pay and advisability of compromise, receipt of payments).

C. Serving as a contact point in the office for questions related to area of expertise from the public, private attorneys, and Departmental employees.

10-2.415 Legal Clerks (GS-986)

Most legal clerks perform clerical duties in support of attorneys. At the GS-6 grade level, the legal clerks should be expected to:

A. Review case files in order to insure that all necessary documentation is present and independently request anything which is missing.

B. Independently prepare (i.e., draft and type in final form) a wide variety of legal documents based on review on the file.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Independently monitor the caseload of the attorney(s) to whom assigned in order to insure that all deadlines are met.

D. Act as the point of contact for coordinating all activities of witnesses as well as insuring their presence, arranging accommodations, and arranging payments of vouchers.

E. Serve as a contact point for the public and Departmental employees concerning the Assistant's caseload. Respond to routine inquiries independently.

F. Handle a variety of clerical duties associated with the movement of cases and matters.

Offices will normally require other clerical support personnel including receptionists, docket clerks, clerk-typists, and clerk-stenographers.

10-2.416 Secretaries (GS-318)

Secretaries serve as the personal assistants to only one supervisor. Their grades are based on both the scope of the supervisor's administrative responsibility and the extent of the secretary's participation in the work of the supervisor. Positions in the U.S. Attorneys' offices are normally not classified in the GS-318 series below GS-7 grade level because the legal clerical duties and qualifications are paramount. They may provide limited clerical support for another attorney when necessary.

Secretaries assist in the management of the supervisor's programs by solving the procedural and management problems which arise. At the highest level, their duties should include:

A. Making arrangements for the implementation of commitments made by the supervisor;

B. Keeping informed of the current status of work in progress throughout the supervisor's organization;

C. Serving as a liaison between the supervisor and other offices;

D. Interviewing and making preliminary selections of clerical employees, making assignments, arranging for overtime work, etc.; and

E. Independently preparing procedural notices, office manuals, etc.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.417 Administrative Officers and Assistants

Administrative officers and assistants are responsible for providing or obtaining a variety of management services and advice essential to the direction and operation of the organization. In smaller offices this responsibility is normally combined with the function of secretary to the U.S. Attorney.

The grade of the administrative officer or assistant is based on the level of responsibility for providing management advisory services; improving established methods and procedures; and insuring that people, money, and material are efficiently used. Supervisory responsibilities generally do not have an impact on the employee's grade above the GS-7 level.

Fully functional administrative officers are normally responsible for:

- A. Management of the support staff, including recruitment, training and awards;
- B. Control of all financial transactions;
- C. Purchase of equipment and supplies;
- D. Design of office space; and
- E. Serving as point of contact for administrative transactions with the Department and the Executive Office.

10-2.420 Position Descriptions and Classifications

10-2.421 Attorney and Non-Attorney Position Description Numbers

All non-attorneys employed in the Offices of U.S. Attorneys are compensated according to the General Schedule or its equivalent and must be assigned to position descriptions which accurately reflect the major duties and responsibilities of their positions. Position descriptions are management tools which serve a number of purposes, including:

- A. The basis for classifying jobs;
- B. Determining training needs;
- C. Analyzing the organizational structure and flow of work;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. Evaluating the use of skills and abilities consistent with management needs; and

E. Determining whether an award is merited.

Position descriptions are not designed to tell an employee how to do a job, but rather to describe major duties and responsibilities. Major duties and responsibilities are those which occupy more than ten percent of the employee's time and occur on a regular basis. Additional duties may be assigned by the supervisor at any time.

The Personnel Management Staff, Executive Office for U.S. Attorneys, has developed the following standard position descriptions:

<u>Title</u>	<u>Series and Grade</u>	<u>Position Description Number</u>
Clerk (Student Assistant)	GW-303-1	81240818
Legal Clerk (Stenography)	GS-986-5	21227728
Legal Clerk (Stenography)	GS-986-6	21227738
Legal Clerk (Steno) Civil	GS-986-6	21227748
Legal Clerk (Steno) Criminal	GS-986-6	21227758
Paralegal Specialist (Summer)	GS-950-7	N1202878

These position descriptions may be used if the listed duties and responsibilities agree with those of the employee. These descriptions cannot be used for docket clerks or for employees assigned to word processing centers.

Assistant U.S. Attorneys are not covered by the Classification Act of 1949 and, therefore, do not have position descriptions. The Executive Office for U.S. Attorneys, however, maintains records indicating which attorneys handle specialized functional areas, such as criminal or civil matters, or those who have supervisory responsibilities. To accomplish this, Assistant U.S. Attorneys' position description numbers vary according to the type of work performed by the attorney.

The Personnel Management Staff, Executive Office for U.S. Attorneys, has developed the following mandatory position description numbers. These numbers are to be used when an Assistant is working predominantly, not necessarily exclusively, on the type of matters indicated.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Function</u>	<u>Position Description Number</u>
Criminal Attorney	P129CRM8
Civil Attorney	P129CIV8
Criminal/Civil (General) Attorney	P129GEN8
Collections Attorney	P129COL8
Drug Task Force Attorney	P129DTF8
Tax Prosecution Unit Attorney	P129TPU8

Some offices may have attorneys who predominantly handle even more or other specialized areas such as lands, general tax, civil rights, or appellate matters. For those offices, the following additional standard position description numbers have been established. Use of these numbers is optional.

<u>Function</u>	<u>Position Description Number</u>
Civil Rights Attorney	P129CVR8
Appeals Attorney	P129APL8
Land/Environmental Protection Attorney	P129LDN8
Tax Attorney	P129TAX8

If an Assistant is recognized by the Executive Office as a member of the paid supervisory staff, then the last character in the mandatory or optional position description is changed from "8" to "1."

The following position description numbers are mandatory:

<u>Function</u>	<u>Position Description Number</u>
First Assistant/Chief Assistant/ Executive Assistant/Administrative Assistant	P1295AA1
Senior Litigation Counsel	P129SLC8

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A position description number must accompany each SF-52, Request for Personnel Action, when an attorney:

1. Is entering on duty;
2. Is being reassigned/promoted between a formally recognized supervisory or Senior Litigation Counsel position and a regular Assistant U.S. Attorney position;
3. Is being reassigned between the office's divisions; or
4. Will be receiving work predominately of a different type.

10-2.422 Procedure for Submission

Position descriptions should be submitted to the Personnel Management Staff, Executive Office for U.S. Attorneys, when a review of the descriptions reveals that the major duties and responsibilities described in an employee's PD are not accurate, when an employee is assigned new duties and/or responsibilities, or when a position is established which is not covered by an existing position. The following documentation must be submitted:

- A. SF-52, Request for Personnel Action, indicating:
  1. Kind of Action, Classification Request;
  2. Proposed title, series, grade;
  3. District;
  4. Whom to contact for information; and
  5. The employee's name if the employee will be reassigned noncompetitively. See USAM 10-2.311.
- B. OF-8, Position Description cover sheet. The U.S. Attorney's office must complete:
  1. Duty Station (Block 5);
  2. Position Status;
  3. Sensitivity (Block 10); see USAM 10-2.181;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Title, series, and grade recommended by supervisor (Block 15e);
5. Organizational title if it is different from 15e (Block 16);
6. Organizational location of the position (Block 18);
7. The employee's signature if the employee will be reassigned to the position non-competitively (Block 19);
8. The immediate supervisor's signature (Block 20a); and
9. The U.S. Attorney's signature, if not the immediate supervisor (Block 20b).

The position description which is written in factor evaluation format should seldom exceed three pages. The format consists of the following:

1. Major duties: Briefly describe the major duties performed in plain, clear language. Duties are best described by using active verbs;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. Knowledge required by the position: briefly describe the various kinds and levels of knowledge and skill necessary to do acceptable work in the position;

3. Supervisory controls: describe how the work is assigned, the employee's responsibility for carrying out the work, and how the work is reviewed;

4. Guidelines: describe the nature of the guidelines for performing the work and how much judgment is needed to apply the guidelines or develop new guides;

5. Complexity: describe the nature of the assignment, the difficulty in identifying what needs to be done, and the difficulty and originality involved in performing the work;

6. Scope and effect: describe the purpose of the work and the impact of the work product or service;

7. Personal contacts: describe the face-to-face or telephone contacts which the employee has with individuals other than the supervisor. Indicate if the people come from elsewhere or the contacts occur outside the Department;

8. Purpose of contacts: explain the purpose of the personal contacts described above;

9. Physical demands: describe the nature of the physical demands placed on the employee;

10. Work environment: describe the physical surroundings in which the employee works.

There are many positions which combine specialized clerical duties with a requirement for a qualified stenographer. In such cases; the word "Stenography" is added to the title in parentheses. For example a legal clerk position, requiring a qualified stenographer is titled Legal Clerk (Stenography).

The qualification standard for the clerk-stenographer and reporter series, GS-312, which is used to determine an applicant's possession of the required degree of stenographic skill, requires proficiency at 80 words per minute for stenographic duties classified at the GS-4 level, and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

120 words per minute for stenographic duties classified at GS-5. Because of this difference in qualification requirements, position descriptions for positions which have the parenthetical title of "Stenography" must show the duties on which the requirement for stenographic skill is based and must document the grade levels of these duties. For position descriptions in FES format, the level of skill will be included in the "Knowledges Required" for the position. For positions written in the traditional format, it will be included under "Other Significant Facts."

This documentation is essential to the recruitment process because otherwise qualified applicants for a position may be rated ineligible based on their inability to meet an erroneous degree of stenographic skill.

10-2.423 Classification

Once a position description is submitted to the Executive Office it is classified. "Classification" is the process of assigning an occupational title, series, and grade to the position description. This process is based on two principals:

A. Employees shall receive equal pay for substantially equal work; and

B. Differences in pay shall be in proportion to differences in the difficulty, responsibility, and qualification requirements for the position. The basic requirements for each grade are defined in 5 U.S.C. §5104.

Requirements have been further defined in OPM classification standards which have been issued for government-wide use. It should be emphasized that classification is based on duties, responsibilities, and qualification standard. It is not based on such factors as the incumbent's longevity, volume of work, efficiency, personality, or willingness to work overtime. Some of these factors may be used as a basis for a monetary awards such as special achievement award or quality within-grade increase (which is worth approximately one-half a promotion in terms of dollars). See USAM 10-2.650.

In the process of classifying a position, audits are used to clarify aspects of the position description. Audits are conducted either by telephone or in person with the employee and/or supervisor in order to better understand how the duties are performed.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

When the decision concerning the classification of a position is made, the servicing Personnel Management Specialist will advise the U.S. Attorney's office.

Certain U.S. 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 effected is to comply fully with OPM classification standards.

10-2.424 Classification Appeals

Employees who disagree with the classification of their positions may appeal either to the Department of Justice, Justice Management Division, or to the Office of Personnel Management (OPM). If they appeal to the Department of Justice and are not satisfied with the results, they have further classification appeal rights to the OPM. If they appeal directly to the OPM without first appealing to the Department of Justice, they forfeit any classification appeal rights to the Department. These classification rights are described in Department of Justice Order 1511.1A, (October 4, 1972).

An appeal must be in writing and include the information specified below. Failure to provide the required information will render the appeal incomplete and will be cause for the nonacceptance of the appeal.

A. Name and mailing address: In those cases where the employee designates a representative, the name and mailing address of the designee must also be included;

B. Exact location of the position within the organization;

C. Present title, series, and grade of the position;

D. A statement of the reason(s) why the employee feels the position is erroneously classified, relating the position, where possible, to applicable OPM classification standards or guides;

E. A statement that the official position description is complete and accurate or that it is not complete and accurate; if the employee states that the position description is not complete and accurate, explain why he/she believes this to be true;

F. A statement that no other classification appeal is pending. Classification appeals within the Department should be submitted to:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Assistant Attorney General for Administration  
Justice Management Division  
Room 1111, Main Building  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

Classification appeals directed to the OPM should be submitted to the Personnel Management and Evaluation Division of the OPM regional office. The address can be obtained from the Personnel Management Specialist servicing the U.S. Attorney's office.

10-2.425 Designation and Justification of Supervisory Assistant  
U.S. Attorneys

Supervisory positions for pay purposes are controlled by the Director, Executive Office for U.S. Attorneys, or the Director's designee. Normally, a U.S. Attorney is permitted to designate up to one-sixth of his or her permanently allocated Assistant U.S. Attorney positions as paid supervisors. Numerous factors, including organizational structure and complexity of cases, will be taken into account when determining the number of supervisors authorized for a district.

Positions established as paid supervisory positions generally fall into three categories:

A. Positions which have district-wide functional and administrative responsibilities but are not necessarily responsible for the direct supervision of five or more Assistants. Incumbents of these positions assist the U.S. Attorney in the overall operation of the district and are typically titled First Assistant, Chief Assistant, or Executive Assistant;

B. Positions which have direct supervisory responsibilities for five or more Assistants. These "line" supervisory positions are typically titled Chief or Deputy Chief of a legal division; or

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

U.S. Attorneys may wish to establish paid supervisory positions having the characteristics of any of these categories. U.S. Attorneys should refrain, however, from requesting that more than one-sixth of the district's permanently allocated attorney staff be designated as paid supervisors. To do so may be an indication of questionable position management.

Requests for the establishment of paid supervisory positions should be sent to the Director, Executive Office for U.S., Attorneys. Justification for the request must be included. See USAM 10-2.513 for procedures for promoting Assistant U.S. Attorneys to supervisory positions.

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

10-2.426 Designation of Non-Attorney Supervisory Positions

Non-attorney positions are designated as supervisory by the Personnel Office as the result of classification action. See USAM 10-2.423.

A. In order for a position to be classified as a supervisor, the employee must be responsible for directing at least 3 subordinate employees in the performance of their work and be held accountable for the quantity and quality of work done and for assuring efficient and economical work operations. At a minimum, the supervisor must:

1. Have the authority to plan assigned work to meet schedules and deadlines for regular and peak loads and priority cases;
2. Have the authority to determine how the work load should be assigned, processed, and reviewed in order to achieve an acceptable quality and quantity; and
3. Have the authority to carry out established personnel functions and practices and to keep employees and higher level supervisors informed of personal matters that affect them.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Employees who are responsible to their supervisors for assuring that the work of a group of at least 3 other employees is carried out may be classified as work leaders. Work leaders normally also perform clerical duties. Typical duties of a work leader are:

1. Distribute and balance the work load among employees in accordance with established work flow or job specialization; assure timely accomplishment of the assigned work load; assure that each employee has enough work to keep busy;
2. Keep in touch with the status and progress of work, and make day-to-day adjustments in accordance with established priorities; obtain assistance from the supervisor on problems that may arise, such as backlogs which cannot be disposed of promptly;
3. Estimate and report on expected time of completion of work and maintain records of work accomplishments and time expended; prepare production reports as requested;
4. Instruct employees in specific tasks and job techniques and make available written instructions, reference materials and supplies;
5. Give on-the-job training to new employees in accordance with established procedures and practices;
6. Maintain a current knowledge and answer questions of other employees on procedures, policies, directives, etc.; obtain needed information or decisions from supervisor on problems that arise;
7. Check on work in progress or spot check work not requiring review (i.e., filing or direct services); review completed work to see that supervisor's instruction on work sequence, procedures, methods and deadlines have been met;
8. Amend or reject work not meeting established standards; refer to supervisor questions or matters not covered by standards and problems in meeting performance standards;
9. See to working conditions such as seating, ventilation, lighting, safety, etc;
10. Approve leave for a few hours or for emergencies;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

11. Inform employees of available services and employee activities;

12. Resolve simple informal complaints of employees and refer others to supervisor;

13. Report to supervisor about performance, progress and training needs of employees, and disciplinary problems; and

14. Make information suggestions to supervisor as requested concerning promotions, reassignment, recognition of outstanding performance, and personnel needs.

Non-attorneys assigned to supervisory positions are required to serve a one-year probationary period and to receive supervisory training. See USAM 10-2.642 and 10-2.833. Those assigned to work leader positions are encouraged to receive such training.

10-2.430 Position Management and Review

It is the policy of the Executive Office for U.S. Attorneys and the Offices of the U.S. Attorneys to ensure that positions which are subject to its purview are soundly designed, accurately described, and properly classified.

A. Responsibilities: It is the responsibility of supervisors to participate in classification operations and to keep employees fully abreast of the status of any classification action which may affect them. Supervisors should be aware of the grade-controlling features of their employees' positions and recognize that changes in position content due to the accretion, deletion, or modification of duties and responsibilities may affect the grade level of the position. Supervisors are responsible, however, for initiating redescriptions of duties if changes occur in program emphasis or due to the introduction of new technology.

B. Position Management: Position management is the process of designing positions and distributing duties and responsibilities among those positions in the most efficient, economical, and productive manner. Therefore, each position should be systematically planned so that it logically fits with other positions within the office in an orderly, productive, and efficient pattern. In part, this means that positions should be so planned that there are logical entrance levels and career patterns for progression to more skilled and higher-graded positions as employees gain the ability to assume greater responsibility. The lack of

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

adequate planning when creating or redesigning a position can result in low quality employees, unsatisfactory productivity, high unit cost, confusion of responsibility, employee dissatisfaction, grievances, and high employee turnover. Therefore, a supervisor should consider the following factors in designing a new position:

1. Whether each duty or function is necessary, is within the organization's functional limits, and is assigned to a specific position.

2. Whether duties have been assigned in the most economical and efficient manner, i.e.:

- a. Related work should be assigned to the same position;
- b. Duplication of effort should be avoided;
- c. Time saving equipment and procedures are to be used wherever practical; and
- d. The qualifications of the employees are to correlate with the work to be done; i.e., recognize that one does not need a stenographer to do work limited to typing.

3. The effect of changing the assignment of duties of one position on the position itself and on other jobs in the same unit.

4. Whether the job description accurately describes the job. A good job description should:

- a. Be complete, i.e., be able to stand on its own with no further explanation;
- b. Neither overstate nor understate the duties and responsibilities;
- c. Clearly indicate supervision exercised and received by the position;
- d. Note the percentages of time devoted to different occupational areas of mixed series positions; and
- e. Distinguish clearly between existing and proposed duties.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The primary responsibility for position management lies with the individual U.S. Attorney and the Director, Executive Office for U.S. Attorneys. The staff of the Executive Office is available to assist in resolving position management problems and to recommend alternatives. Before any reorganization of non-attorney personnel is undertaken, the Personnel Office, Executive Office for U.S. Attorneys, must be contacted to ensure that the reorganization will have no unanticipated personnel consequence. Any reorganization of paid attorney supervisory positions must receive prior approval from the Director, Executive Office. See USAM 10-2.400.

C. Position Review: It is the responsibility of the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices to adhere to the policy, guidelines, and procedures contained in Department of Justice Order 1511.6, (April 29, 1981), Position Classification and Employee Placement Plan. In accordance with the Department's order, every effort is to be made to correct any position management problem and to identify and correct position classification errors. Therefore, in order to ensure that positions in the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices are accurately described and correctly classified, the following guidelines are to be followed:

1. All inactive position descriptions classified prior to 1980 are cancelled.

2. A review is to be made of vacated position descriptions classified since January 1, 1980, for need, soundness of design, adequacy of description, and accuracy of classification prior to being filled. Unnecessary descriptions are to be eliminated. Positions which are of unsound design should be reconstructed and position descriptions should be rewritten where there has been a substantial change in duties. The fact that a review has been made should be documented by the supervisor's signature in block 23 of OF-8, Position Description coversheet.

3. As of July 31 of each calendar year, a review should be made of encumbered position descriptions which are more than four years old. The review should be documented by the supervisor's signature in block 23 of the OF-8. A copy of the signed OF-8 should be mailed to the servicing personnel management specialist by August 31 of the same year for inclusion in the Executive Office's annual report.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.440 Vacancy Control

U.S. Attorneys' offices are responsible for insuring that they do not exceed their authorized strength. See USAM 10-2.450. For this purpose, each office should maintain a position control file consisting of a Position Identification Strip (SF 7D) for each authorized position and an Employee Record Card, SF 7B, for each employee.

Cards will be filed in order by salary schedule (AD or GS) and or salary, from lowest to highest. Steps should be taken to revise the position control file whenever a new allocation is received.

Action may be initiated to fill a position as soon as it is known that a position will be vacated. However, final approval from the Executive Office for U.S. Attorneys to hire an applicant will normally not be given until a vacancy exists. All SF-52, Request for Personnel Action, for new appointments must state whom the applicant is replacing ("vice"), regardless of how long ago the former employee left the office.

10-2.450 Allocation of Positions

Permanent positions are allocated by the Executive Office for U.S. Attorneys based upon the relative work load of the offices and on the number of positions available.

A. The following factors are used to provide a basis for decision. They can not be ranked in order of priority since the impact of each varies according to the circumstances of a particular district.

1. Prosecutive Program of a District:
  - a. Narcotics cases;
  - b. Fraud & corruption cases;
  - c. Alien cases.
2. Number of district court judges (full-time and senior);
3. Number of full-time and part-time magistrates;
4. Statistical data from Administrative Office of U.S. Courts:
  - a. Ranking of districts by weighted caseload (overall);

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- b. Percent of private civil cases;
- c. Ranking of districts by weighted criminal case load;
- 5. U.S. Attorney workload statistics;
- 6. U.S. Attorney workload ranking by weighted activity and manhours in court.
  - a. Criminal case weight:
    - (1) Declinations;
    - (2) Grand jury indictments;
    - (3) Conviction after plea;
    - (4) Trial after plea of not guilty;
    - (5) Appeals.
  - b. Civil case weights:
    - (1) Closed without action;
    - (2) Dismissed as uncollectible without suit;
    - (3) Terminated after completion of installment payments;
    - (4) Terminated by compromise;
    - (5) Dismissed on a motion;
    - (6) Terminated by entry of default judgment;
    - (7) Judgment after trial;
    - (8) Appeals.
  - c. Manhours in court and grand jury manhours for each district;
  - d. Three year comparative analyses of case statistics;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

7. Legal division recommendations;
8. Demographic characteristics:
  - a. Population size;
  - b. Population mix (economic, urban, rural);
  - c. Multi-branch districts (amount of travel by Assistant U.S. Attorneys);
  - d. Prominent federal presence (national parks, military bases), international borders.
9. Evaluation Reports from Assistant Directors:
  - a. Legal and administrative support operations;
  - b. Case allocation and control procedures;
  - c. Prosecutive policies;
  - d. Professional qualifications;
  - e. Comments of judges and representatives of investigative agencies.
10. Continuing dialogue between Executive Office for U.S. Attorneys and U.S. Attorneys;
11. Increases in staffs of investigative agencies;
12. New Programs and Agencies:
  - a. Energy conservation/Federal Energy Administration;
  - b. Pollution control/Environmental Protection Agency.
13. Clerical Allocation:
  - a. Number of attorneys;
  - b. Steno/typing pool;
  - c. Attorney/clerk ratio;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- d. Administrative complement;
  - e. Utilization of automatic equipment.
- 14. Experience of professional and clerical staff;
  - 15. Utilization of paraprofessionals;
  - 16. Comparison of workload with other offices of similar, smaller, or larger staffs

Requests for additional allocations may be made at any time during the year. A general review of all allocations is conducted in late September/October and in late March/April. Adjustments are made, subject to the availability of funds, whenever circumstances warrant. Allocations to fill permanent appointments are made on a permanent or a temporary basis (next vacancy).

B. Allocations are made for 3 major types of employees:

- 1. Assistant U.S. Attorney;
- 2. Paralegal Specialist, GS-950;
- 3. Clerical Employees.

The category "Clerical employees" includes all non-attorneys except Paralegal Specialists.

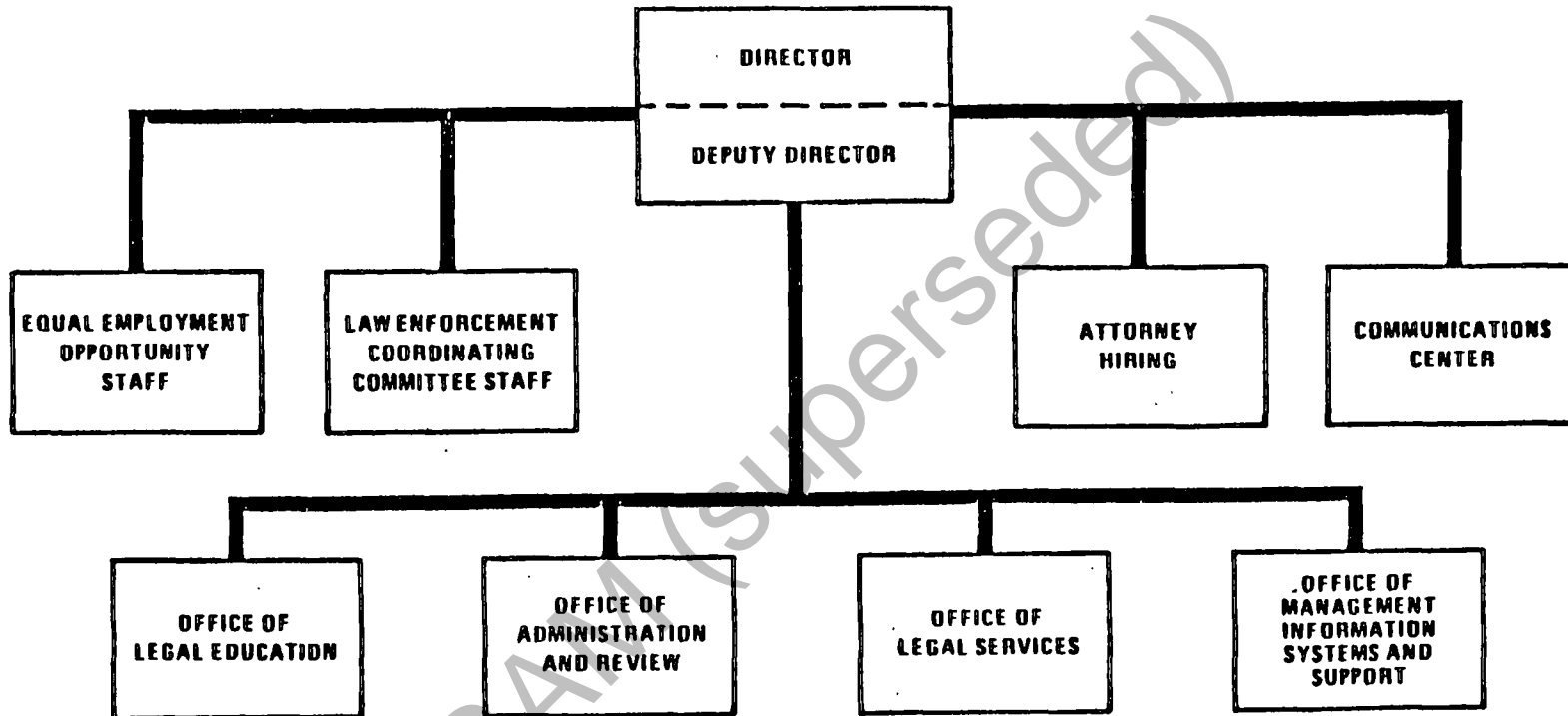
Temporary positions are allocated on an as-needed basis. See USAM 10-2.330.

10-2.460 Organization

10-2.461 Executive Office for U.S. Attorneys (Organizational Chart)



# EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS



Approved by: William French Smith Date: 8/17/84  
Attorney General

NOVEMBER 1, 1984  
Ch. 2, p. 98  
DOJ-0985-01

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.462 Official Duty Station

The Attorney General establishes the official duty station of the U.S. Attorney within each district. See 28 U.S.C. §545. Requests to change the U.S. Attorney's official duty station must be submitted to the Director of the Executive Office.

10-2.500 COMPENSATION AND PAY

10-2.510 Standard Compensation

10-2.511 U.S. Attorneys

The salaries of U.S. Attorneys are set by the Attorney General. See 28 U.S.C. §548. U.S. Attorneys are not eligible for annual salary increases (promotions), but generally do receive annual pay comparability increases.

10-2.512 Court-Appointed U.S. Attorneys

Any person appointed by a court pursuant to 28 U.S.C. §546 to serve as U.S. Attorney receives the full salary level of the position, effective as of the date the person qualifies (i.e., takes the oath of office).

When an Assistant U.S. Attorney has served as court-appointed U.S. Attorney, and is reappointed as an Assistant U.S. Attorney after the new Presidentially-appointed U.S. Attorney has entered on duty, the following rules apply:

A. An Assistant returning to the same position, either supervisory or non-supervisory, shall receive the same salary he/she would have received had he/she not served as U.S. Attorney.

B. An Assistant returning to a higher position (either to a supervisory from a non-supervisory position, or to a higher supervisory position) shall be governed by rules of supervisory promotions, in addition to what he/she would have received had he/she not served as U.S. Attorney.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.513 Supervisory Assistant U.S. Attorneys

Supervisory Assistant U.S. Attorneys generally are recruited from the ranks of regular Assistants or from a Department of Justice legal division. Upon promotion to a supervisory position, Assistants may be recommended for a pay increase of up to 6% of their current salary in recognition of the additional responsibilities of the supervisory position. If a supervisory Assistant is promoted to a higher level supervisory position, i.e., from Deputy Chief to Chief of a Division, and the Assistant has been a supervisor in his or her current position for at least one year, the Assistant may receive up to an additional 6% pay increase. The anniversary date of newly promoted attorneys will not change for annual administrative pay increases. If a supervisory Assistant is reassigned to a non-supervisory position in the same or another U.S. Attorney's office, his or her annual salary shall be decreased by the amount in dollars he or she received in recognition of any supervisory promotions.

If supervisory Assistant U.S. Attorneys are recruited from outside the Department, the starting salary pay scale for regular Assistants based on experience will apply, but the Executive Office will recognize an increase in recognition of the supervisory responsibility.

Under these provisions, an Assistant U.S. Attorney shall not be promoted to a salary which exceeds the salary of the U.S. Attorney appointed pursuant to 28 U.S.C. §541, less \$1,000.

The managerial skills necessary for the successful performance of each paid supervisory position shall be identified and the qualifications of candidates for those positions must be assessed in terms of the identified skills.

The managerial skills of each nominee for a supervisory position must be defined with reference to each of the following activities:

A. Those which reflect the ability to respond to the general public and client agencies;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Those which reflect the ability to establish and maintain relationships with key individuals and groups and to serve as a spokesperson for the organization;

C. Those which reflect the ability to establish goals and the structures and processes necessary to carry them out;

D. Those which reflect the ability to insure that people are appropriately employed and dealt with fairly and equitably; and

E. Those which reflect the ability to insure that plans are implemented and that appropriate results are achieved.

A request for Personnel Action (SF-52), and a narrative description of the Assistant's managerial qualifications should be submitted to the Executive Office for U.S. Attorneys whenever an Assistant is recommended for a supervisory position, even if no pay increase is recommended. It is expected that women and minorities will be affirmatively sought for these positions and that ample opportunity will be provided for them to acquire the experience and to demonstrate the skills necessary to assume such responsibilities.

Supervisory Assistant U.S. Attorneys are eligible for annual salary increases in the amounts indicated in the memorandum entitled "Hiring and Promotion of Assistant U.S. Attorneys."

10-2.514 Assistant United States Attorneys

Starting salaries for regular Assistant U.S. Attorneys are determined based on guidance contained in the annual memorandum entitled "Hiring and Promotion of Assistant U.S. Attorneys."

10-2.515 Special Assistant United States Attorneys

See USAM 10-2.230 for information.

10-2.516 Support Staff

Salary rates for non-attorneys are under the General Schedule. They are based on the classification (grade) of the position to which the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

employee is assigned. See 5 U.S.C. §§5101-5115. The actual rates of pay are published in the Schedule of Annual Salary Rates by the Grade.

The salary of each new appointee shall be set at the minimum rate of the grade. See 5 U.S.C. §5333. The only exception is for an employee who is reemployed or transfers from another federal agency, who may be paid at any rate of the grade which does not exceed his/her highest previous rate:

10-2.517 Merit Pay

Section 501 of the Civil Service Reform Act of 1978 (5 U.S.C. §5410) required that agencies establish merit pay systems (MPS) for all supervisors and managers in grades GS-13, GS-14, and GS-15. The Department developed the Justice Merit System (JUMPS) (Department of Justice Order 1540.1, April 28, 1981).

Coverage under JUMPS is mandatory for all employees, attorneys and non-attorneys, in GS-13, GS-14, and GS-15 positions who meet the following definitions as broadly defined in 5 U.S.C. §7103(a)(10) and 5 U.S.C. §7103(a)(11).

A. Supervisor means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority. See 5 U.S.C. §7103(a)(10).

B. Management official means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency. See 5 U.S.C. §7103(a)(11).

Each employee identified as eligible for inclusion in the MPS due to the nature of his/her position is to be advised of such determination via a memorandum from the Personnel Officer, Executive Office for U.S. Attorneys (EOUSA). Employee disagreements over inclusion in the MPS will be handled as grievances in accordance with Department of Justice Order 1771.1B (August 30, 1982), and USAM 10-2.610.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Briefly stated, employees covered by the MPS receive an annual increase which consists of no less than 50 percent of the authorized comparability adjustment determined by the President and an additional sum which is dependent on the quality of the employee's performance as approved by the immediate supervisor. An employee's current performance rating must be Fully Successful or better to warrant a MPS increase.

The additional sum comes from a merit pay fund or pool which consists of the remainder of the comparability adjustment and the approximate value of within grade increases and quality step increases which would have been paid to merit pay employees if they were not within the MPS. Each employee's share of the fund is determined by three factors: his or her level of performance, grade and relative position in the salary rate range. Employees covered by the MPS in the U.S. Attorneys' offices and the Executive Office for U.S. Attorneys constitute a single merit pay pool.

10-2.520 Salary Increases

10-2.521 Assistant United States Attorneys

Assistant U.S. Attorneys are compensated under an "administratively determined" pay system which provides for annual pay increases called administrative pay increases (API). These increases are in lieu of both the periodic promotions and within-grade increases received by Department attorneys paid according to the General Schedule.

The following tenets apply to Assistant U.S. Attorneys' compensation:

A. U.S. Attorneys determine annually whether an Assistant receives an API;

B. There is a close linkage between performance and pay decisions, although U.S. Attorneys may exercise some discretion in making salary recommendations;

C. Assistants who are rated Excellent should receive salary increases equal to or greater than Assistants in the same salary range rated Fully Successful; and

D. Normally, salary increases are effective the first pay period following the anniversary of the Assistant's last regular administrative

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

pay increase. If the proposed effective date has "slipped" more than one month beyond the Assistant's initial entrance-on-duty (EOD) date within a district, the U.S. Attorney may request that the increase be effected the first pay period after the month and day of the EOD date.

There may be exceptions to the one-year period described above, such as in the following cases:

A. An attorney who transfers from one government agency to a U.S. Attorney's Office.

If upon transfer the attorney is granted a pay increase the EOD date becomes the attorney's anniversary date. If, however, a transferring attorney's EOD salary is no greater than the next higher \$100 increment, the attorney is eligible for an API one year after his or her last within-grade increase or promotion. Cases such as this are handled individually and the first applicable pay increase date will be established by the Executive Office and noted on the SF-50, Notification of Personnel Action.

B. An attorney who has time in a non-pay status in excess of two weeks since his or her last API.

The effective date of the API will be delayed one full pay period for each interval, or part of an interval, of time in a non-pay status in excess of 80 hours.

C. An attorney who has a break in service.

If an attorney resigns his or her position and is reappointed within 52 weeks at the same salary level, the time the attorney is not on the payroll is not creditable toward completion of the 52-week period between APIs. The attorney must work the equivalent of the time off the payroll plus the remainder of the original 52-week period before being eligible for an API. If the attorney is reappointed at a higher salary level, the date of reappointment will become the new anniversary date for pay purposes.

U.S. Attorneys are responsible for submitting SF-52s and recommendations for APIs to the EOUSA three pay periods (six weeks) before the proposed effective date. It is important that offices continually be cognizant of anniversary dates because of established policies regarding when APIs may be effected. Refer to USAM 10-2.524, infra.

The actual allowable increase that may be requested is published annually in a memorandum from the Director which addresses Assistant U.S. Attorneys' starting salaries and salary increases.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.522 Non-Attorney Promotions

A promotion is an increase in grade for an employee covered by the General Schedule due to an increase in the employee's level of responsibility. Promotions are either competitive or non-competitive. See USAM 10-2.311. Most noncompetitive promotions are "career" promotions or are due to the "accretion of more responsible duties." The determination that "accretion of more responsible duties" has occurred must be made by the Personnel Management Staff, Executive Office for U.S. Attorneys, based on a U.S. Attorney's proposal.

In order to be eligible for a promotion, an employee must meet both the qualification requirements of the new position and the time-in-grade requirements. Qualification requirements for each series and grade are described in the Office of Personnel Management's X-118 Qualifications Handbook. Because of differences in the qualifications requirements, an employee may not be eligible for a promotion or reassignment to a different series, even at the same grade level. For example, a Clerk-Stenographer, GS-312-05, must have one year of "legal" clerical experience in order to be qualified as a Legal Clerk (Stenography) GS-986-05.

A. The Office of Personnel Management's time-in-grade requirements state that:

1. For promotion to GS-5 and below, the employee can not be promoted more than 2 grades within one year;



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. For promotion to GS-6 through GS-11, in a single interval series, the employee must have served in the next lower grade one full year. Most clerical and technical positions are in single-interval series;

3. For promotion to GS-7 through GS-11 in a two-grade interval series, the employee must have served one full year in a position at the second lower grade. Most professional positions are in two-grade interval series.

4. For promotion to positions at GS-12 and above, the employee must have served one full year at the next lower grade.

The above restrictions apply to transfers and some reinstatements involving promotions, as well as to promotions within an office. Time served on a temporary appointment at a grade higher than a subsequent permanent appointment is creditable toward satisfying the time-in-grade requirements of the permanent appointment.

Employees who have served less than 90 days after appointment from an OPM Register cannot be promoted, even if all other requirements for promotion are met. See 5 C.F.R. §330.501, and USAM 10-2.312.

B. In order to effect a promotion the following papers must be submitted to the Personnel Office, Executive Office for U.S. Attorneys, well in advance of the proposed effective date:

1. SF-52, Request for Personnel Action
2. Position Description Number, if established, or 5 copies of a proposed position description with an original copy of OF-8, Position Description coversheet. See USAM 10-2.311.
3. Merit Promotion Package, if applicable. See USAM 10-2.311.

10-2.523 Within-Grade Salary Increases

Permanent and "term-appointment" non-attorney personnel are eligible to advance through the step rates of the General Schedule grade by means of within-grade salary increases until the maximum rate is reached. Department of Justice Order 1531.1B, (September 9, 1983). To be eligible for a within-grade, an employee must have completed the prescribed waiting period and have performed at an acceptable level of competence.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A. The length of the waiting period is related to the numerical step of a grade in which the employee is serving:

1. 52 weeks in the next lower step to advance to step 2, 3, or 4;
2. 104 weeks in the next lower step to advance to step 5, 6, or 7;
3. 156 weeks in the next lower step to advance to step 8, 9, or 10.

Approximately 90 days before an employee is eligible to receive a within-grade increase, the U.S. Attorney's office will receive a Within-Grade Salary Increase Certificate. If the immediate supervisor of the employee is satisfied that the employee's performance is of an acceptable level of competence, the certificate should be held until the last pay period before the increase is due (2 weeks before increase is due). At that time the supervisor will sign the certificate and have the employee sign it, deliver one copy to the employee and forward the original to the Personnel Office, Executive Office for U.S. Attorneys. It will be processed and should be reflected in the second paycheck that the employee receives after he/she has become eligible for the increase.

If the immediate supervisor feels that the employee's performance does not or may not meet the acceptable level of competence required when the certificate is received, the Personnel Office, Executive Office for U.S. Attorneys, should be contacted immediately for technical guidance concerning the procedures for denying a within-grade salary increase.

In no case will a within-grade increase be effected until the certification has been signed and returned to the Personnel Office, Executive Office for U.S. Attorneys. If a within-grade increase is delayed through administrative oversight and the employee is otherwise eligible, it will be effected retroactively.

B. Quality within-grade salary increases are additional increases which will add to basic pay. They are given in recognition of employees whose performances are above that found ordinarily in the type of position occupied, and normally benefit employees throughout their careers. This award may be given to no more than 25 percent of an office's non-attorney staff in any one year. See USAM 10-2.656.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.524 Retroactive Pay Increases and Promotions

As a general rule, the effective date of administrative pay increases for Assistant U.S. Attorneys and promotions for non-attorneys is the date action is taken by the proper administrative official or a subsequent date fixed by that official. The proper administrative official is either the Director, Office of Attorney Personnel Management, for attorney pay increases, or the Personnel Officer, Executive Office for U.S. Attorneys (or designee) for non-attorney promotions.

Such pay increases and promotions may be made retroactive only when a personnel action is not effected as originally intended by the proper administrative official because of a clerical error. Delays or oversights in the U.S. Attorney's office or at levels below that of the proper administrative official will not justify a retroactive effective date.

The effective date of within-grade increases for non-attorneys will be made retroactive when the increase has been delayed as the result of administrative oversight on the part of the U.S. Attorney's office or the Executive Office, and the employee is otherwise eligible. See 5 C.F.R. §531.409. See also USAM 10-2.523.

10-2.530 Overtime and Compensatory Leave

10-2.531 Authority

U.S. Attorneys or their designees are authorized to approve paid overtime and compensatory time off for their non-attorney staff. Payment for overtime is authorized only within the limits of the U.S. Attorney's overtime budget.

The Executive Office for U.S. Attorneys makes a quarterly allocation of overtime funds to each U.S. Attorney's office based on estimates of overtime requirements within overall budgetary constraints. Estimates of overtime needs are requested from each office quarterly.

Because overtime under 5 U.S.C. §5542 must be approved in advance by a person authorized to do so, it is recommended that the U.S. Attorney delegate in writing authority to approve overtime. Normally, the administrative officer or the supervisors delegated authority to approve Time and Attendance Records should be delegated the authority to approve overtime.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

U.S. Attorneys are not authorized to approve overtime for attorney personnel. Assistant U.S. Attorneys are professionals and should expect to work in excess of regular hours without overtime pay or compensatory time off.

10-2.532 Payment for Overtime

Federal overtime requirements are based on the provisions of 5 U.S.C. §5542 and on the Fair Labor Standards Amendments of 1974, Pub. L. 93-259 (FLSA). Those requirements are outlined in the following Department Orders:

- A. No. 1500.2 - Pay for Time Spent on Official Travel;
- B. No. 1551.5 - Fair Labor Standards Act;
- C. No. 1551.3 - Overtime and Other Premium Pay.

The following table summarizes the differences between Title 5 overtime provisions and FLSA overtime provisions:

<u>Title 5</u>	<u>FLSA</u>
1. Covers all employees.	1. Covers all employees GS-8 and below, referred to as "nonexempt," except for certain GS-318-8s.
2. "Hours worked" includes paid leave.	2. "Hours worked" does not include paid leave.
3. Overtime after 40 hours worked during a week or <u>8</u> hours in a day.	3. Overtime only after 40 hours worked in a week.
4. Overtime must be approved or ordered in advance by an authorized individual.	4. All overtime worked is covered, including that which is "suffered and permitted."
5. Employees may request compensatory time off in lieu of occasional or irregular overtime pay.	5. Compensatory time off is not authorized unless it is taken during the same week.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

6. Travel is normally not considered hours of work for overtime purposes. Exception: travel to court or the executive branch of government.

7. Time spent in training normally is not eligible for overtime pay.

6. If the employee drives a vehicle, it is considered hours worked. Under certain conditions, travel as a passenger is "work."

7. Depending upon the purpose of the training time spent in training or in preparation for training may be considered "hours worked."

Employees covered by both Title 5 and FLSA receive the greater benefit when both statutes are applicable in a given situation.

If entitlement at the end of a week is solely under Title 5, the employee may be granted compensatory leave at a later date, or be paid overtime.

If entitlement at the end of a week is solely under FLSA, the employee must be paid overtime.

If entitlement at the end of a week is under both FLSA and Title 5, and is equal, the employee may elect compensatory time by completing the appropriate block on the Time and Attendance Sheet or may elect to be paid overtime.

Under the FLSA, management can not accept the benefits of a non-exempt employee's work without compensating the employee for that work. If the supervisor knows, or has reason to believe that work is being performed before or after hours or during the prescribed lunch break, that time counts as "hours worked," and the employee may become entitled to overtime pay. This has placed a new burden on supervisors and administrative officers who must now take positive action to control the amount of time worked by non-attorney personnel.

Employees should be instructed to request overtime from appropriate officials if it is needed. See USAM 10-2.531. Employees should also have the option of taking compensatory leave when they are eligible.

Overtime compensation earned while in travel status will be controlled by telling the employee when to travel and by what mode. If the employee travels at a different time or by a different mode than that which was ordered, the employee receives the lesser amount of compensation based on actual and estimated travel.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.533 Time Spent in Training as Hours of Work Under FLSA

In general, under FLSA a non-exempt employee is paid for all time spent learning the duties and responsibilities of his or her current position. This includes any time spent by an employee in remedial training for the continued performance of the duties of his or her current position. Therefore, if an employee is directed to participate in such training, the training is primarily for the benefit of the agency, and the time spent training is hours of work under FLSA. On the other hand, if an employee voluntarily attends a training program to improve his or her performance, or attends a training program to enhance his or her opportunity for reassignment to another position or advancement to a higher grade, such training is primarily for the benefit of the employee. Time spent in this type of training is not "hours of work" under FLSA.

10-2.534 Compensatory Leave

Compensatory leave is time off in lieu of an equal amount of occasional or irregular overtime worked under the provisions of 5 U.S.C. §§5542, 5543. See Department of Justice Order, 1551.1C (January 10, 1977).

Compensatory leave can not be granted for any other purpose and must be substituted on a quarter hour for quarter hour basis. As a rule, an employee should not be permitted to accumulate more than 80 hours of compensatory time.

Because overtime is not authorized for Assistant U.S. Attorneys, they are not eligible for compensatory leave. The Payroll Office will not record compensatory time earned for Assistants, and if an Assistant attempts to take compensatory leave, his/her annual leave balance will be debited.

An employee, whose rate of basic pay is less than the maximum rate for grade GS-10, may request that he/she be granted compensatory time off in lieu of overtime pay. An employee whose rate of basic pay is in excess of the rate for grade GS-10/step 10 may be required to take compensatory time off in lieu of overtime for irregular or occasional overtime work. Compensatory leave will be authorized or approved in total each pay period in increments of one-quarter hour. At the end of each pay period, the hours and minutes of compensatory leave earned will be totaled on the Time and Attendance Report and odd minutes of less than one-quarter hour will be dropped from the total. Compensatory leave is always to be taken and charged to leave balance in multiples of one-quarter hour.



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

March 20, 1986  
(Expires August 20, 1986)

TO: Holders of United States Attorneys' Manual Title 10

FROM: United States Attorneys' Manual Staff  
Executive Office for U.S. Attorneys

*WPT*  
William P. Tyson, Director  
Executive Office for U.S. Attorneys

RE: Compensatory Time

- NOTE:
1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.550.
  2. Distribute to holders of Title 10.
  3. Insert at end of USAM Title 10.

PURPOSE: This bluesheet sets forth a new policy for all offices that compensatory time must be used before annual leave. The section also details the procedure by which employees in the Executive Office and the Offices of the United States Attorneys are to seek payment for forfeited compensatory time.

AFFECTS: USAM 10-2.534

The following should replace the material at USAM 10-2.534.

10-2.534 Compensatory Time

The following highlights Department of Justice and Executive Office policy regarding compensatory time. This material supplements DOJ Order 1551.1C, subject: Compensatory Time, dated January 10, 1977, and does not replace the contents thereof.

A. Definition

Compensatory time is time off from a regularly scheduled tour of duty in lieu of payment for an equal amount of occasional or irregular overtime worked under the provisions of 5 U.S.C. §§5542 and 5543. See DOJ Order 1551.1C. Irregular or occasional overtime work means overtime work which is not regularly scheduled to recur on successive days or after specified intervals. See DOJ Order 1551.3, Subject: Overtime and Premium Pay, dated November 15, 1971.

Compensatory time cannot be granted for any other purpose and must be substituted on a quarter hour for quarter hour basis. It is each supervisor's responsibility to ensure, that as a rule, an employee not be permitted to accumulate more than 80 hours of compensatory time.

B. Eligibility to Earn Compensatory Time

1. Attorneys

Pursuant to DOJ Order 1551.3, paragraph 8.a.1., "It is the general policy of the Department not to order overtime for attorney personnel".

2. Non-attorneys

a. Exempt employees

An employee who is exempt, i.e., is not covered by the the Fair Labor Standards Act (FLSA), and whose rate of pay is no greater than the maximum rate for grade GS-10, may request that he/she be granted compensatory time off in lieu of irregular or occasional overtime work. An exempt employee whose rate of basic pay is in excess of the rate for grade GS-10 step 10 may be required to take compensatory time off in lieu of overtime for irregular or occasional overtime work.

Maximum earning limitations prevent an exempt employee from being paid premium pay (including compensatory time) when it would cause his/her aggregate rate of pay, i.e., straight-time base pay, for any pay period to exceed the maximum rate for GS-15. This includes when compensatory time which is converted to overtime.

An exempt employee who does not request to use the compensatory time as detailed below will forfeit it.

b. Non-exempt employees

An employee who is non-exempt, i.e., is covered by the FLSA, may be granted compensatory time off as a substitute



for overtime pay depending on whether the employee's greater entitlement to overtime pay is under Title 5 or under FLSA. See DOJ Order 1551.1C paragraph 7(b). A non-exempt employee may make advance selection of compensatory time off using Form DOJ 296, Time and Attendance Report, if his/her entitlement to overtime pay is solely under Title 5, or if the overtime entitlement in a given workweek is equal to or greater under Title 5 than overtime pay entitlement under FLSA. Management cannot compel a non-exempt employee to elect compensatory time.

If a non-exempt employee initially requests compensatory time off but prior to taking it decides overtime pay is preferable, the office does not have to elect to pay overtime. However, the compensatory time must be granted.

Please note that if compensatory time is not used by an FLSA non-exempt employee by the end of the leave year following the year in which it was earned, he/she shall be paid for the overtime work under Title 5 at the rate at which it was earned. To deny overtime pay under Title 5, would have the effect of also denying the employee any entitlement to pay under FLSA which is not permitted. Supervisors are responsible for ensuring that FLSA non-exempt employees are reminded of compensatory time they have earned and the need to use it.

#### C. Accrual and Usage Rates

Compensatory time will be authorized or approved in an amount equal to the time spent in occasional or irregular overtime work. At the end of each pay period, the hours and minutes of compensatory time earned will be totaled on the Time and Attendance Report and fractions of less than one quarter hour will be dropped from the total.

Compensatory time is always to be taken in increments of an hour, if the balance permits, except when it is used in the same pay period in which it was earned. It is Executive Office policy that all employees must use compensatory time prior to using annual leave.

#### D. Time Limit for Use

Compensatory time must be used by the end of the leave year following the year in which it was earned or it becomes subject to forfeiture, i.e., if earned in 1986, it must be used by the end of the leave year 1987. Compensatory time balances are reflected on Form JMD-44, Earnings Statement, including the amount of compensatory time available to use or lose.

E. Unused Compensatory Time

An employee shall be paid for compensatory time not used by the end of the leave year following that in which it was earned provided that: 1) he/she has made one or more requests to use the compensatory time which have been denied, in writing, by the person empowered to grant leave; and 2) the latest or only request was made between September 1 and September 30 of the leave year following the year in which it was earned. Requests to use compensatory time and denials of the use of compensatory time must be recorded on the SF-71, Application for Leave.

Any request to have forfeited compensatory time converted to overtime pay, by either an exempt or non-exempt employee, must be made by the employee via the supervisor, endorsed by the United States Attorney, and sent to the Director, Office of Administration and Review, for a review of entitlement and certification of availability of funds. Each request must include a statement by the employee that he/she desires to have the compensatory time converted to overtime pay. The supervisor must state the hours of compensatory time for which the employee is to be paid, the date(s) it was earned, and the hours forfeited, if any.

To expedite processing, copies of time and attendance records for the pay period(s) in which compensatory time was earned and all subsequent pay periods, the earnings and leave statements for the final pay period of the leave year in which the compensatory is being forfeited and the first pay period of the following leave year, and SF-71(s) referred to above must be submitted. Each request will be reviewed and approved requests will be forwarded to Payroll for processing.

Any employee who has unused compensatory time to his credit at the time of his/her transfer, i.e., employment in another agency or separation shall be paid for the time.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Compensatory leave must be used by the end of the year following the year in which it was earned (i.e., if earned in 1984, it must be used by the end of 1985). If the employee is covered by the Fair Labor Standards Act (generally GS-8 and below) and fails to use the compensatory time, he/she will receive overtime pay. An exempt employee loses his/her right both to the time off and to the overtime pay, unless he/she has requested the leave in writing, between September 1 and 30 of the year in which it will be lost, and the request is denied. In that case, he/she will receive overtime pay.

As a matter of policy, an office may require that compensatory time earned be taken before an employee uses any annual leave. If an employee covered by the FLSA initially requests compensatory time off, but prior to taking it decides that overtime pay is preferable, the office does not have to elect to pay the employee. However, the compensatory time off must be granted.

Employees with unused compensatory time to their credit when transferring or being separated must be paid for the time. A written request must be made to the Personnel Management Staff, Executive Office for U.S. Attorneys. The request should include copies of the employee's time and attendance record for the pay periods in which the overtime was worked.

10-2.540 Payroll

10-2.541 Time and Attendance Reports

Unless specifically authorized by the Director, Executive Office for U.S. Attorneys, only the U.S. Attorney may sign his/her own Time and Attendance Report, Form DOJ-296, as certifying official.

For instruction and assistance in the preparation of Time and Attendance Reports, refer to Department of Justice Order 2120.6B, dated June 28, 1983, entitled Time and Attendance Report.

Any additional questions regarding the preparation of Time and Attendance Reports which are not answered by referencing the manual, and questions regarding non-receipts of Time and Attendance Reports or late submissions, should be addressed to the payroll clerk.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.542 Forms or Correspondence Mailed Directly to Payroll Office

A. The following are to be mailed directly to the Payroll Office:

1. Federal, state, and local tax forms;
2. Savings bonds (SF-1192);
3. Net pay allotments and savings allotments (SF-1199A-Revised 1984);
4. Applications for Refund of Retirement Deductions (SF-2802);
  - a. Under the provisions of the Civil Service Retirement Spouse Equity Act of July, 1984, if application is made for a refund of retirement contributions, the employee must notify his/her current spouse. Notification is accomplished via OPM Form 1537, Current/Former Spouse's Notification of Application for Refund of Retirement Contributions.
5. Applications for Voluntary Contributions (SF-2804);
6. Memoranda requesting cancellations for allotments and bonds;
7. Requests for information on amount of money in retirement fund; and
8. In order for an employee transferring from another federal agency to receive credit for FICA withheld during a calendar year, a copy of the FINAL earnings statement must be submitted via a memorandum which details the employee's name, Social Security number, organization code, telephone number, and that the information is being furnished to update the FICA data in the Master file.

B. The Payroll Office address is:

Justice Employee Data Service Center  
P. O. Box 2922  
Washington, D.C. 20013  
Attn: (Servicing Payroll Clerk)

The servicing payroll clerk should be contacted regarding the processing of these forms and deductions from the salary check. The telephone number is FTS 272-6111.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.543 Substitute Checks

When an employee has not received a salary check, an immediate replacement may be made if reported to the appropriate Disbursing Center within 15 days from the original date of issue.

Prior to reporting non-receipt of a check to Payroll Operations, please call the payroll clerk assigned to your office to determine if the employee has been paid. If payment has not been made, you will be advised why and when you may expect the salary check.

Once it has been established that the employee has not been paid, you should take the following steps:

USAM (superseded)

AUGUST 21, 1985  
Sec. 10-2.543  
Ch. 2, p. 112a

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A. District Does Not Receive by Payday Regular Salary Checks for Distribution in the Office:

Immediately contact the Payroll Operations Unit (FTS or 202) 633-3605. Payroll Operations will make the necessary arrangements with the Disbursing Center for the issuance of substitute checks. At that time you will be given the following instructions:

1. If the original checks are received before the substitute checks, you must contact Payroll Operations before distributing the originals. After checking with the Disbursing Center, Payroll Operations will advise you whether or not you can distribute the originals.

2. If the substitute and original checks are received at the same time, distribute the substitutes and return the originals to the Treasury Disbursing Center with a cover memorandum stating that substitute checks have been distributed. A copy of this memorandum should be sent also to Payroll Operations.

3. If the original checks are received after the substitute checks have been received and distributed, they should be returned to the Treasury Disbursing Center with a memorandum stating that. A copy of this memorandum should be sent also to Payroll Operations.

B. All Other Cases:

The key to getting a substitute check is that the employee never received the check. This may happen in one of two ways:

1. The check is received in the district for remailing, or presentation, to the employee, and subsequently is lost, stolen or destroyed prior to the employee receiving it; or

2. The employee has the salary check mailed directly.

When a check is not received in the above instances, after allowing sufficient time for mail delay, contact Payroll Operations which will make the necessary arrangements for the issuance of a substitute check. Once a substitute check is requested, follow the instructions in part A of this section for determining negotiability of original or substitute checks. In addition, you will be requested to furnish Payroll Operations with a memorandum, which in turn will be forwarded to the Disbursing Center.

A substitute check MUST be requested within 15 days of the original issue date.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Lost or Destroyed Checks:

Once an employee has received his or her check and it is lost, destroyed, stolen or the 15-day deadline for requesting a substitute check has expired, it cannot be replaced by an immediate substitute issue.

The employee must execute a signed statement (memorandum) outlining:

1. The pay date and amount of the check;
2. Circumstances surrounding the loss, destruction or theft of the check;
3. Whether or not the check was endorsed. If it was endorsed, the way it was endorsed should be described; and
4. The employee's mailing address.

This memorandum should be forwarded to Payroll Operations Unit which will provide additional information required and then forward it to the appropriate Disbursing Center requesting that a Stop Pay Action be placed on the check.

10-2.544 Supplemental and Manual Checks

If a new employee does not receive a pay check during the second pay period after his/her entry on duty, a supplemental or manual check may be issued at the request of the office. The following procedures cannot be used for employees who have been paid an incorrect amount.

The U.S. Attorney's office must first determine if the requisite appointment affidavit had been forwarded in a timely manner to the Personnel Office. If it has, the servicing personnel clerk should be contacted to determine whether the action has been keyed and an SF-50, Notification of Personnel Action, generated. If so, the personnel clerk will arrange for a supplemental check to be issued by the Payroll Office. This process takes 5-7 days.

In cases in which an SF-50 has not been generated and the SF-61 was received by the second Thursday in the pay period, a manual SF-50 will be prepared and forwarded to the Payroll Office. The personnel clerk will contact the office to advise that the SF-50 is at the Payroll Office (generally one working day later). The office should then tell the United

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

States Marshals Office that the SF-50 is in payroll for their verification so that a check can be issued. The employee to whom the check has been issued must repay the Marshal as soon as possible after receipt of the regular pay check.

10-2.545 Other Problems

Questions regarding deductions for health benefits, civil service retirement, life insurance, and lump sum payment for annual leave should be addressed to the Payroll Office.

Questions regarding the amount of money in the Civil Service Retirement Fund should be directed to the Health Benefits and Retirement Section on FTS 272-6117.

Questions regarding the issuance or correction on W-2s, Wage and Earning Statement, should be directed to the Payroll Accounting Office on FTS 272-6115.

All other payroll problems not mentioned above or in USAM 10-2.541 should be referred to the Personnel Office, Executive Office for U.S. Attorneys. The servicing personnel management specialist will determine the origin of the problem (i.e., within the Payroll or Personnel Office), take the necessary action to solve it, or refer the caller to the appropriate office for resolution.

10-2.546 Erroneous Payments

Authority to collect indebtedness resulting from erroneous payments to U.S. Attorneys and their staffs has been delegated to the Assistant Attorney General for Administration, 28 U.S.C. §0.150. If an overpayment is discovered, Payroll will notify the employee and make arrangements for repayment.

10-2.547 Justice Earnings Statement

Form OMF-44, Justice Earnings Statement, is a two-part form which shows all of the data elements on both copies. The office copy of this form must be maintained and disposed of in accordance with the Privacy Act (see 5 U.S.C. §552a). Specifically, office copies of OMF-44 must be filed in locked cabinets, accessible only to the U.S. Attorney, the administrative officer, individual(s) designated by the U.S. Attorney to



perform the office's personnel functions, and, on a case-by-case basis, to other Executive Branch personnel who in the course of their official duties have a need to know. There is no minimum retention period because the information contained on the OMF-44 is duplicative of the official files maintained by the Payroll Office in Washington, D.C. They should be destroyed after the employee leaves or after 3 years, whichever occurs first.

10-2.600 Employee Management Relations

10-2.610 Employee Grievances

10-2.611 Authority and Scope

A. Authority: The Department of Justice Order 1771.1B (August 30, 1982), and the Federal Personnel Manual, Chapter 771, govern the processing of employee grievances within the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices.

B. Purpose: The procedures set forth in these regulations are to provide direction and guidance for the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices in carrying out their responsibilities for implementing governing grievance regulations and for assuring effective administration of the grievance system.

C. Policy: It is the policy of the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices to administer a personnel program that promotes good employee-management relations. Effective administration requires that employees be given ample opportunity to obtain consideration of their expressions of dissatisfaction with matters that are subject to management control and affect them personally. Whenever possible, this opportunity should be present in the normal day-to-day relationships between employees and their immediate supervisors. An employee, his or her representative, and other persons involved in grievance matters shall be free from restraint, interference, discrimination, coercion, or reprisal in connection with, or because of, the presentation of a complaint or grievance.

D. Definitions:

1. The term "grievance" means a written and signed request by an employee, or by a group of employees acting as individuals, for

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

personal relief in a matter of concern or dissatisfaction which arises during the employment of the employee(s) and which is subject to the control of agency management;

2. The words "Official Time," as used in these instructions, mean time during working hours without charge to leave or loss of pay;

3. The term "Order," as used in these instructions, refers to Department of Justice Order 1771.1B (August 30, 1982).

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

E. Employees Covered: This section applies to all current and former employees in the Executive Office for U.S. Attorneys and the Offices of the U.S. Attorneys for whom a remedy can be provided except those defined by paragraph 6 of the Order.

F. Actions Covered/Excluded: Any matter of concern or dissatisfaction that is personal to an employee and subject to the control of the management officials of the Department will generally be covered by the grievance procedure. The matters described in paragraph 7 of the Order and 5 C.F.R. §771.206(c)(1) are excluded.

G. Responsibilities:

1. In addition to the responsibilities outlined in paragraph 3 of the Order, supervisors/managers and employees are responsible for the following:

a. Supervisors/Managers are responsible for:

(1) Ensuring that employees are aware of the provisions of Department of Justice Order 1771.1B (August 30, 1982), and USAM 10-2.600 and the right to have access to these materials;

(2) Keeping the employee (grievant) informed either orally or in writing of any steps management has taken to resolve the matter being grieved;

(3) Contacting the Personnel Office for further assistance in processing a case of an unresolved informal grievance or at the time it is known a formal grievance is being filed, whichever occurs first;

(4) Maintaining copies of all written material that transpired at the informal level and forwarding it to Personnel Office; and

(5) Referring the grievance, if necessary, to the appropriate official who has authority to resolve the grievance.

b. Employees are responsible for:

(1) Being knowledgeable about Department of Justice Order 1771.1B (August 30, 1982), and USAM 10-2.600;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

(2) Attempting to resolve a matter of concern or dissatisfaction of working conditions or employment by discussing it with his or her immediate supervisor; and

(3) Maintaining copies of written correspondence regarding the grievance.

2. All parties to a grievance shall take reasonable steps to process a grievance as quickly as possible. The timeframes involved for processing grievances are contained in USAM 10-2.613. Only in unusual cases should 120 days expire between the date an employee files a formal grievance and its final resolution.

10-2.612 Employee Rights

A. Right to Representation: An employee presenting a grievance has the right to be accompanied, represented, and advised by a representative of his or her own choosing.

B. Representation Challenge:

1. The Executive Office has the right to disallow an employee's choice of representative. See Department Order 1771.1B (August 30, 1982), paragraph 8d.

2. An employee has the right to challenge the decision to disallow his or her choice of representative. If the employee exercises this right, he or she must submit in writing the challenge to the head of the Executive Office or his or her designee within five (5) days of notification of the disallowance. The head of the Executive Office or his or her designee shall issue a decision, in writing, to the employee within ten (10) days of receipt of the challenge. This decision shall be final and shall be made before proceeding with the grievance.

C. Utilization of Office Facilities: An employee may request either orally or in writing from the U.S. Attorney access to office facilities in order to prepare his or her grievance. It is at the discretion of the U.S. Attorney whether to grant an employee such access.

D. Official Time: An employee and the employee's representative, if an employee of the Department, are entitled to a reasonable amount of official time to prepare a grievance. This time will vary with each case,

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

but shall not exceed eight (8) hours except in the most unusual circumstances. Arrangements for the use of official time should be coordinated with the employee's supervisor. See Department of Justice Order 1771.1B, paragraph 9 (August 30, 1982).

10-2.613 Grievance Procedures

A. Informal Grievance Procedure:

1. An employee shall attempt to resolve a matter of concern or dissatisfaction with working conditions or employment by discussing it with his or her immediate supervisor. If the matter cannot be resolved, the employee may file an informal grievance with the immediate supervisor in accordance with the following procedures. The grievance must be in writing and be dated and signed by the employee (grievant). If the immediate supervisor lacks authority to resolve the matter being grieved, the immediate supervisor must refer the matter to the lowest level official in the district or the Executive Office for U.S. Attorneys who has such authority within five (5) calendar days of receipt of the grievance. A perceived need to refer the matter outside either of these organizations should be coordinated with the Personnel Office. The referral does not, however, extend the fifteen (15) day timeframe in which a decision must be made under the informal procedure.

2. The informal grievance shall state the employees's name, title, grade, organization (division, section, unit, etc.), and the name and title of his or her immediate supervisor. The employee shall also set forth in precise terms exactly what the grievance is, all facts relating thereto, including the names of any individuals against whom the grievance is made, the perceived reason for his or her dissatisfaction, the manner in which he or she personally has been adversely affected, and the specific corrective action desired. It should also contain specific information concerning any efforts made prior to the informal grievance to resolve the matter with his or her immediate supervisor.

3. An employee shall present a grievance concerning a particular act or occurrence within fifteen (15) days from the date of the act or occurrence, or the date he or she knew or had reason to know of the act or occurrence.

4. An employee shall complete the action under the informal grievance procedure before a grievance concerning the same matter

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

will be accepted for processing under the formal grievance procedures, EXCEPT that a grievance over a reprimand or a suspension of 14 days or less shall be accepted at the formal stage of the grievance procedure. See USAM 10-2.613, paragraph B. A decision under the informal procedure should be made within fifteen (15) days of receipt of the grievance. If the decision is not rendered by the immediate supervisor, the official who has authority to take action should communicate his or her response to the immediate supervisor who is to inform the employee of the decision.

B. Formal Grievance Procedure:

1. If an employee has completed action under the informal grievance procedure and is dissatisfied with the decision or if the employee is grieving a reprimand or a suspension of fourteen (14) days or less, he or she may present the grievance to the next level higher than the individual who had authority to take action at the informal level. This action must be accomplished within fifteen (15) days from the date of receipt of the written decision on the grievance filed under the informal procedure. This official becomes the Deciding Official for the formal grievance.

In the event a decision has not been issued within the specified timeframe (15 days) the employee may also proceed to the formal stage. This action does not stay management's obligation of processing the informal grievance resolution.

2. In addition to the information provided at the informal stage of the grievance as stated in A.2. of this section, the formal grievance shall contain the decision reached during the informal stage, if any, and specific information concerning the corrective action desired. The formal grievance must also be in writing and be dated and signed by the employee (grievant).

C. Referral Beyond Immediate Office:

1. The Deciding Official for both attorney and non-attorney grievances, in most cases, will be the second-line supervisor. When a U.S. Attorney is the immediate supervisor of a grievant, the Deputy Director, Executive Office for U.S. Attorneys, will be the Deciding Official for attorney grievances and the Assistant Director, Administrative Services, for non-attorney grievances. If the Director, Executive Office for U.S. Attorneys, is the immediate supervisor of a grievant, the Deciding Official is the Associate Attorney General in accordance with Department of Justice Order 1771.1B, paragraph 3 (August 30, 1982).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. The Personnel Management Staff should be contacted by a district or a supervisor of the Executive Office for U.S. Attorneys for assistance in the case of an unresolved informal grievance or at the time it is known formal grievance is being filed, whichever occurs first. It is management's responsibility to contact the Personnel Management Staff, to maintain copies of all correspondence that transpired at the informal level, and to forward such material to the Personnel Management Staff.

D. Fact-Finding Inquiry and Final Decision of Grievance: See Department of Justice Order No. 1771.1B, Chapter 4 (August 30, 1982).

10-2.614 Performance Rating Grievance by Non-Attorneys

Non-attorneys in the Offices of the U.S. Attorneys (OUSAs) and Executive Office for U.S. Attorneys (EOUSA), except members of the Senior Executive Service (SES), who wish to contest a performance rating or any aspect of a performance rating must adhere to the policies and procedures contained in the following material. This procedure is an approved variation to Department of Justice Order No. 1771.1B, Chapter 5, Performance Rating Grievances.

The Director, EOUSA has overall responsibility for the performance rating grievance system for all non-SES non-attorneys. The Director may delegate all or a portion of the responsibility to a designee.

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

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

C. Use of Official Time: The employee and his or her representative (if a Department employee) are entitled to a reasonable amount of official time to prepare the written submissions. Appropriate arrangements for the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

use of official time should be coordinated with the employees' supervisors. Normally, a reasonable amount of time should not exceed eight (8) hours. However, if there is disagreement on what constitutes a reasonable amount of time, the issue will be resolved by the Director of the EOUSA, or designee.

D. Submission Procedures:

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

a. A copy of the disputed performance rating;

b. A comprehensive statement of the reason(s) why the overall rating or individual element rating(s) should be changed or the documentation remark(s) removed, and any other supporting documentation, such as a performance workplan; and

c. A statement certifying that a copy of the request for review has been delivered to the rating official.

2. Supporting documentation regarding work performance should relate to the performance standards for each element that is at issue in the grievance. In addition, the employee should specify the specific relief sought. Matters occurring outside the rating period should not be included unless relevant to actual performance during the rating period. To prevail, the employee must demonstrate to the satisfaction of the Director of the EOUSA, or designee, that the rating should be changed.

3. The rating official must furnish a written reply to the employee's request for review to the Director of the EOUSA, or designee, within 20 calendar days of the date the Director of the EOUSA, or designee, received the request for review. The reply should include a copy of the performance workplan, if it has not been submitted. Matters occurring outside the rating period should not be included unless relevant to actual performance during the rating period. The rating official must also provide a statement certifying that a copy of the written reply was delivered to the employee.

4. The employee may respond in writing to the rating official's reply. The response must be submitted to the Director of the EOUSA, or designee, within 10 calendar days of the date the Director of the



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

EOUSA, or designee, received the rating official's reply. The employee is not permitted to raise new issues in this final statement, but may discuss any new matters raised in the rating official's reply. At this time, the employee must designate the Department employee who the employee has selected to serve on the Review Committee.

5. All written statements concerning the appeal are to be submitted to the Executive Office and within the district, if mailing is required, via certified mail. Sensitive and classified information or any other material excluded by law (including grand jury material) shall not be sent as supporting documentation.

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

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

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

a. The Director of the Office of Administration and Review for the EOUSA, or designee.

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

c. The Director of the Office of Legal Services for the EOUSA, or designee.

All members of the Committee must be currently employed by the Department and may not have participated in the assignment or review of the contested rating. The Director of the EOUSA, or designee,

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

retains the right to disapprove selection of a committee member on the basis of a conflict of interest.

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

- a. Adjust the overall rating;
- b. Adjust one or more individual element ratings;
- c. Remove one or more remarks;
- d. Leave the overall rating, individual element rating(s) and/or remark(s) unchanged; or
- e. Return the record to the rating or reviewing official for further consideration.

3. Committee's Recommendation:

The Committee will make a written recommendation to the Director of the EOUSA, or designee. Issues will be settled by majority vote of the Committee and the Committee will prepare a written recommendation to the Director, or designee. Any Committee member may write a dissenting opinion which will be forwarded to the Director, or designee.

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

10-2.615 Performance Rating Grievance by Assistant U.S. Attorneys and Attorneys within the Executive Office

Department of Justice Order 1771.1B (August 30, 1982), and instructions issued by the Office of Attorney Personnel Management (OAPM) establish grievance procedures for all Department attorneys, including Assistant U.S. Attorneys, who wish to contest any aspect of their annual performance ratings. The described grievance is the sole administrative procedure for contesting a disputed performance rating or any aspect of a performance rating.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The Director of the Executive Office for U.S. Attorneys (EOUSA) has overall responsibility for the performance rating grievance system for all non-SES attorneys in the Executive Office and the Offices of the U.S. Attorneys. The Director may delegate all or a portion of the responsibility to a designee.

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

B. Extensions of Time: The Director of the EOUSA, or designee, may grant an extension, not to exceed ten (10) calendar days, of each time limit stated in the following procedures. All parties are to be informed in writing of all time extensions. A request for an extension of time that is not submitted in a timely manner may be rejected by the Director of the EOUSA or designee, for untimeliness.

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

D. Submission Procedures:

1. A request for review of an official performance rating must be submitted in writing to the Director of the EOUSA or designee, and to the rating official, within thirty (30) calendar days of the attorney's receipt of the official appraisal. It must include the following:

a. A copy of the disputed performance rating;

b. A comprehensive statement of the reason(s) why the overall rating or individual element rating(s) should be changed or the remark(s) removed, and any other supporting documentation, such as a performance workplan; and,

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

c. A statement certifying that a copy of the request for review has been delivered to the rating official.

2. Supporting documentation regarding work performance should relate to the performance standards for each element that is at issue in the grievance. In addition, the attorney should specify the specific relief sought. Matters occurring outside the rating period should not be included unless relevant to actual performance during the rating period. To prevail, the attorney must demonstrate to the satisfaction of the Director of the EOUSA or designee that the rating should be changed.

3. The rating official must furnish a written reply to the attorney's request for review to the Director of the EOUSA, or designee, within twenty (20) calendar days of the date the Director of the EOUSA or designee received the request for review and so notified the rating official. The reply should include a copy of the performance workplan, if it has not been submitted. Matters occurring outside the rating period should not be included unless relevant to actual performance during the rating period. The rating official must also provide a statement certifying that a copy of the written reply was delivered to the attorney.

4. The attorney may respond in writing to the rating official's reply. The response must be submitted to the Director of the EOUSA, or designee, within ten (10) calendar days of the date the Director of the EOUSA or designee received the rating official's reply and so notified the attorney. The attorney is not permitted to raise new issues in this final statement, but may discuss any new matters raised in the rating official's reply. At this time, the attorney must designate the Department employee who the attorney has selected to serve on the Review Committee.

5. All written statements concerning the appeal are to be submitted to the Executive Office and within the district, if mailing is required, via certified mail. Sensitive and classified information or any other material excluded by law (including grand jury material) shall not be sent as supporting documentation.

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

E. Review Committee: The final decision on all grievances will be made by the Director of the Executive Office for U.S. Attorneys, or

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

designee. The Review Committee will make a recommendation to the Director based solely on the record. There is no right to an oral presentation before the Committee. However, if a majority of the Committee determines that it is necessary, the Committee may engage in fact-finding.

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

a. The Director of the Office of Administration and Review for the EOUSA, or designee.

b. A Department attorney, including any Assistant U.S. Attorney or other Department attorney, designated by the employee. If the attorney's choice of representative create a conflict of interest or gives rise to unreasonable costs to the government, the Director of the EOUSA or designee can require that the employee select another representative. To avoid unreasonable costs, either the employee or the Director of the EOUSA or designee may select a committee member who works in the Washington metropolitan commuting area.

c. The Director of the Office of Legal Services for the EOUSA or designee.

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

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

a. Adjust the overall rating;

b. Adjust one or more individual element ratings;

c. Remove one or more remarks;

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

e. Return the record to the rating or reviewing official for further consideration.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. The Committee will make a written recommendation to the Director of the EOUSA, or designee. Issues will be settled by majority vote of the Committee and the Committee will prepare a written recommendation to the Director or designee. Any Committee member may write a dissenting opinion which will be forwarded to the Director or designee.

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

10-2.620 Discipline and Adverse Action

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.621 Removal of an Assistant United States Attorney

Assistant U.S. Attorneys are appointed by the Attorney General and may be removed by that official. 28 U.S.C. §542. The Associate Attorney General exercises the power and authority vested in the Attorney General to take final action in matters pertaining to the dismissal of Assistant U.S. Attorneys. See 28 C.F.R. §0.15.

An Assistant U.S. Attorney may be requested to resign for good cause. However, the U.S. Attorney cannot demand an Assistant's resignation. Such a demand constitutes an adverse action for which certain procedures must be followed. To request a resignation by a certain date constitutes a demand.

A contemplated removal of an Assistant should be closely coordinated with the Executive Office for U.S. Attorneys. The U.S. Attorney should submit the recommendation for removal in writing to the Executive Office. The recommendation should contain an explanation of the conduct or performance which serves as the basis for removal.

A removal may be effective immediately upon receipt by the Assistant of the removal letter or any specified date thereafter. The Associate Attorney General's letter will be forwarded to the U.S. Attorney for personal delivery to the Assistant. Assistant U.S. Attorneys have been exempted from the rights which are afforded to competitive service employees with regard to removal. Department of Justice Order 1752.1A (April 27, 1981).

In all instances, a lesser degree of disciplinary action, such as a reprimand or suspension should be considered.

10-2.622 Removal of a Veteran Assistant United States Attorney

A preference eligible (as defined by the Veterans Preference Act, 5 U.S.C. §2108) Assistant U.S. Attorney, may be removed for such "cause as will promote the efficiency of the service." 5 U.S.C. §7513. These rights include 30 days advance written notice and a statement of the specific reasons for the proposed action; a reasonable time within which to reply to the charges, orally or in writing; and the right to be represented. 5 C.F.R. §752.404. There is no right to a trial or formal administrative hearing. See 5 C.F.R. §752.404(c)(2); Arnett v. Kennedy, 416 U.S. 134 (1974). A preference eligible is entitled to written notice of the agency's decision, and a right to appeal the action to the Merit Systems Protection Board. See 5 C.F.R. §752.405.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.623 Other Disciplinary Actions Against an Assistant United States Attorney

The Associate Attorney General exercises the authority to take the final action in matters pertaining to the discipline of an Assistant U.S. Attorney. See 28 C.F.R. §0.19(a)(1). The authority to reprimand an Assistant has been redelegated to the Director of the Executive Office for U.S. Attorneys.

Disciplinary actions other than removal include written and oral reprimands, suspensions, reductions in grade or pay and furloughs for 30 days or less. These actions constitute either an adverse action for which certain procedures must be followed, or a action which may be grieved through the Department of Justice grievance procedure. Thus, any contemplated disciplinary action against an Assistant should be closely coordinated with the Executive Office for U.S. Attorneys.

10-2.630 Labor Management Relations

10-2.631 Authority

Labor management relations within the federal government are based on the policies contained in Executive Order No. 11491. Departmental policies are contained in Department of Justice Order No. 1711.1C (August 18, 1976).

10-2.632 Rights of Employee

Each employee has the right to join or not to join any labor organization which does not strike against or advocate the overthrow of the government of the United States. Employees must be allowed to exercise their rights freely without fear or penalty of reprisal.

Employees have the right to participate in the activities of a labor organization except when such participation or activity would result in a conflict of interest or is otherwise incompatible with law or with the official duties of the employee. Restricted from managing or representing a labor organization are:

A. Employees engaged in personnel work other than in a purely clerical capacity.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Employees who represent the Department of Justice in consultation or negotiations with labor organizations.

C. Management officials and supervisors.

Labor organizations have the right to solicit employees and distribute during non-work time provided there is no interference with the work of the installation. (See Department of Justice Order 1711.1C Appendix 2 (August 18, 1976) for detailed instructions concerning relationships with labor organizations.)

10-2.633 Procedures

If an office receives a petition for exclusive recognition, it should be forwarded immediately to the Personnel Officer, Executive Office for U.S. Attorneys. The Personnel Officer will prepare management's response and advise the U.S. Attorney on appropriate actions. When a labor organization has achieved exclusive recognition, a contract is negotiated. The Personnel Officer will advise the U.S. Attorney on appropriate procedures and bargaining position.

Managers and supervisors of organizations with contracts are responsible for insuring that the employees' rights and responsibilities are met. Any problems or questions should be immediately referred to the Personnel Officer, as the actions of one office may have Department-wide impact.

10-2.640 Employee Performance

10-2.641 Probationary or Trial Period for New Employees

New employees appointed to other than temporary positions limited to one year or less, are required to serve a trial or probationary period of one year if they:

- A. Are appointed from an Office of Personnel Management Register;
- B. Transfer from another federal agency and have not completed a probationary period previously; or

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Are Assistant U.S. Attorneys or other excepted employees unless they transferred from an attorney position in another federal agency without a break in service and have completed a previous probationary period.

This period provides a means to evaluate and judge the employee's fitness for the position through performance on the job.

It is critical in the case of a competitively-appointed employee because removal procedures become far more complex after the end of this period.

Office of Personnel Management and Department regulations require that the supervisor of each employee serving a probationary period submit a signed statement certifying that the employee's performance, conduct, and general trait of character have been found either satisfactory or unsatisfactory. A Request for Review of the Employee's Probationary or Trial Period is forwarded by the Personnel Section, Executive Office for U.S. Attorneys, at the beginning of the ninth month. If the employee's fitness for continued employment is satisfactory, the notice should be signed by the supervisor and returned to the Personnel Section before the end of the tenth month of the probationary period.

In the event that a probationary employee is found to be unsatisfactory at any time, the Personnel Office, Executive Office for U.S. Attorneys, should be consulted for advice and assistance before taking any action.

#### 10-2.642 Probationary Period for Supervisors and Managers

The Civil Service Reform Act of 1978 mandates probationary periods for all competitive employees initially appointed as supervisors or managers. These requirements, which are separate from the requirement that new federal employees serve probationary periods, are designed to give an organization the opportunity to assess the development of new supervisors or managers and to return employees to nonsupervisory or nonmanagerial positions without undue formality should circumstances so warrant.

All competitive positions which are classified as supervisors or managers according to the Supervisory Grade Evaluation Guide are covered by this requirement. These positions have a "1" or "3" as the last character of the position description number. Assistant U.S. Attorney positions are not covered because they are in the excepted service.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Upon initial appointment to a supervisory position, employees will be required to complete a one-year probationary period. Upon initial appointment to a managerial position employees will be required to complete a separate one-year probationary period for managers. When a supervisory position requires substantive, recognizable managerial responsibilities which were performed in a fully successful manner, the requirement for a managerial probationary period may be waived by the Personnel Management Staff. Employees who, as of August 11, 1979, are serving or have served in supervisory or managerial positions in the federal government are exempt from the probationary period requirement.

Employees who are temporarily appointed, promoted, or re-assigned to a supervisory or managerial position will not be required to serve a probationary period. Service in such a temporary assignment is not creditable towards satisfying probationary period requirements unless such assignment follows, without a break in service, permanent assignment in a supervisory or managerial position in which the probationary period is to be served.

During the probationary period, the immediate supervisor is responsible for insuring that the employee receives appropriate training in order to equip him/her for the demands of the job. This is in addition to the long standing requirement for 80 hours of formal supervisory training or its equivalent contained in Department of Justice Order 1410.1C (April 28, 1983). See USAM 10-2.833.

The immediate supervisor is also required to fully and fairly evaluate the performance of the employee. Discussions concerning performance should be conducted throughout the probationary period. Approximately 90 days before the end of the probationary period, you will receive a tickler memorandum from the Personnel Management Staff. If the employee's performance has not been fully successful, the Personnel Management Staff should be contacted immediately.

If after a full and fair evaluation, an employee's performance reveals supervisory or managerial deficiencies which make him/her unsuited for continued employment in the position, the employee is to be returned to a nonsupervisory or nonmanagerial position. This action is not appealable under adverse action procedures, nor is it grievable. The employee is entitled to be returned to a position in the Department of no lower grade and pay than the one the employee left to accept the supervisory or managerial action. The Personnel Management Staff will assist your office in carrying out such an action.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.643 Performance Appraisal System for Attorneys Who Are Not Covered  
by the Performance Management and Recognition System

The guidelines and instructions contained in Department of Justice Order 1430.3 (February 28, 1980), and amendments, and the guidance of the Office of Attorney Personnel Management as implemented by the following instructions are applicable to all Assistant U.S. Attorneys and attorney personnel in the Executive Office for U.S. Attorneys.

A. The Appraisal Cycle:

The appraisal cycle for Assistant U.S. Attorneys is tied to the cycle of administrative pay increases. Performance appraisals normally are for the one-year period ending 8 weeks prior to the effective date of the proposed administrative pay increase. At a minimum, the appraisal period must be 120 days. The Attorney Performance Rating Form (DOJ-477), dated May, 1983, and the performance work plan (DOJ-481) must be submitted with the request for an administrative pay increase.

The appraisal cycle for attorneys in the Executive Office starts on July 1 of each year and ends on June 30 of the following year unless it is deferred for authorized reasons.

The appraisal cycle for both Assistants and attorneys begins upon receipt of a performance appraisal or appointment to the office. In each case, the Assistant or attorney is to be advised of the job elements and standards of the position and is to receive a performance work plan (DOJ-481) within 30 days.

An Assistant or an attorney who has not served in his or her current position or under the same supervisor for at least 120 days is to be rated by either the second level supervisor or by the current supervisor with a supplementary rating from the previous supervisor. In those rare cases in which neither alternative is available, an Assistant's rating should be delayed until satisfaction of the 120-day criteria, or the Assistant may receive a presumptive rating of "fully successful." If the rating is delayed, the associated salary increase for an Assistant U.S. Attorney cannot be effected retroactively to the anniversary date. Thus, the appraisal and pay increase should be delayed only if it is anticipated that the rating will be other than "fully successful." If an Assistant is to receive a presumptive rating of "fully successful," a memorandum describing the circumstances which preclude a normal rating shall be submitted with the request for a salary increase.



U.S. Department of Justice

Executive Office for United States Attorneys

DEB  
J. M.  
LSMS  
Booth

Office of the Director

Washington, D.C. 20530

JAN - 6 1988

TO: Holders of United States Attorneys' Manual Title 10.

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

*JSM* Laurence S. McWhorter, Director  
Executive Office for United States Attorneys

RE: Performance Appraisal

- NOTE: 1. This is issued pursuant to and EXPIRES unless reissued or incorporated pursuant to USAM 1-1.550.
2. Distribute to holders of Title 10.
3. Insert in front of USAM 10-2.643.

PURPOSE: The purpose of this bluesheet is to implement the Department's Performance Management System (DOJ 1430.3A) dated April 14, 1987 and delete non-policy information from the manual.

Procedural information and further guidance will be issued via a Personnel Management Staff Issuance.

AFFECTS: USAM 10-2.643 and 10-2.644

The following replaces the material at USAM 10-2.643 and 10-2.644.

10-2.643 Performance Appraisal for Attorneys and Non-attorneys Who Are Not Covered by the Performance Management Recognition System

Other references: DOJ Order 1430.3A, Performance Management System, dated April 14, 1987  
Attorney Personnel Memorandum (APM) 87-3, dated May 15, 1987, and annual updates  
FPM Chapter 430, Performance Management  
5 C.F.R. Part 430, Performance Appraisal

Additional references may be identified within the text of the resources cited above.

*Lawrence - Your Bob*

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

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

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

Assistant United States Attorneys - Anniversary date with the office. This cycle is an approved exception to the Department's Performance Management System (PMS).

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

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

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

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

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

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

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

1. the Servicing Personnel Office, for all non-attorneys or

2. the Executive Office for all attorneys. For AUSAs, the PWP should be forwarded with the request for administrative pay increase, if appropriate. PWPs for all attorneys will then be forwarded to the Office of Attorney Personnel Management.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The supervisor of each position in which an employee serves 60 days or longer during the appraisal period should provide performance information for consideration in the final assessment of performance. When a supervisor is reassigned or leaves the office, he or she should assess the performance of employees as of that time and the assessment information is to be considered in the final assessment of performance.

All Assistants and attorneys must be rated annually. An Assistant who is not being recommended for an administrative pay increase is to be rated 8 weeks prior to the date he or she would have received the increase. The rating form and work plan should be submitted to the Personnel Management Staff with a memorandum stating that no administrative pay increase is being recommended.

B. Job Elements and Performance Standards:

Job elements and performance standards must be identified for each Assistant and attorney position. The first step is to identify for any given position the significant characteristics, projects, and responsibilities. These are the job elements.

The second step is to identify those job elements which are so important that less than fully successful performance may subject the employee to disciplinary action. These are the critical elements.

The third step is to identify those critical elements, if any, which may substantially influence the evaluation of overall performance. These are the weighted critical elements. The greater weight of these elements, as with all individual performance elements, must be communicated to the employee at least 120 days in advance of serving as the basis for the overall rating. The weighted critical element also must be clearly indicated on the work plan.

The establishment of a weighted critical element can have a significant impact on an employee's overall rating. Specifically, performance of a weighted critical element which is at a lower level than a "majority" of the critical elements can serve as a basis for an overall rating which is lower than a majority of the critical elements. The converse is not true. Performance of a weighted critical element which is at a higher level than a "majority" of the critical elements cannot serve as a basis for an overall rating which is higher than a majority of the critical elements. Where the critical elements, whether or not they are weighted critical elements, are evenly divided between two rating levels, the rating official may select the more appropriate of the two levels,



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

provided other applicable minimum requirements for the level selected are met.

The following critical element is mandatory for all supervisory Assistant U.S. Attorneys:

The incumbent will fully support and implement the Department's and Office's affirmative action efforts with respect to all positions (attorney and non-attorney) under his or her supervision.

The performance standards for this job element should be developed based on the organizational needs of the office and the employee's EEO responsibilities.

The following job element and performance standards are mandatory for all supervisory and administrative Assistant U.S. Attorneys:

The incumbent is responsible for internal control systems which ensure that obligations and costs are in compliance with applicable laws, regulations, and policies; that funds, property and other assets are safeguarded against waste, loss, and unauthorized use, or misappropriation; and that expenditures are properly recorded and accounted for to permit the preparation of reports and to maintain accountability over assets.

Excellent

The incumbent has established, distributed, explained, and maintained current written office policy which describes procedures to appropriate directly or indirectly funds of any type and to receive or to utilize property or equipment. Incumbent has devised system whereby the duties of processing, recording, and authorizing direct or indirect expenditure of funds and receipt of services or property are separated. Office records are complete and logical; i.e., all transactions are promptly and clearly documented, properly classified, and readily available for examination. Controls are established to limit access to records to authorized personnel. Incumbent responds promptly and in a positive and supportive

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

manner to requests for information or to directions to take corrective action.

Fully Successful

Procedures, although not always written or current, are established and have been communicated to appropriate office personnel regarding proper channels to follow to appropriate funds and to receive or to use office property or equipment. Incumbent has devised a system whereby there is a check/balance for the authorization or expenditure of funds, and receipt of services or property. Office records are reasonably complete and organized; i.e., all transactions are documented, classified in an understandable manner and are available for examination within a reasonable time after request is made. Records are kept in a secure area. Incumbent responds to requests for information within reasonable timeframes.

Minimally Satisfactory

The incumbent is aware of procedures required to appropriate funds, but procedures allow a single individual to process, record, and authorize expenditure of funds or receipt of services or property. Office records have been established but are not kept up to date. Records are stored in common areas; access to records is not controlled. Requests for information do not receive regularly incumbent's fullest, timely attention.

Finally, the performance standards for each job element must be identified. Written standards describing "minimally satisfactory," "fully successful," and "excellent" performance must be developed. When developing performance standards, it is essential to the integrity of the system that they be based on a realistic expectation of each individual's level of achievement. Assistants and attorneys should be rated based on what is expected of them, not based on a comparison with the performance of other government attorneys or attorneys in private practice.

Another important element in the development of appropriate job elements and performance standards is the dialogue between the employee and supervisor. This dialogue is a continuing process of both informal

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

and formal discussions. (At least 1 formal meeting must be held during the appraisal cycle as required by DOJ Order 1430.3.) Because the appraisal process is dynamic, it is anticipated that job elements and standards will be modified throughout the appraisal cycle. Any modifications made should be noted on the performance work plan.

The establishment of arbitrary percentages governing the number of ratings in each category is not permissible. However, it is obvious that if inflated ratings are given to increase compensation, the budget will be overtaxed and the system will be jeopardized. Evaluations must be made in accordance with performance standards and not with compensation in mind. The success of the program from a budgetary standpoint depends upon conscientious application of assigning evaluations based on performance.

Accordingly, the higher ratings of "excellent" and "outstanding" should not be cheapened by making them the norm. Those ratings should be reserved for those Assistants and attorneys whose performance is clearly above the norm and merit special recognition.

C. Terminology:

The following terminology is to be used to rate each individual element of an Assistant's or attorney's performance:

1. Unsatisfactory. Performance on an individual critical or noncritical element of the job which substantially fails to meet the performance standards established at the beginning of or modified during the rating period. Usually the employee's performance will show serious deficiencies in terms of quantity, quality, or timeliness of work.

2. Minimally Satisfactory. Performance on an individual critical or noncritical element of the job which barely meets the performance standards established at the beginning of or modified during the rating period.

3. Fully Successful. Performance on an individual critical or noncritical element of the job which completely meets or exceeds to a limited degree the performance standards established at the beginning of or modified during the rating period.

4. Excellent. Performance of an individual critical or noncritical element of the job which markedly exceeds the performance standards established at the beginning of or modified during the rating period.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

5. Outstanding. Performance of an individual critical or noncritical element of the job which clearly demonstrates a level of achievement which exceeds to an exceptional degree the performance standards established at the beginning of or modified during the rating period.

The following terminology is to be used to describe the overall performance level of an attorney or an Assistant U.S. Attorney, taking into account both strengths and weaknesses on each individual job element.

1. Unsatisfactory. Overall performance deemed to be unacceptable. In the individual element ratings, one or more critical elements must be rated "unsatisfactory."

2. Minimally Satisfactory. Overall performance which is marginally acceptable. It is demonstrated by "Minimally Satisfactory" performance in a "majority" of the critical elements of the position. Performance at this level is deficient in important aspects of the job and requires improvement.

3. Fully Successful. Overall performance in which the attorney performs in a manner which generally meets or exceeds to a limited degree the established performance standards. In the individual element ratings, a "majority" of the critical elements must be rated "Fully Successful" or higher and no individual performance element may be less than "Minimally Satisfactory."

4. Excellent. Overall performance in which the attorney consistently performs in a manner which exceeds to a marked degree established performance standards. In the individual element ratings, a "majority" of the critical elements must be rated "Excellent" and no individual performance element may be less than "Fully Successful."

5. Outstanding. Overall performance in which the attorney consistently performs in an exceptional manner with respect to established performance standards. In the individual element ratings, the attorney must demonstrate "Outstanding" performance in a "majority" of the critical elements of the position and demonstrate "Excellent" performance in all other critical elements of the position. No other individual performance element may be less than "Fully Successful."

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. Finality of Ratings:

Annual ratings are to be recorded on Form DOJ-477, Attorney Performance Rating Form. All ratings must be signed and approved by the rating and reviewing officials before becoming final. In those cases where the U.S. Attorney or the Director, Executive Office for U.S. Attorneys, is the rating official, he or she will also be the reviewing official.

The sole remedy for an attorney or Assistant U.S. Attorney who wishes to contest any aspect of a performance rating or associated pay increase rating is a grievance. The procedures described in USAM 10-2.614 are to be followed.

10-2.644 Performance Appraisal System for Non-Attorneys Who Are Not Covered by the Performance Management and Recognition System

The guidelines and instructions contained in Department of Justice Order 1430.3 (February 28, 1980), and amendments are applicable to all non-attorneys other than those covered by the Performance and Recognition System, whose appointment is for four months or longer, except as amended by these instructions.

Each covered employee is to receive a copy of the "Users' Guide to the Performance Appraisal System for Non-Attorneys" so that he or she may fully understand the principles, operation, and implementation of the new appraisal system.

A. The Appraisal Cycle: The annual performance appraisal cycle normally is:

1. For a new employee, from the entrance-on-duty date to the last day of the month preceding the first anniversary of the entrance-on-duty date; and
2. For other than a new employee, from the first day of the month of the employee's anniversary date with the office to the last day of the month preceding the anniversary date.

For example, if an employee enters on duty November 15, 1983, his or her first rating period will be from November 15, 1983 to October 31, 1984. In subsequent years, that employee's rating period will be from November 1 to October 31.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

An employee who has not served under the same first-level supervisor or in his or her current position for at least 120 days is to be rated either by the second-level supervisor or by the current first-level supervisor with a supplementary rating from the previous supervisor. If neither alternative is available, the employee's rating will be delayed until the 120-day requirement is met.

B. Job Elements and Performance Standards: The first stage of the performance appraisal cycle is the development of a work plan (DOJ-481) which identifies the job elements and performance standards of the position. In developing the work plan, the following should be noted.

1. There is no predetermined number of job elements. Normally, however, there are no more than 6-10 important job elements in a given position, of which 3-5 are critical.

2. Written performance standards describing "minimally satisfactory," "fully successful," and "excellent" performance must be developed.

3. Work plans may be developed either for individuals or for groups of employees with the same duties and responsibilities.

4. A formal discussion between the employee and the supervisor must be held when the work plan is prepared. The employee and supervisor must sign and date the work plan to indicate that a discussion has been held.

5. While it is hoped that the employee and supervisor will be in agreement concerning the job elements and performance standards, the rating and reviewing officials are ultimately responsible for establishing and communicating the job elements and performance standards.

6. When there are multiple rating officials, it is recommended that the reviewing official review all of the proposed work plans at the beginning of the rating period to insure internal consistency and fairness.

The following job element is mandatory for all supervisors and administrative officers:

The incumbent will fully support and implement the Department's and Office's affirmative action efforts

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

with respect to all positions under his or her supervision or control.

The performance standards for this job element should be developed based on the organizational needs of the office and the employee's EEO responsibilities.

The following job element and performance standards are also mandatory for all supervisory and administrative officers or principal administrative personnel:

The incumbent is responsible for internal control systems which ensure that obligations and costs are in compliance with applicable laws, regulations, and policies; that funds, property and other assets are safeguarded against waste, loss, and unauthorized use, or misappropriation; and that expenditures are properly recorded and accounted for to permit the preparation of reports and to maintain accountability over assets.

Excellent

The incumbent has established, distributed, explained, and maintained current written office policy which describes procedures to appropriate directly or indirectly funds of any type and to receive or to utilize property or equipment. Incumbent has devised system whereby the duties of processing, recording, and authorizing direct or indirect expenditure of funds and receipt of services or property are separated. Office records are complete and logical; i.e., all transactions are promptly and clearly documented, properly classified, and readily available for examination. Controls are established to limit access to records to authorized personnel. Incumbent responds promptly and in a positive and supportive manner to requests for information or to directions to take corrective action.

Fully Successful

Procedures, although not always written or current, are established and have been communicated to appropriate office personnel regarding proper channels

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

to follow to appropriate funds and to receive or to use office property or equipment. Incumbent has devised a system whereby there is a check/balance for the authorization or expenditure of funds, and receipt of services or property. Office records are reasonably complete and organized; i.e., all transactions are documented, classified in an understandable manner and are available for examination within a reasonable time after request is made. Records are kept in a secure area. Incumbent responds to requests for information within reasonable timeframes.

Minimally Satisfactory

Incumbent is aware of procedures required to appropriate funds, but procedures allow a single individual to process, record, and authorize expenditure of funds or receipt of services or property. Office records have been established but are not kept up to date. Records are stored in common areas; access to records is not controlled. Requests for information do not receive regularly incumbent's fullest, timely attention.

Employees must receive copies of their work plans within 30 days of appointment or reassignment to a new position.

C. Terminology: The following terminology is to be used to rate each individual element of an Assistant's or attorney's performance:

1. Unsatisfactory. Performance on an individual critical or noncritical element of the job which substantially fails to meet the performance standards established at the beginning of or modified during the rating period. Usually the employee's performance will show serious deficiencies in terms of quantity, quality, or timeliness of work.

2. Minimally Satisfactory. Performance on an individual critical or noncritical element of the job which barely meets the performance standards established at the beginning of or modified during the rating period.

3. Fully Successful. Performance on an individual critical or noncritical element of the job which completely meets or exceeds to a



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

limited degree the performance standards established at the beginning of or modified during the rating period.

4. Excellent. Performance of an individual critical or noncritical element of the job which markedly exceeds the performance standards established at the beginning of or modified during the rating period.

5. Outstanding. Performance of an individual critical or noncritical element of the job which clearly demonstrates a level of achievement which exceeds to an exceptional degree the performance standards established at the beginning of or modified during the rating period.

The following terminology is to be used to describe the overall performance level of all non-attorney personnel.

1. Unsatisfactory. Overall performance deemed to be unacceptable. In the individual element ratings, one or more critical elements must be rated "unsatisfactory."

2. Minimally Satisfactory. Overall performance which is marginally acceptable. It is demonstrated by "Minimally Satisfactory" performance in a "majority" of the critical elements of the position. Performance at this level is deficient in important aspects of the job and requires improvement.

3. Fully Successful. Overall performance which generally meets or exceeds to a limited degree the established performance standards. In the individual element ratings, a "majority" of the critical elements must be rated "Fully Successful" or higher and no individual performance element may be less than "Minimally Satisfactory."

4. Excellent. Overall performance in which the attorney consistently performs in a manner which exceeds to a marked degree established performance standards. In the individual element ratings, a "majority" of the critical elements must be rated "Excellent" and no individual performance element may be less than "Fully Successful."

5. Outstanding. Overall performance which is performed in an exceptional manner with respect to established performance standards. In the individual element ratings, the employee must demonstrate "Outstanding" performance in a "majority" of the critical elements of

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

the position and demonstrate "Excellent" performance in all other critical elements of the position and no individual performance element may be less than "Fully Successful."

D. Progress Reviews: An important element in the performance appraisal system is the continuing process of informal and formal discussions. (At least one formal progress review must be held midway through the rating cycle.) Because the appraisal process is dynamic, it is anticipated that job elements and standards will be modified throughout the appraisal cycle. Such modifications must be noted on the DOJ-481.

E. Finality of Ratings: Annual ratings will be recorded on form DOJ-484, Employee Performance Rating Form. All ratings must be signed and approved by the reviewing official before becoming final. If the reviewing official disagrees with the rating official's assessment, the tentative ratings may be adjusted. It is strongly recommended that the rating official not discuss the performance rating with the employee until after the reviewing official has approved the rating. After the reviewing official has signed the rating form, the employee will be asked to sign it to acknowledge receipt.

If an employee wishes to contest any aspect of a performance rating, he or she may file a grievance under the procedures described in Department of Justice Order 1771.1B (August 30, 1982).

F. Submission to the Personnel Management Staff: Completed and approved rating forms must be submitted to the Personnel Management Staff, within 30 days of the end of the rating period. Offices must also submit the performance work plan against which the employee was rated.

G. Program Evaluation: The Executive Office will conduct periodic evaluations of the non-attorney performance appraisal system. This evaluation will occur at least on an annual basis.

10-2.645 Performance Appraisal--Performance Management Recognition System (PMRS) Employees (Reserved)

This section is reserved pending issuance of Department of Justice Order.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.650 Awards

The Department of Justice has an institutionalized awards program designed to recognize and reward superior performance by its employees. The awards program for U.S. Attorney personnel is administered by the Executive Office for U.S. Attorneys (EOUSA), and nominations for awards should be forwarded to that office for further action. The Department's Awards Program is described in detail in DOJ Order 1451.1A.

Each year, nominations are requested for the following awards which are presented at the Attorney General's Awards Ceremony: Attorney General's Awards for Exceptional Service; Distinguished Service; Equal Employment Opportunity; Outstanding Service to the Department of Justice Handicapped Employees; Upward Mobility; Excellence in Law Enforcement; Legal Support and Administrative Support; and the John Marshall Awards.

Additionally, the Director, EOUSA, solicits nominations for Special Commendation Awards, the Director's Award for Superior Performance as an Assistant U.S. Attorney, Director's Award for Outstanding Performance in a Litigation Support or Managerial Role, and the Director's Award for Equal Employment Opportunity. Unsuccessful nominees for the Attorney General's Awards are considered with other nominees for Special Commendation and Director's Awards.

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

10-2.651 The Attorney General's Awards

As stated in USAM 10-2.650, there are eight Attorney General's Awards. The criteria for the three most prestigious awards are outlined below.

A. The Attorney General's Award for Exceptional Service

This is the highest Department of Justice (DOJ) award and is granted only by the Attorney General. Achievements or contributions must show at least one of the following:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. The performance of a special service in the public interest which is over and above the normal requirements and of an outstanding and distinctive character in terms of improved operations, public understanding of the Department's mission, or accomplishment of one of the major goals of the Department.

2. Exceptionally outstanding contribution to the DOJ and/or exceptionally outstanding contribution in terms of leadership in the administration of major programs which resulted in highly successful accomplishments to meet unique or emergency situations.

3. Extraordinary courage and voluntary risk of life in performing an act resulting in direct benefits to the Department or to the nation.

B. The Attorney General's Award for Distinguished Service

This is the second highest DOJ award and is granted annually by the Attorney General. To be eligible for consideration, the employee's achievement, service, or contribution must show at least one of the following:

1. The accomplishment of assigned duties in such an outstanding manner as to be clearly noteworthy among all those who have performed similar duties, or performance of assigned tasks in such an exemplary manner as to improve the quality and/or quantity of their work.

2. The exercise of unusual courage or competence in an emergency while on official duty.

3. The rendering of professional service of a unique or distinctive nature worthy of significant honorary recognition.

4. Distinguished conduct in the performance of duties over a period of years in a position of responsibility that involves exercise of authority and judgment in matters of marked significance.

C. The John Marshall Award

This award is designed to recognize outstanding professional achievement of attorneys. One award is given each year in each of the following areas: Trial of Litigation; Participation in Litigation; Support of Litigation; Handling of Appeals; Providing Legal Advice; Preparation or Handling of Legislation; and Interagency Cooperation in Support of Litigation.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

All attorneys employed by the Department of Justice are eligible, except for the Award for Interagency Cooperation in Support of Litigation, which is designed to recognize an attorney or group of attorneys from client agencies who have rendered exceptionally helpful assistance to the DOJ in highly visible litigation. A nominee must have demonstrated outstanding achievement in one of the seven areas, as determined by the Attorney General, in conjunction with a board of review.

10-2.652 The Director's Awards

As stated in USAM 10-2.650 there are four Director's awards. Nominations are solicited annually.

A. Special Commendation Award

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

1. A significant act, service, or achievement that materially contributes to the successful accomplishment of the objectives of the organization;
2. Accomplishment of a particularly difficult case or assignment of above average importance in a manner that reflects credit on the individual or the organization;
3. Innovations in service to the public or improvements which are of major importance to the organization in communicating its mission to the general community; and
4. Performance of an act of courage above that expected or required for an individual.

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

This award is given by the Director of the Executive Office for U.S. Attorneys to honor Assistants whose performances are deserving of special recognition. This award is based on the following criteria:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

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

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

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

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

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

D. The Director's Award for Equal Employment Opportunity

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

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

10-2.653 [RESERVED]

10-2.654 [RESERVED]

10-2.655 Quality Step Increase

This is an additional step increase which increases the basic pay of a General Schedule employee. It is intended to reward an employee whose performance is above that ordinarily found in the type of position occupied. This award may be given to no more than 25 percent of an office's non-attorney staff in any one calendar year.

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

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

D. The Director's Award for Equal Employment Opportunity

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

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

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

10-2.653 [RESERVED]

10-2.654 [RESERVED]

10-2.655 Quality Step Increase

This is an additional step increase which increases the basic pay of a General Schedule employee. It is intended to reward an employee whose performance is above that ordinarily found in the type of position occupied. This award may be given to no more than 25 percent of an office's non-attorney staff in any one calendar year.

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



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

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

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

a. that a supervisor/employee relationship exists; and

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

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

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

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

C. A QSI is not appropriate when:

1. The employee is nearing retirement or separating from federal employment and would benefit for only a limited period;

2. The employee is about to receive or just received a promotion which included consideration of the high level of performance the QSI would recognize;

3. The employee is serving on a detail to another position;

4. The employee is transferring to another position either within or outside the Department; or

5. The employee's contribution is so significant that a large lump sum payment would be more fitting recognition than a smaller continuing benefit.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. The following documentation must be submitted in order to nominate an employee for a QSI:

1. A memorandum must be prepared stating that the high quality performance is characteristic of the employee and is expected to continue.

2. The memorandum must state that the employee is expected to remain in the same or similar position at the same grade level for at least 60 days after the QSI is effective.

3. A copy of the employee's most recent performance appraisal must support the conclusion that overall performance of his or her assigned duties exceeds an acceptable level of competence.

4. The employee's annual performance appraisal (DOJ-484) may be used as documentation for the QSI, provided it is reflective of the employee's current duties and responsibilities, except that when the appraisal is more than 60 days old, it must be accompanied by a written statement giving reason for recommending the recognition.

5. If the employee's last annual appraisal is not applicable to his/her current position, a separate appraisal must be submitted. The appraisal of the employee's performance must be documented in a memorandum which addresses the employee's specific achievements in relation to his or her current job elements and performance standards which warrant the nomination for the QSI or these comments may be provided on the employee's work plan (DOJ-483) in the column designated "Progress Review/Results/Comments/Recommendations."

6. In all cases, the appraisal of the employee's performance must clearly indicate the critical elements of the employee's current position.

10-2.656 Special Achievement Award

Special Achievement Awards are lump sum cash awards which may be granted in recognition of either (a) an employee's performance exceeding normal requirements that is sustained over a period of at least six months, or (b) specific acts, service or achievement of a non-recurring nature connected with or related to official employment. Special Achievement Awards may be given to an employee or group of employees. The number of awards that may be given in any calendar year is limited to no more than 10 percent of the office's total authorized full-time permanent staff. Nominations may be submitted at any time.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DOJ Order 1451.1A Section 29,b,(1) defines specific criteria for Special Achievement Awards for Sustained Superior Performance. To summarize, nominations for awards based on sustained superior performance must:

- A. Briefly describe the employee's major duties;
- B. Describe with specificity how the employee's performance exceeds normal standards; and
- C. Recommend the size of award.

Also, the employee's most recent performance appraisal must support the conclusion that overall performance of his or her assigned responsibilities exceeds an acceptable level of competence so that, when viewed as a whole, the employee's performance is at a high level of quality. Form DOJ-484, Employee Performance Rating, may be used as documentation if it is less than 60 days old. If it is more than 60 days old, the recommendation must be accompanied by a written statement giving reasons for granting the recognition.

The amount of a Special Achievement Award in recognition of sustained superior performance may be granted within defined ranges. The following chart follows Appendix 1, Scale #1, in DOJ Order 1451.1A for General Schedule (GS) employees.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>General Schedule Grade</u>	<u>Award Range</u>
GS 1-4	\$100 up to the amount of a within-grade increase
GS 5-8	\$150 up to the amount of a within-grade increase
GS 9-11	\$200 up to the amount of a within-grade increase
GS 12-13	\$250 up to the amount of a within-grade increase
GS 14-15	\$300 up to the amount of a within-grade increase

The amount of award an Assistant U.S. Attorney may receive for sustained superior performance is also up to the amount of a within-grade increase. The award amount is determined by comparing the salaries of Assistant U.S. Attorneys with those earned by General Schedule attorneys in the Department. The applicable grade range is determined by rounding the salary of step 1 or grades GS-9 and above to the nearest \$100, and subtracting \$100 from the rounded salary of the next higher grade. For example, as shown on the January, 1984, Schedule of Annual Rates, a GS-13/1 earns \$36,152, and rounds to \$36,200. A GS-14/1 earns \$42,722 which rounds to \$42,700. Therefore, an Assistant U.S. Attorney who earns a salary of \$37,500 would fall in the range between a GS-13 and GS-14 and would be eligible for a award up to the amount of a within-grade increase at the GS-13 level, or \$1,205.

Merit pay employees are not eligible for a cash award for sustained superior performance except under unusual circumstances, such as where additional recognition is desired for an employee whose pay has been at or near the maximum grade rate over a period of years because of superior performance. See DOJ Order 1540.1, Section 9.b.(1) and (2).

Nominations based on specific acts, service, or achievement in the public interest may be made under criteria set forth in DOJ Order 1451.1A, Section 29.b.(2) and Appendix 1, Scales #2 and #3. The nomination should include a justification statement emphasizing achievements beyond job requirements and identifying benefits which can be measured. The nomination must also explain how the recommended amount of the award was determined.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

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

10-2.657 Other Awards

A. Department of Justice Awards

1. Suggestion Award: This is a lump sum cash award made in recognition of constructive proposals that are either outside the employee's normally assigned responsibilities or if within those responsibilities, sufficiently significant to warrant special recognition and which, when adopted, result in direct contributions to the efficiency of government operations.

2. Career Service Awards: Length of service awards to recognize significant milestones of an employee's career in federal service. On completion of each five years of service, an appropriate emblem is awarded. Retirement Certificates are designed to recognize the loyalty and devotion of employees who are retiring. Persons retiring under any provision of the Civil Service Retirement Act are eligible.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. Annual Promotion as "Very Good or Exceptional Assistant U.S. Attorney": While not properly an award, the evaluation of an Assistant as "very good or exceptional" at the time of eligibility for promotion increases the cash amount of the salary increase received. See USAM 10-2.521.

4. Letters of Appreciation: Letters of appreciation may be granted to employees by supervisory personnel for satisfactory performance or suggestions which would not ordinarily warrant a cash or honor award. Such letters, as well as letters received from other government agencies or units of the Department, become a part of the employee's official personnel folder.

B. Non-Justice Awards

Throughout the year, the Department of Justice may nominate employees for awards granted by outside organizations. Department of Justice Order 1451.1A, Appendix 3 (December 14, 1978) lists the most significant of these awards with a brief statement about the purpose, requirements, and criteria for each one. The Executive Office for U.S. Attorneys will solicit nominations throughout the year when the nominations are due. All nominations must be accompanied by a DOJ-387, Consent to Release Information for Award Consideration, signed by the nominee.

10-2.658 Senior Litigation Counsel

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

A. Have at least five years experience as an attorney, the major portion of such experience having been as an active litigator in the federal court system;

B. When nominated, be at a salary equivalent to the GS-15 grade (presently \$50,252 per annum);

C. Be recognized as an outstanding litigator in the federal court system as demonstrated by awards, letters of commendation, press coverage, or other material attesting to the success and quality of the attorney's advocacy skills;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. Be committed to the active litigation of significant cases and not be in a supervisory position established pursuant to USAM 10-2.425;

E. Be responsible for the in-office training of less knowledgeable Assistants in advocacy skills; and

F. Have the stated intention of remaining with the Department of Justice for at least one year after designation as well as the stated intention of being available to serve as a rotating faculty member of the Attorney General's Advocacy Institute when it will not interfere with assigned caseload.

Upon designation as a Senior Litigation Counsel, the Assistant may be eligible for a pay increase of up to 6% of his or her current salary. However, in no case may this increase cause the Assistant's per annum salary to exceed that of a Presidentially appointed U.S. Attorney, less \$1,000. This pay increase will not affect the Assistant's anniversary date for annual administrative pay increases.

The Executive Office reviews the staffing level of the program at least annually (usually in the Autumn) and may solicit nominations from the U.S. Attorneys' offices.

A Request for Personnel Action (SF-52) and a memorandum delineating how the attorney meets the qualification requirements described above must be submitted to the Executive Office by the U.S. Attorney when nominations are solicited. It is expected that women and minority attorneys will be given an equal opportunity to obtain the requisite skills and qualifications necessary for such positions and that they will be given an equal opportunity to be considered for such positions.

Assistants selected to serve as Senior Litigation Counsel are to have the following "weighted critical elements" included in their performance workplans. See USAM 10-2.643 for information on the "weighted critical element."

A. Under the general direction of the U.S. Attorney, assumes complete responsibility for the preparation and presentation at the trial level of complex or difficult cases, often involving significant or novel issues.

1. Fully successful: Demonstrates a creative style and ability in complex and sophisticated matters working under the general direction of the U.S. Attorney, to:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- a. Develop appropriate legal theories and plans;
- b. Organize, prepare and direct investigations and proceedings leading to litigation;
- c. Effectively represent United States' interest at all stages preliminary to trial;
- d. Conduct trials in a refined, articulate, assertive and persuasive style, reflecting thorough knowledge of facts, issues and substantive law; and
- e. As appropriate, coordinate a team in carrying out above functions.

2. Excellent: In addition to the standard for "fully successful," is considered a subject matter expert regarding specific areas of the law and is often consulted for advice by other U.S. Attorney offices and/or the Department's legal divisions. Is occasionally requested to assume the responsibility of representing the United States' interest by leading other districts or Department legal divisions in matters involving complex or novel issues of public interest and receiving high visibility.

B. Under the general direction of the U.S. Attorney, has responsibility for the development and implementation of a litigation-oriented "in-house" training program for the district's less knowledgeable attorneys.

1. Fully Successful: Identifies training needs, designs training to meet those needs at appropriate levels of lawyers' experience in the office, and plans for delivery of training, including a series of programs and materials. The training plan reflects thorough understanding of substantive issues and best use of staff expertise and talent.

2. Excellent: Identifies training needs and designs a program that reflects imaginative use of teaching methods appropriate to subject and objectives, including use of video, demonstrations, and other alternatives to the lecture format. Presentations include experts, judges, and others from outside the office.

Any performance appraisal effected 120 days or more after an Assistant is selected as a Senior Litigation Counsel is to contain an



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

explicit evaluation of the "weighted critical elements." Any Assistant selected to be a Senior Litigation Counsel is expected to be rated at least at the "fully successful" level in these elements in order to remain in the program.

10-2.659 Public Service Awards

Public Service Awards are designed to recognize private citizens and organizations who make a significant contribution to the accomplishment of the Department's mission. Departmental employees are not eligible.

U.S. Attorneys may nominate individuals or groups for Public Service Award certificates at any time. Nominations should be submitted to the Director, Executive Office, who is the approving official. Nomination letters must contain the following information:

- A. A brief biographical sketch of the nominee;
- B. Dates of the achievement or contribution and the place where it occurred;
- C. A narrative statement of the endeavor or achievement;
- D. Any newsworthy items which may be used in publicity release;
- E. A factual explanation of how the contributions were reflected in the work of the Department; and
- F. For group or organizational nominations, the name and address of the individual designated to serve as the representative for award purposes.

Copies of nominations for all approved Public Service Award certificates are forwarded to the Incentive Awards Board which annually recommends to the Attorney General one of the recipients for the Meritorious Public Service Award which is granted at the Annual Awards Ceremony.

10-2.660 Standards of Conduct

Under Executive Order 11222, each agency of the federal government is responsible for issuing regulations on the standards of ethical and other conduct for its employees. It is required that these standards be brought to the attention of each employee annually.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

For the Department, these standards are contained in 28 C.F.R. Part 45, a copy of which can be found in USAM 1-4.100. These should be consulted by all U.S. Attorneys and their staff.

Every current employee should receive a copy annually, and a copy should be given to each new employee when he/she enters on duty. All employees should review these standards carefully and bring any problems to the attention of their supervisor. Any questions concerning the applicability of the Standards of Conduct should be addressed to the Assistant Director, Legal Services, Executive Office for U.S. Attorneys.

Copies of the Standards of Conduct can also be obtained through the Department's Warehouse.

10-2.661 Misconduct

Allegations of misconduct are handled in accordance with 28 C.F.R. §0.39.

It is the responsibility of the U.S. Attorney to:

A. Notify promptly the Counsel, Office of Professional Responsibility, of any allegation made against a Department employee involving any violation of law, Department order or regulation, or applicable standard of conduct, mismanagement, gross waste of funds, abuse of authority, or acts of reprisal against "whistleblowers;"

B. Take no further action on any allegation except to render such assistance as the Counsel, Office of Professional Responsibility may request; and

C. Remind employees in writing at least twice a year of the existence of the Office of Professional Responsibility; of their right to bring allegations of misconduct directly to the attention of the Office of Professional Responsibility; and of their obligation to cooperate fully with any investigation that Office may initiate.

Allegations against employees of the U.S. Attorney's office should also be reported to the Executive Office for U.S. Attorneys.

10-2.662 Financial Disclosure Report

To comply with the requirements of the Ethics in Government Act of 1978, each U.S. Attorney, and each Assistant U.S. Attorney occupying a

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

supervisory position whose pay level is equivalent to a GS-16 or above, must file a Financial Disclosure Report (Standard Form 278, Rev. 6/81) within 30 days after assuming the covered supervisory position, each May 15 for the preceding calendar year, and within 30 days after leaving his or her position for the period from the date of the last report up to the date of termination. Such reports are subject to disclosure to the public.

A court-appointed U.S. Attorney, or an Assistant U.S. Attorney occupying a supervisory position (including an acting U.S. Attorney in the U.S. Attorney's temporary absence) whose pay level is equivalent to a GS-16 or above, who is retained, designated, appointed or employed to perform services on all or part of 60 or fewer days in a calendar year is not required to file a public financial disclosure report.

However, a court-appointed U.S. Attorney, or an Assistant U.S. Attorney occupying a supervisory position (including an acting U.S. Attorney in the U.S. Attorney's temporary absence) whose pay level is equivalent to a GS-16 or above, who was initially expected to perform services on 60 or fewer days, but who thereafter performs service on more than 60 days in a calendar year must, within 15 days of completing the 60th day of such service, file a financial disclosure report for the period from his or her initial retention, designation, appointment, or employment to the present, each May 15 for the preceding calendar year, and within 30 days of leaving his or her position from the date of the last report up to the date of termination. See 28 C.F.R. §45.735-27.

For information about post-government employment restrictions as they apply to a court-appointed U.S. Attorney who was initially expected to perform services for 60 or fewer days, but who thereafter performs services on more than 60 days in a calendar year, see USAM 10-2.669, part II, note 1 and part V.

10-2.663 Participation by Department Employees in Outside Cases

Upon entering on duty Department attorneys must, in general, withdraw from all cases they are currently handling in private practice. 28 C.F.R. §45.735-9. The Deputy Attorney General, upon written request, may grant an exception to the newly appointed U.S. Attorney for a limited number of cases, not involving the federal government, on which he/she has completed a substantial amount of work before appointment, provided

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

withdrawal from these cases would seriously prejudice his/her clients. These cases should be completed within one year after entry on duty and may not interfere with the discharge of duties. Exceptions are rarely approved. After entry on duty, the Deputy Attorney General's approval is necessary before any cases may be handled. See 28 C.F.R. §45.735-9. See also 18 U.S.C. §205.

Assistant U.S. Attorneys must end all work on other matters before entering on duty. Requests for approval of outside employment by Assistant U.S. Attorneys should be addressed to the Deputy Attorney General and forwarded to the Executive Office for processing. The U.S. Attorney's endorsement of the request should appear on the request.

Fees for services rendered prior to appointment as a U.S. Attorney or an Assistant U.S. Attorney, but which are outstanding at the time of appointment, may be received unless the United States has a direct and substantial interest in the matter and it is pending at the time of appointment. A specific dollar amount, or a specific percentage of the settlement or final judgment in matters that are pending, should be determined prior to appointment. A candidate for the position of Assistant U.S. Attorney must notify the Executive Office of the financial arrangements with regard to these fees.

10-2.664 Outside Activities

U.S. Attorneys and Assistant U.S. Attorneys may not engage in any outside employment or the private practice of law, except as provided by 28 C.F.R. §§45.735-9(c)(3), 45.735-6(b) and (d) or by the Deputy Attorney General's specific exception (28 C.F.R. §45.735-9(e)). Requests for exceptions must be made in writing stating the reasons therefor and should be addressed to the Deputy Attorney General through the Applicant's superior. Such requests should be directed to the Executive Office for U.S. Attorneys.

One exception is that an employee may act as an agent or attorney, with or without compensation, for his/her parents, spouse, child, or any person for whom, or for any estate for which, he/she is serving as a personal fiduciary, except in those matters in which he/she participated personally and substantially as a government employee (28 C.F.R. §§45.735-6(d) and 45.735-9(d)). Specific situations should be determined on their own merits and questions in this respect should be brought to the attention of the Executive Office of U.S. Attorneys so that its staff and that of the Deputy Attorney General may review the situation as appropriate.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

No U.S. Attorney or Assistant U.S. Attorney should engage in any professional practice or any other outside employment if the activity: (1) interferes with proper and effective performance or official duties; (2) creates or appears to create a conflict of interest; (3) reflects adversely on the Department of Justice; (4) will be influenced or appears to be influenced by the employee's position at the Department of Justice; (5) involves assertions contrary to interests or positions of the United States; or (6) involves a criminal matter in which the United States (or the D.C. Government) is a party or has a direct or substantial interest regardless of whether it is a federal, state or local proceeding. Teaching is not considered the private practice of law under this rule (28 C.F.R. §45.735-9(f)). See USAM 10-2.665, infra.

U.S. Attorneys and their Assistants also should freely consult the Executive Office on these matters.

10-2.665 Teaching and Lecturing

Department of Justice regulations regarding private professional practice and outside employment have been amended (46 Fed. Reg. 52358, October 27, 1981). Under the previous regulations, teaching by Assistant U.S. Attorneys was viewed as the private practice of the profession, and required prior authorization of the Associate Attorney General. Teaching is no longer considered "professional practice" requiring prior authorization (28 C.F.R. §45.735-9(a)). Employees who wish to undertake teaching engagements are directed to consult 28 C.F.R. §45.735-12, which generally requires prior approval by the Deputy Attorney General only when the use of non-public information is contemplated. Employees should be cautious to avoid any conflict of interest with their position and to insure that no interference with the performance of their official duties occurs. Assistant U.S. Attorneys must take annual leave or leave without pay for any time required for teaching during normal business hours.

10-2.666 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, especially if the organization is funded in whole or in part by the federal government. The six criteria cited in USAM 10-2.664 with reference to outside activities also control this situation. You should contact the Executive Office whenever questions arise.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.667 Pro Bono Work

Title 28, Code of Federal Regulations, Section 45.735-9 encourages Department of Justice attorneys to participate in pro bono activities without compensation in their off-duty hours or while on leave. Leave will be granted for court appearances or other necessary absences incident to representation. Attorney's fees for such services may not be sought. In determining whether to provide pro bono services in a particular matter the attorney should consider the requirements of section 45.735-9(f) and, in particular, the prohibition against engaging in any profession practice that involves a criminal matter. Any attorney wishing to participate in such pro bono work must advise the Executive Office for U.S. Attorneys of his/her intention, identifying the name of the organization with which he/she will be associated and the general nature of the work, for a determination as to whether such activities fall in one of the accepted categories of public interest services. These categories are: (1) service to an indigent client; (2) service to defend an individual or public right in which society has an interest; (3) services to further the purposes of the organizational group; and (4) services to improve the administration of justice.

10-2.668 Gifts Received from Foreign Governments

Public Law 95-105, 5 U.S.C. §7342, governs the receipt and disposition of gifts and decorations tendered by foreign governments to federal employees, their spouses, or dependents.

Section 515 of Public Law 95-105 requires the Department of Justice to submit to the Secretary of State, by January 31 of each year, a listing of all statements filed by employees during the preceding year concerning gifts valued over \$140, all foreign gifts of travel or expenses for travel taking place entirely outside the United States and valued at more than \$140, where the acceptance of which has not been authorized in accordance with specific instructions from the Department of Justice.

Federal Property Management Regulations (FPMR) Par. 101-49 and Justice Property Management Regulation (JPMR) Part 128-49, prescribe policies and procedures governing utilization, donation, and disposal of gifts and decorations from foreign governments.

In accordance with JPMR §128-49.201, each U.S. Attorney's office is required to submit to the Executive Office, Attention: Facilities

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Management and Support Services Staff, by January 11th each year, a listing of all gifts and decorations, regardless of value, received by employees, their spouses, or dependents from foreign governments during the preceding year.

A separate statement, containing the following information should be submitted by each employee receiving a gift or decoration:

A. For tangible gifts:

1. Name and title of recipient;
2. Gift, date of acceptance, estimated value, and current disposition or location;
3. Identity of foreign donor and government; and
4. Circumstances justifying acceptance.

B. For travel or expenses for travel:

1. Name and title of recipient;
2. Brief description of travel or travel expenses occurring entirely outside the United States;
3. Identity of foreign donor or governments; and
4. Circumstances justifying acceptance.

Negative responses may be communicated by telephone to the Executive Office for U.S. Attorneys, Facilities Management and Support Services Staff.

10-2.669 Post-Government Employment Restrictions

A. Ethics in Government Act: The Ethics in Government Act of 1978, which amended 18 U.S.C. §207, and the regulations issued thereunder bar certain acts by former government employees (including all officers, employees and special government employees, both attorney and non-attorney, of any U.S. Attorney's Office) which may actually make or give the appearance of making, unfair use of prior government employment. Criminal penalties and disciplinary action may be imposed for violations. See 5 C.F.R. §737 as amended in 45 Fed. Reg. 7401, 7402 (Feb. 1, 1980); 45 Fed. Reg. 8544, 8556 (Feb. 8, 1980); 45 Fed. Reg. 75500-01, 75518-19 (November 14, 1980).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The regulations cited above, dated February 1, 1980, contain numerous examples of permissible and prohibited post-employment activities by various types of former employees. However, the regulations under the Ethics in Government Act do not incorporate or supplant restrictions that may be contained in other laws or professional codes of conduct. (See discussion in subparagraph G, infra.)

Requests from present or former employees of U.S. Attorneys' offices for the Department's views on prospective, specific factual situations or legal issues should be sent to the Director, Executive Office for U.S. Attorneys, for a written opinion from the Office of Legal Counsel or the Office of Government Ethics, as appropriate (pursuant to 5 C.F.R. §738; 46 Fed. Reg. 2582 (Jan. 9, 1981)). While some research materials and a bibliography of pertinent cases are set forth below, requests for additional materials not otherwise available may be made to the Executive Office for U.S. Attorneys.

The Office of Government Ethics (OGE) has issued advisory letters regarding the permissible and prohibited post-government employment activities of former government employees in specific factual situations under the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended by Pub. L. 96-28) (and the predecessor statute, 18 U.S.C. §207). Copies of briefs of the advisory letters which were prepared by the Executive Office for U.S. Attorneys may be obtained by contacting the Executive Office.

B. Summary: The statute and regulations now contain the following four major restrictions, against representing anyone other than the United States which apply to any person who held a government position after June 30, 1979:

1. A permanent restriction on any former government employee's (i.e., U.S. Attorney, supervisory Assistant U.S. Attorney, Assistant U.S. Attorney or other employee) acting as a representative in connection with any matter in which the employee participated personally and substantially while a government employee (see 18 U.S.C. §207(a));

2. A two-year restriction on any former government employee's (i.e., U.S. Attorney, supervisory Assistant U.S. Attorney, Assistant U.S. Attorney or other employee) acting as a representative in connection with any matter for which the employee had official responsibility during his/her final year as a government employee (see 18 U.S.C. §207(b)(1));



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. A two-year restriction on a former "senior employee's" (i.e., U.S. Attorney) 1/ acting as a representative or aiding, counseling, advising, consulting or assisting in representing any other person by personal presence in connection with any matter in which the employee participated personally and substantially while a government employee (see 18 U.S.C. §207(b)(ii)), and;

4. A one-year restriction on a former "senior employee's" (i.e., U.S. Attorney) communications with the former agency 2/ on any matter, regardless of prior involvement (See 18 U.S.C. §207(c)) (i.e., a former U.S. Attorney cannot deal with the office he/she headed).

However, a former Executive Schedule U.S. Attorney (Northern District of Illinois, Central District of California, Southern District of New York, and District of Columbia) is precluded for one year from communicating on any matter or case involving any other U.S. Attorney's office as well as his/her own former office, all United States Marshals' offices and the seven other non-statutory components of the Department designated under 18 U.S.C. §207(d)(1)(C). Former Executive Schedule U.S. Attorneys may, however, handle cases or matters involving the ten statutory separate agencies or bureaus of the Department under 18 U.S.C. §207(e).

C. Limitations on matters covered: The first three restrictions (18 U.S.C. §§207(a), (b)(i) and (b)(ii)), apply only to matters in which the United States or District of Columbia is a party or has a direct and substantial interest; the fourth restriction (18 U.S.C. §107(c)) applies only to matters pending before the former senior employee's agency or department, or in which the agency or department has a direct and substantial interest.

1/ All U.S. Attorneys (including the 89 non-Executive Schedule U.S. Attorneys and the four U.S. Attorneys paid Executive Schedule salaries) are "senior employees"; no Assistant nor supervisory Assistant U.S. Attorneys have been designated as "senior employees." Court-appointed U.S. Attorneys become subject to the post-employment restrictions after serving as U.S. Attorneys for 60 days.

2/ For the 89 non-Executive Schedule U.S. Attorneys, the "agency" with which such contacts are prohibited is defined as being the particular U.S.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Representation of the United States by any former government employee is, when authorized, of course, exempted from all of the above restrictions.

D. Restrictions on All Former Government Employees: Subsections (a) and (b)(i) of 18 U.S.C. §207 do not depart significantly from prior law. Subsection 207(a) retains the permanent prohibition against all former Executive branch officers and employees acting as agent of, attorney for, or representing in an appearance, or making oral or written communications with the intent to influence, on behalf of another party not the United States (hereinafter, "appearances before or communications with") the government or in court, in a case or other particular matter in which the United States or the District of Columbia is a party of has a direct and substantial interest, and in which the former government employee participated personally and substantially while a government employee. See 5 C.F.R. §737.5; 45 Fed. Reg. 7409 (February 1, 1980).

The new subsection 207(b)(i) merely extends from one to two years the period of disqualification of all former Executive branch employees from "appearances before or communications with" the government or in court in matters in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which the former government employee did not actually participate while in government, but which were under his/her official responsibility as an employee within one year prior to the end of such responsibility. See 5 C.F.R. §737.7; 45 Fed. Reg. 7411 (February 1, 1980).

The term "official responsibility" as used in 18 U.S.C. §207(b)(i) is defined in 18 U.S.C. §202(b); 5 C.F.R. §737.7(b).

Attorney's office (and the United States Marshal's office in that district) and the parent Department of Justice, with the exception of: (a) ten separate statutory agencies or bureaus of the Department, under 18 U.S.C. §207(e) (see 45 Fed. Reg. 75500-01 (November 14, 1980)); and (b) the other U.S. Attorneys' offices and United States Marshals' offices in the 93 other districts and the seven other non-statutory components of the Department of Justice, designated under 18 U.S.C. §207(d)(1)(C) (see 45 Fed. Reg. 75501 (November 14, 1980)). Thus, the former U.S. Attorney for the District of "A" normally would not be precluded by 18 U.S.C. §207(c) from handling a matter or case involving the U.S. Attorney's office or the United States Marshal's office in the District of "B" or before one of the ten statutory separate agencies or bureaus or the other seven non-statutory components of the Department of Justice.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

E. Restrictions on Former Senior Government Employees: The Act also added two new restrictions in 18 U.S.C. §§207(b)(ii) and §207(c) which apply only to certain former senior-level government employees who are defined under 18 U.S.C. §207(d)(1). That definition includes the U.S. Attorneys in four districts who are statutorily included in the Executive Schedule under 18 U.S.C. §207(d)(1)(A); and all non-Executive Schedule U.S. Attorneys, who were designated under §207(d)(1)(C) as "senior employees" by the Director of the Office of Government Ethics (45 Fed. Reg. 75519 (November 14, 1980)) and are therefore covered by the restrictions of both §§207(b)(ii) and 207(c). No Assistant U.S. Attorneys, supervisory Assistant U.S. Attorneys, nor any other employees of U.S. Attorneys' offices were designated as "senior employees." Court-appointed U.S. Attorneys become subject to these post-employment restrictions upon serving as U.S. Attorneys for 60 days.

Therefore, all former U.S. Attorneys who left their position after June 30, 1979, as "senior employees" are prohibited under 18 U.S.C. §207(b)(ii), for two years from representing, aiding or assisting in representing another person other than the United States by personal appearance before the government or in court in a matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which the "senior employee" is personally barred because of his or her personal and substantial participation in the matter while in government. See 5 C.F.R. §737.9; 45 Fed. Reg. 7412 (February 1, 1980).

In addition, all former U.S. Attorneys, as "senior employees," are barred by 18 U.S.C. §207(c) for one year from appearances or communications on behalf of any person other than the United States before the department or agency in which he/she was employed, or before any officer or employee thereof, in any case or particular matter pending before that department of agency or in which that department or agency has a direct and substantial interest, regardless of the "senior employee's" prior involvement with the case or matter while a government employee. See 5 C.F.R. §737.11; 45 Fed. Reg. 7413 (February 1, 1980).

The one-year restrictions under §207(c) on certain "senior employees" has been limited to less than the entire Department of Justice by two methods provided in the statute. By the discretionary designation of the Director of the OGE, pursuant to §207(d)(a)(C), administratively created, unrelated component agencies or bureaus within the parent department or agency may be designated, if they have separate and distinct subject matter jurisdiction from the parent department or agency, and the OGE has determined that there exists no potential for use of undue influence or

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

unfair advantage based on past government service. The Director of OGE has designated the following as such separate agencies: all U. S. Attorneys' offices, as well as all U.S. Marshals' offices and seven other non-statutory components of the Department of Justice.<sup>3/</sup> Therefore, with the exception of former Executive Schedule U.S. Attorneys,<sup>4/</sup> former U.S. Attorneys are not automatically prohibited, pursuant to 18 U.S.C. §207(c), from appearances before or communications with U.S. Attorneys' offices or United States Marshals' offices in districts other than the district in which they served as a "senior employee," nor with the seven separate non-statutory components of the Department. All former U.S. Attorneys are still prohibited for one year from making appearances before or communications with the U.S. Attorney's office and the United States Marshal's office in the district which they headed.

All former U.S. Attorneys from all districts may handle matters and cases otherwise prohibited under 18 U.S.C. §207(c) before the ten statutorily created separate agencies and bureaus of the Department of Justice which the Director of OGE has designated pursuant to 18 U.S.C. §207(e).<sup>5/</sup>

In addition, all former U.S. Attorneys' appearances before and communications with the government, other U.S. Attorneys' offices, other components of the Department of Justice, and in court are still restricted by §§207(a) and (b)(i), which apply to all former employees.

---

<sup>3/</sup> Antitrust Division; Civil Rights Division; Land and Natural Resources Division; Tax Division; Civil Division; Criminal Division; and the Office of Legal Policy (formerly the Office for Improvements in the Administration of Justice) 5 C.F.R. §737.13; 45 Fed. Reg. 7415-16 (February 1, 1980); 5 C.F.R. §737.32; 45 Fed. Reg. 755-1 (November 14, 1980).

<sup>4/</sup> Although the Director of the Office of Government Ethics included the four Executive Schedule U.S. Attorneys in the designation of "senior employees" under §207(d)(1)(C), the Office of Legal Counsel has concluded that the Ethics Act does not authorize such designations for Executive Schedule employees covered under §207(d)(1)(A). The Department's Office of Legislative Affairs has previously determined that an amendment to the statute would be appropriate in order to eliminate the disparity among U.S. Attorneys. The Executive Office for U.S. Attorneys is urging the Department to submit such an amendment to the Congress.

<sup>5/</sup> Bureau of Prisons (including Federal Prison Industries, Inc.); Community Relations Service; Drug Enforcement Administration, Federal

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

F. Sanctions: The statute provides criminal penalties of up to two years' imprisonment and/or a \$10,000 fine for violations of §§207(a)-(c) by former employees. Disciplinary action by a department or agency for violations by former employees may also include up to five years' debarment from appearances before or communications with the Department, pursuant to §207(j). See 5 C.F.R. §737.27; 45 Fed. Reg. 7418 (February 1, 1980); 28 C.F.R. §45.735-7a; "Disciplinary Proceedings Under 18 U.S.C. §207(j)" (Order No. 889-80, 45 Fed. Reg. 31717 (May 14, 1980)). (In addition, 18 U.S.C. §207(j) provides penalties of up to one year imprisonment and/or a \$5,000 fine for certain violations by partners of present employees of the Executive Branch.)

A review of the criminal sanctions appears at USAM 9-85.240.

G. Other Post-Government Employment Restrictions, and Restrictions on Partners of Former Government Attorneys and Employees: In addition to the Ethics in Government Act, the American Bar Association Code of Professional Responsibility (ABA Code), rules of state bar associations and court decisions restrict the conduct of attorneys who are former government employees and their firms and affiliates. There is nothing in 18 U.S.C. §207 that prevents courts and bar associations from holding former employees of the federal government to standards more demanding than the minimal requirements of the criminal law. 28 C.F.R. §45.735-7 (1979), which paraphrases the predecessor statute to 18 U.S.C. §207, makes plain that a former employee is not free to disregard other, more demanding standards of professional conduct.

18 U.S.C. §207(c) by its terms raises no obstacles for the fellow lawyers of a former U.S. Attorney or Assistant U.S. Attorney in a private

---

Bureau of Investigation; Law Enforcement Assistance Administration; National Institute of Justice; Bureau of Justice Statistics; Office of Justice Assistance, Research and Statistics; Immigration and Naturalization Service; and the United States Parole Commission. 5 C.F.R. §737.13(c); 45 Fed. Reg. 7415 (February 1, 1980); 5 C.F.R. §737.31; 45 Fed. Reg. 75500-01 (November 14, 1980).

law firm. Moreover, the ABA Code does not contain a provision that, like 18 U.S.C. §207(c), prohibits an appearance in a matter in which the former government lawyer had not participated or for which he/she had no official responsibility. As to these types of matters, therefore, absent a restraint of that kind in a disciplinary rule, there is no disqualification to impute to the partners of the lawyer in regard to such matters.

An attorney is personally disqualified from representing a client on a particular matter in which the attorney had substantial responsibility as a public employee. See ABA Code, DR 9-101(B).

The definition of "matter" as used in ABA Formal Opinion No. 342 (November 24, 1975), 62 ABAJ 517 (1976) (copy, infra) is usually limited to activities related to litigation between identifiable parties.

The definition of the term "substantial responsibility" which activates Canon 9 of the Code of the Professional Responsibility is not firmly established and depends on the specific facts. See ABA Formal Opinion No. 342. Some circuits hold that DR 9-101(B) permits disqualification of the former government employee only in matters in which he/she had a direct and substantial personal involvement. In others, a more restrictive standard based on state law may be imposed where, in addition to actual knowledge, responsibility exists over the subject matter, whether exercised or not. DR 9-101(B) has been applied even when the attorney had no active or direct participation in a case while a prosecutor, or acted in only an advisory, not supervisory, capacity.

Likewise, the former government attorney's partners, associates, and any other lawyer affiliated with his/her firm are disqualified by imputation from employment on the same particular matter for which the former government employee is personally disqualified. See ABA Code, DR 5-105(D). However, this is not an absolute disqualification. The imputation of the former government attorney's knowledge of privileged information to the entire firm and its affiliates may be rebuttable by an adequate screening mechanism. And, absent an appearance of significant impropriety or taint of the underlying trial or matter, the government may waive the law firm's imputed disqualification, if there are adequate screening procedures by the firm to isolate that attorney from direct and indirect participation in the "matter" and the fees attributable to it. See ABA Formal Opinion No. 342. However, inasmuch as it is the court's responsibility to ensure that attorneys practicing before it maintain the highest standards of professional conduct, any waiver filed by the government is not binding upon the court.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

In order to maximize its ability to recruit able attorneys who may later leave the government for private practice, the Department of Justice has opposed an automatically imputed disqualification of the personally-disqualified attorney's law firm and has adopted an administrative practice to allow waivers in appropriate screening situations, as discussed in the Department's comments on the ABA Proposed Model Rules (May 23, 1980), and Armstrong v. McAlpin, brief of United States as amicus curiae on rehearing en banc (2d Cir. 1980), in which the government endorsed the procedures for screening. A law firm that employs a former Department of Justice attorney and that has instituted screening procedures may request the Department's consent to the firm's representation in matters with which the former government attorney was involved. Procedurally, the firm should make its written request to the head of the appropriate Department office, board or division, identifying the matters involved and detailing the screening measures used to insulate the attorney from involvement in the matters. Department components may then consult the Department's Office of Legal Counsel, which has responsibility for ethical considerations under 28 C.F.R. §§0.25(k) and 45.735-26(b). U.S. Attorneys and Assistant U.S. Attorneys should forward their requests to the Executive Office for U.S. Attorneys.

Some of the factors which have been considered in government waiver determinations, and in the courts' acceptance of the adequacy of a firm's screening on motions for disqualification are:

1. Screening measures were utilized by the firm ab initio, prior to the government or other party's motion for disqualification;
2. The attorney derives no remuneration from funds obtained by the firm for the representation;
3. The attorney is excluded from participation in the action and has never participated in any fashion whatever in the firm's representation of the client;
4. The attorney has not imparted any information concerning the matter or the adverse party to the firm nor discussed the action with other firm members;
5. No one at the firm is permitted to discuss the matter in the attorney's presence or allow the attorney to view any document related to this litigation; and the attorney has no access to relevant files (which should be locked);

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

6. There is no indication that the attorney, while employed by the government, formed an intent to prosecute this action as a private attorney, nor that the attorney's official actions, while a government employee, were affected nor his authority misused by contemplation of subsequent employment or action in the matter as a private attorney;

7. The attorney did not facilitate the client's engaging the firm, nor was the attorney hired away from the government by a firm in order to defuse the government's representation in a matter handled by the firm;

8. The screening is "specific and inflexible;" and

9. The presence of the former government employee attorney will not taint the [underlying] trial, nor affect the outcome of the case.

In addition, in deciding whether a proposed screening mechanism is likely to be effective, the government or the court may consider the relative size of the law firm; the proportion of the firm's resources devoted to, and income derived from, the particular litigation; the protracted nature of the litigation; and whether, in multi-district litigation, involving the same law firm and issues, the United States is or may become a direct party or third party in other cases. Although disqualification under DR 9-101(B) and DR 5-105(D) is often used to prevent a former government attorney from switching sides on a matter as well as to prevent the attendant violation of attorney-client confidences and the appearance of impropriety, the imputed disqualification of the law firm may be equally applicable where there is no switching of sides. This applies, for example, when the former government attorney's former agency and present firm would maintain actions adverse to the same party in (two) related matters with which the attorney was involved while in government. (The screening mechanism does not apply, however, to attempts to create a "Chinese wall" within a law firm in order to allow simultaneous representation of two parties with adverse interests.)

Judicial review may be available to the law firm employing the former government attorney in the case of an agency's arbitrary or capricious denial of a waiver. Judicial review may also be available to another party in the case of the agency's arbitrary or capricious determination granting a waiver.

The granting of a motion for disqualification is usually appealable, but the denial of such a motion is not appealable in all circuits.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

H. Briefs of Advisory Letters: The Office of Government Ethics (OGE) has issued advisory letters regarding the permissible and prohibited post-government employment activities of former government employees in specific factual situations under the Ethics in Government Act of 1978 (the Ethics Act), 18 U.S.C. §207. (For persons whose government employment ended prior to July 1, 1979, the OGE has also interpreted the predecessor statute, 18 U.S.C. §207.)

Copies of the full texts of the letters may be requested from the Executive Office for U.S. Attorneys, Room 1629, Main Justice, 10th Street and Pennsylvania Ave., N.W., Washington, D.C., 20530 (FTS 633-4024). Briefs of these and of future advisory letters will be published in the United States Attorneys' Bulletin.

The OGE's advisory letters concern the following issues, as applied to the specific factual situations presented by individual former employees of various government agencies:

1. Whether an attorney in a private law firm who is a former "senior employee" (for purposes of 18 U.S.C. §207(d)(1)(C)) may, during the one-year time ban of §207(c), represent a private client in court in a civil suit against the attorney's former government Department, involving the interpretation of a Department regulation, but not involving a particular matter involving specific parties which would trigger any prohibitions of §§207(a) or (b). This would be prohibited, because the attorney's representation and arguments to the court would unavoidably involve "oral . . . communication" to the Department "with the intent to influence" it (i.e., to persuade the Department to change its position, or in required settlement negotiations). Based on the legislative history of §207(c), such contact by the former official with his/her former agency is proscribed, not only on the matters pending before the agency, but on matters in which the former agency has a "direct and substantial interest" (i.e., where it is named as a defendant), even though the matter is pending elsewhere (i.e., in court).

2. Under the definition of the term "particular matter" (18 U.S.C. §207(a)), whether an attorney who is a former government employee (Administrative Law Judge (ALJ) assigned to an agency) may represent claimants at hearing before law judges of the same agency in three situations where:

- a. The claimants are new and present new claims. Here there is no general prohibition because "particular matter" applies to specific cases or matters and not a general area of activity;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

b. and c. In hearings over which the former employee presided as an ALJ, the claimant had his original application for benefits denied and, in lieu of an appeal, now files a new application, or the claimant's application was granted, but the agency has since reexamined it and terminated benefits.

In these two situations, the representation is prohibited, because under the Act's implementing regulations, the same particular matter may continue in another form or part, and the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information and the continuing existence of an important federal interest.

3. What is the effect of the re-employment [as a Special Government Employee] of a former government employee who originally had resigned prior to the effective date of the Ethics Act, July 1, 1979?

The restrictions of the new Ethics Act apply only to the matters upon which the re-employed person works subsequent to re-employment after July 1, 1979. However, as to the previous period of government employment (pre-July 1, 1979), the former provision of 18 U.S.C. §207 predating the Ethics Act covers the particular matters in which the former employee was either personally or substantially involved or which were pending under his/her official responsibility.

4. What is the effect of the re-employment of a former government employee as a re-employed annuitant in the same agency but in a different non-"Senior employee" position, where there are no operational responsibilities regarding the former position, and where the former position was designated as a "senior employee" position under §207(d)(1)(C) effective one day after the employee originally terminated employment with the agency?

Because this particular re-employment in a non-senior employee position is not viewed by OGE as a "shifting position" under 5 C.F.R. §737.25(i), the re-employment will not subject the employee to restrictions on a "senior employee."

5. What is the application of the definitions of "personal and substantial" participation in a "particular matter involving a specific party or parties," under the former pre-Ethics Act statute,

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

18 U.S.C. §207, in the following situation: Whether a former government employee who left the government prior to the effective date of the Ethics Act, and is now an employee of a corporation, is barred from representing the corporation in conjunction with any of the four "phases" of a government program [to deliver aircraft to a foreign airforce], where the former employee had worked on only one of the phases of the program in government.

There is no prohibition of representation as to the three other separable phases of the program, because they are separate "particular matters" for which the former employee did not have "official responsibility." 18 U.S.C. §202(b).

Section 207 covers the one program phase in which the employee had participated "personally and substantially" as a government employee. The phase was a covered "matter" involving specific parties, even though the work was preparatory and preliminary to an actual contract, similar to an employee's participating in an investigation to determine whether the government should file a formal action, or recommending such formal action be undertaken.

The limitations on the proposed duties of a former government employee as to matters covered under §207 vary according to the type of representation, and §207(a) does not prohibit contacts or communications with the government that do not involve potentially adversarial or controversial matters with respect to a particular matter (i.e., a contract).

6. Under the two-pronged standard of 18 U.S.C. §§207(a) and (b)(i), defining "a particular matter involving a specific party or parties," former government employees who were involved in the development of a matter (i.e., request for proposals for a contract) are not prohibited from representing a specific party before the government on that particular matter, where the party was not identified as a party to the matter in question at the time the employees worked on the matter in the government.

7. Under the definitions of "[personal and] substantial" participation and a "particular matter involving a specific party or parties" in 18 U.S.C. §207(a), an attorney who, as a former government employee, drafted or amended specific clauses in documents (i.e., contracts) or reviewed the documents for legal sufficiency is barred generally from representing parties in the particular matter (the contract) in toto, because such documents cannot be divided into clauses to mitigate the post-employment restrictions of 18 U.S.C.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

§207, nor can passing upon the legality of a matter be separated from the substantive merits of the particular matter.

However, as to such documents (contracts) which were amended or reviewed for legal sufficiency subsequent to the termination of the attorney's responsibilities therefore, §207 does not bar later involvement, because to the extent that the primary substance of the documents (i.e., rates and benefits of contracts) change yearly, they are new "particular matters," despite certain continuing generic clauses with which the attorney was involved while in government.

8. What are the limitations of 18 U.S.C. §§207(a) and (b)(i) on a former "senior employee" who, as director of a federal office, had a broad policymaking role (in science, technology, energy, national security, and research and development issues) and official responsibility for certain particular matters (contracts) involving the government office and the new employing organization? Most of the policy activities, being of a general rather than specific nature, result in no post-employment restrictions, because "rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application" are not a particular matter involving a specific party or parties. 18 U.S.C. §§207(a) and (b)(i). These restrictions would require a discrete and isolatable transaction between identifiable parties, and do not apply to a general area of activity.

However, there is a restriction on particular matters (i.e., contracts) in which the former government director participated personally and substantially, where "personally" means directly, including the participation of a subordinate when actually directed by the former government employee, and where to participate "substantially" means that the director's involvement must have been of significance or form the basis for a reasonable appearance of such significance to the matter and requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

J. Bibliography: Post-Government Employment Restrictions

Cases:

American Can Co. v. Citrus Feed Co., 436 F.2d 1125 (5th Cir. 1971).

Armstrong v. McAlpin, 699 F.2d 79 (2d Cir. 1983).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Armstrong v. McAlpin, 625 F.2d 433 (2d Cir. 1980) (reh'g en banc),  
vacated, 449 U.S. 1106, 101 S. Ct. 911, 66 L. Ed. 2d 835 (1981).

Armstrong v. McAlpin, brief of United States as amicus curiae on  
reh'g en banc, No. 79-7042 (2d Cir. 1980).

Board of Education v. Nyquist, 590 F.2d 1241 (2d Cir. 1979).

Central Milk Producers Co-Op v. Sentry Food Stores, 573 F.2d 988 (8th  
Cir. 1978).

Cheng v. GAF Corporation, 631 F.2d 1053 (2d Cir. 1980).

Cinema 5, Ltd. v. Cinerama, Inc., 528 F.2d 1384 (2d Cir. 1976).

Community Broadcasting of Boston, Inc. v. F.C.C., 546 F.2d 1022 (D.C.  
Cir. 1976).

Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 646 F.2d 1020  
(5th Cir. 1981).

Freeman v. Chicago Musical Instrument Co., 689 F.2d 715 (7th Cir.  
1982).

General Mill Supply Company v. SCA Services, Inc., 697 F.2d 704 (6th  
Cir. 1982).

Handelman v. Weiss, 368 F. Supp. 258 (S.D. N.Y. 1973).

In re Asbestos Cases, 514 F. Supp. 914 (E.D. Va. 1081), aff'd on  
reh'g, sub nom, Greitzer & Locks v. Johns-Manville Corp., 681 F.2d  
813 (4th Cir.), cert. denied, 103 S. Ct. 364 (1982).

In re Continental Investment Corporation, 637 F.2d 1 (1st Cir. 1980).

In re Coordinated Pre-trial Proceedings in Petroleum Products  
Antitrust Litigation, 658 F.2d 1355 (9th Cir. 1981).

In re Corrugated Container Antitrust Litigation. Kraft, Inc. v.  
Alton Box Board Co., 659 F.2d 1341 (5th Cir. 1981).

In re International Business Machines Corporation, 687 F.2d 591 (2d  
Cir. 1982).

# Professional Ethics Opinions



## Formal Opinion 342 (November 24, 1975)

Following the 1974 amendment of D.R. 5-105(D), which extended every disqualification of an individual lawyer in a firm to all affiliated lawyers,<sup>1</sup> the interpretation and application of D.R. 9-101(B) have been increasingly of concern to many government agencies as well as to many former government lawyers now in private practice.<sup>2</sup> D.R. 9-101(B) is based upon former A.B.A. Canon 36, but its standard or test is different. Our task is to interpret D.R. 9-101(B) in light of its history and in consideration of its underlying purposes and policies.

D.R. 9-101(B) reads as follows: "A lawyer shall not accept private employment in a matter in which he had substan-

tial responsibility while he was a public employee."<sup>3</sup>

At the outset, the relationship between D.R. 9-101(B) and the provisions of Canons 4 (confidences and secrets) and 5 (independent professional judgment) should be explored briefly. To some extent, the disciplinary rules of those two canons reinforce the same ethical concepts underlying D.R. 9-101(B).

The disciplinary rules of Canon 4 generally forbid a lawyer to reveal or use a confidence or secret of a client, see D.R. 4-101(B). That rule applies to a government lawyer as well as to private practitioners, for "the disciplinary rules should be uniformly applied to all lawyers, regardless of the nature of their

professional activities."<sup>4</sup> A lawyer violates D.R. 4-101(B) only by knowingly revealing a confidence or secret of a client or using a confidence or secret improperly as specified in the rule. Nevertheless, many authorities have held that as a procedural matter a lawyer is disqualified to represent a party in litigation if he formerly represented an adverse party in a matter substantially related to the pending litigation.<sup>5</sup> Even though D.R. 4-101(B) is not breached by the mere act of accepting present employment against a former client involving a matter substantially related to the former employment, the procedural disqualification protects the former client in advance of and against a possible future violation of D.R. 4-101(B).<sup>6</sup>

The disciplinary rules of Canon 5 bring into professional regulation, and with some specificity, the ancient maxim that one cannot serve two masters.<sup>7</sup> The dis-

1 As amended at the study year meeting of the A.B.A. in February, 1974, D.R. 5-105(D) provides: "If a lawyer is required to decline employment or to withdraw from employment under a disciplinary rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment." Prior to amendment, the rule undertook to disqualify all such affiliated lawyers only when the lawyer in question was "required to decline employment or to withdraw from employment under D.R. 5-105 . . ." But see fn. 2, *supra*.

2 It has long been recognized that the disqualification of one lawyer in an organization generally constituted disqualification of all affiliated lawyers, see, e.g., *American Can Company v. Curus Food Company*, 436 F.2d 1125 (5th Cir. 1971); *Lasky Bros. of West Virginia v. Warner Bros. Pictures*, 224 F.2d 824 (2d Cir. 1955); *Silver Chrysler Plymouth v. Chrysler Motors Corporation*, 370 F.Supp. 381 (E.D. N.Y. 1973), aff'd 518 F.2d 751 (2d Cir. 1975); *W.E. Bassett Company v. N.C. Coal Company*, 201 F.Supp. 321 (D. Conn. 1962); Formal Opinion 169 (1937), 49 (1931), 23 (1931), and 16 (1929); Informal Opinions 1336 (1973) and 906 (1966); Texas Ethics Commission Opinion 100 (1954); Perlman, *The Federal Conflict of Interest Law*, 76 HARV L. REV. 1113, 1162 (1963); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657, 660 (1957); Kaplan, *Forbidden Retainers*, 31 N.Y.U.L. REV. 914, 926 (1956); Casmore, 69 HARV L. REV. 1339 (1956). The rule is based upon the close, informal relationship among

law partners and associates and upon the incentives, financial and otherwise, for partners to exchange information freely among themselves when the information relates to existing employment. As to the application of D.R. 5-105(D) in situations involving D.R. 9-101(B), see the discussion *infra*.

3 The companion provision in the former A.B.A. Canons of Professional Ethics was found in Canon 36 and read as follows: "A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

4 Preliminary Statement, C.P.R.

5 See *Emile Industries, Inc. v. Patentes, Inc.*, 478 F.2d 562 (2d Cir. 1973); *American Can Company v. Curus Food Company*, 436 F.2d 1125 (5th Cir. 1971); *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 381 (E.D. N.Y. 1973), aff'd, 518 F.2d 751 (2d Cir. 1975); *Humble Oil and Refining Company v. American Oil Company*, 224 F.Supp. 909 (E.D. Mo. 1963); *Schmidt v. Pear Loan Memorial Park*, 198 N.W.2d 496 (S.D. 1972); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957), Note, 64 YALE L.J. 917 (1955).

6 If this device of a procedural disqualification based upon the substantial relationship of the subject matter of the two employments were not used, the remedy would be rather frail, as after-the-fact disciplinary action in which the issue is whether a particular confi-

dence or secret was actually revealed or used improperly, or second, a procedural disqualification based upon the fact issue of whether confidences or secrets were actually revealed in the first employment that are so relevant that they are likely to be revealed or used during the second employment. The "substantially related" test is less burdensome to the client first represented and is less destructive of the confidential nature of the attorney-client relationship. See *Emile Industries, Inc. v. Patentes, Inc.*, 478 F.2d 562, 571 (2d Cir. 1973), in which it is pointed out that an inquiry, as a procedural motion to disqualify into actual confidences "would prove destructive of the weighty policy considerations that serve as the pillars of Canon 4 of the code" and that if the procedural disqualification were not used as a prophylactic measure, a lawyer might unconsciously or intentionally use a confidence or "out of an excess of good faith, might bend too far in the opposite direction, refraining from seizing a legitimate opportunity for fear that such a tactic might give rise to an appearance of impropriety." Cf. E.C. 5-14, C.P.R.

7 "No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon." Matthew 6:24. See also Formal Opinions 33 (1931), 71 (1932), and 83 (1932). The latter quoted Hoffman's Eighth Resolution: "If I have ever had any connection with a cause, I will never permit myself (where that connection is for any reason severed) to be engaged on the side of my former antagonist."

disciplinary rules of Canon 5 are concerned largely with the effect of dual representation upon the quality of the professional service rendered to a client. Therefore the rules generally require a lawyer to refuse employment or to withdraw from employment when his exercise of professional judgment on behalf of a client may be affected, see D.R. 5-105, E.C. 5-14; and E.C. 5-15. The rules also forbid a lawyer to switch sides even in situations where the exercise of the lawyer's professional judgment on behalf of a present client will not be affected.<sup>8</sup> To this extent, the disciplinary rules of Canon 5 regulate the employment a lawyer may undertake after concluding or terminating past employment, whether the past employment was as a private or as a public lawyer.

D.R. 9-101(B) appears under the maxim of Canon 9, "A Lawyer Should Avoid Even the Appearance of Professional Impropriety." It is obvious, however, that the "appearance of profes-

sional impropriety" is not a standard, test, or element embodied in D.R. 9-101(B).<sup>9</sup> D.R. 9-101(B) is located under Canon 9 because the "appearance of professional impropriety" is a policy consideration supporting the existence of the disciplinary rule. The appearance of evil is only one of the underlying considerations, however, and is probably not the most important reason for the creation and existence of the rule itself.

The policy considerations underlying D.R. 9-101(B) have been thought to be the following: the treachery of switching sides,<sup>10</sup> the safeguarding of confidential governmental information from future use against the government,<sup>11</sup> the need to discourage government lawyers from handling particular assignments in such a way as to encourage their own future employment in regard to those particular matters after leaving government service,<sup>12</sup> and the professional benefit derived from avoiding the appearance of evil.<sup>13</sup>

There are, however, weighty policy considerations in support of the view that a special disciplinary rule relating only to former government lawyers should not broadly limit the lawyer's employment after he leaves government service. Some of the underlying considerations favoring a construction of the rule in a manner not to restrict unduly the lawyer's future employment are the following: the ability of government to recruit young professionals and competent lawyers should not be interfered with by imposition of harsh restraints upon future practice nor should too great a sacrifice be demanded of the lawyers willing to enter government service;<sup>14</sup> the rule serves no worthwhile public interest if it becomes a mere tool enabling a litigant to improve his prospects by depriving his opponent of competent counsel,<sup>15</sup> and the rule should not be permitted to interfere needlessly with the right of litigants to obtain competent counsel of their own choosing, particularly in specialized areas requiring special

8. The prohibition against switching sides where the exercise of the lawyer's professional judgment on behalf of a client will not be affected is somewhat obscure. The prohibition is found in D.R. 5-105(A) and (B) forbidding the acceptance or retention of employment involving the representation of "differing interests," which is defined as every interest "that will adversely affect either the judgment or the loyalty of a lawyer to a client. . . ." Definitions (1). Generally, see *E. F. Hunan & Company v. Brown*, 305 F. Supp. 371 (S.D. Tex. 1969).

9. *Bus of Silver Chrysler Plymouth Inc. v. Chrysler Motors Corporation*, 518 F. 2d 751 (2d Cir. 1975); *General Motors Corporation v. City of New York*, 501 F. 2d 639 (2d Cir. 1974); *Motor Murt Inc. v. Saab Motors, Inc.*, 359 F. Supp. 156 (S.D. N.Y. 1973); *Hilo Metals Company Ltd. v. Learner Company*, 258 F. Supp. 23 (D. Hawaii 1966); *United States v. Standard Oil Company*, 136 F. Supp. 345 (S.D. N.Y. 1955); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957); Judge Weinsien made an appropriate comment regarding "appearances of impropriety" in *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F. Supp. 581, 589. "Defendants seem to suggest that the complexities of the factual determination to be made by this court should be avoided by a decision couched in notions of possible appearance of impropriety. On the contrary, the importance of the underlying policy considerations call for careful analysis of the matters embraced by previous and present litigations. Vague or indefinite allegations do not suffice. . . . The danger of damage to public confidence in the legal profession would be great if we were to allow unfounded charges of impropriety to form the sole basis for an unjust disqualification."

10. See formal Opinion 71 (1932); Kaplan, *Forbidden Retainers*, 31 N.Y.U.L. REV. 914, 917 (1956); Association of the Bar of the City of New York, *CONFLICT OF INTEREST AND FEDERAL SERVICE* 45 (1960). Thus Canon 5 and D.R. 9-101(B) are based at least in part on the same considerations of ethics.

11. See *Allied Realty of Saint Paul v. Exchange National Bank of Chicago*, 283

F. Supp. 464 (D. Minn. 1968), aff'd 408 F. 2d 1099 (8th Cir. 1969); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957). Cf. McKay *An Administrative Code of Ethics: Principles and Implementations*, 47 A.B.A.J. 890 (1961). Thus Canon 4 and D.R. 9-101(B) are based at least in part on the same considerations of ethics. Speaking of former Canon 36, the forerunner of D.R. 9-101(B), Judge Kaufman said "Canon 36 was designed to supplement the other two [canons regarding conflicts and confidences], not to replace them." *Id.* at 660.

12. "Interviews revealed a substantial body of opinion that government employees who anticipate leaving their agency some day are put under an inevitable pressure to impress favorably private concerns with which they officially deal." ASS'N OF THE BAR OF THE CITY OF NEW YORK, *CONFLICT OF INTEREST AND FEDERAL SERVICE* 233 (1960). See also *Allied Realty of Saint Paul v. Exchange National Bank of Chicago*, 283 F. Supp. 464 (D. Minn. 1968), aff'd 408 F. 2d 1099 (8th Cir. 1969); *Hilo Metals Company v. Learner Company*, 258 F. Supp. 23 (D. Hawaii 1966); Formal Opinion 37 (1931).

13. See *General Motors Corporation v. City of New York*, 501 F. 2d 639 (2d Cir. 1974); *Motor Murt v. Saab Motors, Inc.*, 359 F. Supp. 156 (S.D. N.Y. 1973); *Hilo Metals Company Ltd. v. Learner Company*, 258 F. Supp. 23 (D. Hawaii 1966); *United States v. Standard Oil Company*, 136 F. Supp. 345 (S.D. N.Y. 1955); Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957).

14. "It is not sufficiently recognized that postemployment restrictions can be overly stringent, hurting the government more than they help it. This is most easily seen in the deterrent effect of such regulation upon the government's recruitment of manpower; no man will accept government appointment—especially temporary government appointment—if he must abandon the use of his professional skills for several years after leaving government service. The adverse effect of such restrictions on the government's efficient use of skills and information is probably even greater. The knowledge of an experienced former official may be made to operate against

the government, but it may also contribute to the ends of the government." ASS'N OF THE BAR OF THE CITY OF NEW YORK, *CONFLICT OF INTEREST AND FEDERAL SERVICE* 224 (1960). It was also said that the "most damaging result of the present system is its deterrent effect on the recruitment and retention of executive and some kinds of consultative talent." *Id.* at 181.

See also *Silver Chrysler Plymouth Inc. v. Chrysler Motors Corporation*, 370 F. Supp. 581 (E.D. N.Y. 1973) ("A concern both for the future of young professionals and for the freedom of choice of the litigants in specialized areas of law requires care not to disqualify needlessly"), aff'd 518 F. 2d 751 (2d Cir. 1975); *United States v. Standard Oil Company*, 136 F. Supp. 345 (S.D. N.Y. 1955) ("If service with the government will tend to sterilize an attorney in too large an area of law for too long a time, or will prevent him from engaging in practice of the very specialty for which the government sought his service—and if that sterilization will spread to the firm with which he becomes associated—the sacrifices of entering government service will be too great for most men to make. As for those men willing to make these sacrifices, not only will they and their firms suffer a restricted practice thereafter, but clients will find it difficult to obtain counsel, particularly in those specialties and with dealing with the government"). Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957) ("The restrictions placed upon [the government attorney's] future career are so unclear and may be so sterilizing that unless he is completely unaware he will hesitate before accepting government employment"). *Comment*, 68 HARV L. REV. 1084 (1955) (suggesting that a lawyer should not be disqualified in a case involving his specialty unless a hearing, such as an ex parte hearing, results in a finding that the information obtained from the client is not available elsewhere by reasonable research); Kaplan, *Forbidden Retainers*, 31 N.Y.U.L. REV. 914 (1956); *Comment*, 64 YALE L.J. 917 (1944) ("Furthermore, the attorney ought to develop a special skill free from unwarranted limitations as to employment must be recognized.")

15. *Cf. Emile Industries, Inc. v. Poweret, Inc.*, 478 F. 2d 362, 374 (2d Cir. 1973).

technical training and experience.<sup>16</sup>

D.R. 9-101(B) itself, while presumably drafted in the light of the above policy considerations, does not embody any of them as a test. The issue of fact to be determined in a disciplinary action is whether the lawyer has accepted "private employment" in a "matter" in which he had "substantial responsibility" while he was a "public employee." Interpretation apparently is needed in regard to each of the quoted words or phrases, and each should be interpreted so as to be consistent, insofar as possible, with the underlying policy considerations discussed above.<sup>17</sup>

As used in D.R. 9-101(B), "private employment" refers to employment as a private practitioner. If one underlying consideration is to avoid the situation where government lawyers may be tempted to handle assignments so as to encourage their own future employment in regard to those matters, the danger is that a lawyer may attempt to derive undue financial benefit from fees in connection with subsequent employment, and not that he may change from one salaried government position to another. The balancing consideration supporting our construction is that government agencies

should not be unduly hampered in recruiting lawyers presently employed by other government bodies.<sup>18</sup>

Although a precise definition of "matter" as used in the disciplinary rule is difficult to formulate, the term seems to contemplate a discrete and isolatable transaction or set of transactions between identifiable parties.<sup>19</sup> Perhaps the scope of the term "matter" may be indicated by examples. The same lawsuit or litigation is the same matter. The same issue of fact involving the same parties and the same situation or conduct is the same matter.<sup>20</sup> By contrast, work as a government employee in drafting, enforcing, or interpreting government or agency procedures, regulations, or laws, or in briefing abstract principles of law, does not disqualify the lawyer under D.R. 9-101(B) from subsequent private employment involving the same regulations, procedures, or points of law, the same "matter" is not involved because there is lacking the discrete, identifiable transactions or conduct involving a particular situation and specific parties.<sup>21</sup>

The element of D.R. 9-101(B) most difficult to interpret in light of the underlying considerations, pro and con, is that of "substantial responsibility." We turn

first to the language of the predecessor Canon 36—language found wanting.

Canon 36, former A.B.A. Canons of Professional Ethics, stated that the former government lawyer should not accept employment in connection with a matter "he has investigated or passed upon" while in government employ. But "passed upon" proved to be too broadly encompassing; for example, it was held under Canon 36 that a lawyer could not accept employment in connection with a land title which he had passed upon in a perfunctory manner, the title having been before him for consideration only because title reports were made in his name as assistant chief title examiner or in the name of the chief title examiner.<sup>22</sup> And if disqualifying a lawyer because of a mere "rubber stamp" approval of the work of another was not bad enough, this committee was confronted with the necessity of either disregarding that language of Canon 36 or holding that a lawyer who was a former governor was disqualified from litigation involving any legislation he had passed upon—perhaps by vetoing, signing, or permitting it to become law without signature—as governor.<sup>23</sup> Perhaps an extreme in the interpretation of the language was reached when the

16 *Emle Industries Inc. v. Patentes, Inc.*, 478 F.2d 362, 363 (2d Cir. 1973); *Lasley Bros. of West Virginia Inc. v. Warner Bros. Pictures*, 224 F.2d 824 (2d Cir. 1955); *Silver Chrysler Plymouth Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D. N.Y. 1973), aff'd 518 F.2d 751 (2d Cir. 1975), Note, 64 YALE L.J. 917 (1955).

17. Perhaps the least helpful of the seven policy considerations mentioned above is that of avoiding the appearance of impropriety. This consideration appears in the heading of Canon 9 and is developed more fully in E.C. 9-2 and 9-3 thereby giving guidance to lawyers when making decisions of conscience in regard to their professional responsibility. Thus, "avoiding the appearance of evil" is relevant to our task of interpreting D.R. 9-101(B), even though it is not relevant when a grievance committee or court is determining whether a violation of the standard of D.R. 9-101(B) has in fact occurred. It is fortunate that "avoiding even the appearance of professional impropriety" was not made an element of the disciplinary rule, for it is too vague a phrase to be useful (see McKay, *An Administrative Code of Ethics: Principles and Implementation*, 47 A.B.A.J. 990, 994 (1961)), and lawyers will differ as to what constitutes the appearance of evil (see *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 370 F.Supp. 581 (E.D. N.Y. 1973), aff'd 518 F.2d 751 (2d Cir. 1975)). For the same reasons, the concept is of limited assistance as an underlying policy consideration. If "appearance of professional impropriety" had been included as an element in the disciplinary rule, it is likely that the determination of whether particular conduct violated the rule would have degenerated from the determination of the fact issues specified by the rule into a determination on an imitative, *ad hoc* or even *ad hominem* basis. Cf. McKay, *supra* at 993.

18. This position is not in conflict with *General Motors Corporation v. City of New York*,

301 F.2d 639 (2d Cir. 1974). In that case it appears that the lawyer for the municipality was privately retained, and the appellate court held that this employment constituted "private employment" within the meaning of D.R. 9-101(B).

19. See Manning, *FEDERAL CONFLICT OF INTEREST LAW 204* (1964).

20. See *Emle Industries, Inc. v. Patentes, Inc.*, 478 F.2d 362 (2d Cir. 1973), where an issue of fact regarding Burlington's control of Patentes was an issue of fact in the earlier litigation as well as in the instant litigation. Similarly, in *General Motors Corporation v. City of New York*, 301 F.2d 639 (2d Cir. 1974), it appeared that many, if not all, of the issues of fact in the two cases involved the same conduct of General Motors that allegedly resulted in monopolizing trade in the manufacture and sale of city buses, and it was held that the same "matter" was involved within the meaning of D.R. 9-101(B). In that opinion it was said, at 651: "The district court set forth the proper test (60 F.R.D. at 402): in determining whether this case involves the same matter as the 1956 *Buz* case, the most important consideration is not whether the two actions rely for their foundation upon the same section of law, but whether the facts necessary to support the two claims are sufficiently similar."

21. "Many a lawyer who has served with the government has an advantage when he enters private practice because he has acquired a working knowledge of the department in which he was employed, has learned the procedures, the governing substantive and statutory law and is to a greater or lesser degree an expert in the field in which he was engaged. Certainly this is perfectly proper and ethical. Were it not so, it would be a distinct deterrent to lawyers ever to accept employment with the government. This is distinguishable, however, from a situation where, in addition, a former government lawyer is employed and is expected to

bring with him and into the proceedings a personal knowledge of a particular matter," the latter being thought to be within the proscription of former Canon 36; *Allied Realty of Saint Paul v. Exchange National Bank of Chicago*, 283 F.Supp. 464 (D. Minn. 1968), aff'd 408 F.2d 1099 (8th Cir. 1969). See also B. Manning, *FEDERAL CONFLICT OF INTEREST LAW 204* (1964).

A contrary interpretation would unduly interfere with the opportunity of a former lawyer to use his expert technical legal skills, and the prospect of such unnecessary limitations on future practice probably would unreasonably hinder the recruiting efforts of various local, state, and federal governmental agencies and bodies.

Our interpretation leaves protection of governmental confidences or information largely to the disciplinary rules of Canon 4, which apply to governmental lawyers as well as privately employed lawyers, see fn. 4, *supra*. This result is consistent with the trend toward "government in the sunshine" and with such statutes as the Freedom of Information Act; cf. *National Labor Relations Board v. Sears, Roebuck & Company*, 421 U.S. 132 (1975), which discusses the application of that act and its exceptions to the work of government lawyers and generally protects information held by government lawyers when the information falls within the classifications of attorney work product or executive privilege.

22. Formal Opinion 37 (1931).

23. The committee concluded that the governor was not disqualified. Formal Opinion 26 (1930). In the opinion it was observed that the literal language of former Canon 36 would prevent governors and legislators from ever again dealing with any subject studied while in office. "They illustrate that the canon was not intended to have the effect that its words too literally construed imply."



government contended in one case that a lawyer was barred under Canon 36 when the lawyer "should have passed," even if he had not passed, upon a particular matter.<sup>24</sup>

Discussions of former Canons 6 (predecessor to Canon 5), 36 (predecessor to the disciplinary rule in question), and 37 (predecessor to Canon 5) sometimes are worded in terms of "rebuttable presumptions," "irrebuttable presumptions," "rebuttable inferences," "horizontally imputed knowledge," "vertically imputed knowledge," "charged with knowledge," and other conceptions not found in the language of those prior canons or in the language of the present disciplinary rules.<sup>25</sup> To an extent, the discussions are confusing and seem to constitute a bit of a tour de force. It is not clear, for example, whether the presumptions in question are intended to have the procedural effect of assuring the sufficiency of evidence on a fact issue, or of shifting a burden of going forward with evidence, or of shifting the burden of persuasion, or, in fact, of constituting a new substantive rule different from that stated in the canon or disciplinary rule in question.<sup>26</sup> Neither is it clear why knowledge should be "imputed" or "charged" to a person, nor, indeed, why knowledge itself, rather than "investigated or passed upon," is even relevant in some instances. But after reading such discussions one senses that there is dissatisfaction with having to make findings of certain facts such as, for example, whether the lawyer in question personally did in fact "investigate or pass upon" the matter in question.<sup>27</sup>

Apparently the new language of D.R. 9-101(B), "substantial responsibility," was designed to alleviate some of the difficulties discussed above. The new lan-

guage is, however, not without its own difficulties.

As used in D.R. 9-101(B), "substantial responsibility" envisages a much closer and more direct relationship than that of a mere perfunctory approval or disapproval of the matter in question.<sup>28</sup> It contemplates a responsibility requiring the official to become personally involved to an important, material degree in the investigative or deliberative processes regarding the transactions or facts in question. Thus, being the chief official in some vast office or organization does not *ipso facto* give that government official or employee the "substantial responsibility" contemplated by the rule in regard to all the minutiae of facts lodged within that office.<sup>29</sup> Yet it is not necessary that the public employee or official shall have personally and in a substantial manner investigated or passed upon the particular matter, for it is sufficient that he had such a heavy responsibility for the matter in question that it is unlikely he did not become personally and substantially involved in the investigative or deliberative processes regarding that matter.<sup>30</sup> With a responsibility so strong and compelling that he probably became involved in the investigative or decisional processes, a lawyer upon leaving the government service should not represent another in regard to that matter. To do so would be akin to switching sides, might jeopardize confidential government information, and gives the appearance of professional impropriety in that accepting subsequent employment regarding that same matter creates a suspicion that the lawyer conducted his governmental work in a way to facilitate his own future employment in that matter.

The element of "substantial responsibility," as so construed, should not un-

duly hinder the government in recruiting lawyers to its ranks or interfere needlessly with the right of litigants to employ technically skilled and trained former government lawyers to represent them.

The last factual element of D.R. 9-101(B) deserving explanation is that of "public employee." It is significant that the word lawyer was not used instead of employee. Accordingly, the intent clearly was for D.R. 9-101(B) to be applicable to the lawyer whose former public or governmental employment was in any capacity and without regard to whether it involved work normally handled by lawyers.

The extension by D.R. 5-105(D) of disqualification to all affiliated lawyers is to prevent circumvention by a lawyer of the disciplinary rules. Past government employment creates an unusual situation in which inflexible application of D.R. 5-105(D) would actually thwart the policy considerations underlying D.R. 9-101(B). The question of the application of D.R. 5-105(D) to the situation in which a former government employee would be in violation of D.R. 9-101(B) should be considered in the light of those policy considerations, viz.: opportunities for government recruitment and the availability of skilled and trained lawyers for litigants should not be unreasonably limited in order to prevent the appearance of switching sides, yet confidential information should be safeguarded, and government lawyers should be discouraged from handling particular assignments in such a way as to encourage their own future employment in regard to those particular matters after leaving government service. The desire to avoid the appearance of evil, even though less important, must be considered. A realistic construction of D.R. 5-105(D) should recognize and give

<sup>24</sup> See *United States v. Standard Oil Company*, 136 F.Supp. 345 (S.D. N.Y. 1955).

<sup>25</sup> As to the applicability or interpretation of the "investigated or passed upon" language of former Canon 35, see also *United States v. Trafficante*, 323 F.2d 117 (5th Cir. 1964); *Taylor v. City of Amarillo, Texas*, 335 F.Supp. 423 (N.D. Tex. 1971); *Minnesota v. United States Steel Corporation*, 44 F.R.D. 599 (D. Minn. 1968); *Mio Metals Company v. Lorain Company*, 251 F.Supp. 23 (D. Hawaii 1964); *Kaplan, Forbidden Retainers*, 31 N.Y.U.L. Rev. 914 (1956); *Kaufman, The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957); *Perkins, The New Federal Conflict-of-Interest Law*, 76 HARV L. REV. 1113 (1963); *Cannole*, 68 HARV L. REV. 1339 (1956); B. Manning, *FEDERAL CONFLICT OF INTEREST LAW* 196 (1964).

<sup>26</sup> See, e.g., *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 518 F.2d 731 (2d Cir. 1975); *American Gas Company v. Citrus Feed Company*, 436 F.2d 1125 (5th Cir. 1971); *Lesley Bros. of West Virginia v. Warner Bros. Pictures*, 224 F.2d 824 (2d Cir. 1955); *United States v. Standard Oil Company*, 136 F.Supp. 345 (S.D. N.Y. 1955); *Kaufman, The Former Government Attorney*

*and the Canons of Professional Ethics*, 70 HARV L. REV. 657 (1957).

<sup>27</sup> Imputation of knowledge from a lawyer to his firm need not be explored where a lawyer is disqualified by reason of prior representation or employment, for D.R. 5-105(D) specifically makes all associated lawyers disqualified and therefore knowledge *vel non* is irrelevant. Imputation of knowledge is likewise irrelevant in considering the fact issue whether the former government lawyer did in fact personally "investigate or pass upon" a matter, knowledge of close associates or subordinates regarding the matter in question may in some instances be logically relevant in determining whether the lawyer did investigate or pass upon the matter, but to work in terms of "imputed knowledge" tends to fictionalize the fact-finding process. Yet, in the application of D.R. 4-101(A), a lawyer's knowledge of a confidence or secret may be a highly relevant fact. Under D.R. 9-101(B) an issue of fact obviously is whether the lawyer had "substantial responsibility" in regard to the matter in question, rather than whether he possessed certain knowledge.

<sup>28</sup> Compare with *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation*, 518 F.Supp. 281, 587-8 aff'd 518 F.2d 731 (2d Cir. 1975). Generally see McCormack, *EVIDENCE* 802-6 Old ed. 1972.

<sup>29</sup> For example, Judge Kaufman's discussion suggests that the test whether the government lawyer personally investigated or passed upon the matter in question affords inadequate protection. Many responsible supervisory government officials make decisions based on the work of subordinates, and the work and knowledge of the subordinates may or may not be known to or remembered by the official. See Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 666 (1957).

<sup>30</sup> See Informal Opinion 1129 (1969) discussing both D.R. 9-101(B) and former Canon 36.

<sup>31</sup> If "official responsibility" had been used in lieu of "substantial responsibility," the scope of D.R. 9-101(B) would have been enlarged considerably but perhaps in the detriment of governmental recruiting. Compare *Bent, The Massachusetts Conflict-of-Interest Statute: An Analysis*, 45 BOSTON U.L. REV. 299, 318 (1965).

<sup>32</sup> Compare the views expressed in Kaufman, *The Former Government Attorney and the Canons of Professional Ethics*, 70 HARV L. REV. 657, 667 (1957). See also Perkins, *The New Federal Conflict-of-Interest Law*, 76 HARV L. REV. 1113, 1127 (1963).

affect to the divergent policy considerations when government employment is involved.

When the disciplinary rules of Canons 4 and 5 mandate the disqualification of a government lawyer who has come from private practice, his governmental department or division cannot practicably be rendered incapable of handling even the specific matter. Clearly, if D.R. 5-105(D) were so construed, the government's ability to function would be unreasonably impaired. Necessity dictates that government action not be hampered by such a construction of D.R. 5-105(D). The relationships among lawyers within a government agency are different from those among partners and associates of a law firm. The salaried government employee does not have the financial interest in the success of departmental representation that is inherent in private practice. This important difference in the adversary posture of the government lawyer is recognized by Canon 7, the duty of the public prosecutor to seek justice, not merely to convict, and the duty of all government lawyers to seek just results rather than the result desired by a client. The channeling of advocacy toward a just result as opposed to vindication of a particular claim lessens the temptation to circumvent the disciplinary rules through the action of associates. Accordingly, we construe D.R. 5-105(D) to be inapplicable to other government lawyers associated with a particular government lawyer who is himself disqualified by reason of D.R. 4-101, D.R. 5-105, D.R. 9-101(B), or similar disciplinary rules. Although vicarious disqualification of a government department is not necessary or wise, the individual lawyer should be screened from any direct or indirect participation in the matter, and discussion with his colleagues concerning the relevant transaction or set of transactions is prohibited by those rules.

Likewise, D.R. 9-101(B)'s command of refusal of employment by an individual lawyer does not necessarily activate D.R. 5-105(D)'s extension of that disqualification. The purposes of limiting the mandate to matters in which the former public employee had a substantial responsibility are to inhibit government recruitment as little as possible and enhance the opportunity for all litigants to obtain competent counsel of their own choosing, particularly in specialized areas. An inflexible extension of disqualification throughout an entire firm would thwart those purposes. So long as the individual lawyer is held to be disqualified and is screened from any direct or indirect participation in the matter, the problem of his switching sides is not present; by contrast, an inflexible extension of disqualification throughout the firm often would result in real hardship to a client if com-

plete withdrawal of representation was mandated, because substantial work may have been completed regarding specific litigation prior to the time the government employee joined the partnership, or the client may have relied in the past on representation by the firm.

All of the policies underlying D.R. 9-101(B), including the principles of Canons 4 and 5, can be realized by a less stringent application of D.R. 5-105(D). The purposes, as embodied in D.R. 9-101(B), of discouraging government lawyers from handling particular assignments in such a way as to encourage their own future employment in regard to those particular matters after leaving government service, and of avoiding the appearance of impropriety, can be accomplished by holding that D.R. 5-105(D) applies to the firm and partners and associates of a disqualified lawyer who has not been screened, to the satisfaction of the government agency concerned, from participation in the work and compensation of the firm on any matter over which as a public employee he had substantial responsibility. Applying D.R. 5-105(D) to this limited extent accomplishes the goal of destroying any incentive of the employee to handle his work so as to affect his future employment. Only allegiance to form over substance would justify blanket application of D.R. 5-105(D) in a manner that thwarts and distorts the policy considerations behind D.R. 9-101(B).

Our conclusion is further supported by the fact that D.R. 5-105(C) allows the multiple representation that is generally forbidden by D.R. 5-105(A) and (B), where all clients consent after full disclosure of the possible effect of such representation. D.R. 5-105(A) and (B) deals, of course, with much more egregious contingencies than those covered by D.R. 9-101(B). It is unthinkable that the drafters of the Code of Professional Responsibility intended to permit the one afforded protection by D.R. 5-105(A) and (B) to waive that protection without also permitting the one protected by D.R. 9-101(B) to waive that less-needed protection. Accordingly, it is our opinion that whenever the government agency is satisfied that the screening measures will effectively isolate the individual lawyer from participating in the particular matter and sharing in the fees attributable to it, and that there is no appearance of significant impropriety affecting the interests of the government, the government may waive the disqualification of the firm under D.R. 5-105(D). In the event of such waiver, and provided the firm also makes its own independent determination as to the absence of particular circumstances creating a significant appearance of impropriety, the result will be that the firm is not in violation of D.R.

5-105(D) by accepting or continuing the representation in question.

Although this opinion has dealt explicitly and at length with the interpretation and application of D.R. 9-101(B), it is not amiss to point out that, on the ethical rather than the disciplinary level of professional responsibility, each lawyer should advise a potential client of any circumstances that might cause a question to be raised concerning the propriety of his undertaking the employment and should also resolve all doubts against the acceptance of questionable employment. See E.C. 5-105 and E.C. 5-16. A

\* Reprinted with permission from American Bar Association Journal.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

International Electronics Corp. v. Flanzer, 527 F.2d 1288 (2d Cir. 1975).

Kesselhaut v. United States, 555 F.2d 791 (Ct. Cls. 1977).

Melamed v. ITT Continental Baking Co., 592 F.2d 290 (6th Cir. 1979).

Multi-Piece Rim Products Liability Litigation. Firestone Tire & Rubber Co. v. Risjord, 612 F.2d 377 (8th Cir. 1980) (en banc), vacated sub nom, Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 101 S. Ct. 669, 66 L. Ed. 2d 571 (1981).

Musicus v. Westinghouse Electric Corporation, 621 F.2d 742 (5th Cir. 1980).

O'Reilly v. The New York Times Company, 692 F.2d 863, (2d Cir. 1982).

Schloetter v. Railoc of Indiana, Inc., 546 F.2d 706 (7th Cir. 1976).

Sierra Vista Hospital, Inc. v. United States, 639 F.2d 749 (Ct. Cls. 1981).

Taxpayers, Homeowners and Tenants Protective Association, Inc. v. Haber, 634 F.2d 182 (5th Cir. 1981).

Telos, Inc. v. Hawaiian Telephone Co., 397 F. Supp. 1314 (D. Hawaii 1975).

Traylor v. City of Amarillo, Texas, 335 F. Supp. 423 (N.D. Tex. 1971).

Trone v. Smith, 621 F.2d 994 (9th Cir. 1980).

Unified Sewerage Agency v. Jelco, Inc., 646 F.2d 1339 (9th Cir. 1981).

United States v. Agosto, 675 F.2d 965, (8th Cir. 1982).

United States v. Birdman, 602 F.2d 547 (3rd Cir. 1979).

United States v. Caggiano, 660 F.2d 184 (6th Cir. 1981).

United States v. Cunningham, 672 F.2d 1064 (2d Cir. 1982).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

United States v. Curcio, 694 F.2d 14 (2d Cir. 1982).

United States v. Kitchin, 592 F.2d 900 (5th Cir. 1978), cert. denied, 444 U.S. 843 (1979).

United States v. William G. Miller, 624 F.2d 1198 (3d Cir. 1980).

United States v. Phillips, 699 F.2d 798 (6th Cir. 1983).

United States v. Smith, 653 F.2d 126 (4th Cir. 1981).

Westinghouse Electric Corporation v. Kerr-McGee, 580 F.2d 1311 (7th Cir. 1978), cert. denied, 439 U.S. 955 (1978).

Woods v. Covington County Bank, 537 F.2d 804 (5th Cir. 1976).

Periodicals and Miscellaneous:

Administrative Conference of the United States, Recommendation 79-7, "Appropriate Restrictions on Participation by a Former Agency Official in Matters Involving the Agency" (Dec. 14, 1979), reprinted in Legal Times of Washington, December 31, 1979, at 27.

American Bar Association Formal Opinion No. 342 (Nov. 24, 1975), 62 ABA 517 (1976).

Association of the Bar of the City of New York, Committee on Professional and Judicial Ethics, Opinion No. 889, 31 The Record 552 (1976).

Kaufman, The Former Government Attorney and the Canons of Professional Responsibility, 70 Harv. L. Rev. 657 (1957).

Lacavora, Restricting the Private Practice of Former Government Lawyers, 20 Ariz. L. Rev. 369 (1978).

Murphy, William L., Vicarious Disqualification of Government Lawyers, 69 ABA 299 (1984).

Note, Ethical Problems for the Law Firm of a Former Government Attorney: Firm of Individual Disqualification, 1977 Duke L.J. 512.

Note, Conflicts of Interest and the Former Government Attorney, 65 Ga. L.J. 1025 (1977).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Note, The Chinese Wall Defense to Law-Firm Disqualification, 128 U. Pa. L. Rev. 677 (1980).

10-2.670 Office Hours of Operation

10-2.671 Hours of Duty

The official hours for all offices of the Department of Justice, including U.S. Attorneys' offices, are 9:00 a.m. to 5:30 p.m., Monday through Friday. Any other tour of duty for the general staff of the U.S. Attorney's office must be approved by the head of the Executive Office. U.S. Attorneys may authorize variations in the tours of duty for individual employees, provided they do not work between 6:00 p.m. and 6:00 a.m.

10-2.672 Flexitime

Flexible work hours, popularly called flexitime, is a concept which has gained popularity because of its potential for improving productivity, expanding the hours of service to the public, and providing greater employment opportunities for those who cannot work standard, fixed hours.

Under flexitime, fixed hours are replaced by a working day composed of core time and flexible time. Core time, which normally comprises 4-5 hours per day, is time which all employees must be present unless on approved leave. Flexible time is periods designated as part of the schedule or work hours within which the employee may choose his/her time of arrival and departure.

Flexitime, as the name implies, can be very flexible. All employees must work 8 hours per day. However, they can determine their own arrival and departure times on either a daily or weekly basis. In any case, the authorized day should not begin prior to 6:00 a.m. or end after 6:00 p.m. because of an employee's potential entitlement to premium pay for night work.

A. Two possible arrangements are:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Example 1:

Flexible Band	Core Time	Flexible Band	
6:30 a.m.	9:00 a.m.	3:00 p.m.	6:00 p.m.
8 hours + 1/2 hour lunch			

In the above example, the core time has been established at 5 hours to include 1/2 hour for lunch to be taken at some time within the established core. Flexible time bands extend for 3 hours on either side of the core. An employee, therefore, might come to work at 6:30 a.m. and leave as early as 3:00 p.m. Alternatively, he/she may begin as late as 9:30 a.m. and leave at 6:00 p.m. He/she may, however, begin at any other time between 6:30 and 9:30 a.m. and his/her departure time will be 8 1/2 hours later.

Example 2:

Flexible Band	Core Time	Flexible Band	Core Time	Flexible Band	
6:30 a.m.	9:00 a.m.	11:00 a.m.	1:00 p.m.	3:00 p.m.	5:30 p.m.
8 hours + 1/2 hour lunch					

In the above example, an analysis of the workload revealed a requirement for the entire workforce to be present between the hours of 9:00 and 11:00 a.m. and again between 1:00 and 3:00 p.m.

B. Flexitime must be approved by the Assistant Attorney General for Administration. Requests must be submitted through the Executive Office. They should include:

1. Proposed core and flexible time;
2. Whether arrival and departure time will be set on a daily or weekly basis;
3. Plans for maintaining time and attendance records;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Additional building costs resulting from flexitime, if any, and potential savings in overtime or other expenses; and

5. Proposed effective date.

The Personnel Office, Executive Office for U.S. Attorneys, will provide offices considering the use of flexitime with further guidance on development and implementation.

10-2.700 (RESERVED)

10-2.800 TRAINING AND CONTINUING EDUCATION

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

The Executive Office for U.S. Attorneys makes every effort to assure that its training programs are readily accessible to handicapped employees. Any official nominating a handicapped 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 handicapped nominee(s), e.g., sign language interpreters for the hearing impaired, etc.

10-2.810 Attendance at Meetings

Employees and officials of the Department of Justice may attend conferences, conventions, professional meetings or other meetings at government expense provided:

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

B. They have been invited to participate in their official capacities; or

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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

D. Attendance will improve conduct, supervision, or management of job duties.

Fees for attendance at meetings which meet the above criteria may be paid for pursuant to Department of Justice Order 1410.3C (July 6, 1982). The U.S. Attorney may authorize travel expenses at these meetings in accordance with the provisions of USAM 10-3.510. Pay for attendance and travel to meetings at government expense is a privilege, not a right. These expenses are charged against the district's travel budget and requests should be denied if funds are not available.

When the above criteria for attendance at the conferences, conventions, or professional meetings are not met, attendance under these circumstances is at the participant's expense in accordance with Department of Justice Order 1410.3C (July 6, 1982); however, annual or administrative leave may be granted at the discretion of the U.S. Attorney in accordance with the Department's leave policies.

Before authorizing attendance at any meeting, whether or not it is at the Department's expense, the U.S. Attorney should consider: the nature of the meeting; the amount of time the employee will be out of the office; and the impact on the district's travel budget in relation to the benefit to the office and the employee. Title 28, Part 45 of the Code of Federal Regulations regarding standards of conduct must also be followed. (See USAM 10-2.660.)



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.820 Attorney Training

10-2.821 Attorney General's Advocacy Institute

The Attorney General's Advocacy Institute (AGAI) sponsors courses designed to instruct Assistant U.S. Attorneys and division attorneys in techniques of trial and appellate advocacy. The Institute also has responsibility for authorizing training for all attorney personnel and for training materials used by those offices.

The AGAI offers the following courses:

A. Criminal and Civil Trial Advocacy Courses:

1. Students: These basic trial courses are offered for Assistant U.S. Attorneys and legal division attorneys with little or no trial experience. Forty students attend each session.

2. Course of Instruction: These courses consist primarily of small group workshops in which the students make opening statements and closing arguments, and conduct direct and cross-examinations of a variety of types of witnesses. Each student's performance is critiqued by the attending instructor, who also leads discussion of the evidentiary or procedural problems that arise during the exercise. The workshops are supplemented by lectures and demonstrations on topics relevant to trial practice. The course culminates in two days of full mock trials before federal district court judges and a jury.

3. Frequency and Duration: The Criminal and Civil Trial Advocacy courses are offered six times yearly at the Advocacy Institute in Washington, D.C. A course schedule for the calendar

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

year is sent to the U.S. Attorneys each fall, and each course is announced individually by teletype approximately eight weeks in advance. The courses are three weeks in length, with the third week approximately six months after the first two weeks. In the first two weeks, the classes meet Monday through Saturday of the first week and Monday through Friday of the second week. The third week is Monday through Friday.

B. Appellate Advocacy Course:

1. Students: The appellate course is designed for Department attorneys and Assistant U.S. Attorneys with little or no appellate experience. Class size is limited to 15-20 students.

2. Course of Instruction: The appellate course consists of small group workshops, lectures, demonstrations and panel discussions, all designed to teach the rudiments of both written and oral appellate advocacy. The course culminates in oral arguments before U.S. Circuit Court judges.

3. Frequency and Duration: The appellate course is held in Washington, D.C., four times a year, and lasts one five-day week. A course schedule for the calendar year is sent to the U.S. Attorneys each fall, and each course is announced individually by teletype approximately ten weeks in advance.

C. Special Seminars: The Advocacy Institute sponsors a number of specialized seminars on topics such as program fraud, criminal tax, controlled substances, and white collar crime. These are held at various times and locations throughout the year. They are intended to provide continuing legal education for Department attorneys. U.S. Attorneys and section chiefs are notified of these seminars and are responsible for nominating participants. Suggested topics for future seminars are encouraged.

Instructors for AGAI courses are experienced and talented trial attorneys from the Department, either Assistant U.S. Attorneys or litigating division attorneys. As the number of courses increases, so does the need for experienced faculty. U.S. Attorneys and section chiefs should submit names of Department attorneys who would contribute significantly as an instructor. Interested attorneys should submit a resume to the AGAI, including such information as trial experience, teaching experience, and topics in which they would be interested in lecturing (i.e., grand jury, opening statements, summations, direct and cross examination, trial preparation, damages, TRO's, etc.).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Federal judges play an integral part in AGAI courses. In the civil and criminal trial courses, district court judges preside over full-day mock trials. In the appellate course, circuit court judges hear oral arguments in moot court proceedings. The judges give detailed critiques of the student attorneys. U.S. Attorneys should submit the names of judges who might be interested in assisting the Department in its training efforts.

10-2.822 Training Outside the AGAI

To meet the varied training requirements of the U.S. Attorneys' offices, the Executive Office has established attorney training budgets. These funds are to pay for training conducted by both government and non-government agencies (except AGAI) and include the cost of tuition, books, travel, and per diem.

Annually, the AGAI, in conjunction with the field offices, will determine training fund allotments for each office. The U.S. Attorney is responsible for recommending employees for training within these allocations.

Determinations of which employees should be nominated for training opportunities should be guided by budgetary constraints and such factors as:

A. Is the training mandatory as in the case of certain supervisory and EEO training?

B. Will the requested training improve the efficiency of the employee's job related skills?

C. Does the requested training substantially duplicate that which is already offered by the Department:

D. Does the benefit to be derived from this training justify its expense?

10-2.823 Training Resource Lending Library

The Attorney General's Advocacy Institute maintains a Lending Library of educational and instructional materials for the use of the U.S.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Attorneys' offices. The Lending Library has audio and video tapes of Irving Younger's lectures on evidence and trial advocacy, which were made specially for the Department, and audio tapes of lecturers sponsored by AGAI and other continuing legal education organizations on various topics of litigation. Tapes can be borrowed from the Advocacy Institute for a period of 30 days by submitting a request in writing to the AGAI Director. An updated listing of available tapes is regularly sent to the U.S. Attorney's offices.

Requests for training materials (i.e., brochures, books, publications, films, tapes, etc.) should be submitted to the AGAI Director for consideration. If it is determined that the materials are valuable to the overall training needs of the U.S. Attorneys' offices, they will be added to the AGAI Lending Library. Suggestions of such educational materials are welcome.

10-2.824 Executive Development

It is the policy of the Executive Office for U.S. Attorneys to encourage formal executive training for senior personnel in the U.S. Attorneys' offices and the Executive Office for U.S. Attorneys.

Senior personnel are defined as individuals in the Senior Executive Service (SES) or who are in SES-equivalent positions (GS-16 and above) and who are:

- A. Responsible for directing the work of an organizational unit;
- B. Are accountable for the success of one or more specific programs or projects;
- C. Monitoring progress toward organizational goals;
- D. Supervising the work of employees other than personal assistants; and
- E. Otherwise exercise important policymaking, policy determining, or other executive functions.

Senior personnel are encouraged to pursue developmental activities including formal training in managerial theory and practice; a broad orientation within which the federal executive operates; and a more specific orientation involving executive management in the Department in the areas of policy development processes, budget, personnel management program goals and management philosophy.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Such training can be found in the Department's Attorney General's Management Seminars course offerings. Each fiscal year the Executive Office for U.S. Attorneys sends a solicitation memorandum to all U.S. Attorneys' offices and the Executive Office for U.S. Attorneys for the following year's seminars.

Individuals who are interested in additional types of executive training which may be available from other sources should contact the Personnel Office, Programs Unit, for more specific information.

10-2.830 Non-Attorney Training

10-2.831 Identification of Training Needs

It is the policy of the Executive Office for U.S. Attorneys to provide employees with whatever training is necessary, within limits of practicability, to perform their official duties. Managers and supervisors in the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices are responsible for developing a well-trained staff by assisting employees to achieve their highest potential consistent with Departmental needs.

A. Supervisors and managers are to evaluate periodically their organizations to improve the efficiency of operations. One major facet of this evaluation involves the review of the employees' knowledges, skills, and abilities. This review should consider:

1. The organizational needs;
2. The employees available to address the needs; and
3. The employees' performance that may need to be enhanced through training and development.

B. In identifying whether a need for a particular knowledge, skill or ability merits training, consideration should first be given to other possible ways to meet the need. Specifically, perhaps job restructuring, detailing of other employees or on-the-job training can satisfy the need.

If, however, it is determined that training is the most viable means of improving office efficiency, the following points should be considered:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. Concentrate on training opportunities that may improve both the immediate performance of employees and the overall efficiency of the office in the foreseeable future.

2. Determine what method(s) of training are available and should be used, giving consideration to cost, total time needed, and the degree of correlation between the training and the goal of improving office efficiency.

3. Schedule training in advance to avoid conflict with known periods of peak workload requirements.

4. Design an individual development plan (IDP) for each employee who is to receive training. Consider the requirements of the position and performance expectations. IDPs are useful in:

a. Formalizing the commitment of management to improve the efficiency of operations through employee development;

b. Monitoring efforts to provide employee development;

c. Developing a training budget by forecasting costs;

d. Evaluating the benefits of training; and

e. Aiding the manager to plan an employee's career based on reasonable goals within the current organization.

5. All training should be evaluated to determine the extent it enhances job performance and improves the efficiency of the office.

10-2.832 Training Sources

There are three major sources of training available to employees of the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices; the Department of Justice, interagency training, and non-government training facilities.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

A. Department of Justice: At the beginning of each fiscal year the Justice Management Division (JMD) publishes a training course calendar which lists training to be presented in the Washington, D.C., area for that fiscal year. The calendar typically offers specific courses in the following general subject areas:

1. Executive Development;
2. Management Training;
3. Supervisory Training;
4. Paralegal Training;
5. Legal Support Training;
6. Records Management Training;
7. Clerical Training;
8. Communications Training;
9. Word Processing and Computer Training;
10. Special Emphasis Training; and
11. Upward Mobility Training.

Unfortunately, many of these courses are impractical for employees assigned outside the Washington, D.C., metropolitan area because the courses are presented over an extended period of time for only a few hours per week. One popular course, however, offered several times each year is the three and one-half week paralegal training course. The Personnel Office solicits nominations for this course from the U.S. Attorneys' offices approximately four to six weeks prior to its commencement.

The Executive Office for U.S. Attorneys also periodically offers specialized training conferences to non-attorney personnel. Topics covered in the past include debt collection, PROMIS, procurement, Administrative Officer, EEO for supervisors and managers, EEO counselors and investigators and special emphasis program manager conferences. Nominees for these conferences are solicited by teletype or selections are made by the Executive Office component sponsoring the conference.

B. Interagency Training: Other government agencies constitute a second major source of training; particularly, the Office of Personnel

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Management (OPM) and the General Services Administration (GSA). Both of these agencies offer courses to federal employees on a space available basis. Both also issue annual training catalogs and offer courses at various regional facilities.

1. OPM offers specialized courses in the following general areas:

- a. Labor and Employee Relations;
- b. Office Systems;
- c. Management Sciences;
- d. Supervisory Development;
- e. Accounting, Budgeting, and General Financial Management;
- f. Information Management and Automation; and
- g. Personnel Management.

2. GSA offers courses in the following topical areas:

- a. Automated Data Processing;
- b. Records Management;
- c. Procurement and Supply;
- d. Property Management;
- e. Space Management; and
- f. Travel and Transportation.

C. Non-government Training: A third source of training is non-government facilities such as colleges, universities or private vendors. Training of employees through non-government facilities is subject to certain prohibitions, limitations, and requirements. Specific information regarding these restrictions may be found in Department of Justice Order 1410.3C, paragraph 12 and 13, (July 6, 1982), and USAM 10-2.851.



10-2.833 Supervisory Training

All non-attorney employees who are assigned to supervisory positions are required to receive at least 80 hours of formal training or its equivalent within their first two years in a supervisory position. 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. See Department of Justice Order 1410.1C, (April 28, 1983). This is in addition to the requirement that new supervisors serve a probationary period. See USAM 10-2.642.

A. This training must cover the following areas:

1. Personnel policy, practices, and procedures;
2. Equal employment opportunity responsibilities;
3. Labor-management relations;
4. Supervisory responsibilities;
5. Communicative process in management;
6. Human behavior, motivation, and interpersonal relations;
7. Work planning and productivity;
8. Theories of supervision and management;
9. Concepts of organization;
10. Problem solving and decision-making techniques; and
11. Methods of performance appraisal and evaluation.

When an individual's background provides skills and knowledge equivalent to those which would be acquired through portions of the required training, the 80 hour training requirement may be reduced accordingly with the approval of the Personnel Office.

Form DOJ-346, Individual First-Level Supervisory Training Record, is used to document mandatory supervisory training. An original and three copies must be prepared before or no later than one month after the new supervisor assumes the job. The original and one copy of the completed, signed form must be submitted to the Personnel Office, Executive Office

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

for U.S. Attorneys, for review and approval. One copy must be retained by the new supervisor and one by the office. Each office is required to submit to the Personnel Office, Attention: Programs Unit, by August 31 of each year a completed and up-to-date DOJ-346, for each non-attorney supervisor in the district. Individuals occupying these positions have a "1" as the last character of their position description number. When the training is completed, the original is placed on the permanent side of the Official Personnel Folder by the Personnel Office.

B. Supervisory training is available from a number of sources, including:

1. Regional offices of the Office of Personnel Management:
2. The Personnel and Training Staff, Justice Management Division; and
3. Local colleges and universities.

10-2.840 Upward Mobility Program

It is the policy of the Executive Office for U.S. Attorneys to effectively utilize the personnel resources of the U.S. Attorneys' offices and the Executive Office by increasing the opportunities of lower level employees to attain their full employment potential. To that end, the Executive Office has established an Upward Mobility Program which consists of three components--career and educational counseling, basic skills training, and job restructuring. These efforts are designed to supplement the Merit Promotion Plan.

A. Program Eligibility: Employees of the U.S. Attorneys' offices and the Executive Office who meet the following criteria are eligible for participation in the Upward Mobility Program:

1. Presently serving under a permanent competitive appointment;
2. Have at least one year of service with the Department; and
3. Are assigned to a single interval series job at or below GS-8.

B. Career and Educational Counseling: Career and educational counseling is an important part of the Upward Mobility Program. It is

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

designed to provide employees with the opportunity to explore their career interests and to assist them in formulating realistic career plans. Offices will provide career counseling for all eligible employees. Upon request, counseling will be provided by the Personnel Office, in concert with the employee's supervisor.

C. General Education and Basic Skills: All eligible and interested employees should be afforded training opportunities designed to provide them with an understanding of the world of work, skill in dealing with others, and improved communications skills. Offices are encouraged to utilize local training facilities, including the Office of Personnel Management, to provide basic skills courses for all interested employees. These might include telephone techniques, basic filing, typing, shorthand, office procedures, and legal secretarial skills. This training is in addition to other training provided to employees, to improve their current performance. If training is primarily provided to qualify an employee for promotion, all eligible employees must be allowed to compete for the training opportunity. See USAM 10-2.311.

D. Upward Mobility Program Positions: Each U.S. Attorney's office, to the extent possible, will identify positions to be included in the Upward Mobility Program. These positions may be ones which are suitable for redesign, may be "tagged" as trainee slots, or may be new positions that will be created as the result of new allocations or employee resignations.

In each case, a "bridge" position and a "target" position must be established. A "bridge" position is a transitional position that provides qualifying experience which may enable an employee to move from a dead-end position into a different occupation with greater growth potential. Usually, a bridge position is one in which a professional or administrative position has been converted to a technical level job by combining lower level tasks from the professional occupation and higher level tasks from the appropriate clerical or support occupation. The new position, or bridge position becomes an interim or preprofessional job which has the related two-grade interval job as the target position.

A "target" position is a position for which an Upward Mobility Program participant will qualify upon satisfactory completion of a prescribed period (usually one year) in a program of formal and on-the-job training. The grade level(s) of the target position will be specified in the upward mobility position merit promotion announcement along with its known promotion potential. The target position must be identified and the position description prepared prior to filling the Upward Mobility position.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

E. Filling Upward Mobility Positions: All positions filled under the Upward Mobility Program must be advertised under the Merit Promotion Plan. The area of consideration may be limited to the U.S. Attorneys' offices in the commuting area. See USAM 10-2.311. The vacancy announcement (USA-195) will be clearly labeled "Upward Mobility Position."

Applicants must be Department of Justice employees who meet the criteria for program eligibility described above. In addition, applicants must meet OPM qualification requirements for the bridge position. In some instances, employees may have to accept a lower grade because they do not meet the minimum qualification requirements at their current grade level. In such cases the Executive Office, to the extent permitted by applicable regulations, may adjust the employees salary to maintain the present salary level.

When ranking applicants for an Upward Mobility position, the greatest weight should be given to the supervisory appraisal of present performance and assessment of the candidates potential to assume higher level responsibilities. To that end, each applicant's supervisor will be requested to complete an Upward Mobility Program Appraisal Form (OBD-169). No other form is to be used because the OBD-169 is designed to measure performance potential.

F. Career Development Plan: Each employee assigned to an Upward Mobility Position must have a formal, written Career Development Plan which outlines the on-the-job (OJT) experience, formal education, and/or training necessary to prepare the employee for successful performance in the target position. It is to be written within 30 days of placement in the bridge position. The plan is prepared jointly by the trainee, his or her supervisor, and the servicing Personnel Management Specialist. The plan is will be reviewed and approved by the Chief of the Personnel Programs Unit in the Personnel Office, Executive Office for U.S. Attorneys, to verify that the planned OJT is sufficient to provide qualifying experience for the target position.

Generally, most of the training involved in each Career Development Plan will be OJT. Formal training will be scheduled on an individualized basis to meet specialized training needs. This training may be provided by the Department of Justice, Office of Personnel Management, of local educational institutions.

G. Length of the Upward Mobility Program: Generally, each trainee has one calendar year from the date of placement in the bridge position to demonstrate the knowledges, skills, and abilities necessary to perform the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

duties of the bridge position as well as the potential to successfully perform in the target position. This period can be extended for an additional year.

Upward mobility trainees who successfully complete the training outlined in the Career Development Plan will be assigned non-competitively to their target positions at the end of the training period. Once in the target positions, advancement will be through non-competitive career promotions.

Trainees who are unsuccessful in completing the training outlined in their Career Development Plan or who in other ways do not demonstrate that they are able to perform the duties of the target position will be returned to their most recent former positions, if they have not been filled, or to positions of the same grade as their most recent former positions.

H. Evaluation of Trainees' Progress: Supervisors of Upward Mobility Program trainees will monitor the participants' performance and development. Written appraisals will be provided to the Chief of the Personnel Programs Unit, Executive Office for U.S. Attorneys every three months. In addition, the trainees will submit progress reports, including an appraisal of the training experience, to the Chief of the Personnel Programs Unit. The due dates of these evaluation reports will be noted on the Career Development Plan.

I. Program Evaluation and Reports: Each office is required to submit to Personnel Office by September 15 of each year the following information.

1. Accomplishments during fiscal year:
  - a. Number of employees given formal career counseling;
  - b. Number of employees covered by the Upward Mobility Program who received formal basic skills training; and
  - c. Number of employees selected for Upward Mobility Program positions.
2. Plans for upcoming fiscal year:
  - a. Number, position title, series, and grade level of the position(s) to be designated as target positions for the upward Mobility Program.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

- b. Plans for providing career counseling and training to employees covered by the Upward Mobility Program.

This information will be used by the Personnel Office to prepare required reports and to assist it in its coordination role.

In addition to the report described above, offices with 100 or more employees will be required to conduct formal analysis of their Upward Mobility Programs as a part of their Affirmative Action Plans.

10-2.850 Authorization and Payment

10-2.851 Authority to Approve Training

Authorization for training and payment of expenses such as tuition and books for both government and non-government training is accomplished by execution of Standard Form 182 (formerly OF-170), Request, Authorization, Agreement and Certification of Training.

A U.S. Attorney or, in his or her absence, an individual designated Acting U.S. Attorney (28 C.F.R. §0.131), is authorized to approve the expenditure of training funds for Assistant U.S. Attorneys and non-attorneys in the district within the following guidelines:

- A. Expenditures may not exceed the district's training budget;
- B. The Office of Personnel Management (OPM) regulations described below must be met; and
- C. The following training is excluded from this authority:
  1. Training sponsored or coordinated by the Executive Office (including the Attorney General's Advocacy Institute and the Legal Education Institute);
  2. Training outside the district or a contiguous district;
  3. Office-sponsored training which is subject to procurement procedures due to the cost of speakers and/or facilities; and
  4. Training for which the total cost, including travel, is greater than \$1,500.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

U.S. Attorneys, or their designees, are not authorized to approve their own training. Only the U.S. Attorney or, in his or her absence, the individual acting in his or her stead, may sign block 29A of the SF-182 or OF-170 (Request, Authorization Agreement and Certification of Training). In the absence of the U.S. Attorney, it must be clearly stated in block 19A that the individual approving the SF-182 or OF-170 is the "Acting United States Attorney."

In accordance with OPM regulations, the U.S. Attorney, or his or her designee, is responsible for making the following determinations prior to approving non-government training:

A. That adequate government facilities are not available or are more expensive than the non-government training program;

B. That, if the program exceeds 120 hours, the functions for which the training is needed cannot be assumed by other employees;

C. That, if training is for the purpose of being promoted regardless of the course's length, no other employee is equal in suitability and ability, fully qualified for the position, and available within a reasonable distance from the position's location (does not apply to employees in grade and/or pay retention);

D. That the purpose of the training is not to provide an employee with the opportunity to obtain an academic degree in order to qualify for appointment to a position for which an academic degree is a basic requirement;

E. That the facility or instructor does not advocate the overthrow of the government by force or violence;

F. That the facility does not, as a substantial part of its activity, carry out propaganda or other attempts to influence legislation and does not participate or intervene in any political campaign on behalf of a candidate for public office; and

G. That the facility does not discriminate because of race, religion, color, sex, or national origin in the admission or subsequent treatment of students.

Training expenses may not be authorized if they are solely for the purpose of providing an employee the opportunity to obtain one or more academic degrees. This does not prevent the approval of training courses

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

designed to improve an employee's ability to perform his or her official duties when the employee is enrolled for degree purposes. If an institution charges a higher tuition rate for a degree candidate than a non-degree student, only the lower rate may be paid.

Employees having less than one year of current continuous civilian service in the government generally are not eligible for training by, in, or through non-government facilities. U.S. Attorneys or their designees are authorized to approve such training only if:

- A. It is essential to law enforcement activities;
- B. It is of little or no cost to the Department other than salary expenses;
- C. It is relatively short (40 hours or less), highly specialized, job related training with immediate job application; or
- D. It is an integral part of a formal, entry level, development program.

Finally, OPM regulations require that merit promotion procedures be followed when selecting non-attorneys for training required before an employee may be considered for promotion or as part of an Upward Mobility program. (See USAM 10-2.145, supra).

All attorney training requests (OF-170 or SF-182) must be submitted to the Office of Legal Education and all non-attorney training requests must be submitted to the Personnel Office for review prior to the commencement of training. (Do not remove any copies of the form prior to submission.) The Director, Office of Legal Education, and the Director for the Office of Administration and Review will continue to sign those OF-170s and SF-182s for which approval authority has not been redelegated to the U.S. Attorney.

The exercise of this delegation will be monitored closely to insure that training budgets are not exceeded and that OPM regulations are applied. This delegation will be withdrawn from those districts found to abuse it.

#### 10-2.852 Completion of Training Request

An SF-182 or OF-170 must be completed for all training of eight hours or more which meets either of the following criteria: (a) all or



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

part of the cost is paid by the government or (b) training occurs during duty hours. For training of less than eight hours, an SF-182 or OF-170 must be completed if there are any direct costs. If training is being requested for two or more employees, a group training request must be completed if the following conditions exist:

- A. Employees are from the same office;
- B. Employees are attending the same course, on the same date(s), at the same location, and for the same cost;
- C. There are no indirect costs involved such as travel, per diem, etc.; and
- D. The Authorizing Official (space 29A) is the same for all employees listed on the group training request.

For all "in house training," including the AGAI, the five-part OF-170 or SF-182 is required. Use the ten-part form for any training not provided by the Department of Justice. When submitting the OF-170 or SF-182, forward all copies of the form to the EOUSA. All copies are needed prior to approval.

The following instructions have been developed to assist in the completion of the SF-182 or OF-170:

A, B, and C, refer to spaces on the form.

- A. Leave blank;
- B. Leave blank;
- C. Leave blank.

SECTION A - Trainee Information

1. The applicant's name, as requested in the block, followed by the first five (5) letters of the applicant's last name.

For group training requests this item should read "SEE ATTACHED LISTING." The listing should include each employee's name, social security number, position title, pay plan, series, and grade.

2. The applicant's Social Security Number.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

3. The applicant's date of birth, year followed by month as requested in the block (i.e., March 20, 1950, shown as 50/03).
4. The applicant's home address, as requested in the block.
5. The applicant's home telephone number.
6. The position level of the applicant, as determined by the applicant or his/her supervisor.
7. The organization mailing address, as requested in the block (i.e., the U.S. Attorney's office and its mailing location).
8. The office telephone number. For commercial numbers, insert the area code. When using the FTS number, the area code block should include the capital letters "FTS." The FTS telephone number should be used when training is provided by government vendors.
9. The applicant's continuous Civilian Service, meaning the number of years and months from the applicant's Federal Service Computation Date.
10. The number of prior non-government training days which the applicant has attended, if known. If not known, leave blank.
11. The applicant's position, title or function (i.e., Assistant U.S. Attorney, Administrative Officer, Legal Clerk (steno), etc.).
12. The applicant's Pay Plan, Series, Grade and Step as requested in the block. For General Schedule employees, use "GS;" for Assistant U.S. Attorneys, use "AD."

Examples:

Administrative Officer, GS-341-OX/OX  
Assistant U.S. Attorney, AD-905  
Clerk-Stenographer, GS-312-OX/OX

13. The type of appointment under which the applicant is serving; for an Assistant U.S. Attorney "Excepted;" for other persons, either "Career-Conditional" (CC) or "Career" (C).
14. The applicant's educational level. This is not simply the number of years of schooling. The following codes are to be used:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- 01 - Some Elementary School - Did Not Complete: Elementary school means grades 1 through 8 or equivalents.
- 02 - Elementary School Completed - No High School: Grade 8 or equivalent completed.
- 03 - Some High School - Did Not Graduate: High School means grades 9 through 12 or equivalent.
- 04 - High School Graduate or Certificate of Equivalency.
- 05 - Terminal Occupational Program - Did Not Complete: Program extending beyond grade 12, usually no more than 3 years; designed to prepare students for immediate employment in an occupation or cluster of occupations; not designed as the equivalent of the first two or three years of a baccalaureate program. Includes cooperative training or apprenticeship consisting of formal classroom instruction coupled with on-the-job training.
- 06 - Terminal Occupational Program - Certificate of Completion, Diploma or Equivalent: Two levels are recognized: 1) the technical and/or semi-professional level preparing technicians or semi-professional personnel in engineering and non-engineering fields; and 2) the craftsman/clerical level training artisans, skilled operators and clerical workers.
- 07 - Some College - Less than One Year: Less than 30 semester hours or 45 quarter hours completed.
- 08 - 1 Year College: 30-59 semester hours or 45-89 quarter hours completed.
- 09 - 2 Years College: 60-89 semester hours or 90-134 quarter hours completed.
- 10 - Associate Degree: 2-year college degree program completed.
- 11 - 3 Years College: 90-119 semester hours 135-179 quarter hours completed.
- 12 - 4 Years College: 120 or more semester hours or 180 or more quarter hours completed--no baccalaureate (bachelor's) degree.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

- 13 - Bachelor's Degree: Requires completion of at least 4 but no more than 5 years of academic work; includes bachelor's degree conferred in a cooperative plan or program which provides for alternate class attendance and employment in business, industry, or government to allow students to combine actual work experience with college studies.
- 14 - Post-Bachelor's: Some work beyond (at a higher level than) the bachelor's degree but no additional higher degree.
- 15 - First Professional Degree: Signifies the completion of academic requirements for selected professions, which are based on programs requiring at least two academic years of college work for completion (i.e., Dentistry (D.D.S. or D.M.D.), Law (LL.D or J.D.), Medicine (M.D.), Theology (D.D.), Veterinary Medicine (D.V.M.), Chiropody or Podiatry (D.S.C. or D.P.), Optometry (O.D.), Osteopathy (D.O.)).
- 16 - Post-First Professional: Some work beyond (at a higher level than) the first professional degree but no additional higher degree.
- 17 - Master's Degree: For liberal arts and sciences customarily granted upon completion of three (sometimes two) academic years beyond a bachelor's degree. In professional field, an advanced degree beyond the first professional but below the Ph.D.
- 18 - Post Master's: Some work beyond (at a higher level than) the Master's degree but no additional higher degree.
- 19 - Sixth-Year Degree: For example, Advanced Certificate in Education, Advanced Master of Education, Advanced Graduate Certificate, Advanced Science, Certificate of Advanced Study, Advanced Degree in Education, Specialist in Education, Licentiate in Philosophy, Specialist in Guidance and Counseling, Specialist in Art, Specialist in Science, Specialist in School Psychology, Licentiate in Sacred Theology.
- 20 - Post-Sixth Year: Some work beyond (at a higher level than) the sixth-year degree.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

- 21 - Doctorate Degree: Includes such degrees as Doctor of Education, Doctor of Juridical Science, Doctor of Public Health, and the Ph.D. (or equivalent) in any field. Does not include doctor's degrees that are first professional degrees per code 15.
- 22 - Post-Doctorate: Work beyond the doctorate.

SECTION B - Training Course Data

15. A. The name of the training vendor must be specified (i.e., a section of the Department of Justice, another government agency, a private firm or institution) with the proper mailing address as requested in the block. Any internal training should list as the vendor, the appropriate office providing the training, which building that office is located in followed by Washington, D.C., and the appropriate zip code: (i.e., EOUSA, Main Justice Building, Washington, D.C. 20530). Any outside vendor would have similar information such as the University of New Mexico, Albuquerque, New Mexico 87103, or Office of Personnel Management, Chicago, Illinois 60604.

B. The location of the training site.

16. The course title and training objective. The course title is self-explanatory; for the Training Objective, a brief note on why the applicant is taking the training and the expected benefit derived by the government. This information should not be put on a separate sheet of paper.

17. Leave blank. This block will be completed by the training office.

18. The training period requires six digits on each line, as requested on the form. The information in the block is self-explanatory, but note that the sequence of dates is year, month, and day.

19. The number of course hours requires four digits on each line. Again, the information in the block is self-explanatory, and the information for Sections A and B should be provided by the training vendor; Section C is simply a total of Sections A and B.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

20. Training codes for a, b, and c should be determined by the applicant or the supervisor from the instructions on the back of the OF-170 or SF-182. Training codes for 20d are:

- 0 - No special program
- 1 - Executive Development
- 2 - Supervision
- 3 - Upward Mobility
- 4 - Mid-Management Development
- 5 - Paralegal Training
- 6 - Litigative Training
- 7 - Occupational Safety and Health Administration (OSHA)
- 8 - Equal Employment Opportunity

SECTION C - Estimated Costs and Billing Information

21. Information for Blocks A, B, and C should be provided by the applicant by referring to information in the vendor's brochures, or teletypes received. Line D requests that the dollar total include four digits in the "Dollar Column" on line "D". For Attorney training the appropriation code is OE 40-72; for non-attorney training the district's appropriation code is used (i.e., OE40-99-XX).

Standard Form 1164, Claim for Reimbursement for Expenditures on Official Business, should be used to claim reimbursement of training costs or books paid directly by the employee. A copy of the approved SF-182 and the receipts for expenses being claimed must be attached. The claim is submitted to the Accounting Operations Group, Justice Management Division for payment.

22. Information for Blocks A, B, and C will have to be provided by the applicant through consultation with airlines, travel agents, computing mileage where authorized, etc.; computing per diem or Actual Subsistence expenses based on the length and location of the training; and what other incidental expenses may occur such as taxis or limos. Line D and appropriation codes are completed the same way as in Section 21.

Note 1: Approval of the SF-182 does not authorize the expenses shown in Section 22. Authorization for travel, subsistence or per diem, and other travel related expenses must be authorized by use of an Official Travel Request and Authorization, Form DOJ-501 (formerly OBD-1).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

Note 2: The first digit of the appropriation code changes with the fiscal year. For example, training in FY 1979 read 9E 40-72; training in FY 1980 read OE 40-72.

Note 3: For Items 21 and 22, if the training does not have any associated cost in one of those two blocks, enter four zeroes in the amount column on line D for whichever block does not have the expenses.

23. Leave Blank. To be completed by the training office.

24. The eight digit station symbol for offices of the U.S. Attorneys is 15-01-0004.

25. Billing instructions should have the following address:

Accounting Operations Group  
Post Office Box 7405  
Ben Franklin Station  
Washington, DC 20044

SECTION D - Approvals

26. A. The name, title and telephone number of the applicant's immediate supervisor. Leave blank if the U.S. Attorney is being trained.

B. The supervisor's signature and the date of the signature.

27. If the U.S. Attorney is the immediate supervisor, there is no need to duplicate his/her name and signature in this block. Leave blank if the U.S. Attorney is being trained.

28. The training officer is the Personnel Officer, and the telephone numbers are FTS 272-6818 or (202) 272-6818.

SECTION E - Approval/Concurrence

29. A. For any training for U.S. Attorneys, the signature block should read: Director, EOUSA. Mail to:

Executive Office for U.S. Attorneys  
Room 1338  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

B. For any Assistant U.S. Attorney training, refer to USAM 10-2.851. Mail to:

Executive Office for U.S. Attorneys  
Room 1338  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

C. For any training of non-attorney personnel, refer to USAM 10-2.851. Mail to:

Executive Office for U.S. Attorneys  
PAT Building  
Room 9322  
Washington, D.C. 20530

SECTION F - Certification of Training Completion

30. Leave blank.

SECTION G - Employee's Agreement to Continue In Service

On reverse side of page one of the 10 part OF-170 and SF-182 is an Employee's Agreement to Continue in Service. If any non-government training is to exceed 80 hours, have the employee read, sign, and date this agreement prior to submission.

After approval has been given, the copies of the SF-182 or OF-170 are distributed as follows:

For the 10-part form:

Copy 1 - Held by the Personnel Office until after the completion date of the course at which time it is filed in the Official Personnel Folder.

Copy 2 - Retained by the training assistant.

Copies 3, 4, 5, and 6 - These are the training vendor's copies. For interagency training, the Personnel Office will forward these to the agency conducting the training. For non-government training, these copies will be



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

forwarded to the U.S. Attorney's office for distribution.

Copy 7 - Forwarded to the Accounting Office.

Copies 8, 9, and 10 - Forwarded to the U.S. Attorney's office. Copy 8 is to be submitted with the voucher for payment, if necessary. Copy 9 is to be completed and returned to the Personnel Office after completion of the course. Copy 10 is for the office's files.

For the 5-part form:

Copies 1 and 2 - Same as above.

Copies 3, 4, and 5 - Correspond to copies 8, 9, and 10 or the 10 part form.

If travel expenses are incurred during training, such as subsistence or per diem, an Official Travel Request and Authorization, Form DOJ-501 (formerly OBD-1), must be attached to the Travel Voucher, OBD-157. Vouchers are submitted to the Accounting Operations Group, Justice Management Division, for payment. The usual procedures should be followed if a travel advance is required. Travel advances for AGAI courses must be charged against the district's appropriation, not the AGAI's appropriation. Vendors should be advised to submit their bills along with Copy 4 of the OF-170 or SF-182.

#### 10-2.853 Cancellation of Training

Every effort should be made to see that employees nominated and authorized to attend training do so. If an employee is unable to attend authorized training or if the training course is cancelled by the vendor, the following information should be sent to the Executive Office:

A. A copy of the approved SF-182, Request, Authorization, Agreement and Certification of Training; and

B. A brief memorandum explaining whether the training cost obligation was cancelled (in whole or part) so that the funds for the training may be deobligated.

If an employee authorized to attend training is unable to go and the office wants to send another employee as a substitute, the Executive

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Office should be telephoned immediately to obtain approval and to tentatively record the change. Although verbally approved, the following information must be submitted to the Executive Office as soon as possible thereafter to document the training and to pay the vendor.

A. A copy of the approved SF-182 for the employee who was originally authorized to attend the training; and

B. An SF-182 requesting authorization for the employee designated to attend the training course as a replacement.

This applies to both attorney and non-attorney training.

The requested information related to attorney training should be directed and submitted to the Office of Legal Education. Information regarding non-attorney training should be directed and submitted to the Personnel Management Staff, Attention: Programs Unit.

10-2.900 EMPLOYEE BENEFITS

10-2.910 Attendance and Leave

The Department's policies on attendance and leave are contained in Department of Justice Order 1630.1A, (September 20, 1978).

Presidentially-appointed U.S. Attorneys and intermittent employees are excluded from the provisions for earning leave described below.

U.S. Attorneys or their designees are responsible for developing leave policies for their offices to meet the needs of their organizations. Leave policies should include such information as who is authorized to approve leave on scheduled and emergency basis, when documentation is required, what documentation is acceptable, timeframes for requesting leave, and how tardiness will be handled.

Normally, authority to approve leave requests should be delegated to the lowest supervisory level having personal knowledge of the work requirements and the employee's leave record. It is good practice to designate a primary and alternate approving authority. When the day-to-day recording of leave usage is assigned to a time and attendance clerk, it is essential that the approving official be advised when a problem or questionable situation arises and that the approving official assume responsibility for any necessary action because the Payroll Office

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

will assume that leave on the T&A is appropriate and has been approved. Denial of a leave request or cancellation of approved leave normally needs to be based on the necessity for the employee's services. Leave may not be denied or cancelled for arbitrary or capricious reasons nor is it to be denied or cancelled as a punitive measure.

All employees should be required to schedule annual leave throughout the year. Unless there have been bona fide efforts to schedule all excess annual leave throughout the year, and only if there is the likelihood that the scheduled leave actually will be taken, requests for extended periods of annual leave during the latter months of the year should not be approved.

Court-appointed U.S. Attorneys are authorized to approve their own leave for periods of up to two weeks. Periods of more than two weeks must be approved by the Director of the Executive Office.

Each U.S. Attorney, Presidentially-appointed and Court-appointed, is encouraged to designate an Acting U.S. Attorney (28 C.F.R. 0.131) if he/she plans to be absent from the office for an extended period of time. The Director, Executive Office for U.S. Attorneys, is to be notified of such a designation.

10-2.911 Annual Leave

A. Earning Rates: Employees serving on appointments of more than 90 days earn annual leave as follows:

<u>1. Full-time Employees</u>	<u>Earning Rate</u>
Less than 3 years of service	4 hours each full biweekly pay period (13 days a leave year)
3, but less than 15 years of service	6 hours each full biweekly pay period plus 4 additional hours for the last full biweekly pay period in any calendar (20 days a leave year)
15 years or more years of service	8 hours each full biweekly pay period (26 days a leave year)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>2. Part-time Employees</u>	<u>Earning Rate</u>
Less than 3 years of service	1 hour for each 20 hours in pay status
3 years but less than 15 years of service	1 hour for each 13 hours in pay status
15 years or more of service	1 hour for each 10 hours in pay status

B. Requesting Annual Leave: Annual leave shall normally be planned and requested a sufficient period of time in advance to permit careful scheduling of leave for all employees and in order to promote the efficient conduct of the work. The taking of annual leave is the right of the employee contingent upon the right of supervisors to establish the time when leave may be taken. Use of Form SF-71 is encouraged for requests for all annual leave and may be required by all supervisors for all annual leave requests.

C. Granting and Advancing Annual Leave:

1. Annual leave may be granted as of the first day of employment.

2. If an initial appointment is less than 90 days, the employee is not entitled to annual leave. However, if employment continues without a break in service under successive appointments for a period of more than 90 days, the employee will earn the annual leave retroactively to the initial appointment.

3. An employee may be permitted to take the annual leave to his/her credit plus the leave that will accrue during the current leave year at any time during the year. Annual leave may be advanced only if there are no reasons known to the supervisor why the employee will not be able to earn the leave advanced. When such leave is granted, the employee is to be informed that if such leave is not earned later during the year, a refund will be required, except in the case of death of the employee, removal for disability, disability retirement, or entrance on active military duty with restoration rights.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. Restoration of Forfeited Annual Leave: An employee is entitled to accrue up to 240 hours of annual leave. Annual leave in excess of 240 hours may be restored when it is forfeited because of illness or exigencies of the public business, administrative error or an unjustified or unwarranted personnel action. The annual leave an employee potentially could forfeit is indicated on his/her OMF-44, Justice Earnings Statement, as "use or lose" leave.

There are only three circumstances under which forfeited annual leave can be restored:

1. The correction of an administrative error (*i.e.*, incorrect service computation date, failure to change a leave accrual rate, incorrect calculations on time and attendance records, etc.) which results in the forfeiture of annual leave otherwise accruable after June 30, 1960;

2. A period of sickness of at least one day which occurs during a period of "annual leave scheduled in advance" and results in a reduction in charge of annual leave. In addition, the period of sickness has to be of such duration or occur so late in the leave year that the resulting excess annual leave cannot be rescheduled and used prior to the end of the leave year;

3. "Annual leave scheduled in advance" and subsequently canceled by a supervisor because of an exigency of public business (*i.e.*, unexpected work situation which clearly requires the services of the employee) and the excess annual leave cannot be rescheduled and used prior to the end of the leave year. The use of annual leave, compensatory time off, or LWOP after a canceled period of scheduled annual leave (unless covered by a separate period of "annual leave scheduled in advance") is considered as rescheduled and used annual leave, or as available time for annual leave usage. Therefore, such time off is subtracted from any excess annual leave otherwise eligible for restoration.

For circumstances 2 and 3 above, note that there is a strict requirement that annual leave be scheduled in advance. The definition of "annual leave scheduled in advance" is annual leave that is requested in writing for use on specific dates, and is approved in writing by an official having authority to approve leave no later than six weeks before the end of the leave year. If all or a portion of the "annual leave scheduled in advance" is later canceled by a supervisor because of a work exigency or is interrupted by a period of sickness, and the excess annual

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

leave cannot be rescheduled and used prior to the end of the leave year, it is then eligible for restoration.

Annual Leave in "restored leave" accounts must be used by a deadline date or the annual leave is lost and not eligible for restoration. The "must be used by" dates for separate leave accounts are shown on Form OMF-14, Master Card, which are sent to the persons who handle time and attendance reports. The separate leave accounts are administered as follows:

1. For the first leave year during which the separate leave account is established (and possibly the second leave year depending on the deadline date on the Form OMF-14), annual leave is not charged against the separate leave account until all the employee's regular leave account for the leave year (i.e., 104 hours, 160 hours, or 208 hours) is used; and

2. Since any leave in a separate leave account is lost if not used by the deadline date, during the last leave year of a separate leave account all annual leave used is charged first against the separate leave account until it is liquidated. Once the separate leave account is liquidated, subsequent annual leave usage is charged against the regular annual leave account for the leave year.

In addition to the strict criteria for restoration of forfeited annual leave, Department of Justice Order 2120.11 (April 24, 1974), states that requests must be supported by specific documentation. Therefore, employees who may be in a position to forfeit annual leave should retain:

1. Documentation (SF-71's, Application for Leave, memoranda, etc.) showing that annual leave for specific dates was scheduled at least six weeks before the end of the leave year. The scheduling must be in writing and must show the calendar date this leave was approved by an official having authority to approve leave and the amount of leave (days/hours) that was scheduled for use. This requirement applies to U.S. Attorneys who approve leave for themselves.

2. Documentation showing the supervisor's reason(s) for the subsequent canceling of approved leave, or doctors' certificates for periods of sickness which occurred during annual leave that was scheduled for use.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. Documentation showing why canceled leave or excess leave resulting from a period of sickness could not be rescheduled and used prior to the end of the leave year.

4. Documentation showing attempts that were made to reschedule the excess annual leave, including the date(s) during which the leave was rescheduled for use and the amount of leave (days/hours) that was rescheduled for use.

5. Documentation showing the amount of leave rescheduled and used or rescheduled and subsequently canceled.

6. Copies of all JMD-44s, Earnings Statements, for each pay period from the date scheduled annual leave was canceled or first interrupted by a period of sickness through the end of the leave year.

Requests for restoration of annual leave must be submitted on Form DOJ-364, Request for Restoration of Forfeited Annual Leave. In addition to copies of the documentation described above, copies of Form DOJ-296, Time and Attendance Report, for each pay period from the date scheduled annual leave was canceled or first interrupted by a period of sickness through the end of the leave year must be submitted with the request. Employees who had forfeited annual leave restored at the end of earlier leave years and again forfeit annual leave at the end of the current leave year must submit copies of Form DOJ-296 for the entire current leave year.

Requests for restoration of forfeited annual leave should not be submitted until after the leave year. A request will not be processed if it is not supported by appropriate documentation.

10-2.912 Sick Leave

A. Earning Rates: All employees, regardless of the length of appointment, earn sick leave as follows:

1. Full-time employees: Four hours for each full biweekly pay period, regardless of type and duration of appointment or total creditable service.

2. Part-time employees: One hour for each 20 hours in a pay status.

B. Accumulation: There are no limitations on the accumulation of sick leave.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Granting Sick Leave: Sick leave is authorized in the following circumstances:

1. When an employee is incapacitated by sickness, injury, pregnancy, or confinement;
2. For medical, dental, or optical examination;
3. Prior to disability retirement; or
4. When a member of the immediate family is ill with a contagious disease and requires the care and attendance of the employee, or the employee's presence would jeopardize fellow employees' health.

D. Approval of Sick Leave: Supervisors may require a medical certificate or other acceptable evidence for use of sick leave in excess of three days. It is incumbent upon supervisors responsible for approving sick leave to determine that the circumstances of the absence justify approval.

E. Reporting Sickness: Employees who are absent on account of illness should notify their supervisors as soon as practicable after the time they are scheduled to report for duty. When such notice is not given, the absence may be charged to leave without pay or absence without leave pending contact with the employee and/or receipt of appropriate medical evidence.

F. Advance Sick Leave:

1. Advance sick leave may be granted only in cases of serious disability or illness and when required by the exigencies of the situation. Except for those serving probationary or trial periods, such leave may be advanced to employees irrespective of whether they have annual leave to their credit. Employees serving probationary or trial periods will be required to exhaust annual leave before any sick leave may be advanced.

2. Advance sick leave may not be granted to an employee:

- a. Who is absent because a member of his/her family has a contagious disease;
- b. Who has filed application for disability retirement or has signified an intention to resign for disability;



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

c. When a separation date has been established which would preclude an employee from earning leave to cover the advance sick leave; or

d. When there is evidence that a return to duty is not contemplated.

3. Advance sick leave is subject to the following limitations:

a. May not exceed 30 days for full-time employees;

b. Shall normally not exceed 15 full days for part-time employees;

c. Every application for advance sick leave must be in writing and supported by a medical certificate from a practicing physician; and

d. Temporary employees may not be advanced sick leave in excess of the amount which they will earn during the period of temporary employment. Employees who have applied for optional retirement may not be advanced sick leave in excess of the amount which they will earn prior to the date of retirement.

4. In the event an employee is advanced sick leave and fails to return to duty (retirement or resignation) due to an illness or disability, offices must request acceptable medical evidence to determine if the failure to return to work is due to an illness or disability.

5. In the event the employee fails to return to work for a reason other than illness or disability, offices should inform employees of the following:

a. Failure to return to duty after a period of advanced sick leave results in an indebtedness to the government.

b. Indebtedness may be repaid from an employee's retirement funds or annual leave account at the request of the employee. This request must be made in writing and should be sent to the Justice Employee Data Service (JEDS). The letter should include at a minimum, the employee's name, social security number, and organization code. The letter must also include the following statement: It is requested that the indebtedness which resulted from the use of (number) hours of

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

advanced sick leave be liquidated with funds from my retirement and/or annual leave account.

c. In the event voluntary arrangements cannot be established to resolve the indebtedness, the Department may file a claim against the employee in accordance with DOJ Order 2120.3A, Collection of Indebtedness Resulting From Erroneous Payments to Employees.

6. Administrative Officers must obtain the written statement outlined above from the employee as soon as the employee gives notice of his/her intention not to return to duty. The original statement should be forwarded to JEDS and copy should be retained with the OBD-123, Employee's Clearance Record, for a period of three years.

10-2.913 Holidays

A. Designation: The following days are observed as holidays for federal employees:

1. New Year's Day, January 1
2. Inauguration Day (Washington, D.C. Metropolitan area only)
3. Washington's Birthday, third Monday in February
4. Memorial Day, last Monday in May
5. Independence Day, July 4
6. Labor Day, first Monday in September
7. Columbus Day, second Monday in October
8. Veteran's Day, November 11
9. Thanksgiving Day, fourth Thursday in November
10. Christmas Day, December 25
11. Martin Luther King Day, third Monday in January commencing 1986.
12. Any other day designated as a holiday by federal statute or Executive Order.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

If a holiday falls on a Saturday, the preceding Friday will be observed as the holiday. If a holiday falls on a Sunday, the following Monday will be observed as the holiday.

B. Procedure for Holiday Work: If a non-attorney employee is required to work on a holiday he/she shall receive additional compensation equal to his/her regular hourly rate, not to exceed eight hours (i.e., the employee is paid double time for the first eight hours worked on a holiday).

Anyone required to work on a holiday must be paid for at least two hours of holiday work. Compensatory time off may not be granted for holiday work. See 28 CG 431. Holiday pay is charged to the district's overtime budget. Work beyond eight hours on holidays should be treated as normal overtime and is compensated accordingly.

Intermittent employees (i.e., Special Assistant U.S. Attorneys) are not entitled to premium compensation for holidays. An intermittent employee is defined as an employee of less than full-time status with no pre-scheduled regular tour of duty and paid at per diem or per hour rates.

U.S. Attorneys may authorize holiday work in the same manner that overtime work is authorized. Holiday work for U.S. Attorneys and their regular Assistants should only be authorized in the case of a court appearance falling on a holiday.

Holiday work should be noted in the appropriate space on the Time and Attendance Records.

C. State and Local Holidays: It is the policy of the Executive Office that a U.S. Attorney's office may be closed in observance of a state or local holiday if:

1. The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating;
2. Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to work; or
3. The duties of the employees consist largely or entirely of dealing directly with employees and officials of business or local government offices, and all such establishments are closed in observance of the holiday, and there are no other duties (consistent

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

with their normal duties) to which employees can be assigned on the holiday.

When group dismissals occur because of such a closing, the employees are excused without charge to leave and without loss of pay.

Authority to authorize such closings has not been delegated to the U.S. Attorneys. It resides with the Director, Office of Administration and Review, Executive Office for U.S. Attorneys. U.S. Attorneys are to advise the Executive Office at least two days before the date of the proposed closing where they believe such closing would be authorized due to a state or local holiday.

Each employee's Time and Attendance Record should be annotated to show "other leave" for the state or local holiday. If an employee works on a day when the office has been closed for such a holiday, he/she cannot be authorized to receive holiday pay or compensatory time off. Normal payment is all that may be received.

D. Time Off for Religious Observances: The Federal Employees Flexible and Compressed Work Schedules Act of 1978 provides that an employee may elect to work compensatory overtime for the purpose of taking time off without charge to leave when personal religious beliefs require that the employee abstain from work during certain periods of the workweek.

Under the law, any employee who elects to work compensatory overtime in lieu of time off for religious observances shall be granted in lieu of overtime pay an equal amount of compensatory time off from his/her scheduled tour of duty if modifications in work schedules do not interfere with the accomplishment of the office's workload. The supervisor and the employee are to determine a mutually agreeable time before or after the religious holiday when productive overtime work may be performed. The work must be performed within a period of six weeks before or six weeks after the time off.

Time off for religious observances will be charged to object class 1465. The compensatory time worked will be charged to object class 1466.

10-2.914 Leave Without Pay

Leave without pay (LWOP) is solely a matter of administrative discretion. Employees cannot demand it as a matter of right, except in cases of disabled veterans in need of medical treatment and reservists and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

National Guardsmen performing military training duties. Such factors as whether there is a reasonable expectation that the employee will return to government service at the end of the period, whether the individual's health will substantially improve, and whether his/her employment record is commendable, should be taken into consideration. Consideration must be given to the fact that except in the case of an employee on LWOP pending approval of disability retirement, the position remains "filled" while the employee is on LWOP. This will prevent employment of a replacement which may result in additional burdens on the remaining staff.

Maximum periods of LWOP have been established by the Department in Department of Justice Order 1630.1A (September 20, 1978). Additionally, except in rare instances, LWOP for attorneys will be limited to a maximum of 90 days.

Employees who enter a nonpay status (LWOP) should be advised that they must pay their share of the cost of Federal Employees Health Benefits, if enrolled, for each pay period during which their salary is insufficient to cover the required premium. Refer to USAM 10-2.932 for additional information regarding the effect of LWOP on FEHB coverage.

LWOP of more than 30 calendar days must be approved by the U.S. Attorney and an SF-52, Request for Personnel Action, must be completed and submitted to the Personnel Management Staff. A second SF-52 must be submitted when the period of LWOP ends.

10-2.915 Administrative Leave

Administrative leave refers to an authorized absence from duty with pay and without charge to annual or sick leave. Ordinarily, administrative leave is authorized on an individual basis, except where an installation is closed or groups of employees are excused for other general reasons as outlined below.

A. Emergency Situations: The U.S. Attorney 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. Employees are expected to work provided the conditions at their worksite are reasonably adequate, even if these conditions are not normal and involve a few minor discomforts. Dismissals due to unusual employment or work conditions created by a temporary disruption of air cooling or heating systems should be rare and emphasis should be placed on the correction of these conditions.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

If an individual employee becomes incapacitated for duty due to the unusual level of temperature, he or she may be granted annual or sick leave at the supervisor's discretion.

In the event of a prolonged breakdown of essential building services, the U.S. Attorney may close an office or part of an office and place employees on administrative leave. In those cases, it clearly must be established by reasonable standards of judgment that the conditions are such as to actually prevent working. The office should consider the physical requirements of the positions involved as well as the temperature of the work areas. Equity does not require that if a group of employees are dismissed, other employees also must be dismissed.

1. Emergency during working hours:

a. Employees in a duty status are placed on administrative leave for the remainder of the day following early dismissal.

b. Employees in a duty status who depart on leave after official word of early dismissal is received, but before the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

time set for dismissal, are charged annual leave only from the time they departed until the time set for dismissal. They are placed on administrative leave for the remainder of the day.

c. If employees are scheduled to report for duty after an initial period of leave and early dismissal is set before they can report, leave is charged until the time set for dismissal. The remainder of the day is charged to administrative leave.

d. If the employee is absent on approved leave for the entire day or before official work of early dismissal, the entire absence is charged to that leave. No administrative leave is to be authorized.

2. Emergency during nonworking hours:

a. When federal offices are closed by administrative order for an entire workday, that day is considered a nonworkday for leave purposes. Employees are to be placed on administrative leave even if they were previously scheduled for leave on those days.

b. When federal offices are open as usual but, due to emergency conditions that develop during nonworking hours, employees have difficulty arriving at work on time, first line supervisors may excuse short periods of tardiness (up to two hours), without charge to leave. Supervisors may excuse tardiness for longer periods on an individual basis at their discretion. Employees who do not report for work at all because of weather conditions should be authorized annual leave.

c. When federal offices open up as normal but, due to the varying impact of the emergency situation, a liberal leave policy applies, an employee can utilize annual leave to his or her credit without obtaining prior approval or providing justification. The normal requirement that an employee notify his or her supervisor within prescribed time limits is suspended.

B. Voting Leave: Under the following conditions, employees may be granted administrative leave to vote:

1. The polls are not open at least 3 hours either before or after the employee's regular work hours. The employee should be granted administrative leave which will permit him/her to report

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

three hours after the polls open or leave work three hours before the polls close, whichever is the lesser amount.

2. Depending upon the particular circumstances; i.e., the voting place is beyond normal commuting distances, up to one full day of administrative leave may be granted.

C. Admission to the Bar: Administrative leave may be granted to employees who have passed a bar examination for the time necessary to be sworn into membership of the bar. It may also be granted for travel time to and from the ceremony, not to exceed 8 hours each way. Administrative leave may not be authorized for studying or taking bar exams.

D. Tardiness and Brief Absences: Employees may be excused for up to one hour for unavoidable tardiness or brief absences.

10-2.916 Court Leave

Court leave is authorized leave for employees serving on jury duty or appearing as a witness in court in an unofficial capacity on behalf of a state or local government or private party when the federal or D.C. government or a state or local government is a party to the case. An employee who testifies in an official capacity is considered to be in a official duty status.

An employee is not entitled to court leave when he/she is excused or discharged by the court, either for an indefinite period subject to call by the court or for a definite period in excess of 1 day.

If an employee is on paid leave when called for jury service, court leave should be substituted for the paid leave. Court leave may not be granted to an employee who is in a non-paid leave status. Employees called for jury duty usually are paid some fees and/or allowances by the court. Employees on court leave are permitted to retain all payments that are specifically identified as expense allowances, but all fees, per diems, compensation, and other payments that may be classified as payment for services must be transmitted via a check payable to the U.S. Treasury to the Accounting Operations Group, Post Office Box 7405, Ben Franklin Station, Washington, D.C. 20044, Attn: Accounts & Reports Section. Employees performing jury duty on non-work days or during periods in which they would be in non-pay status may retain all fees that are paid.

The following is a ready-reference chart for comparison of types of absence or duty for court service.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

EMPLOYEE ABSENCES FOR COURT OR COURT RELATED SERVICES

Nature of service	Type of Absence		Fees		Govt. travel expense	
			Annual leave or LWOP	No	Yes	No
	Court leave	Official duty		Retain	Turn in to agency	
I. Jury Service						
A. U.S. or D.C. court	X		X			X
B. State or local court	X				X	X
II. Witness Service						
A. On behalf of U.S. or D.C. government		X	X			X
B. On behalf of state or local government						
1. in official capacity		X			X	X
2. not in official capacity	X				X	X
C. On behalf of a private party						
1. in official capacity		X			X	X
2. not in official capacity						
a. when a party is U.S., D.C., or state or local government	X				X	X
b. when a party is not U.S., D.C., or state or local government			X	X		X

(Offset to the extent paid by the court, authority, or party which caused the employee to be summoned.)

10-2.917 Absence Without Leave

Absence without leave (AWOL) is a nonpay status resulting from the supervisor's determination that leave (including leave without pay) will not be granted for a period of absence for which the employee did not

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

obtain advance authorization or for which his/her request for leave on the basis of alleged sickness or emergency has been denied.

All AWOL cases should be specifically documented and should be the subject of an inquiry by the supervisor. Disciplinary action may be taken when considered appropriate. An employee who is absent without approved leave for any cause must explain to his/her immediate supervisor, at the earliest possible and practical time, the cause of the absence and the reason for failure to request permission to be absent. If it is found that the employee was absent for insufficient cause, or if his/her failure to obtain permission to be absent is not satisfactorily accounted for, the time lost will be counted as AWOL and pay will be lost for the period of such absence. An employee absent without approved leave on the day immediately following a holiday will not be paid for the holiday.

10-2.918 Maternity Leave

There is no separate category of leave in the federal service called "maternity leave." Any absence for maternity reasons is chargeable to a combination of sick leave, annual leave, and/or leave without pay. Employees can no longer be required to take a set amount of leave prior to or after delivery.

An employee should be requested to advise the U.S. Attorney of her intent to request leave for maternity reasons, approximate dates, and anticipated duration in order to allow for any staffing adjustments. The employee should also be advised to make known whether she will continue employment or terminate. The employee has the option of submitting her resignation at the expiration of her period of incapacitation or at an earlier date, if she desires.

The period during which the employee is unable to work is the period of incapacitation. This period is to be treated like any other medically certified temporary disability. Sick leave may be used to cover this period and to cover the time required for physical examination. If all sick leave is used, up to 30 days sick leave may be advanced at the discretion of the U.S. Attorney provided the employee plans to return to the office. Annual leave or leave without pay may also be authorized during this period.

After delivery and recuperation, the employee may desire a period of adjustment or need time to make arrangements for the care of the child. These additional requirements may be taken care of by the use of available

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

annual leave or leave without pay. Approval of both annual leave and leave without pay are at the discretion of the U.S. Attorney. However, efforts should be made to accomodate reasonable requests by the employee.

In order to shorten the period of time in which an employee is away from the office, it may be appropriate to allow the employee to work part-time or to modify her duties. Such changes should be with the concurrence of the employee's doctor.

A male employee may be authorized only annual leave or leave without pay for purposes of assisting or caring for minor children or the mother of his newborn child while she is incapacitated for maternity reasons.

#### 10-2.919 Military Leave

Any employee who is a member of the National Guard or the reserves of the Armed Forces and is employed on a full-time permanent or indefinite basis can accrue military leave at the rate of 15 days per fiscal year. Individuals who are serving on a part-time career employment basis may accrue military leave on a pro rata basis based on the number of hours in the regularly scheduled workweek. These employees are entitled to a leave of absence from their duties, without loss of pay for active duty for training.

The reserve components of the Armed Forces include: the reserves of the Army, Navy, Air Force, Coast Guard, and Marine Corps and the National Guards of the Army and the Air Force.

Employees are not eligible for military leave unless the active duty is as a reservist or a member of the National Guard. Excluded service includes:

- A. Summer training as member of Reserve Officers' Training Corps.
- B. Temporary Coast Guard Reserves.
- C. Participation in parades by members of the State National Guard.
- D. Training with a State Guard or other state military organizations.
- E. Civil Air Patrol.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

F. Time taken on a workday to travel to the place where the training is to begin unless military training orders encompass the period of travel time required (See unpub. Comp. Gen. Dec. B-138990, April 22, 1959).

Temporary and intermittent personnel are not entitled to military leave.

Military leave is limited to a maximum of 15 calendar days during each year, regardless of the number of training periods in the year or whether the active duty is intermittent, one day at a time, or all at one time.

Employees who are unable to use the accumulated leave can carry up to 15 days forward into the next fiscal year.

Intervening non-workdays during military training or active duty are charged against the 15 days of military leave allowed during the year. However, non-workdays occurring at the beginning or end of the period are not counted.

10-2.920 Federal Employees Group Life Insurance

10-2.921 Introduction

Nearly all federal employees are eligible to participate in the Federal Employee Group Life Insurance Program. The main exception to coverage is those employees serving appointments limited to one year or less. The federal government as the employer pays one-third the cost of the Basic Life Insurance, the remaining cost is withheld from the employee's pay.

The overall responsibility for administration of the insurance plan rests with the Office of Federal Employees Group Life Insurance which has the responsibility for settling claims.

The Federal Employees Group Life Insurance Program consists of Basic Life Insurance and three types of optional coverage. An employee must elect Basic Life Insurance before enrolling in one or all of the optional insurances.

A. Basic Life Insurance coverage is based on the employee's salary. It equals the employee's salary rounded to the next \$1,000 plus \$2,000. For example, an employee whose salary is \$19,205 per annum would have \$22,000 coverage. Effective October 1, 1981, the Basic Life Insurance Coverage was increased for employees under age 45 with no corresponding

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

increase in premiums. This extra benefit doubles the amount of life insurance of employees age 35 or younger. The extra benefit is reduced 10% each year until the employee reaches age 45 at which time there is no extra benefit.

B. In addition to Basic Life Insurance coverage, employees may elect one or all of the following insurance coverage options:

1. Option A: \$10,000 insurance;
2. Option B: life insurance equal to up to five (5) times one's annual basic salary; or
3. Option C: insurance on the lives of one's spouse and children.

10-2.922 New Enrollments

Every eligible employee must complete Form SF-2817 to enroll or to waive enrollment in the life insurance program. An employee has 31 days after appointment or after becoming eligible for life insurance to file Form SF-2817. Employees who fail to submit Form SF-2817 will be automatically enrolled in Basic Life Insurance. Employees who do not elect Basic Life Insurance and/or one or all of the optional insurances at their first opportunity will be eligible to enroll only if they meet the requirements described in SF-2817, Federal Employees Group Life Insurance Program.

The Administrative Officer must insure that every eligible employee receives Forms SF-2817 and SF-2817A. Form SF-2817 should be reviewed for accuracy and completeness prior to being forwarded to the Personnel Office, Executive Office for U.S. Attorneys. This form should not be separated. The Personnel Office will certify the completed form and return it to the Administrative Officer.

Copies of Forms SF-2817 and SF-2817A are stocked by the Department's warehouse.

10-2.923 Waivers

A properly executed waiver of basic life insurance or a declination of standard optional, additional optional, and family coverage remains in effect until cancelled even though the employee may transfer to another agency.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

An employee who has previously waived basic insurance or declined optional or family coverage, however, will have the declination automatically cancelled if the employee is separated and has a break in service of at least 180 days. An employee whose declination is so cancelled must file an SF-2817A within 31 days.

An employee who previously waived basic or declined standard optional or additional optional life insurance may have the cancellation waived if the employee meets the conditions described in SF-2817A, Federal Employees Group Life Insurance Program, and completes and files a SF-2822, Request for Insurance. This form is a combination request to cancel a waiver, medical certificate, and authorization to insure an employee. The completed form must be forwarded by the examining physician to the Office of Federal Employees Group Life Insurance which will either authorize insurance coverage or deny that coverage and so inform the Personnel Office.

10-2.924 Designation of Beneficiary

When an employee becomes insured he/she should be informed that any life insurance death benefits will be paid to his/her heirs in the order of precedence indicated on Standard Form 2823, Designation of Beneficiary. If the employee does not wish payment to be made in that order, he/she must file SF-2823, which must be completed without erasures or changes and signed and witnessed in duplicate. Forward both copies to the Personnel Office, Executive Office for U.S. Attorneys. One receipted copy will be retained in the employee's official personnel folder and the other copy will be returned to the employee.

An employee who wishes payment to be made to the designated beneficiary, only if that person survives the employee by a specified number of days (up to but not more than 30), may so stipulate on the SF-2823. A statement added on the form following the name of the designated beneficiary (beneficiaries) to the effect". . . , if he (she) survives me by at least \_\_\_\_\_ days." will alert the Office of Federal Employees' Group Life Insurance to hold up payment of the life insurance proceeds until the specified period has elapsed. It will also preclude any right of insurance to vest in the estate of the beneficiary. In the event the designated beneficiary does not survive the specified period, payment of the proceeds will follow the order of precedence as if the beneficiary had predeceased the insured.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.925 Conversions

Under the conversion privilege, an employee who resigns or separates from the federal government may purchase without a medical examination an individual policy from any eligible insurance company. The policy, at the employee's option, may be in an amount equal to or less than the federal group insurance which the employee had, including optional insurance. It may be in any form customarily issued by the insurance company, except term insurance, but without disability or accidental death or dismemberment benefits. Any insurance policy purchased under the conversion privilege is a private business transaction between the individual and the insurance company.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

There are two forms which explain fully the employee's privilege to convert to an individual policy. Because prompt notice is required and a minimum of work is desirable, SF-2819, Notice of Conversion Privilege, may be issued to the employee. If the employee desires, he/she may receive an Agency Certification of Insurance Status, SF-2821. This form is not an application for conversion but merely gives information required by the insurance company.

10-2.926 Retirement and FEGLI

A. An employee who retires retains regular life insurance (without accidental death and dismemberment clauses) without further cost, if all of the following requirements are met:

1. The employee retires on an immediate annuity from a position in which insured;
2. The employee does not convert to an individual policy when the regular insurance as an employee would otherwise cease; and
3. The retirement is for disability or after at least 5 years service.

B. Employees who meet the criteria described above have the opportunity to elect one of the three post-age 65 rates of reduction in their basic life insurance coverage as follows:

1. 75% of Basic Life Insurance coverage. At age 65 the amount of basic insurance will be reduced by 2% per month to no less than 25% of the amount of basic insurance in force at the time of retirement. This is at no cost to the employee.
2. The employee has had optional insurance from the first time it became available to him/her or for at least 5 years immediately preceding retirement; and
3. The monthly annuity is sufficient after all other deductions, to pay the full cost.

After age 65, the Option A-Standard Life Insurance will be reduced by 2% each month until it reaches 25% of its face value. The employee will continue to pay the full cost of the life insurance until reaching age 65. The Accidental Death and Dismemberment Benefits that are payable under the



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Option A-Standard Life Insurance are discontinued upon retirement. At age 65, the Option B-Additional and Option C-Family Life Insurance will be reduced by 2% each month for 50 months, at which time the coverage will cease. The employee will continue to pay the full cost of the insurance until age 65.

Employees must complete SF-2818, Election of Post-Retirement Basic Life Insurance Coverage, when filing for retirement. Failure to complete this form could delay the processing of the retirement application by the Office of Personnel Management.

10-2.930 Health Benefits

10-2.931 Introduction

The Federal Employees Health Benefits Program (FEHB) provides protection for civilian employees and their families against the cost of illness or accident. The program is entirely voluntary and nearly all federal employees are eligible for coverage except those serving under appointments limited to one year or less. Dual coverage under FEHB is not permitted. The federal government as the employer pays part of the cost and the employee pays the remainder.

10-2.932 New Enrollments and Changes

A. New Enrollments

When a new employee enters on duty or when an employee first becomes eligible for health benefit coverage, he/she should be given the following forms:

1. BRI-41-212, Biweekly list of premium rates for all plans;  
and
2. BRI-41-331, Enrollment Information and Plan Comparison Chart.

Standard Form 2809-A gives information concerning the program cost; types and description of plans available; types of enrollments; conversion privileges upon separation from the federal service; conditions for continuing health benefits coverage after retirement; and consequences of election not to enroll.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Each eligible employee must register either to enroll in a plan or not to enroll on an SF-2809, Health Benefits Registration Form. An employee has 31 calendar days after appointment or after becoming eligible for health benefits coverage to file an SF-2809 and have it received by the Personnel Management Staff. If an employee has not returned the completed form within the 31-day period, and he/she has been contacted and urged to do so, a form should be filed for the employee by the Administrative Officer with the notation that he/she was contacted but declined to register.

In completing the SF-2809, only the appropriate sections of Parts A through E should be completed. DO NOT COMPLETE PART F. This part will be completed by the Personnel Management Staff. In the Remarks section, include the district and the employee's position title. The complete SF-2809 should be forwarded to the Personnel Management Staff, Executive Office for U.S. Attorneys. No copies should be removed from the form. Offices with delegated personnel authority should process health benefits forms in accordance with their delegation.

Once a plan has been selected by an employee, the Administrative Officer should give the employee a copy of that plan's brochure.

B. Changes in Enrollment Status

Employees are allowed to make changes in health benefits coverage in accordance with the events stated on the reverse side of the carriers copy of the SF-2809, Health Benefits Registration Form. One change which requires further explanation due to the need for supporting documentation is when an employee becomes eligible to enroll or change enrollment for health benefits coverage due to loss of coverage under a spouse's non-federal plan because the non-federally employed spouse was involuntarily separated from his/her employment because of a lay-off.

Specifically, an employee may change enrollment in the following situations:

a. An employee who loses coverage under a spouse's non-federal enrollment because the non-federally employed spouse was involuntarily separated from his/her employment because of a lay-off, may register to enroll within the period beginning 31 days before and ending 31 days after the spouse's employment terminates. If the employee enrolls under this provision he/she must receive the same forms outlined in Part I, "New Enrollments."

b. An employee whose spouse loses non-federal coverage because the non-federally employed spouse was involuntarily

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

separated from his/her employment because of a lay-off, may change enrollment from self-only to self and family within the period beginning 31 days before and ending 31 days after the spouse's employment terminates.

To effect an enrollment change under the conditions stated in paragraphs a and b, the following information should be submitted in addition to the SF-2809:

a. A letter from the spouse's employer stating that the person was laid-off, the effective date of the lay-off, and that the person had health benefits coverage.

b. In part C(3) of the SF-2809, the appropriate date is the date the spouse's non-federal employment terminated.

C. Effect of Nonpay Status on FEHB Premiums

Employees who enter a nonpay status are required to pay the premium on their health benefits coverage. Effective August 22, 1982, the Office of Personnel Management issued regulations which eliminate free health benefits coverage for federal employees who continue their enrollments under the Federal Employees Health Benefits program while in a nonpay status. Under prior regulations, employees were given free coverage for up to 12 months of continuous leave without pay. While this general employee entitlement to one year of continued enrollment (before automatic termination) remains unchanged, employees must now pay their share of the cost of the FEHB enrollment for each pay period during which their salary is insufficient to cover the required premium.

Under the new regulations, an employee is deemed to consent to the withholding of past due health benefits premiums from salary or from any other monies payable to the employee by the federal government. Also, any premiums owed are not subject to waiver by the Department. Therefore, the only way an employee can avoid liability for FEHB premiums during nonpay status is to cancel his or her FEHB enrollment.

Cancellation of health benefits enrollment is an action that could have serious ramifications and should not be taken without careful consideration and consultation with a servicing personnel specialist. A cancellation is effective at the end of the pay period following the one in which the Standard Form 2809 is received by the Personnel Management Staff. Following a cancellation of health benefits enrollment, there is no 31-day extension of coverage nor is there a right to convert to a non-group contract with the carrier of the plan in which enrolled. Also,

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

after a cancellation, an employee would not be automatically allowed to re-acquire health benefits coverage upon return to a pay status. Most employees would have to wait until an "open season" in order to re-enroll unless there is another event which would permit enrollment. Before cancelling, employees should be made aware of the eligibility requirements for continuing FEHB coverage during retirement or the receipt of workers' compensation benefits. An employee must have been enrolled (or covered as a family member in another FEHB enrollment) for the five years of service immediately preceding retirement, or for all of the period(s) during which the employee was eligible to be enrolled, if less than five years, in order to continue FEHB coverage into retirement.

No action is required in advance for employees who desire to continue their FEHB coverage during nonpay status. When an employee has a period of at least two pay periods during which there are no withholdings for health benefits, the employee will have the option of either paying the biweekly premiums directly to the Department on a biweekly or advance basis, or having the past-due premiums withheld from salary upon return to pay status. All direct payments must be in exact multiples of the biweekly premium rate (the ninth listed deduction from gross pay on Form JMD-44 or 44A, Employee Earnings Statement). Payments can be made by check or money order, made payable to the Treasurer of the United States and annotated with the employee's Social Security number. A short explanatory memorandum should accompany all such payments and be sent to the U.S. Department of Justice, Justice Employee Data Service, Post Office Box 2922, Washington, D.C. 20013. Do not send payments to the Personnel Management Staff.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Employees who return to pay status after only one pay period of no premium withholding will automatically and without prior notification have the past due premium and regular premium deducted from their paychecks in order to liquidate the debt. This procedure is necessary due to administrative and cost effectiveness considerations. Those employees who return to pay status after two or more pay periods without premium withholding and who have not made full direct payment to the Department will receive a computer-produced notice from the Justice Employee Data Service informing them that one additional biweekly premium will be automatically deducted from their paychecks each pay period until the debt is liquidated unless other acceptable arrangements are made. Employees who are indebted and separate from the Department will likewise receive notices that establish premium collection procedures.

10-2.933 Retirement and FEHB

An employee must meet all of the following requirements to continue an enrollment after retirement (employees should be periodically reminded of these requirements, particularly before they elect not to enroll or to cancel an enrollment).

A. The employee must retire under the disability provisions of the applicable retirement law or have at least 5 years of creditable service;

B. The employee must retire on an immediate annuity (that is, an annuity which begins to accrue no later than one month after the date of final separation);

C. The employee must have been enrolled (or covered as a family member) in a plan (not necessarily the same plan) under the health benefits program (a) for the five years of service immediately preceding retirement, or (b) for all service since his/her first opportunity to enroll, or (c) continuously for the full period or periods of service beginning with the enrollment which became effective no later than December 31, 1964; and

D. The annuity must be sufficient to cover the withholding required as his/her share of the cost of the enrollment.

10-2.934 Conversion Rights

If an employee's enrollment ends for any reason other than voluntary cancellation, or if the coverage of a family member ends for any reason,

---

AUGUST 16, 1985  
Sec. 10-2.932-.933  
Ch. 2, p. 228

except when an employee cancels or changes to a self only enrollment, the person whose enrollment or coverage is ended has a right to convert, without evidence of insurability, to a nongroup health benefits contract offered by the carrier of the plan. A family member who loses coverage because the employee cancels or changes to a self only enrollment does not have a conversion right.

Application for conversion should be made to the nearest office of the plan. Normally, the application must be made, and the first premium paid to the carrier, within 31 days after termination of the enrollment or, for a family member, after termination of coverage under the enrollment.

10-2.935 Open Season

A health benefits open season is held each year during the month of November and sometimes is extended into December. During the open season, eligible employees have an opportunity to enroll in a health benefits plan or to change their present enrollment. Generally, open season changes do not become effective until the first full pay period in January. SF-2809 is used for making changes in enrollments during the open season. An open season change should be stated in the Remarks section of the SF-2809. Only Parts A through E should be completed by the district office. Part F will be completed by the Personnel Office, Executive Office for U.S. Attorneys.

10-2.940 Retirement

10-2.941 Introduction

The Office of Personnel Management (OPM) administers the major programs to provide retirement, life insurance, and health benefits to federal employees and annuitants. OPM adjudicates all claims arising under the retirement laws. The Justice Management Division is responsible for the maintenance of individual retirement records and the processing of retirement forms for employees in the offices of the U.S. Attorneys. Administrative officers or servicing personnelists provide individual counselling to employees to include informing employees of their rights and obligations under the law, giving assistance to claimants, including survivors of deceased employees, and promptly processing retirement applications.

Whether an employee is subject to the Civil Service Retirement Act is governed by the appointment itself, and the individual generally does not have a choice as to retirement coverage. Form SF-50, Notification of Personnel Action, indicates whether the employee is subject to the Act, to Social Security (FICA), or to a congressionally established transitional system in effect from January 1, 1984, through December 31, 1985, during which time a supplemental retirement plan for federal employees is to be developed.

Under the transitional system, employees pay both 1.3 percent to Civil Service Retirement (CSR) and 6.7 percent to FICA. The transitional system applies to all new federal employees first appointed to permanent positions on or after January 1, 1984.

Employees who were serving under temporary appointments as of December 31, 1983, and later appointed/converted to a permanent position are to be treated as "new" employees and are subject to both 6.7 percent Social Security deductions and 1.3 percent CSR deductions. This applies to all employees who served on temporary appointments and who were later converted to a permanent position unless they had a period of service under the Civil Service Retirement System (CSRS) or other federal retirement system within one year of the effective date of their appointment/conversion.

All federal employees with appointments subject to CSR deductions only, pay 7.0 percent to CSR and have the Medicare hospital insurance portion, 1.3 percent of base pay payable to Social Security, deducted from their paychecks.

The obligations, rights and privileges of membership in the CSRS are explained in the Certificate of Membership (Standard Form 105). Every enrolled employee should be given a certificate and urged to preserve it as a part of his/her valuable personal papers.

Each office also should have copies of 1) Pamphlet Number 18, Your Retirement System; 2) "Medicare for Federal Employees," and 3) "Your New Social Security and Medicare Fact Sheet," to provide to employees entitled to benefits.

If an employee is contemplating retirement, he/she may be advised to submit an OBD-45, Annuity Estimate Request, to the Personnel Office, EOUSA. A retirement computation will be prepared and the employee will be advised of the various available options.

10-2.947 Refunds

It is the policy of the Department that employees not be allowed to resign and then return to work sooner than thirty-one (31) days after resignation solely to withdraw their retirement money.

There are two conditions under which a person may receive a Civil Service Retirement refund. The first is if the individual has been separated from federal employment for at least 31 consecutive days. Or second, if reemployed within the 31-day period, then there must be both a three-day break in service and the reemployment appointment cannot convey retirement coverage.

An employee who desires and is eligible to receive a refund of the contributions he/she has made to the Retirement Fund should submit at time of separation a completed Standard Form 2802, Application for Refund of Retirement Deductions (revised December 1983), to the Payroll Office for processing and transmittal. Individuals separated from federal employment for more than 30 days should submit the completed SF-2802 directly to the OPM.

Interest computed at three percent, compounded annually, will be paid on the refund only if the former employee had more than one but less than five years of creditable civilian service. Interest is payable on retirement deductions withheld prior to December 31, 1950, if a former employee has more than five years of creditable service.

Regulations implementing the Interest and Dividend Tax Compliance Act of 1983, require that employees and former employees who apply for a refund of their retirement deductions, and are entitled to receipt of interest on these monies, must designate at time of application whether or not OPM should withhold federal income tax from the interest payment. This designation is to be indicated through completion of item 13, Federal Tax Withholding Election, on the SF-2802. If withholding is elected, the amount withheld will be five percent of the total interest payable.

Applicants who elect no federal income tax withholding must certify on the SF-2802, by checking the appropriate blocks on item 13, that the Taxpayer Identification Number (Social Security Number) recorded on the application form is correct and that the Internal Revenue Service (IRS) has not previously notified the applicant of being subject to "backup withholding," as defined under the form's instructions for users. Under current federal tax law, the OPM must either receive this certification or forward to the IRS 20 percent "backup withholding" of the interest payable. To receive the withheld interest, the individual must file for a refund with the IRS.

C. He/she, if otherwise eligible, has not declined a reasonable offer of a position in his/her agency for which he/she is qualified. The offered position must be in the employee's same commuting area (unless the employee is under a mobility agreement), have the same tenure and work schedule, and not be more than two grades below the employee's current position.

Resignations of presidentially-appointed U.S. Attorneys are considered involuntary separations for the purpose of discontinued service retirement.

If the retiring employee is under age 55, the basic annuity is reduced by one-sixth of one percent for each full month he/she is under age 55. An annuity rate so determined will not be increased when the annuitant reaches age 55.

#### 10-2.946 Deferred Annuity

Any employee who is separated from the service or transferred to a position which is not under the Civil Service Retirement System before meeting the requirements for an immediate annuity is entitled to a deferred annuity at age 62, if:

A. He/she has completed at least five years of civilian service and has not been refunded the retirement deductions covering the last period of service; and

B. He/she was employed under the Civil Service Retirement System for at least one year within the two-year period immediately preceding the separation on which the deferred annuity is based.

The annuity is computed according to the law in effect on the date of the employee's last separation from a position under the retirement law on which entitlement to the annuity is based.

A separated employee who, except for his/her age, is eligible for a deferred annuity should be instructed not to file an Application for Deferred Retirement (OPM Form 1496 and OPM Form 1496A) earlier than three months before he or she attains age 62. At that time, the individual may obtain the proper application from the Office of Personnel Management. Employees should be advised that, except for employees who leave federal employment at very young ages, it is usually financially advantageous to wait for a deferred annuity instead of taking an immediate refund of retirement deductions, even if the refund is prudently invested and interest earnings are considered.

#### 10-2.942 Designation of Beneficiary

When an employee enters on duty in a position in which he/she is subject to the CSR system, he/she should be informed that any lump-sum death benefit under the system will be paid to the person or persons named in the order of precedence shown on Standard Form 2808, Designation of Beneficiary. A designation of beneficiary is for lump-sum benefit purposes only, and does not affect the right of any person who qualifies to receive survivor annuity benefits. If the employee does not wish payment to be made in this order, he/she must file SF-2808, which must be signed and witnessed in duplicate. The SF-2808 should be forwarded to the Office of Personnel Management, Bureau of Retirement, Insurance and Occupations Health, Washington, D.C. 20415. One receipted copy will be retained at the OPM and the other receipted copy will be returned to the employee. Do not send the SF-2808 to the Personnel Office.

#### 10-2.943 Optional Retirement

An employee under the retirement system is eligible for optional retirement annuity if:

A. He/she has been employed under the retirement system for at least one year within the two-year period immediately preceding the separation on which the annuity is based:

B. He/she has had at least five years civilian service; and

C. He/she meets one of the following minimum age and service conditions:

1. Age 62 and five years creditable service; or
2. Age 60 and 20 years of creditable service; or
3. Age 55 and 30 years of creditable service.

Refer to USAM 10-2.949 for procedures for processing retirements.

#### 10-2.944 Disability Retirement

An employee must meet the following conditions to be eligible for an immediate annuity because of disability retirement:



A. Have completed at least five years of civilian service;

B. While employed subject to the retirement system, have become totally disabled for useful and efficient service in his/her present position and be unqualified for reassignment to a vacant position at the same grade or pay level within the agency and commuting area; and

C. The disease or injury which caused the disability must not be the result of vicious habits, intemperance, or willful misconduct on his or her part within the 5-year period immediately prior to becoming disabled.

Standard Form 2801, Application for Retirement, is used to apply for disability retirement. The employee must make the application for disability retirement except where it has been determined that the employee is mentally incompetent and a decision has been made to separate him/her. The agency, a guardian, a relative, or some other interested person then should apply on the employee's behalf.

Disability retirement, however, should be considered only after the office and employee have exhausted all efforts to continue employment. Offices are to attempt to accommodate the employee's medical condition in his/her current position or to reassign the employee to a position at the same grade or pay. Consideration may also be given to reassignment to a lower graded position with retained pay to retain the services of an experienced, trained employee.

The U.S. Attorney, or a designee, is responsible for determining if there are any available positions to which the employee can be reassigned. The office must review all vacant positions within the commuting area which are at the same grade or pay level and determine if the employee meets the minimum qualification standards. The U.S. Attorney should make every possible effort to reassign the disabled employee to an available position. However, there is no obligation to create or vacate a position for an employee.

If the U.S. Attorney is able to reassign the employee, the disability retirement application and supporting documents must be returned to the employee. If an employee refuses to accept such an offer of reassignment, the application for disability retirement will be denied by OPM.

All applications for disability retirement (SF-2801) must be accompanied by the following forms:

1. OPM Form 1503, Applicant's Statement of Disability;
2. OPM Form 1504, Supervisor's Statement; and
3. OPM Form 1505, Agency Certification of Reassignment and Accommodation Efforts;
4. OPM Form 1506, Physician's Statement; and
5. OPM Form 1507, Disability Retirement Application Checklist.

It is seldom to the advantage of an employee who is eligible for optional retirement to retire under the disability provisions. In most cases, the annuity is needlessly delayed by the additional time necessary to review the disability application. In addition, there is no tax advantage unless the employee is totally disabled for all gainful employment. The Personnel Office will counsel retirement in their particular cases.

A disabled annuitant may be reemployed in any position for which he/she is qualified without prior approval from OPM. If OPM finds the annuitant to be recovered from his/her disability while the annuitant is reemployed and receiving a disability annuity, the OPM will discontinue the annuity effective on the date of its determination. Until the disabled annuitant has been found to be recovered, the Personnel Office will offset the annuitant's pay by the amount of annuity allocated to the period of reemployment.

#### 10-2.945 Discontinued Service Retirement

An employee under the retirement system who is involuntarily separated from the service is entitled to an immediate annuity if:

A. He/she has been employed under the retirement system for at least one year within the two-year period immediately preceding the separation on which the annuity is based;

B. He/she meets either of the following minimum requirements:

1. Age 50 and 20 years of creditable service, including five years civilian service, or
2. Regardless of age, has 25 years of creditable service, including five years of civilian service; and

# APPLICATION FOR REFUND OF RETIREMENT DEDUCTIONS

## CIVIL SERVICE RETIREMENT SYSTEM

To avoid delay in payment: (1) Complete application in full. (2) Type/print in ink.

Form Approved (44) No. 3746-0128  
 Expires 9-31-80

(For Agency Use Only)  
 Agency Payroll Office Number

NAME (Last, first, middle)	1. DATE OF BIRTH (Month, day, year)	2. SOCIAL SECURITY NUMBER	4. ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA?	YES NO
----------------------------	-------------------------------------	---------------------------	---	-----------

LIST ALL OTHER NAMES YOU HAVE USED (including maiden name, if applicable)	3. PREVIOUS APPLICATIONS FILED (Indicate by "X")	RETIREMENT ANNUITY REFUND	DEPOSIT OR REDEPOSIT VOLUNTARY CONTRIBUTIONS
---	--	---------------------------	--

LIST BELOW ALL OF YOUR CIVILIAN AND MILITARY SERVICE FOR THE UNITED STATES GOVERNMENT OR DISTRICT OF COLUMBIA

DEPARTMENT OR AGENCY (including bureau, branch, or division where employed)	LOCATION OF EMPLOYMENT (City, State, and ZIP Code)	TITLE OF POSITION	PERIODS OF SERVICE		INDICATE WHETHER CS RETIREMENT DEDUCTIONS WERE WITHHELD FROM YOUR SALARY (Check One)		HAVE YOU PAID DEPOSIT OR REDEPOSIT FOR ANY PERIOD, INCLUDING MILITARY SERVICE AFTER 1964? (Check One)	
			BEGINNING DATE	ENDING DATE	WITHHELD	NOT WITHHELD	FULL OR PARTIALLY PAID	NOT PAID

HAVE YOU ACCEPTED ANY FURTHER EMPLOYMENT WITH THE FEDERAL OR DISTRICT OF COLUMBIA GOVERNMENT (OR APPOINTED FOR SUCH EMPLOYMENT) TO BECOME EFFECTIVE WITHIN 31 DAYS FROM THE ENDING DATE OF YOUR LAST PERIOD OF SERVICE?	YES → Complete Items 9, 10, 11 and 12 NO	8. IF YOU ANSWER "YES" TO ITEM 8, ARE CIVIL SERVICE RETIREMENT DEDUCTIONS BEING WITHHELD FOR WILL THEY BE WITHHELD FROM YOUR SALARY DURING SUCH EMPLOYMENT?	YES NO	10. DATE OF NEW APPOINTMENT (Expected date if not yet reemployed)
---	---	---	-----------	---

DEPARTMENT OR AGENCY, INCLUDING BUREAU, BRANCH OR DIVISION IN WHICH YOU ARE (OR WILL BE) EMPLOYED	11. LOCATION OF NEW EMPLOYMENT (City, State, and ZIP Code)	11. APPLICANT CERTIFICATION I understand that I am not legally entitled to receive a refund if I am reemployed or otherwise assigned to a position under the Civil Service Retirement System within 31 days of separating from my most recent position. I agree to notify OPM if I am employed again within this time period, and will return or repay any refund paid to me under those circumstances. I hereby certify that all statements in this application are true to the best of my belief and knowledge, and that the tax withholding election made here reflects my wishes.
---	--	---

**FEDERAL TAX WITHHOLDING ELECTION**

Although the refund of your contributions to the Civil Service Retirement fund is not subject to Federal income tax, any interest paid on your contributions is taxable. If you elect not to have Federal tax withheld, and if you do not have enough Federal tax withheld, you may be responsible for payment of estimated tax. In addition, you may incur penalties under the estimated tax rules if your withholdings and estimated tax payments are not sufficient.

- Indicate below whether you wish to have Federal income tax withheld from the interest portion of your refund:
- Withhold Federal income tax from the interest portion of my refund payment.  
 If you elect withholding, the amount withheld will be 5% of the total interest payable.
- Do not withhold Federal income tax from the interest portion of my refund payment.  
 If you elect no withholding, you must also certify the following:
- 1) The Social Security Number provided in 3 above is correct.  YES  NO
- 2) The Internal Revenue Service has not notified me that I am subject to backup withholding (see 8, on reverse, for explanation).  YES  NO

**FOR AGENCY USE ONLY**

I certify that this agency received this SF 2902 on the date shown below.

SIGNATURE OF AGENCY OFFICIAL	TITLE	DATE RECEIVED
------------------------------	-------	---------------

OCTOBER 19, 1964  
 Ch. 2, p. 232a



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

10-2.948 Deposit or Redeposit

An employee who wishes to make a deposit to cover a period of service for which no retirement deductions were made or to redeposit money which was refunded from the retirement system, should complete Standard Form 2803, Application to Make Deposit or Redeposit, and forward it to the Payroll Office for processing and transmittal to the OPM. The OPM will advise the employee of the amount due and issue instructions for payment. An employee should not file an Application for Deposit or Redeposit if retirement is contemplated within six months.

Individuals first employed by the federal government under the Civil Service Retirement System on or after October 1, 1982, should be advised that they will receive Civil Service Retirement credit for their post-1956 military service at time of retirement only if a deposit is paid in the amount of seven percent of the military base pay which the individual received.

Individuals who were first employed by the federal government under the Civil Service Retirement System before October 1, 1982, have the option of either:

A. Making the seven percent deposit for post-1956 military service—thereby avoiding a reduction in annuity at age 62 or later, if the individual becomes eligible for Social Security benefits; or

B. Receiving full credit initially, as in the past, and having his/her annuity reduced if and when the individual becomes eligible for Social Security benefits. Included are individuals who were previously employed under the Civil Service Retirement System and who return to employment under the Retirement System after October 1, 1982.

Employees in receipt of retired military pay may waive such pay and receive credit under the Civil Service Retirement System, as appropriate, by paying the deposit. Exceptions to the waiver provision apply to service-connected disability and reserve retirees. If military retired pay has already been waived in favor of a Veterans Administration benefit, a waiver of military retired pay must also be made for Civil Service Retirement purposes before the military service can be credited.

The law requires that deposits for military service be made through the employee's agency prior to the date of retirement. Administrative officers should coordinate requests for computation of amounts owed and filing of applications for military service credit with the Personnel Office. If a deposit is made prior to October 1, 1985, or two years from the date the individual becomes an employee covered under the Civil Service Retirement System, whichever is later, no interest will be charged

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

An employee who applies to make a deposit for post-1956 military service, should enter the following statement on Standard Form 2803, Application to Make Deposit or Redeposit: "I wish to pay the deposit necessary to obtain credit for my military service. I understand that the entire deposit must be paid to my agency before I retire. I further understand that any monies I deposit may be refunded to me only if I become eligible for the refund of civil service retirement deductions or retire without having completed the deposit."

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
CIVIL SERVICE RETIREMENT SYSTEM  
Washington, D.C. 20415

NOTICE OF FEDERAL TAX WITHHOLDING FROM REFUNDS

Under Federal tax law, payments from the Civil Service Retirement Fund are subject to Federal income tax withholding if the payment can reasonably be expected to be taxable. The portion of your refund consisting of your contributions is not taxable. However, if your refund also contains interest on your contributions, OPM must offer you the choice of having income tax withheld or not having tax withheld from that interest.

If you choose not to have Federal income tax withheld from the interest portion of your refund, you are still liable for payment of Federal income tax on this portion of the refund. You may also be subject to tax penalties under the estimated tax payment rules if your payments of estimated tax, if any, are not adequate.

Please indicate below whether you wish to have Federal income tax withheld from the interest portion of your refund and attach the election to your Application for Refund, SF 2802.

Employee Service and Records Center  
Boyers, PA 16017

-----  
ELECTION OF FEDERAL TAX WITHHOLDING FROM REFUNDS

[ ] Do not withhold Federal income tax from the interest portion of my refund payment.

If you elect no withholding, you must also complete a Form W-9. If you do not submit the W-9, OPM is obliged to withhold 20 percent of the interest amount even if you elect not to have tax withheld.

[ ] Withhold Federal income tax from the interest portion of my refund payment.

If you elect withholding, the tax withheld will be 5 percent of interest amount.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Social Security Number  
Previous Versions Unusable

BRI 49-459  
Rev. January 1984

(For Local Reproduction)

\_\_\_\_\_  
MAY 25, 1984  
Ch. 2, p. 232e

## Payer's Request for Taxpayer Identification Number

Name as shown on account (If joint account, also give joint owner's name)

---

Address

---

City, State, and ZIP code

---

List account number(s) here (See Instructions) ▶

---

### PART I.—Taxpayer Identification Number

Enter the taxpayer identification number in the appropriate box. For most individual taxpayers, this is the social security number.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on which number to give the payer.

Social security number

OR

Employer identification number

### PART II.—Backup Withholding On Accounts Opened After 12/31/83

Check the box if you are NOT subject to backup withholding under the provisions of section 3406(a)(1)(C) of the Internal Revenue Code.

(See Highlight below.)

**Certification.**—Under the penalties of perjury, I certify that the information provided on this form is true, correct, and complete.

Signature ▶

Date ▶

#### Instructions (Section references are to the Internal Revenue Code)

#### Highlight for Interest or Dividend Accounts Opened After 12/31/83—Backup Withholding

You may be notified that you are subject to backup withholding under section 3406(a)(1)(C) because you have underreported interest or dividends or you were required to but failed to file a return which would have included a reportable interest or dividend payment. If you have NOT been so notified, check the box in PART II. Note: Backup withholding may apply to existing accounts as well as accounts opened after December 31, 1983.

**Caution:** There are other situations where you may be subject to backup withholding. Please read the instructions below carefully.

#### Purpose of Form

Use this form to report the taxpayer identification number (TIN) of the record owner of the account to the payer (or broker).

Beginning January 1, 1984, payers must generally withhold 20% of taxable interest, dividend, and certain other payments if you fail to furnish payers with the correct taxpayer identification number (this is referred to as backup withholding). For most individual taxpayers, the taxpayer identification number is the social security number.

To prevent backup withholding on these payments, be sure to notify payers of the correct taxpayer identification number and, for accounts you open after December 31, 1983, properly certify that you are not subject to backup withholding under section 3406(a)(1)(C).

You may use this form to certify that the taxpayer identification number you are giving the payer is correct and, for accounts opened after December 31, 1983, that you are not subject to backup withholding.

If the payer provides a different form than Form W-9 to request the taxpayer identification number, please use it.

#### Backup Withholding

You are subject to backup withholding if:

- (1) You fail to furnish your taxpayer identification number to the payer, OR
- (2) The Internal Revenue Service notifies the payer that you furnished an incorrect taxpayer identification number, OR
- (3) You are notified that you are subject to backup withholding (under section 3406(a)(1)(C)); OR
- (4) For an interest or dividend account opened after December 31, 1983, you fail to certify to the payer that you are not subject to backup withholding under (3) above, or fail to certify your taxpayer identification number.

For payments other than interest or dividends, you are subject to backup withholding only if (1) or (2) above applies.

(See the section on the back titled "Payers Exempt from Backup Withholding.")

#### Payments of Interest, Dividends, and Patronage Dividends

##### Accounts Opened Before January 1, 1984

To certify that the taxpayer identification number is correct for accounts opened before January 1, 1984, fill out your name and address, enter your account number(s) (if applicable), complete Part I, sign and date the form and return it to the payer.

##### Accounts Opened After December 31, 1983

To certify that the taxpayer identification number is correct and that you are not subject to backup withholding under section 3406(a)(1)(C) for accounts opened after December 31, 1983, fill out your name and address, enter your account number(s) (if applicable), complete Parts I and II, sign and date the form and return it to the payer.

If you are subject to backup withholding and are merely providing your correct taxpayer identification number to the payer, fill out your name, address, enter your account number(s) (if applicable), and complete Part I.

#### Other Payments

If you are merely providing your correct taxpayer identification number to the payer for payments other than interest, dividends, and patronage dividends, you need not sign this form. Fill out your name and address, enter your account number(s) (if applicable), complete Part I and return the form to the payer.

#### Account Numbers

If you have more than one account with the same payer (for example, a savings account and a certificate of deposit at the same bank), the payer may request a separate Form W-9 for each account depending on how the payer's records are kept.

#### What Number to Give the Payer

Give the payer the social security number or employer identification number of the record owner of the account. If the account belongs to you as an individual, give your social security number. If the account is in more than one name or is not in the name of the actual owner, see the chart on page 2 for guidelines on which number to report.

#### Obtaining a Number

If you don't have a taxpayer identification number or you don't know your number, obtain Form SS-5, Application for a Social Security Number Card, or Form SS-4, Application for Employer Identification Number, at the local office of the Social Security Administration or the Internal Revenue Service and apply for a number. Write "applied for" in Part I in place of your number. When you get a number, submit a new Form W-9 to the payer.

(Give this form to the payer, not to the Internal Revenue Service)

Form W-9 (10-83)

**Penalties**

- (1) **Penalty for Failure to Furnish Taxpayer Identification Number.**—If you fail to furnish your taxpayer identification number to a payer, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.
- (2) **Failure to Report Certain Dividend and Interest Payments.**—If you fail to include any portion of an includible payment for interest, dividends, or patronage dividends in gross income, such failure will be treated as being due to negligence and will be subject to a penalty of 5% on any portion of an underpayment attributable to that failure unless there is clear and convincing evidence to the contrary.
- (3) **Civil Penalty for False Information With Respect to Withholding.**—If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of \$500.
- (4) **Criminal Penalty for Falsifying Information.**—Falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Payees Exempt from Backup Withholding**

Payees specifically exempted from backup withholding on ALL payments include the following:

- A corporation
- A financial institution.
- An organization exempt from tax under section 501(a), or an individual retirement plan.
- The United States or any agency or instrumentality thereof
- A State, the District of Columbia, a possession of the United States, or any subdivision or instrumentality thereof.
- A foreign government, a political subdivision of a foreign government, or any agency or instrumentality thereof
- An international organization or any agency or instrumentality thereof
- A registered dealer in securities or commodities registered in the U.S. or a possession of the U.S.
- A real estate investment trust
- A common trust fund operated by a bank under section 584(a).
- An exempt charitable remainder trust, or a non-exempt trust described in section 4947(a)(1)
- An entity registered at all times under the Investment Company Act of 1940
- A foreign central bank of issue.

Payments of dividends and patronage dividends not generally subject to backup withholding include the following:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the U.S. and which have at least one nonresident partner
- Payments of patronage dividends where the amount received is not paid in money
- Payments made by certain foreign organizations.

Payments of interest not generally subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals. *Note: You may be subject to backup withholding if this interest is \$600 or more and is paid in the course of the payer's trade or business and you have not provided your correct taxpayer identification number to the payer.*
- Payments of tax-exempt interest (including exempt-interest dividends under section 852).
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.

Exempt payees described above should file Form W-9 to avoid possible erroneous backup withholding. Because certain payments exempt from backup withholding are nevertheless subject to information reporting, if you file this form with the payer, furnish your taxpayer identification number, write "exempt" on the face of the form, and return it to the payer. If the payments are interest, dividends, or patronage dividends, also sign and date the form.

Certain payments other than interest, dividends, and patronage dividends that are not subject to information reporting are also not subject to backup withholding. For details, see the regulations under sections 6041, 6041A(a), 6045, and 6050A.

**Privacy Act Notice.**—Section 6109 requires most recipients of dividend, interest, or other payments to give taxpayer identification numbers to payers who must report the payments to IRS. IRS uses the numbers for identification purposes. Payers must be given the numbers whether or not recipients are required to file tax returns. Beginning January 1, 1984, payers must generally withhold 20% of taxable interest, dividend, and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

**Guidelines for Determining the Proper Identification Number to Give the Payer.**—Social security numbers have nine digits separated by two hyphens: i.e., 080-00-0000. Employer identification numbers have nine digits separated by only one hyphen: i.e., 00-0000000. The table below will help you determine the number to give the payer.

For this type of account:	Give the SOCIAL SECURITY number of—
1. An individual's account	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, any one of the individuals <sup>1</sup>
3. Husband and wife (joint account)	The actual owner of the account or, if joint funds, either person <sup>1</sup>
4. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. Adult and minor (joint account)	The adult or, if the minor is the only contributor, the minor <sup>1</sup>
6. Account in the name of guardian or committee for a designated ward, minor, or incompetent person	The ward, minor, or incompetent person <sup>3</sup>
7. a. The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under State law	The actual owner <sup>1</sup>
8. Sole proprietorship account	The owner <sup>1</sup>

For this type of account:	Give the EMPLOYER IDENTIFICATION number of—
9. A valid trust, estate, or pension trust	Legal entity (Do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title.) <sup>4</sup>
10. Corporate account	The corporation
11. Religious, charitable, or educational organization account	The organization
12. Partnership account held in the name of the business	The partnership
13. Association, club, or other tax-exempt organization	The organization
14. A broker or registered nominee	The broker or nominee
15. Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district, or prison) that receives agricultural program payments	The public entity

- <sup>1</sup> List first and circle the name of the person whose number you furnish
- <sup>2</sup> Circle the minor's name and furnish the minor's social security number
- <sup>3</sup> Circle the ward's, minor's, or incompetent person's name and furnish each person's social security number.
- <sup>4</sup> Show the name of the owner.
- <sup>5</sup> List first and circle the name of the legal trust, estate, or pension trust.

**Note:** If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.949 Application Procedure

A. Optional Retirement and Discontinued Service: An eligible employee who wishes to apply for optional retirement or discontinued service completes SF-2801, Application for Retirement, and gives it to the U.S. Attorney who should immediately submit a SF-52, Request for Personnel Action, to the Personnel Office, Executive Office for United States Attorneys. After receipt of these forms, the Personnel Office will prepare Form DOJ-50, Notification of Personnel Action, and forward it, and related papers, to the Department's Payroll Office which is responsible for submitting the final retirement papers to the Office of Personnel Management.

B. Disability Retirement: An eligible employee who wishes to apply for disability retirement should have the following forms completed and forwarded to the Personnel Office, Executive Office, for processing and transmittal to the OPM:

1. SF-2801, Application for Retirement;
2. SF-2801-A, Superior Officer's Statement in Connection with Disability Retirement; and
3. SF-2801-B, Physician's Statement for Employee Disability Retirement Purposes. The SF-2801-B must be submitted in a sealed envelope marked with the applicant's name and the words "Disability Retirement-Privileged-Private."

The employee should be permitted to work or be carried in a leave or leave-without-pay status, with his/her permission, until the application is acted upon by the OPM. If the OPM approves the disability retirement, it will forward a notice of approval to the Executive Office, which then will notify the U.S. Attorney. The U.S. Attorney should then submit a SF-52, Request for Personnel Action, with a proposed effective date of the day after the last day the employee was in a pay status or, if the employee is in a pay status the date on which OPM's notice of approval is effective or any date thereafter.

10-2.950 Unemployment Benefits

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.951 Introduction

5 U.S.C. §§8501-8508, states that Unemployment Compensation for Federal Employees (UCFE) is administered by the Secretary of Labor and provides that state unemployment insurance offices will accept claims of former federal employees and will determine their eligibility to receive unemployment benefits under applicable state law. The state eligibility and qualification provisions, and the amount of benefits, vary considerably.

10-2.952 Determination

The major determination in allowing unemployment compensation is whether the individual has performed "federal civilian service" within a base period as determined under applicable state law. "Federal civilian service" includes service performed in the employ of the United States. The only excepted category which is relevant to a U.S. Attorney's office is that service performed on a contract or fee basis is not included.

10-2.953 Employer Responsibilities

Each U.S. Attorney's office must furnish information to employees explaining their rights and responsibilities under the UCFE program. This requirement is met by preparation of a SF-8, Notice to Federal Employee about Unemployment Insurance, which informs the employee that he/she may have rights to unemployment compensation, explains the basic eligibility requirements, tells him/her to go to the nearest employment office, and describes the documents he/she should provide when filing a claim.

The U.S. Attorney's office is responsible for issuing a SF-8 to employees in the following circumstances, and within the indicated time limitations:

- A. Upon termination for any reason, on or before the last day of active duty.
- B. Upon retirement, on or before the last day of active duty.
- C. Upon transfer to another federal agency, on or before the last day of duty.
- D. Intermittent employees who are placed in nonpay status. The SF-8 is issued only the first time in each calendar year that such employees are placed on nonpay status. Issuance of this form is not required for subsequent periods of nonpay status during the same calendar year.
- E. Employees to be placed on involuntary nonpay status; *i.e.*, reduction in force, furlough, suspension pending action, and disciplinary suspension, for a period of seven consecutive calendar days or more, on or before the last day of active duty.

Each federal agency is required to pay the costs of regular and extended UCFE benefits paid to its former employees by state employment security agencies (SESAs). Because an SESA may pay UCFE benefits on the basis of a claimant's statements if the payroll office does not respond to the SESA's request for verification within 12 days, there is a paramount need for providing prompt, complete and accurate wage and separation information.

The SF-8, Notice to Federal Employee about Unemployment Insurance, must list as the address of the office where payroll records are maintained:

Justice Employee Data Service-USA-12  
Post Office Box 2922  
Code 460  
Washington, D.C. 20013

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

If unemployment compensation forms ES-931 or ES-931A are received by the office, they should be immediately forwarded to the Justice Employee Data Service at the above address.

10-2.954 Occupational Safety and Health Program

A. Authority: Department of Justice Order 1779.2A (February 12, 1982), provides guidance and procedures for the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices in carrying out their responsibilities for implementing an Occupational Safety and Health (OSHA) Program and for assuring effective administration of the Program.

B. Purpose: The purpose of the OSHA Program is to prevent unsafe and unhealthful working conditions and practices which may cause or contribute to occupational accidents or illness to employees. In addition, the program focuses on reduction of other forms of monetary losses caused by accidental property damage to facilities, equipment, vehicles and supplies, as well as losses caused by fire.

C. Policy:

1. It is the policy of the Executive Office for U.S. Attorneys and the U.S. Attorneys' offices to administer an OSHA Program to ensure safe and healthful working conditions for its employees while on the job. Effective administration of this program requires that supervisors, employees and the Safety and Health Manager for the Executive Office for U.S. Attorneys develop and maintain a system for prompt reports, investigations, and corrections of any unsafe and unhealthful working condition.

2. Employees are encouraged to report immediately to their supervisors any condition or situation in any office which they believe may reasonably contribute to an unsafe and unhealthful work site. No employee shall be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition or for other authorized participation in the OSHA Program activities.

D. Responsibilities:

1. The Director of the Executive Office for U.S. Attorneys has overall responsibility for the OSHA Program. He or she, possibly through a designee, shall promote employee awareness of occupational

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

safety and health matters through the normal information channels such as publishing information, as necessary, in the "For Your Information" news bulletin and distributing pamphlets, handbooks, and posters. The Director shall also ensure that the Safety and Health Manager for the Executive Office adheres to the specific requirements and guidelines to maintain an effective Safety and Health Program as outlined in Department of Justice Order 1779.2A (February 12, 1982).

2. The Safety and Health Manager is responsible for receiving and investigating reports of unsafe or unhealthful working conditions and to make every effort to promptly abate such matters. The manager will effect reasonable actions to abate unsafe working conditions within the timeframes set forth in an established abatement plan. If a condition cannot be abated within the specified timeframe, the manager is responsible for notifying the Director, Executive Office for U.S. Attorneys, or a designee, of the condition, the corrective efforts initiated, the basis for the delay, and a recommended course of action.

3. The U.S. Attorney is responsible for establishing an Occupational Safety and Health (OSHA) Committee in his or her office which pursuant to Department policy will be comprised of at least one management and one nonmanagement employee. The OSHA Committee will monitor and execute safety and health policies of the program. The Administrative Officer will serve the role as the OSHA Coordinator and will be responsible for reporting to the Safety and Health Manager of the Executive Office any unsafe or unhealthful working conditions. Additionally, each local OSHA Committee will be responsible for the following duties:

a. Monitoring and assisting the safety and health program at establishments under their jurisdiction and make recommendations to the Safety and Health Manager on the operation of the program;

b. Monitoring findings and reports of workplace inspections to confirm that appropriate corrective measures are implemented;

c. When requested by the Safety and Health Manager, participating in inspections of the establishment;

d. Reviewing and recommending changes, as appropriate, to procedures for handling safety and health suggestions and recommendations from employees;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

e. When requested by the Safety and Health Manager, commenting on standards proposed pursuant to the provisions of Chapter 3 of Department of Justice Order 1779.2A (February 12, 1982);

f. Monitor and recommend changes, as required, in the level of resources allocated and spent on the safety and health program; and

g. Review OBD, Bureau or establishment responses to reports of hazardous conditions, safety and health program deficiencies and allegations of reprisal.

10-2.955 Incident Investigations

Incident investigations are important and necessary if reoccurrences of the incidents are to be prevented and if general working conditions are to be reasonably free of safety and health hazards. Investigations will be conducted of the following incidents:

A. Any employee injury, occupational disease, or death connected with the performance of official duties;

B. All known public injuries and property damage within the jurisdictional administration of the Department where there is a reasonable possibility of a tort claim to be filed against the United States;

C. Any fire, regardless of its cost, involving equipment, building structures, or contents of any property under Department control;

D. Any motor vehicle accident involving Department or GSA motor pool vehicles and those privately owned, commercially leased or legally seized when used on official business; and

E. Any other property under the control of the Department that is damaged by accident (repaired or replaced for any reason other than a fair wear and tear) irrespective of the cost to repair or replace such property.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-2.956 Occupational Safety and Health Committee

[RESERVED]

10-2.957 Occupational Safety and Health Training

[RESERVED]

10-2.958 Recordkeeping and Reporting Requirements

[RESERVED]

10-2.960 Workers Compensation

10-2.961 Introduction

The Federal Employees' Compensation Act (FECA), 5 U.S.C. §8101 provides compensation and medical care for all employees of the federal government (including instrumentalities of the United States wholly owned by the United States) for disability due to personal injuries sustained while in the performance of duty. The term "injury" includes diseases proximately caused by the employment. The law also provides for the payment of funeral and burial expenses and compensation for dependents if an injury or disease causes an employee's death.

10-2.962 Jurisdiction

A federal employee who is injured while in the performance of duty has no right to recover damages from the United States for the effects of an injury except through the FECA. The benefits provided by the Act constitute the exclusive remedy for work-related injuries or deaths.

10-2.963 Application Procedure by Employee

An employee is required to give his/her official supervisor written notice of injury within 30 days after an injury in the performance of duty. Compensation may be denied if notice of injury is not given within 30 days or if the supervisor does not have actual knowledge of the injury. An injured employee is required to file a written claim for compensation within three years after the injury before compensation may be paid.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Generally, a person may not concurrently receive compensation from the Office of Workers' Compensation Programs and a retirement or survivor annuity from the Office of Personnel Management, but the beneficiary may elect to receive the more advantageous benefits. The one exception to this rule occurs when a widow/widower is being paid the balance of a scheduled compensation award due a deceased employee.

10-2.964 Employer Responsibilities

An employee injured on the job is also entitled to first aid and medical care. This includes hospital care when needed. The medical care is to be provided by any duly qualified local private physician or hospital of the employee's choice. When travel is necessary to receive medical care, the injured employee may be furnished transportation or may be reimbursed for travel and incidental expenses.

A. Traumatic Injury: An employee who sustains a disabling, job-related traumatic injury is entitled to continuation of regular pay without charge to leave for a period not to exceed 45 days. However, there is no requirement for continuation of a person's employment beyond the date it would have terminated had the employee not been injured.

Upon receiving notice that an employee has sustained a job-related traumatic injury, the supervisor is to authorize medical care promptly, if needed. Form CA-16, Request for Examination and/or Treatment, is provided for this purpose. In addition, the following steps should be initiated:

1. Provide the employee with Form CA-1, Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, for reporting the injury and, upon receipt of the completed form, return to the employee the Receipt of Notice of Injury copy;
2. Advise the employee of the right to elect continuation of regular pay, if the injury is disabling;
3. Inform the employee whether continuation of regular pay will be controverted, and if so, whether it will be terminated, and the basis for this action. An explanation of the controversion is to be submitted to the Office of Workers' Compensation Programs (OWCP) on the supervisor's portion of Form CA-1, or by separate narrative report, or both;



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Form CA-1, fully completed by both employee and supervisor, and all other documents and pertinent information must be submitted to the appropriate regional Office of Workman's Compensation and two copies mailed to the Personnel Office, Executive Office for U.S. Attorneys.

5. Notify OWCP immediately when employee returns to work or disability ceases. Form CA-3 is provided for this purpose.

**B. Occupational Disease:** An employee who sustains an occupational disease is not entitled to continuation of pay for the period of the illness. The employee may elect annual leave, sick leave, or leave without pay.

Upon receiving notice that the employee has sustained an occupational disease, the supervisor, before authorizing medical care, will initiate the following steps:

1. Provide the employee with Form CA-2, Notice of Occupational Disease and Claim for Compensation, and upon receipt of the completed form, return to the employee the "Receipt of Notice of Injury" copy;

2. Advise the employee to furnish supporting medical and factual information requested on the instruction sheet attached to the CA-2;

3. Advise the employee of the right to elect sick or annual leave pending adjudication of the claim by the OWCP; and

4. Form CA-2 fully completed by both employee and supervisor, together with all other documents and pertinent information must be submitted to appropriate regional OWCP district office and a copy mailed to Personnel Office, Executive Office For U.S. Attorneys.

**C. Forms:** U.S. Attorneys' offices are expected to maintain an adequate supply of the basic forms needed for the proper recording and reporting of injuries or diseases. Below is a listing of the basic CA forms.

<u>Form</u>	<u>TITLE</u>
CA-1	Federal Employee's Notice of Traumatic Injury and Claim for Compensation
CA-2	Federal Employee's Notice of Occupational Disease and Claim for Compensation

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- CA-2a Notice of Recurrence of Disability
- CA-3 Report of Termination of Disability and/or Payment
- CA-4 Claim for Compensation on Account of Injury or Occupational Disease
- CA-7 Claim for Compensation on Account of Traumatic Injury
- CA-8 Claim for Continuing Compensation on Account of Disability
- CA-16 Request for Examination and/or Treatment
- CA-17 Duty Status Report
- CA-20 Attending Physician's Report
- CA-20a Attending Physician's Supplemental Report
- CA-1333 Federal Employees' Compensation Medical Provider's Claim Form

The Office of Workers' Compensation Programs (OWCP) has adopted Form CA-1333, Federal Employees' Compensation Medical Provider's Claim Form, for payment of medical services and/or supplies. This form should be reproduced locally. Use by hospitals of Form CA-1333 is optional. In all other cases use of this form is mandatory as of June 2, 1980. Medical claims not submitted on the CA-1333 after June 2, 1980 will not be processed by OWCP but will, instead, be returned for completion of that form.

Any employee who is authorized by Form CA-16 to obtain medical services and/or supplies should be furnished with two copies of Form CA-1333, Federal Employees' Compensation Medical Provider's Claim Form. Use of this billing form, with the exception of hospitals, is mandatory for payment of medical services and/or supplies.

**D. Leave Buy Back:** If an employee has elected to use leave pending the settlement of a compensation claim, he/she maybe entitled to the "reinstatement of leave" (leave buy back). In those cases, the Office of Federal Employees' Compensation will forward a form CA-1207 to the employee. Items 1 through 4 of the CA-1207 should be completed by the employee. The remainder of the form will be completed by the Payroll

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Office. U.S. Attorneys' offices should not complete items 5 through 8 of the CA-1207. Forward it for completion to: Justice Employee Data Service, P.O. Box 2922, Washington, D.C. 20013.

E. Offices of Workmen's Compensation:

<u>Region Address</u>	<u>Area of Jurisdiction</u>
Region I - Boston	
Rm. 1800, John F. Kennedy Bldg. Government Center Boston, Massachusetts 02203	Connecticut, Maine Massachusetts, New Hampshire, Rhode Island and Vermont
Region II - New York	
1515 Broadway (at West 44th) Rm. 3324 New York, New York 10036	New Jersey, New York Puerto Rico, and the Virgin Islands
Region III - Philadelphia	
Rm. 15100, Gateway Bldg. 3535 Market Street Philadelphia, Pennsylvania 19104	Delaware, Pennsylvania, Virginia, West Virginia and the District of Columbia
Region IV - Atlanta	
Rm. 325 1365 Peachtree Street, N.E. Atlanta, Georgia 30309	Alabama, Florida, Georgia Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
Region V - Dallas	
555 Griffin Square Bldg. Rm. 100 Griffin & Young Streets Dallas, Texas 75202	Arkansas, Louisiana, New Mexico, Oklahoma and Texas
Region VI - Chicago	
230 South Dearborn Street 8th Floor Chicago, Illinois 60604	Illinois, Minnesota, and Wisconsin

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Rm. 867  
1240 East Ninth Street  
Cleveland, Ohio 44199

Indiana, Michigan  
and Ohio

Region VII - Kansas City

1910 Federal Office Bldg.  
Kansas City, Missouri 64106

Iowa, Kansas, Missouri  
and Nebraska

Region VIII - Denver

Drawer 3558, Federal Bldg.  
1961 Stout Street  
Denver, Colorado 80294

Colorado, Montana,  
North Dakota, South Dakota,  
Utah, and Wyoming

Region IX - San Francisco

450 Golden Gate Avenue  
P.O. Box 36066  
San Francisco, California 94102

Arizona, California  
and Nevada

300 Ala Moana Boulevard  
Rm. 5108, P.O. Box 50209  
Honolulu, Hawaii 96815

All land and water areas  
west of the continents of  
North and South America  
to 60° East Longitude  
(Excluding Iran)

Region X - Seattle

4010 Federal Office Bldg.  
909 First Avenue  
Seattle, Washington 98174

Alaska, Idaho,  
Oregon, and Washington

10-2.970 Death Benefits

10-2.971 Possible Benefits

The beneficiary of a deceased employee may be eligible to receive the following benefits:

A. Federal Employees Group Life Insurance, if the employee was covered. See USAM 10-2.920.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. A survivor's annuity under the Civil Service Retirement System, (CSRS) or lump sum payment; or Office of Federal Employee's Compensation (OFEC) death benefits, if the death is job-related.

C. Federal Employees Health Benefits.

D. Unpaid compensation.

10-2.972 CSRS Survivor's Annuity

For a deceased employee's survivor(s) to be eligible for an annuity, the employee must have completed at least 18 months civilian service and have died while employed in a position covered by the CSRS. See USAM 10-2.940. A survivor's annuity may be payable to:

A. A widow/widower who was married to the employee for at least 2 years immediately before the employee's death or, if married less than 2 years, was the parent of a child born of the marriage.

B. A child, including one who is legally adopted, of the deceased employee who is unmarried and under the age of 18. A step child or illegitimate child is eligible if the child lived with the employee in a regular parent-child relationship.

C. An unmarried child who is over 18 and is incapable of self-support because of a physical or mental disability which began before age 18, or an unmarried child between ages 18 and 22 who is a student.

Survivors' annuities are adjusted for cost-of-living increases which occur after the death of the employee.

If the employee did not meet the basic eligibility requirements or if there are no surviving spouse or children eligible for the annuity, a lump sum benefit is payable.

10-2.973 OFEC Death Benefits

OFEC death benefits cover deaths due to personal injury sustained while in performance of duty or due to employment related disease. The proximate cause of death must be the employment. Benefits include burial expenses and a monthly annuity for the employee's spouse, children, and other dependents. These benefits and a Civil Service Retirement annuity cannot be paid concurrently. Therefore, the survivors should apply for both and elect whichever one is most advantageous.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The OFEC has the right to be reimbursed for damages recovered in any case of death caused under circumstances creating a legal liability upon someone other than the United States. No person claiming compensation should attempt to settle a third party claim arising out of the death without first obtaining advice and approval from the Secretary of Labor.

10-2.974 Health Benefits

A deceased employee's survivors may continue his/her health benefits coverage if all the following requirements are satisfied:

A. The deceased employee was enrolled for self and family at the time of death;

B. At least one family member is entitled to an annuity as the survivor of the deceased employee; and

C. The total survivor's annuity is sufficient to pay the withholdings required for enrollment in the plan.

If there is only one survivor annuitant, the health benefits enrollment will be changed automatically to self only, and there will be a reduction in the amount of the premium.

10-2.975 Unpaid Compensation

The survivor(s) will receive payment for unpaid compensation, which includes:

A.. The final salary;

B. Any annual leave in the deceased employee's leave account; and

C. Any partial contributions for U.S. Savings Bonds.

Any money owed to the government for such items as travel advances and excess leave will be deducted from the compensation payment.

10-2.976 Responsibilities of the Employing Office

The U.S. Attorney's office is responsible for contacting the Personnel Office, Executive Office for U.S. Attorneys, immediately upon

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

the death of an employee and providing the following information:

- A. Date of employee's death;
- B. Whether the death was job related; and
- C. The name, current address, and telephone number of next-of-kin, designated beneficiaries, and executor of the estate, if one is appointed.

The office may be asked by the Personnel Office to assist in transmitting information to the beneficiaries and assisting the beneficiaries in submitting the required forms.

10-2.977 Responsibilities of the Personnel Office

The Personnel Office, Executive Office for U.S. Attorneys, will inform the beneficiaries, next-of-kin, or executor of all benefits and entitlements and will supply them with the necessary forms and instructions for their completion. Upon receipt of the completed forms, the Personnel Office will take the necessary action to process them.

USAM (superseded)



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DETAILED  
TABLE OF CONTENTS  
FOR CHAPTER 3

	<u>Page</u>
10-3.000 <u>OPERATIONAL EXPENSES</u>	1
10-3.100 INTRODUCTION - ECONOMY OF OPERATIONS	1
10-3.200 <u>CONDITIONAL EXPENSES</u>	2
10-3.210 <u>Depositions</u>	2
10-3.211 Depositions Taken for the Purpose of Discovery	4
10-3.220 <u>Extradition</u>	4
10-3.230 <u>Foreign Counsel and Witnesses</u>	5
10-3.231 Foreign Counsel	5
10-3.232 Foreign Witnesses	5
10-3.233 Payment of Travel Expenses of Defendant & Counsel to Attend Depositions taken at the Instance of the Government	7
10-3.240 <u>Interpreters</u>	7
10-3.250 <u>Subpoenas</u>	8
10-3.251 Compliance with Subpoenas Duces Tecum	8
10-3.252 DOJ Employees under Subpoena	9
10-3.260 <u>Witnesses</u>	9
10-3.261 Witness Protection & Maintenance Policy & Procedures	11
10-3.262 Payment of Expert Witnesses Appointed by the Court Under Fed. R. Evid. 706	11
10-3.270 <u>Lapse in Appropriations</u>	12
10-3.271 Phasing Down U.S. Attorney Operations	12
10-3.272 "Sample" Motion for Continuance of all Further Proceedings	16
10-3.300 <u>FEEES &amp; EXPENSES</u>	16

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-3.310	<u>Appraisers &amp; Masters</u>	16
10-3.320	<u>Court Reporting &amp; Transcripts</u>	17
10-3.321	Salaried Court Reporters	17
10-3.322	Employment of Independent Reporters	21
10-3.323	Employment of Additional Reporters in Land Cases	21
10-3.324	Grand Jury Reporting	21
10-3.325	Expenses	22
10-3.330	<u>Expenses Incurred on Behalf of Indigents</u>	22
10-3.340	<u>Payment of Judgments Against the United States</u>	23
10-3.350	<u>Notorial Expenses of Employees</u>	24
10-3.360	<u>Office Funds</u>	25
10-3.370	<u>Expenses Requiring Prior Authorization</u>	25
10-3.380	<u>Out-of-Pocket Litigative Expenses</u>	26
10-3.381	Expenses Incurred in a Foreclosure Proceeding Brought in Behalf of a Government Agency or Corporation	26
10-3.400	PAYMENT OF BILLS	28
10-3.410	<u>Advance Payments</u>	28
10-3.420	<u>Appropriations Chargeable</u>	28
10-3.421	Chargeable to U.S. Attorneys' Appropriations	29
10-3.422	Chargeable to "Fees and Expenses of Witness" Appropriations	30
10-3.423	Chargeable to Legal Divisions	30
10-3.424	Chargeable to United States Courts	31
10-3.430	<u>Certification of Vouchers</u>	31
10-3.431	Certifying Officers	31
10-3.432	Comptroller General & Departmental Review	32
10-3.500	TRAVEL	32
10-3.510	<u>Authority</u>	32

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-3.520	<u>District Travel Budget</u>	34
10-3.530	<u>Payment for Travel Expenses</u>	35
10-3.540	<u>Foreign Travel</u>	36
10-3.550	<u>First Class Transportation</u>	37
10-3.560	<u>Relocation</u>	39

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.000 OPERATIONAL EXPENSES

10-3.100 INTRODUCTION - ECONOMY OF OPERATIONS

In all instances, expenses of operating the U.S. Attorneys' offices should be kept to a minimum.

Among the economies which should be effected by U.S. Attorneys are:

A. Reducing the number of Assistants and support personnel traveling to places of holding court, and reducing the number of autos used in transporting personnel to such places.

B. Keeping under control the number of witnesses subpoenaed, and limiting the number to those without whom the case could not be litigated successfully.

C. Notifying witnesses promptly of postponement

D. Calling cases to trial as promptly as the state of the docket and legal problems permit, particularly actions involving seizures.

E. Using every expedience available to reduce storage expenses on seized automobiles, foodstuffs, and the like.

F. Utilizing government physicians whenever possible for medical examinations.

G. Limiting transcript purchases to essential needs.

H. Negotiation of fees of expert witnesses, to keep them as moderate as possible.

I. Using the most economical means of communication for transaction of official business.

J. Centralizing procurement activities in one officer, to insure that equipment and services are purchased only when needed and at the lowest possible costs.

K. Utilizing annual position reviews to eliminate unnecessary positions or reduce grades when appropriate.

L. Planning travel to minimize layovers and the number of nights spent away from the district.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

M. Requesting parking spaces only when absolutely necessary and only for those in need.

N. Ensuring that available space is used as efficiently as possible.

O. Limiting the use of commercial telephone networks for long distance telephone calls.

10-3.200 CONDITIONAL EXPENSES

10-3.210 Depositions

Depositions should be taken whenever possible, to reduce expenditures. Depositions should be taken before notarial officers or other officer authorized for administering oaths. Depositions before magistrates should be taken only when other such officers are not available.

U.S. Attorneys are authorized to incur the necessary expenses of taking depositions. Whenever a salaried federal court reporter takes a deposition, the reporter is entitled to compensation for the production of transcript, but no attendance fee may be paid. To pay an attendance fee to a salaried federal court reporter would be considered a violation of the prohibition against dual compensation. 5 U.S.C. §5533. The salaried federal reporter is not controlled by the court-reporting law (see 28 U.S.C. §753) as to charges for work not regulated by that statute. Payment to stenographers for services should be in accord with prevailing local rates.

Payment for reporting or transcribing depositions, expenses of notaries, etc., will be made from the appropriation "Salaries and Expenses, United States Attorneys and Marshals, Department of Justice." Payment can be accomplished by completing a Voucher Cover Sheet (OBD-50) in accordance with Department of Justice Order 2110.27 (August 31, 1973).

All expenses, including witness payments, should be coded to the district in which the case requiring the deposition is being conducted, even though the deposition may have been taken in another district.

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

witnesses. In these cases, such charges should be vouchered in the same manner as expenses for depositions of government fact witnesses. They should be signed by the district judge as required by statute. 18 U.S.C. §1825.

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. If a foreign witness must travel to the place designated for taking the deposition, proceed in the same manner as meeting travel expenses for bringing such a witness to trial. Authorization can be obtained to pay for the services of interpreters and stenographers, if none are available in the embassy or consulate, by notifying the Financial Manager, Administrative Services, Executive Office for U.S. Attorneys, approximately one week in advance, so that that office may authorize the consular officer to pay for the services.

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, in connection with depositions to be taken abroad, 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.

U.S. Attorneys' offices desiring to send letters rogatory, depositions, service of summons, or other court orders abroad should forward them to the Office of Special Consular Services, Department of State, Room 4800, 2201 C Street, N.W., Washington, D.C. 20520, which will send the documents to the country involved in diplomatic pouch. Should further assistance be desired regarding letters rogatory, they should be forwarded to the Civil Division, Attention: Office of Foreign Litigation, for transmittal to the Department of State. It is necessary in this case to indicate the desired method of handling for the consular officer performing the service. Certain foreign countries do not permit consular officers to perform these services; in those countries, public officials or local attorneys are required to effect the service or conduct the examination. Letters rogatory should be addressed "To the Appropriate Judicial Authority in (name of country)."

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.211 Depositions Taken for the Purpose of Discovery

Expenses incurred in the taking of depositions of expert witnesses who will not be government witnesses may not be charged to the Department of Justice's "Fees and Expenses of Witnesses" appropriation, since this appropriation may only be charged for the expenses of government witnesses and not for depositions taken to discover the testimony of expert witnesses who will testify for opposing counsel.

Such expenses are considered litigative expenses and should be charged to "Salaries and Expenses, U.S. Attorneys and Marshals."

10-3.220 Extradition

Fees and expenses, including travel expenses for witnesses who are to testify in foreign extradition proceedings may not be charged to the appropriation "Fees and Expenses of Witnesses," since that appropriation refers specifically to witnesses before U.S. Courts.

If the witness is employed by a United States government agency which has investigative or law enforcement power and will testify as to the witnesses' official duties, his/her costs, including travel, are properly chargeable to the agency.

If the witness is a United States government employee but does not fit the criteria in the preceding paragraph, the witness/employee should travel in accordance with the costs charged to the office securing the extradition.

If the witness is not a United States government employee, the witness may be paid a fee and expenses, with such costs chargeable to the office securing the extradition. The Assistant Attorney General for Administration is responsible for setting the rates for fees and expenses of witnesses and, since schedules have not been established, it is necessary to obtain approval from the Assistant Attorney General for Administration in each case.

For any extradition proceeding, immediately contact the Criminal Division, Office of International Affairs, which will provide specific guidelines, and suggestions, as well as the necessary clearances. All other information relating to extradition should be obtained from the Executive Office, as well as the other relevant sections of other titles of the U.S. Attorneys' Manual.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.230 Foreign Counsel and Witnesses

10-3.231 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. The letter should explain the nature of the suit and the type of special qualifications, if any, which may be required. 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. These officials maintain lists of qualified counsel based on their experiences with such counsel. They know which counsel have previously represented the United States and the rates they have charged.

Upon receipt of the above list, the various attorneys should be sent a uniform letter explaining in detail the facts and issues involved and requesting that those interested submit a daily fee for preparation of the case, a daily fee for courtroom attendance, and travel and other miscellaneous expenses.

After it is determined which counsel is most suitable on the basis of both qualifications and cost, and before any final commitment is made, a written request explaining the purpose for which foreign counsel is required and providing an estimate of the cost should be submitted to the Executive Office for U.S. Attorneys. The Executive Office will review the request and inform the U.S. Attorney's office what expenses have been authorized. It will also inform the U.S. Attorney of the arrangements made to procure services of foreign counsel and the procedure for payments of the foreign counsel's fee. Foreign counsel may be reimbursed in either U.S. currency or foreign currency. Payment may be made either through the Department of Treasury or State.

10-3.232 Foreign Witnesses

In most cases, consular officials will 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



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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. The Consular Mission can make such payments directly from Department of Justice funds when effecting service of the subpoenas, provided the Assistant Attorney General for Administration gives disbursing authorization. To guard against possible misuse of funds or failure to appear, it is urged that court orders be drafted and employed which call for the provision of a ticket, as opposed to cash. Attendance expenses may be in cash, on the basis of rates prescribed in 28 U.S.C. §1821, for the first two or three days' absence from home. There may also be a cash allowance in an estimated amount for incidental expenses such as transportation to and from terminals.

U.S. Attorneys and their Assistants should:

A. Secure a court order in accordance with above and 28 U.S.C. §1783 least two weeks prior to trial, if possible.

B. Send the original and one copy of the subpoena and court order to the Office of Special Consular Services, Department of State, Room 4800, 2201 C Street, N.W., Washington, D.C. 20520. In the letter of transmittal, advise the consular officer that the return may be made on the reverse side of the subpoena or on a separate paper, and indicate where the return should be forwarded.

C. Send one copy of the court order to the Assistant Attorney General for Administration, attention: Special Authorizations, to serve as a basis for disbursing authorization.

Since foreign nationals residing abroad are not subject to the subpoena power of United States courts, their attendance can be only voluntary. Obtaining such testimony is often a delicate matter, and care must be taken during negotiations not to offend the sovereignty of the nation involved. 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. §1821. This

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

payment can be made on the basis of the witness attendance certificate, and additional forms are not necessary. If the witness requires an advance of travel funds from the embassy or consulate, the U.S. Attorney should notify the Assistant Attorney General for Administration one week in advance, if possible, so that the consular officer can be authorized to furnish a ticket and, if necessary, the first day's witness allowance. The U.S. Marshal will be notified of such authorization and will adjust witness payments accordingly.

For assistance on witness matters, call the special Authorization Unit, Administrative Programs Management Staff, Justice Management Division.

10-3.233 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. §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.

Thus, in those instances where a U.S. 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 U.S. Attorneys' appropriation and payable through the U.S. Marshals. 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.

10-3.240 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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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 U.S. 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 U.S. 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 U.S. 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.

Payment for interpreter services can be accomplished by obtaining a bill from the interpreter and completing a voucher cover sheet (OBD-50) in accordance with Department of Justice Order 2110.27 (August 31, 1973).

10-3.250 Subpoenas

10-3.251 Compliance with Subpoenas Duces Tecum

Whenever such a subpoena is served on a U.S. 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.

In lieu of subpoenas duces tecum involving Armed Forces documents, it is urged that letter requests be forwarded for certification and authentication under the seal of the branch of the service. See Rule 44, Fed. R. Civ. P. and Rule 27, Fed. R. Crim. P. As much notice as possible should be provided prior to the date of trial. In the request, the U.S. Attorney should indicate the purpose or use of the documents to give the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

service the ability to supply the exact evidence required. In exceptional cases where production of official documents or records by a representative of the Armed Forces is required, the attendance procedure for Armed Forces witnesses should be followed. See USAM 3-2.510-2.520.

To expedite production of fiscal records, a letter should be directed to the Comptroller General, attention: Records Management and Service Branch, General Accounting Office, Washington, D.C. 20548. Maximum lead time should be allowed.

10-3.252 Employees Under Subpoena

See 28 C.F.R. §§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 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. In such cases, the fee and mileage previously received will be forwarded to the Accounting Operations Group, Justice Management Division, for deposit into the appropriate Miscellaneous Receipt Account.

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 1630.14 (September, 20, 1978).

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.

10-3.260 Witnesses

For problems on witness matters call the Special Authorizations Unit, Justice Management Division.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Attendance expenses for fact witnesses are prescribed in 28 U.S.C. §1821. See USAM 3-2.000, and call the above unit for specific information on rates and information as to what expenses the Department of Justice will pay.

A. Fact Witnesses: When absolutely essential, advances may be obtained by completing OBD-158, application for Advance of Funds, and submitted to the U.S. Marshal for payment. See OBD Order 2110.6 (July 22, 1975). Form OBD-3 (Superseding form LAA 3), Witness Attendance Certificate, provides for certification of attendance and payment of fees. Payments are made by the U.S. Marshal for the district in which the hearing is held. See USAM 3-2.100-2.210. Fact witnesses for defendants proceeding in forma pauperis are paid in the same manner as other fact witnesses.

See Department of Justice Order 2110.24A (July 17, 1978); USAM 3-2.200 and 3-2.422.

B. Government Employee Witnesses: Requests for such witnesses should be made on OBD-16, Request for Armed Forces or Government-Employee Witness. For procedures, see USAM 3-2.400-2.422.

C. Armed Forces Witness: OBD-16 is also used. See USAM 3-2.510-520.

D. Prisoners as Witnesses: See Department of Justice Order 2110.25 (October 23, 1973); USAM 3-2.600. Generally, prisoners may be produced to testify in another district only upon presentation of a writ of habeas corpus, naming the U.S. Marshal serving the writ and the warden having custody. Only unconvicted prisoners awaiting trial may be paid fees and expenses.

E. Expert Witnesses: Whenever experts are required, every effort should be made to use government employees in the specialized fields, from field offices or, in some circumstances, from Washington. Each office should establish an expert witness list to assist in locating and negotiating fees with such witnesses. See Department of Justice Order 2110.25 (Oct. 23, 1973). For information on what fees and expenses may be paid government employee witnesses, see USAM 3-2.711. For a description of available FBI services, see USAM 3-2.720. Careful consideration should be given to a potential expert witnesses's personal character, integrity, and loyalty to the United States. If there are any doubts as to the latter, a name check should be requested from the FBI. For

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

information on negotiations with expert witnesses, see USAM 3-2.740. Authorization and payment procedures are described in USAM 3-2.750-2.770.

10-3.261 Witness Protection and Maintenance Policy and Procedures

28 U.S.C. §524 authorizes the Department to pay for compensation of witnesses and informants at rates approved by the Attorney General or the Assistant Attorney General for Administration. Title V of Pub. L. 91-452 authorizes the Attorney General to provide for the security of government witnesses and potential witnesses, and members of their families. A detailed explanation of this program is found in USAM 9-21.000.

10-3.262 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. §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 U.S. Attorney should submit to Justice Management Division (JMD) an OBD-47 accompanied by a copy of the court order appointing the expert witness under Fed. R. Evid. 706. Prior approval by JMD is not required in such situations; instead, JMD will accept the court order and automatically authorize use of the expert witness.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

For instructions on submitting expert witness expenses, see USAM 3-2.770 and contact the Accounting Operations Group, JMD, if further information is needed.

D. 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 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. See generally, USAM 10-3.330 and DOJ Order 2110.24A (July 17, 1978).

10-3.270 Lapse in Appropriations

10-3.271 Phasing Down U.S. Attorney Operations

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 U.S. Attorneys' offices will proceed under the guidelines set forth below, in compliance with the Antideficiency Act, 31 U.S.C. §665. 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.

A. Administrative Operations

1. 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 Executive Office for U.S. Attorneys will then contact each U.S. Attorney with more specific information and instructions and will keep them aware of any more current information available from the Justice Management Division and Office of Management and Budget.

2. Essential/Non-Essential Personnel: Upon notification of a pending lapse in appropriations, the U.S. Attorney shall identify employees who are necessary to sustain legal operations as defined in USAM 10-3.271(B) below. At the instance of a lapse in appropria-

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

tions, only those employees necessary to sustain the legal operations defined in USAM 10-3.271(B) shall be permitted to continue working. All other employees may only remain in duty status to the extent necessary to facilitate an orderly phasedown of non-essential activities. The U.S. Attorneys shall identify the individual employees who are considered essential and shall notify each employee of his/her status, in the event of a lapse in appropriations. The U.S. 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 "essential." The U.S. Attorney does not have the authority to recall employees because of the financial hardships they may be suffering.

3. Furloughs: Any employee designated non-essential 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 and Chapter 351 of the Federal Personnel Manual) will be followed whenever an employee must be furloughed for more than 30 days.

4. Travel During a Lapse in Appropriations: All 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 10-3.271(B)) 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 expenses incurred in returning are authorized.

5. Payment of Fees and Expenses of Witnesses During a Period of Lapsed Appropriations: The Antideficiency Act, 31 U.S.C. §665(a) prohibits the government from routinely continuing to make expenditures under the Fees and Expense of Witnesses ("FEW") account or creating obligations in connection with its use of fact or expert witnesses. The Office of Legal Counsel has noted several exceptions:

a. If a witness traveled to and from the courthouse because his/her appearance was directed by a court order issued prior to a lapse in appropriations, an obligation in an amount sufficient to permit the witness to return home, or if travel



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

overnight is impracticable at that time, to secure overnight accommodations and meals is authorized. Disbursement will not be made until the Department's funding has resumed unless it can be shown that, where the witness lacks financial resources necessary to return home, his/her safety would be compromised by not providing a means home. In such case, a cash disbursement for that purpose is warranted;

b. Use of a witness and any obligations incurred as a result are authorized where the court denies a motion for a continuance;

c. Other instances which are not covered by the above exceptions but appear significant enough to justify use of the FEW account will be evaluated on a case-by-case basis by JMD and/or Office of Legal Counsel.

B. Legal Operations

1. Matters to be Continued During a Lapse in Appropriations:  
Only ongoing litigation and investigations which are essential to the protection of life and property are to continue, subject to any order of the court as indicated in subparagraphs (B)(1)(b) and (B)(1)(c). Government attorneys should take all procedural steps reasonably necessary to protect the government the government's rights in on-going litigation. Generally speaking, an attorney may act during the funding hiatus if failure to do so would permit the running of a statute of limitations or other period cutting off property rights of the government or another person. He/she may not act, however, unless or until it becomes apparent that he/she must do so in order to protect the right. In other words, an attorney should not act now if he/she can delay doing so by seeking a continuance or an extension of time without prejudice to the right.

a. Criminal Matters

(1) Trials: Attorneys handling criminal trials in which jeopardy has attached are to inform the court that, in the opinion of the Department of Justice, continuation of the trial is legally authorized.

(2) Grand Juries: Courts should all be informed that grand juries in session which are scheduled to return indictments on the day appropriations lapse may continue in operation. Other grand juries should not meet until and unless speedy trial, statutes limitations or other such problems require them to meet.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

(3) Pretrial-Postrial Matters: Attorneys handling pretrial and postrial matters in criminal cases should conform to Subparagraphs (B)(1)(a)(1) and (B)(1)(a)(2), when the defendant is in custody, and to subparagraph (B)(1)(b), when the defendant is not in custody.

b. Civil Matters: Attorneys handling on-going civil litigation, whether in trial or pretrial, should ask for a continuance or extension of time (see USAM 10-3.272) for any action required to be taken by them with respect to such litigation unless they can articulate facts demonstrating that the granting of a continuance or extension of time would jeopardize life or property or is necessary to the orderly suspension of government activities.

c. Continuances: Other than as stated in subparagraph (B)(1)(b), attorneys are to move for a continuance on the ground that the court is not authorized to be in session in absence of appropriations for the judicial branch except as authorized under 31 U.S.C. §665, and that officials of the executive branch may not make any court appearances or engage in pre- or post-trial litigation activities unless specifically ordered to do so by the court. In the event that opposing counsel objects or the court denies the requested continuance, attorneys should urge the court to make a finding and enter an order: (1) that continuance of the proceedings is necessary to the protection of life or property or to the orderly termination of operations, and (2) directing the parties to proceed. If the court declines to make a finding of fact and issue an order as noted above, but also directs the continuance of the litigation, attorneys are to obey the directions of the court.

2. Matters Prohibited During a Lapse in Appropriations

a. Non-essential activities: U.S. Attorneys should not engage in any other activities that are not essential to the protection of life and property or the orderly phase down of activities.

b. New cases: No new cases (unless there is a risk of a default judgment, or the running of a statute of limitations), investigations, or other initiatives are to be undertaken.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.272 "Sample" Motion for Continuance of All Further Proceedings

THE UNITED STATES OF AMERICA (SECRETARY OF \_\_\_\_\_), (ADMINISTRATOR OF \_\_\_\_\_) HEREBY REQUESTS OF THIS COURT A CONTINUANCE UNTIL FURTHER NOTICE OF ALL PENDING PROCEEDINGS IN THIS CASE.

THE BASIS FOR THIS MOTION IS THE MANDATE CONTAINED IN THE ANTIDEFICIENCY ACT, 31 U.S.C. §665, WHICH REQUIRES THAT IN THE ABSENCE OF APPROPRIATIONS, NO OBLIGATIONS MAY BE INCURRED EXCEPT FOR THE PROTECTION OF LIFE AND PROPERTY, THE ORDERLY SUSPENSION OF OPERATIONS, OR AS OTHERWISE AUTHORIZED BY LAW. AT THE PRESENT TIME, THERE IS NO FUNDING AUTHORIZATION WHICH HAS BEEN ENACTED INTO LAW TO REPLACE THE CONTINUING RESOLUTION THAT EXPIRED AT \_\_\_\_\_. ACCORDINGLY, THE PROHIBITIONS OF THE ANTIDEFICIENCY ACT TAKE EFFECT UNLESS THIS MATTER FALLS INTO ONE OF THE ACT'S EXCEPTIONS AS LISTED ABOVE.

BECAUSE IT DOES NOT APPEAR THAT THIS MATTER QUALIFIES AS ONE OF THE EXCEPTIONS SET FORTH IN THE ACT, THE FEDERAL GOVERNMENT IS WITHOUT LEGAL AUTHORITY TO PROCEED WITH THIS CASE AT THIS TIME. ACCORDINGLY, A CONTINUANCE OF ALL PROCEEDINGS IN THIS MATTER, UNTIL FURTHER NOTICE, IS REQUIRED.

AT THIS TIME, AND UNTIL A NEW CONTINUING RESOLUTION IS ENACTED INTO LAW, ONLY GOVERNMENT PERSONNEL DEEMED ESSENTIAL FOR THE CRITICAL OPERATIONS AND ORDERLY CESSATION OF BUSINESS WILL CONTINUE IN THE PERFORMANCE OF THEIR DUTIES. SUCH ESSENTIAL PERSONNEL SHALL ADVISE THIS COURT PERIODICALLY OF THE STATUS OF THE GOVERNMENT'S ABILITY TO PROCEED IN THIS MATTER. ANY INQUIRIES WHICH THIS COURT OR OTHER COUNSEL MAY HAVE CONCERNING THIS MATTER CAN BE MADE TO \_\_\_\_\_, CHIEF, \_\_\_\_\_, SECTION, AT (202) 633-\_\_\_\_\_.  
(FTS 633-\_\_\_\_\_).

RESPECTFULLY SUBMITTED,

10-3.300 FEES AND EXPENSES

10-3.310 Appraisers and Masters

The Department of Justice generally 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. U.S. Attorneys may authorize reasonable compensation.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

U.S. 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. Until the Justice Management Division prescribes a form for special masters, 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 U.S. Attorneys' Offices, to the U.S. Marshal's Office for that district.

Internal procedures for paying the master will follow the same procedures used for payment to experts and consultants. The master will submit an itemized invoice (OBD-84 and 85, "Pay Voucher for Special Services," may be used for this purpose) to the government attorney who, in turn, will submit the invoice to the administrative officer to be forwarded to the U.S. Marshal's Office, as prescribed above. Upon the order of the court, partial or advance payment of fees and expenses will be handled through these same procedures.

Fees and expenses of land commissioners will not be paid by the Department. Land commissioners appointed pursuant to Rule 71A, Federal Rules of Civil Procedure are payable from funds appropriated to the judiciary. Arrangements for the payment of land commissioners' compensation and expenses should be handled by the Administrative Office of the U.S. Courts.

10-3.320 Court Reporting and Transcripts

10-3.321 Salaried Court Reporters

As provided in 28 U.S.C. §753, each district court shall appoint one or more salaried court reporter 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. Executive Office for U.S. Attorneys 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.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The court reporter shall transcribe and certify all arrangements, pleas and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording and the original records so taken have been certified by the reporter and filed with the clerk of the court. Upon request of the judge or any party to the proceeding, the reporter is to transcribe the requested portions, promptly furnishing a certified copy to the clerk for the records of the court.

Court reporters may also use electronic sound recording equipment to record arraignments, pleas, and proceedings in connection with the imposition of sentences in criminal cases, in most magistrate proceedings and in bankruptcy proceedings. Electronic sound recording includes only recordings of the voices heard in court in a specific proceeding on a standard-make, commercially available recorder. It does not include steno-mask recording or other recorded dictation by the court reporter.

If, in lieu of transcription the court reporter elects to file an electronic sound recording of the proceeding, the reporter shall file such recording with the clerk of the court. The court reporter will also be responsible for making and filing in the clerk's office, without charge, any transcript of an electronic sound recording which may be requested for any subsequent court action. Court Reporter Manual, Chapter XVI at 1-4.

Standards for equipment to be used for electronic sound recordings have been established by the Administrative Services Division of the Administrative Office of the U.S. Courts. Court Reporter Manual, Chapter XVI at 5-8.

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 chargeable for any part of a transcript furnished to: the court; to its opponent; 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 expense 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 cases, the reporter may bill the ordering party for the subsistence costs of other reporters or auxiliary personnel. These 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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

auxiliary personnel is not billable to the ordering party. Court Reporter Manual, Chapter XX at 10.

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 U.S. Attorney or First Assistant U.S. Attorney, and documentation of such authorization must accompany all payment vouchers for hourly or daily transcripts.

USAM (superseded)

---

APRIL 1, 1986  
Sec. 10-3.321  
Ch. 3, p. 18a

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

In March 1980, the Judicial Conference established the following maximum rates per page for transcripts. Court Reporter Manual, Chapter XX at 4-5:

	<u>Original</u>	<u>First Copy to Each Party</u>	<u>Each Add'l Copy to the Same Party</u>
<u>Ordinary Transcript</u>			
A transcript to be delivered within thirty (30) calendar days after receipt of order.	\$2.00	\$ .50	\$ .25
<u>Expedited Transcript</u>			
A transcript to be delivered within seven (7) calendar days after receipt of order.	\$2.50	\$ .50	\$ .25
<u>Daily Transcript</u>			
A transcript to be delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually is a court day.	\$3.00	\$ .50	\$ .25
<u>Hourly Transcript</u>			
A transcript of proceedings ordered under unusual circumstances to be delivered within two (2) hours.	\$3.50	\$ .50	\$ .25

In March 1981, the Judicial Conference reviewed the current transcript rates and found that in some localities, circumstances justified higher transcript rates. As a result, the Conference authorized the Director of the Administrative Office to increase transcript rates for original copies only by no more than 20% of the existing maximum rate. The following is a listing of the approved districts and the amounts they can charge above the maximum rate:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>District</u>	<u>Amount</u>
New York, Southern	20%-all categories
New York, Eastern	20%-all categories
Texas, Southern	20%-all categories
Michigan, Eastern	15%-daily and hourly only
Texas, Northern	20%-daily and hourly only
California, Northern	20%-expedited, daily and hourly only
New Jersey	10%-daily and hourly only

It is the responsibility of the certifying officer to insure that the U.S. Attorney is charged at the correct rate and in the correct amount by verifying that all transcripts received comply with the format standards established by the Judicial Conference.

The format standards require that a page of transcript shall consist of 25 lines of actual testimony written on paper 8-1/2 by 11 inches in size, prepared for binding on the left side, with a 1-3/4 inch margin on the left side and a 3/8 inch margin on the right side. Typing shall be 10 letters to the inch.

All "Q" and "A" designations shall begin on the second space from the left margin. The statement following the "Q" and "A" shall begin on the fifth space from the left margin. Subsequent lines shall begin at the left margin.

Speaker identification (colloquy) shall begin on the tenth space from the left margin followed directly by a colon. The statement shall begin on the third space from the colon. Subsequent lines shall begin at the left margin. See Report of the Proceedings of the Judicial Conference, Oct. 1946, p. 12; Court Reporter Manual, Chapter XVIII at 2-4.

In the event the U.S. Attorney's certifying officer finds instances of failure to comply with established rates, format or requirements, the certifying officer shall notify, in writing, the court reporter and request an amended bill. If the incorrect bill has been inadvertently paid, the court reporter shall refund any overbilling to the ordering party.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.322 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.

10-3.323 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 U.S. Attorney should request that the judge secure authority for appointment from the Administrative Office for U.S. Courts.

10-3.324 Grand Jury Reporting

Grand jury reporting may be performed by an employee of the U.S. 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 transcript 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. §5533.

In establishing rates for commercial court reporters, it is usually best to establish separate rates for recording proceedings and for transcribing the record. The first charge would be based on time worked and could be assessed on a hourly, half-day, or daily rate, depending upon the requirements of the U.S. Attorney. In this fashion, a court reporter will be guaranteed compensation for recording the proceedings regardless of whether the U.S. Attorney requests a transcript. If a transcript is ordered, the reporter should be paid at a per page rate for the additional service performed. Court reporters may be paid for travel expenses if required, but the rates allowed should not exceed the rates allowed government employees.

Payment for commercial reporting services may be arranged through the U.S. Marshal. A Voucher Cover Sheet (OBD-50) may be used to transmit the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

reporter's bill to the Marshal's office for payment. See Department of Justice Order 2110.27 (August 31, 1973).

Pursuant to Rule 6(e), Fed. R. Crim. P., an obligation of secrecy is imposed on all participants with regard to the disclosure of matters before the grand jury. Interpreters, stenographers, and all other participants should be informed of this obligation and administered an oath in accord with that set down in Rule 6(e). A record of all oaths should be kept on file.

10-3.325 Expenses

Ordinarily, only one transcript should be purchased in any case, except Court of Claims cases or depositions. Any decisions by the U.S. Attorney to order more than one transcript must be based on absolute necessity for and availability of funds. Transcripts should only be purchased as required, for heads of the legal divisions of the Department of Justice and their assistants, U.S. 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.

10-3.330 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 defendant's fact witnesses are the responsibility of the Department of Justice and payable at the rates prescribed for witnesses pursuant to 28 U.S.C. §1821. See USAM 3-2.000 for a discussion of witness fees and expenses.

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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

called by the court are paid by the Administrative Office of the U.S. Court. See USAM 3-2.210. The Department of Justice will pay for expert witness fees and expenses for expert witnesses appearing on behalf of the government. These expenses require prior approval on form OBD-47. See USAM 3-2.700 and Department of Justice Order 2110.25 (October 23, 1973).

C. Mental Examinations for Indigent Persons: Expenses for examinations under 18 U.S.C. §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 USAM 3-3.333 and Department of Justice Order 2110.24A (July 17, 1978).

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 Administrative Counsel, Department of Justice, November 26, 1975. The U.S. Attorney may authorize such expenses in a similar fashion as other litigative expenses. Payments for expenses may be arranged through the local U.S. Marshal.

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.

A chart indicating the controlling rule or law which affects the financial responsibility for the payment of certain expenses of litigation in indigent proceedings and sets forth the appropriations chargeable for expenses, may be found in Department of Justice Order 2110.24A (July 17, 1978), and USAM 3-12.210.

10-3.340 Payment of Judgments Against the United States

All payments of judgments against the United States, including judgments taxing the government for court costs, are to be made from funds

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

administered by the General Accounting Office (GAO). See 28 U.S.C. §2414. In order to arrange for payment in satisfaction of such judgments, U.S. Attorneys should submit a request to the GAO, following the same procedure as outlined in USAM 4-3.200-4-3.210 with regard to effecting payment of judgments in Federal Tort Claims Act cases. Two certified copies of the judgment order must be included with the request for payment, along with the name of the payee and instructions to forward the check "in care of" the U.S. Attorney. The U.S. Attorney should indicate that no appeal will be sought and that the check will be delivered to counsel for the judgment creditor upon entry of a satisfaction of judgment.

10-3.350 Notarial 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's certificate 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, which should be submitted to the U.S. Marshal for payment.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.360 Office Funds

Most U.S. Attorney's offices desire the establishment of an office fund from which small miscellaneous expenses may be paid. The following is the procedure for the creation and maintenance of such a fund:

A. The administrative officer or designate should be authorized by the U.S. Attorney to request an advance of funds. This advance can be obtained by submitting an OBD-158 (Application for Advance of Funds) to the Accounting Operation Group, Justice Management Division.

B. A check will be returned in the amount requested, made out to the administrative officer, who should then cash this check. This cash constitutes the office fund.

C. When a miscellaneous expense arises, the employee who must pay such expense should request cash from the administrative officer, and should sign a receipt for any cash received.

D. When the office fund must be replenished, the administrative officer should prepare an SF-1164, Claim for Reimbursement of Expenditures of Official Business. Only the total amount need be shown. This covering SF-1164 should be supported by other SF-1164s, which the administrative officer should receive from employees whenever they are reimbursed for miscellaneous expenses. All receipts received by employees should be included. The covering SF-1164 and supporting documents should be submitted to the Accounting Operation Group, where it will be audited and a check issued to the claimant for the amount indicated, with which the office fund may be replenished. The description on the covering SF-1164 need only refer to the subvouchers attached. The fund may not be used for procurement of supplies or equipment for which another procedure is prescribed. See Procurement/Property Management, USAM 10-4.000. Although the advance is in the nature of a field advance, it will, because of the mechanics involved, appear on the monthly travel advance listing submitted to U.S. Attorney's offices.

When the administrative officer leaves the U.S. Attorney's office, he/she must repay the advance by writing the government a check for the outstanding balance.

10-3.370 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

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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). U.S. Attorneys may incur litigative expenses without specific authorization from the Executive Office for U.S. Attorneys.

10-3.380 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 U.S. Attorneys' appropriation as litigative expenses.

Out-of-pocket expenses are generally defined as those expenses incurred by the U.S. Marshals 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.

10-3.381 Expenses Incurred in a Foreclosure Proceeding Brought in Behalf of a Government Agency or Corporation

In assisting in foreclosure proceedings, the U.S. Marshals Service incurs various out-of-pocket expenses associated with the proceedings. Out-of-pocket expenses are defined as those costs incurred for advertising, property appraisals, abstract supplementation and any other services provided by private vendors which are directly related to conducting the foreclosure proceedings. Intrinsic expenses such as U.S. Marshals' fees, commissions, mileage, per diem, salaries, etc., are

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

assumed by the U.S. Marshals Service to be constructive earnings and are not expenses that are chargeable to the U.S. Attorneys' appropriation.

The U.S. Marshals Service will be reimbursed for the out-of-pocket expenses incurred in foreclosure proceedings in either one of two ways. First, when a third (i.e. non-government) party is the successful bidder for the mortgaged property at the foreclosure sale, the bid is paid into the court and a fund is created. The U.S. Marshals Service is reimbursed from this fund for all appropriate expenses incurred before the fund is then disbursed to the first lien creditor, then to other creditors in order of priority or the court for distribution as the court may direct. The U.S. Attorneys' appropriation may not be billed by the U.S. Marshals Service for out-of-pocket expenses incurred in a third-party sale. If the U.S. Attorney's office in the district in which the litigation occurred had inadvertently been billed and paid for any of the out-of-pocket expenses associated with the litigation, the U.S. Attorney should seek reimbursement for the payments from the U.S. Marshals Service.

Secondly, in those cases where the government, through the Farmers Home Administration, is the successful bidder at the foreclosure sale, no fund is created. Instead, all out-of-pocket expenses incurred will be properly chargeable to the U.S. Attorneys' appropriation. The U.S. Marshals Service should submit an itemized voucher for appropriate out-of-pocket expenses incurred during a foreclosure proceeding to the U.S. Attorney in the district responsible for handling the litigation. The U.S. Attorney must sign the voucher and certify that the charges billed are appropriate for payment.

Administrative expenses which the U.S. 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).

Administrative expenses which must be approved by the Executive Office include work-study agreements, equipment purchases, equipment rental, foreign travel, transportation of property, space acquisition/release, and alteration to space. Request for such approval should be sent, with appropriate justification, to the Executive Office. See Space Management, Procurement and Services, USAM 10-5.000.

The disbursement of funds may be accomplished through the U.S. Marshals Service except where payment by the Department is required by general order, such as payroll (payment request is made by the Fiscal Services Section, Justice Management Division. P.O. Box 7405, Washington, D.C. 20044, Ben Franklin Station); GSA telephone bills, GSA space

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

assignment charges (SLUC); prior year obligations (bills received after January 1 for expenses incurred in the prior fiscal year, i.e., bills for expenses incurred prior to October 1, which are handled the same way as travel); or by specific order, such as purchase orders, printing orders, or work authorization, the bill for which are sent by the vender directly to the Fiscal Service Section. Generally, litigative expenses, work-study charges, and charges for rental equipment with variable rates such as copiers and telephones are payable through the U.S. Marshals service.

Procedures for securing prior authorization vary according to the type of expense incurred. Consult the appropriate section of this Title in order to determine how specific types of prior authorizations may be obtained.

10-3.400 PAYMENT OF BILLS

10-3.410 Advance Payments

In accordance with 31 U.S.C. §3324, prohibiting advance payments of public monies, no disposition of funds should be made for services rendered, purchases made, etc., until the transaction has been accomplished. An exception to this rule is permitted if advance payment is authorized by "other law." This provision has been interpreted to include state law. Therefore, if state law requires the advance payment of filing fees, for instance, such payments may be issued upon appropriate showing of the requirement in law. A voucher prepared for issuance of an advance payment should specifically identify the statute requiring payment in advance.

10-3.420 Appropriations Chargeable

The appropriation "Salaries and Expenses, United States Attorneys and Marshals, Department of Justice," is chargeable with the expense of operating the U.S. Attorneys' offices.

The date on which fees are earned, services rendered, or expenses incurred, and not the date of certification of payment, determines the fiscal year from which payment shall be made, except that bills for metered commodities or services such as electricity, telephone, etc., shall be paid from the appropriation current at the end of the billing period.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-3.421 Chargeable to United States Attorneys' Appropriation

A. Salaries of U.S. Attorneys, Assistant U.S. Attorneys, and support employees;

B. Interpreters for witnesses;

C. Advisory reports obtained by U.S. Attorneys;

D. Compensation of Special Masters;

E. Appraisers (except in Land matters), guardians ad litem, if obtained by U.S. Attorneys. See USAM 3-7.000-7.100;

F. Travel and subsistence expenses of U.S. Attorneys, Assistant U.S. Attorneys, and support employees;

G. U.S. Attorneys' communications expenses, including postage, telecommunications and messenger services. See Communications, USAM 10-6.000;

H. Advertising, as required in the course of litigation conducted by the U.S. Attorney;

I. Cost of space assigned by the General Services Administration. See Space Management, USAM 10-5.000;

J. Equipment, supplies and services required to maintain the offices of the U.S. Attorneys. See Procurement, USAM 10-4.000;

K. Court reporting, transcripts, and notarial expenses, as required in the course of litigation conducted by U.S. Attorneys;

L. Filing and recording fees in state or local courts;

M. Notarial expenses of employees;

N. U.S. Attorneys' printing and binding. See Printing, USAM 10-4.220;

O. Expenses of producing records under subpoena duces tecum, including the search and reproduction costs incurred by financial institutions. See USAM 9-4.800 et seq., for information concerning the payment of expenses incurred under the Right to Financial Privacy Act.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

P. Physical examination of injured persons, where trial may result, for the purpose of making the record for future use, and of defendants in criminal cases and witnesses who allege illness for the purpose of delaying trial, reason for not appearing, etc. See USAM 3-3.000-3.140;

Q. Awards to employees under incentive awards program. See Employee Performance Awards, USAM 10-2.650; and

R. Deposition transcripts for individuals proceeding in forma pauperis cases.

In short, all expenses related to salaries, space, administrative expenses and certain litigative expenses for indigent defendants are chargeable to the U.S. Attorneys' appropriation.

10-3.422 Chargeable to "Fees and Expenses of Witness" Appropriations

Expenses chargeable to the appropriation "Fees and Expenses of Witness" are as follows:

A. Fees for attendance, per diem and traveling expenses for attendance of witnesses, both expert and fact, for witnesses testifying for the United States in proceedings in U.S. courts or U.S. Magistrates' hearings. See USAM 3-2.100-2.130 and 3-2.700-2.770;

B. Traveling expenses of government employees attending on court when properly payable. See USAM 3-2.400-2.422;

C. Physical examinations of plaintiffs, witnesses, or defendants in contemplation of testimony in court. See USAM 3-3.00-3.140; and

D. Expenses of examining prisoners to determine sanity as provided in 18 U.S.C. §4244-8, including competency to stand trial exams, and employment of psychiatrists, hospital expenses incident thereto, and testimony. See USAM 3-3.000-3.230.

10-3.423 Chargeable to Legal Divisions

Expenses chargeable to the Legal Divisions include:

A. Litigation expenses in cases for which a division has assumed direct responsibility; and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Foreign counsel in extradition cases.

10-3.424 Chargeable to United States Courts

- A. Lands Commissioners (see USAM 3-7.000-7.100);
- B. Interpreters, except for government witnesses; and
- C. Expenses authorized on behalf of indigent defendants.

10-3.430 Certification of Vouchers

10-3.431 Certifying Officers

Vouchers involving expenses of the U.S. Attorney's offices must be certified by an authorized certifying officer of that office before submission to the Marshal for payment. 31 U.S.C. §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. §82c,f.

Certifying officers are notified of exceptions in the audit of their vouchers by the General Accounting Office on SF-1100-Rev., "Notice of Exception and Reply to Exception" and informal "Request for Information." These should be answered immediately. If there will be a delay in securing the necessary information or collection, the GAO should be so advised.

The reply should be made on the above forms, signed by the responsible officer, and forwarded to the GAO. If a collection is involved, the collection schedule number, name of the disbursing officer, and the disbursing symbol number must be shown. The U.S. Marshal's office will furnish this information on request.

There should be at least two certifying officers in each U.S. Attorney's office, one of whom should be the U.S. Attorney.

When a new U.S. Attorney enters on duty, any employee who is already a certifying officer continues on in such capacity unless the U.S.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Attorney requests the termination of that designation and the designation of someone else. Authorized certifying officer designations remain in effect until revoked by the Director, Executive Office for U.S. Attorneys.

Should a certifying officer cease to function in such capacity, the Director of the Executive Office should be notified immediately and informed of any proposed replacement or addition.

Vouchers for payment must be signed by an authorized certifying officer and the words "Authorized Certifying Officer," the date of certification, and the name of the certifying officer must be typed or stamped on the voucher.

SF-210 should be executed by each U.S. 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.

10-3.432 Comptroller General and Departmental Review

Vouchers containing questionable items of expense may be submitted to the Assistant Attorney General for Administration for administrative audit and advice prior to payment.

Decisions are also rendered by the Comptroller General on any question of law involving certifications and payment on vouchers by certifying and disbursing officers. Any such decision rendered shall govern the General Accounting Office in passing upon the account containing such voucher.

A U.S. Attorney desiring to secure a ruling or decision of the comptroller General shall set forth the facts pertaining to the case in full in a letter and forward it to the Assistant Attorney General for Administration for submission to the GAO. This requirement does not apply to appeals to the Comptroller General in connection with exceptions or disallowances made by that office.

10-3.500 TRAVEL

10-3.510 Authority

Travel is governed by standardized government travel regulations as supplemented by the Department's travel regulations, see Order OBD 2200.1A (November 14, 1977).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

U.S. Attorneys may authorize their own travel as well as that of their subordinates anywhere within the United States by common carrier (coach class); personal vehicle (auto or airplane); or car rental, either commercial or through GSA. They may also authorize per diem and actual subsistence to designated high-rate areas, and other miscellaneous expenses such as official telephone calls and taxis. They may not authorize relocating expenses, foreign travel, actual subsistence for travel to a non-designated high-rate area, or first class travel. Authority to authorize these categories remains with the Director, Executive Office for U.S. Attorneys. Special Assistants who perform the work of regular Assistants are authorized to travel in the same fashion as Assistant U.S. Attorneys. Travel of employees of the legal divisions who are working with U.S. Attorneys' offices must be authorized by submission of OBD-1, Official Travel Request and Authorization, to the Executive Office. U.S. Attorneys are delegated authority to authorize in cases of emergency the use of cash instead of GTR's to procure domestic passenger transportation services costing more than \$100. This authority may not be redelegated by the U.S. Attorney. In order to obtain reimbursement for the purchase of passenger transportation costing in excess of \$100, all vouchers containing such claims must be accompanied by a statement from the U.S. Attorney explaining the emergency situation which required the use of cash (or credit card). In addition, the traveler must initial a statement on the voucher assigning to the United States government the right to recover any excess payments involving carriers' use of improper rates. Passenger coupons or other evidence as appropriate should also accompany the voucher.

To obtain authorization for first class transportation, U.S. Attorneys should submit a First Class Authorization Request (see infra) to the Director of the Executive Office for U.S. Attorneys. First class travel should only be requested for the reasons allowed by travel regulations (Department of Justice Order 2200.1A, para. 3.34d(3)); or when it can be shown that first class accommodations will result in an 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. 45 Fed. Reg. 27,436 (1980). In most instances, U.S. Attorneys should only request first class travel after all other efforts have been made to obtain regular coach fare or contract air carrier flight fare for the intended trip.

The power to authorize travel is reserved to the U.S. Attorney or an Assistant U.S. Attorney designated as Acting U.S. Attorney in accordance

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

with 28 C.F.R. §0.131. The U.S. Attorney may exercise his/her authority by signifying his/her authorization of a travel authorization form (OBD-1). The U.S. Attorney may not redelegate this authority to another official. Only the Director, Executive Office for U.S. Attorneys may delegate authority to authorize travel and only in accordance with the criteria established in OBD Order 2200.1A, para. 2.3a (November 14, 1977).

All requests for travel made to the U.S. Attorney should be scrutinized carefully to insure that the travel is essential and the cost justified. To obtain authority for relocation expenses, forms DJ-10A, OBD-1, and 33 must be submitted to the Executive Office for U.S. Attorneys. To obtain authority for foreign travel or actual subsistence in a nondesignated high rate area, an OBD-1 must be submitted to the Executive Office for U.S. Attorneys. See also OBD Order 2200.1A, para. 2.3a (November 14, 1977).

10-3.520 District Travel Budgets

In order to manage the funds available to U.S. Attorneys for travel expenses, the Executive Office allots an annual budget to each U.S. Attorney. The allotments are based on the individual estimates of each U.S. Attorney but are of course limited by the overall availability of funds.

Each U.S. Attorney is responsible for monitoring the district travel allotment. As travel is authorized by the U.S. Attorney, an estimated cost should be deducted from the travel allotment. By maintaining a declining balance in this fashion, the U.S. Attorney will know on a day-to-day basis the approximate level of funds remaining in the district travel allotment.

The Executive Office issues monthly status reports for each district travel allotment, but these reports refer to time periods well in advance of the report's issuance and should not be relied upon for the day-to-day management of the district travel allotment. The charges reported in the Executive Office status reports are based on payments made during the previous month, which are generally the consequence of obligations incurred in the month prior to the month in which payments are accomplished. The status reports are thus simply intended to permit the U.S. Attorney to verify the level of charges against the district allotment as reported by the paying office--the Accounting Operations Group, Justice Management Division. Suspected inaccuracies in the monthly status reports should be reported promptly to the Financial Manager, Administrative Services, Executive Office for U.S. Attorneys. The

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Executive Office can provide a schedule of charges (employee reimbursement, carrier payments, GSA Motor pool charges, etc.) for each month if necessary.

If the U.S. Attorney determines that the travel funds available to the district will be insufficient, he/she should advise the Financial Manager, Administrative Services, Executive Office for U.S. Attorneys, accordingly. The U.S. Attorney should indicate in a memorandum the action(s), if any, which have been taken to minimize travel costs. The causes for the anticipated deficit should also be identified, as well as an estimate of additional funding requirements provided.

10-3.530 Payment for Travel Expenses

Reimbursement for employee travel expenses is paid by the Accounting Operations Group, Justice Management Division. All travel expenses must be authorized by the U.S. Attorney and approved by an official designated by the U.S. Attorney. See OBD Order 2200.1A, para 12.58 (November 14, 1977). The Accounting Operations Group is responsible for auditing vouchers and certifying to the correctness and propriety of payments.

Travel advances should be held to a minimum and allowed only when it is indicated that such an advance is required and justified. In no case should the amount of the advance exceed the amount of the estimated per diem cost of the trip. When the advance exceeds the amount subsequently claimed on the OBD-157, Travel Voucher, the excess shall be returned along with the OBD-157, in the form of a check made out to the Treasurer of the United States. In the event of cancellation or indefinite postponement of travel, the advance shall be refunded within one week of the date of cancellation or postponement. All advance applications should be coded to the cost center (E4099) of the district employing the traveler (*i.e.*, the district to which the employee's salary is charged). The proper coding of advance accounts is necessary so that the monthly travel advance listing provided to each office is complete (see OBD Order 2200.1A, para. 9.25 (November 14, 1977)) and so that the quarterly traveler's account statement is forwarded to the correct office (see OBD Order 2200.1A, para. 9.27 (November 14, 1977)). Aside from the production of erroneous reports, the improper coding of advance applications could affect the accurate completion of the Employee's Clearance Record (OBD-123) upon separation. See OBD Order 1300.4 (February 18, 1981).

Requests for advances of funds should be made on OBD-158, application for Advance of Funds. See OBD Order 2200.1A Chapter 9 (November 14, 1977). An emergency travel advance may be obtained from the U.S. Marshal.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

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 for the travel. A letter from the U.S. Attorney explaining the hardship, along with the Official Travel Request and Authorization, should be sent to the Deputy Director of the Executive Office prior to the travel. The certifying officer in the U.S. Attorney's office must take the responsibility to see that the advance is paid back by submitting a voucher to Fiscal Services, Justice Management Division, to clear the advance.

If travel expenses are paid for non-Department of Justice personnel, the traveler should pay the expenses and then seek reimbursement from the U.S. Attorney's office. Itemized travel expenses and receipts, not to exceed government rates, should be submitted for review by the certifying officer before payment is made. After all valid expenses have been approved, the certifying officer should attach an OBD-50 (Voucher Cover Sheet), along with the receipts, to the U.S. Marshal's office for disbursement. Regardless of the method of payment, such expenses are to be deducted from funds made available in the U.S. Attorneys' travel allocation.

10-3.540 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 within 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 either the Office of International Affairs in the Criminal Division or the Office of Foreign Litigation in the Civil 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 foreign travel by employees occupying Executive Schedule positions must be authorized by the Attorney General. See OBD Order 2200.1A, para. 2.9 (November 14, 1977) for procedure.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Foreign travel requests may be submitted on an OBD-1 Official Travel Request and Authorization form, or in a teletype message transmitted to the Executive Office. In either case, the request must provide all applicable information as indicated in the following format. If the request is submitted in a teletype message, items responding to the following format may be listed in numerical sequence corresponding to the format.

10-3.550

1. Names of individuals travelling abroad for purposes of investigation with titles, district, FTS and home telephone numbers: \_\_\_\_\_

\_\_\_\_\_

2. Name of case: \_\_\_\_\_

3. What is the nature of the case (briefly)? \_\_\_\_\_

\_\_\_\_\_

4. Is the prosecution of foreign national foreseen? \_\_\_\_\_

\_\_\_\_\_

5. Purpose of investigation; in particular specify interviewing witnesses, taking depositions, or conducting other investigation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Has Interpol or other police agency cleared visit and are local police prepared to cooperate? Please explain in detail. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

7. Have foreign embassy, consular, or diplomatic officials been consulted regarding travel? If so, whom? \_\_\_\_\_

8. Are the individuals travelling abroad in possession of official government passports? Have the passports been appropriately visaed?

9. How sensitive is the case in your estimation? \_\_\_\_\_

10. Names and nationalities of persons to be interviewed or deposed:

11. Itinerary: \_\_\_\_\_

12. If assistance of American embassy/consulate or other personnel is required, (e.g., consular officer to administer oath) or if office space at post is required, please specify: \_\_\_\_\_

13. If assistance of stenographer, court reporter or interpreter is desired, please provide Department of Justice appropriate number and fund code: \_\_\_\_\_

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

14. Any other details which would help us and that we should know to ensure that difficulties do not arise: \_\_\_\_\_

\_\_\_\_\_

15. Approving offices in legal divisions, Department of Justice:

\_\_\_\_\_

16. Approving official in Office of International Affairs: \_\_\_\_\_

\_\_\_\_\_

10-3.550 First Class Transportation

First class transportation may only be authorized by the Director, Executive Office for U.S. Attorneys, in accordance with the criteria established in Department of Justice Order 2200.11 (May 15, 1984). All requests for first class transportation must be submitted in advance to the Executive Office for review and approval.

10-3.560 Relocation

New or transferring employees may be entitled to reimbursement for a number of expenses such as moving costs, shipment of privately owned vehicles outside of the United States; transportation of a mobile home, transportation and storage of household goods and/or personal effects; allowances relating to real estate transactions such as the sale of a home, purchase of new home, or settlement of unexpired lease; round-trip travel to seek permanent residence quarters; allowances for expenses while occupying temporary quarters; or travel allowance. New appointees are entitled to relocation expenses only in circumstances governed by the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

travel regulations and employees transferring within the Department of Justice only when the transfer is determined to be primarily in the interest of the government and not primarily for the benefit of the employee. The eligibility of new or transferring employees to relocation expenses is depicted in Travel Regulations figure 2.1.2, DOJ Order 2200.11, pg. 2-1 (November 14, 1983). Authority to authorize such expenses rests with the Director of the Executive Office for U.S. Attorneys. Decisions will be made upon written justification submitted over the U.S. Attorney's signature. Oral commitment will not be given in advance by the Director or any member of his staff.

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

Payments of relocation costs also will not be considered unless the U.S. Attorney shows evidence that every effort was made to find applicants from the local area. (Example: submit evidence of advertising in the local newspaper, local bar association newsletter or nearby law schools.) When all efforts to hire someone locally have failed, the U.S. Attorney may then seek out employees from other areas with the particular expertise to fill the position.

When the above requirements are met the U.S. Attorney may request authorization of relocation expenses for a new or transferred employee. The U.S. Attorney should send a memorandum to the Director of the Executive Office for U.S. Attorneys containing a justification for authorization of these expenses. The justification should state why local applicants were not acceptable. A copy of the employee's SF-52, Request for Personnel Action, should be attached. The Executive Office for U.S. Attorneys will take the request under advisement, and inform the U.S. Attorney of the Director's decision when the prospective employee's appointment is approved. If relocation expenses are authorized, the U.S. Attorney must complete a DOJ-501 (Official Travel Request and Authorization), a DOJ-502 (Supplement to Official Travel Request and Authorization), and an OBD-33 (Service Agreement--Relocation Allowances). These forms must be sent to the Executive Office for U.S. Attorneys for confirmation of exact entitlements.

There is no separate fund available for the payment of relocation expenses. Funds expended for such purposes reduce the amount of funds available for payment of litigation costs in your offices. Accordingly, the cost of relocation expenses should be borne by the individual districts which initiate the employment actions. Hence, effective March 1, 1986 the cost of relocation expenses which are approved by the Director, Executive Office for U.S. Attorneys will be assessed against

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

individual districts, through a combination of reduced financial allowances and workforce levels. For example, in the event that a relocation expense in the amount of \$20,000 is approved for an attorney, this sum would be recouped by reducing the financial allowance and/or the attorney workyear level of the requesting district to achieve offsetting reductions.

Since U.S. Attorneys' Offices have relatively few changes in duty station or overseas assignments, the preceding paragraphs do not contain detailed explanations regarding relocation entitlements. Further information may be obtained from DOJ Order 2200.11 (November 14, 1983), or by contacting the Executive Office for U.S. Attorneys.

USAM (superseded)

USAM (superseded)



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DETAILED  
TABLE OF CONTENTS  
FOR CHAPTER 4

	<u>Page</u>
10-4.000 <u>PROCUREMENT/PROPERTY MANAGEMENT</u>	1
10-4.100       ADVERTISING	1
10-4.110 <u>Legal Advertising</u>	1
10-4.120 <u>Employment Advertising</u>	2
10-4.200       PROCUREMENT	3
10-4.220 <u>Printing</u>	3
10-4.221               Printing--General	3
10-4.222               Consultation Services on Publishing Projects	4
10-4.223               Printing of Official Court Instruments	5
10-4.224               Reporting Requirements	6
10-4.230 <u>Purchase of Equipment (Other Than Word Processing)</u>	6
10-4.231               General	6
10-4.232               Criteria	7
10-4.233               Procedure	10
10-4.240 <u>Books</u>	12
10-4.241               Ordering Procedures	13
10-4.250 <u>Rental of Equipment (Other Than Word Processing)</u>	19
10-4.251               General	19
10-4.252               Copier Equipment	19
10-4.253               Miscellaneous Equipment	20
10-4.260 <u>Supplies and Services</u>	21
10-4.261               Supplies	21
10-4.262               Procedures for Obtaining Supplies	21
10-4.263               44 Authority	22
10-4.264               Services	23
10-4.270 <u>Word Processing</u>	24
10-4.271               General	24

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-4.272	Ordering Procedure	26
10-4.273	Definition of Requirements	28
10-4.274	Receipt of Equipment Procedure	33b
10-4.275	Annual Reporting Requirement	33b
10-4.300	PROPERTY MANAGEMENT	34
10-4.310	<u>Definitions</u>	34
10-4.320	<u>Responsibilities</u>	37
10-4.330	<u>Property Accountability</u>	38
10-4.331	Deliveries to Field Offices	38
10-4.332	Delivery Problems	39
10-4.333	Determination of Accountable Property	40
10-4.340	<u>Physical Inventories</u>	41
10-4.341	Conducting Physical Inventories	41
10-4.342	Summary of Records to be Maintained	42
10-4.343	Reporting Lost or Stolen Property	43
10-4.344	Property Control	43
10-4.350	<u>Permanent Issue of Accountable Personal Property</u>	43
10-4.351	Temporary Issue	45
10-4.352	Use By U.S. Attorney Offices of Forfeited Vehicles and Other Property	45
10-4.360	<u>Disposition of Personal Property</u>	45
10-4.361	Transfer of Property	45
10-4.362	Exchange/Sale Property	47
10-4.363	Acquisition of Excess Property	47
10-4.370	<u>Seized Property</u>	48
10-4.380	<u>Evidence</u>	48
10-4.390	<u>Shipment of Goods</u>	49
10-4.400	OFFICE FILES AND RECORDS MANAGEMENT	50
10-4.410	<u>Office Files</u>	50
10-4.411	Docket Records	50



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-4.412	Case Files	51
10-4.413	Official Receipt File	52
10-4.414	Debtor Index and Payment Record File	52
10-4.415	Miscellaneous Correspondence	52
10-4.416	Personnel Files	52
10-4.417	Administrative Files	53
10-4.418	Maintenance of Attorney-Client Information	53
10-4.420	<u>Directives</u>	54
10-4.430	<u>Disposal of Records</u>	55
10-4.431	Closing Notice for Case Files	55
10-4.440	<u>Forms</u>	57
10-4.441	Standardized Forms	57
10-4.442	Special Forms	58

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.000 PROCUREMENT/PROPERTY MANAGEMENT

10-4.100 ADVERTISING

10-4.110 Legal Advertising

All advertising and publication on behalf of the United States, when required by law, rule of court, or court order is authorized generally and may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts, without Departmental approval. Invoices of this type are payable through the U.S. Marshal.

Advertising under the name of the U.S. Attorney or clerk of the court will be handled by the U.S. Attorney, who will also advise the U.S. Marshal on the manner of the publication. Such advertising is considered a litigation expense and therefore requires no prior authorization. An "Advertising Order," SF 1143, should be prepared in triplicate, fully executed and certified.

The Advertising Order should be worded, or such information added to the printed matter appearing on it, so that the style of type, setup, and rate applicable are clearly shown. Instructions on the Advertising Order form require the matter to be set solid. Therefore, all published matter must be set solid as required, unless otherwise specially authorized by the Department. When the matter is not to be set solid, typewritten instructions to this effect should be added to the form. The copy of material to be printed accompanying the order should also be prominently marked as to whether or not it is to be set solid. This marking should correspond to the instructions on the Advertising Order. Where it is the local practice to publish legal notices with paragraphs and display headings and no deviation from this practice is permitted, the Department has no objection to following the local practice but payment will be made for only the same necessary for setting up solid.

Copies of the advertisement must be attached to the original and duplicate copies of the Advertising Order.

In those cases where multiple bills or invoices are received from a single newspaper publisher for advertisements over an extended period of time, and no objection is raised by such publisher to making a single payment, such may be processed for payment on a single OBD-50, "Voucher Cover Sheet," attaching copies of the various SF 1143's as supporting documents.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.120 Employment Advertising

Offices are generally encouraged to use publicity and other forms of unpaid advertisement to attract applicants, i.e., local state employment service, legal bulletins, public service announcements, etc. However, it may occasionally be appropriate to use paid advertisements. For non-attorney advertisements, the concurrence of the U.S. Office of Personnel Management is required. Contact the Personnel Section, Executive Office for U.S. Attorneys, for procedures and help in obtaining this concurrence.

Complete procurement authority has been delegated to the Assistant Attorney General for Administration. With the exception of legal advertisements (covered in the following section), authority has not been redelegated to the U.S. Attorneys. See 28 C.F.R. §0.140; 44 U.S.C. §§3702, 3703; 5 U.S.C. §552(b). Further, volume 35 of the Decisions of the Comptroller General (7-67), Reference B-125630, pp. 235-7, specifically prohibits ratification of invoices "after the fact." This means that bills incurred without prior approval cannot be authorized for payment.

The correct procedure for obtaining approval for advertising, other than legal, is as follow:

A. Complete Form SF 1143, "Advertising Order," only up to the point beginning, "Instructions to Publishers," and attach a separate sheet of plain paper on which is typed the advertisement as you would like it to read.

B. Forward the original plus three copies of the above form to the Executive Office for U.S. Attorneys, Attention: Personnel Section and retain one copy for your files.

C. Executive Office staff will obtain the necessary approval. (Because wording of advertisements for personnel must be approved by the Office of Personnel Management and if this approval has not already been obtained locally, wording may be altered slightly from the original request to comply with Office of Personnel Management requirements.)

D. The signed Form SF 1143 (indicating approval) will be returned to the U.S. Attorney, whereupon he/she may contact the newspaper and arrange for the advertisement to be run.

E. The newspaper will complete the back of the form and submit it, with a copy of the advertisement, to the Accounting Section for payment.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Please note that when requesting dates for the advertisement to be run, sufficient time should be allowed for processing through the various phases. If expedited treatment is required, please so specify on the request.

10-4.200 PROCUREMENT

10-4.220 Printing

The Regulations governing printing, duplicating, copying and related services are as follows:

Title 44, United States Code  
Government Printing and Binding Regulations, No. 24, April 1977  
Federal Property Management Regulations (FPMR)  
Code of Federal Regulations, Title 41 (CFR)  
Department of Justice Order 2510.9 (Nov. 24, 1975)  
Department of Justice Order 2510.10 (Dec. 7, 1979)  
Department of Justice Order 2520.4 (Aug. 22, 1979)  
Justice Publications and Printing Guide, May 1977

10-4.221 Printing - General

All printing must be authorized in advance by the Support Services Office, Facilities Management and Support Services Staff of the Executive Office for U.S. Attorneys, notwithstanding instructions from other offices of the Department. In some cases, this can be a one-time approval, written or verbal, for a particular type of job; in all cases, authority must be obtained in advance.

Requests for the printing of forms, labels, letterhead, envelopes and all other printed requirements should be submitted on Form DOJ-2, "Printing Requisition." Wherever possible, submit artwork previously done, "camera ready" copy or samples of the printed matter (include 3 samples if available). Indicate required delivery date and complete shipping (not mailing) address on all requests. An indication of "ASAP" as a delivery date is not acceptable. In determining required delivery, allow time for mailing and processing of the request and shipping time for the completed job. In general, letterhead takes about 4 weeks to complete; envelopes, 6 weeks; labels, 4 weeks; single sheet forms, 4 weeks; publications, 8 weeks; snap out multi-copy, 6 weeks. If proofs are required, add

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

approximately 2-3 additional weeks. Letterhead and other single-page jobs requiring 5000 copies or less can be done on a "rush" basis if such need is indicated.

Premium prices (several times the normal rate) are paid when printing jobs have to be expedited and/or overtime paid. Someone in each U.S. Attorney's office should be designated as the person responsible for maintaining printed supplies and reordering before these "rush" procedures become necessary. The greatest expense in printing is not the number of copies but the initial set-up charges on each job. Forms and letterhead as well as envelopes should be ordered in sufficient quantities to make reprinting as infrequent as is reasonable. Suggested quantities are a six-month to one-year supply.

The following general rules are provided for informational purposes:

A. Personal names on any printed items are not permitted. Letterhead and business cards using the Department of Justice seal may be printed for official use at the user's personal expense. Sources and "camera ready" copy for the Department of Justice seal are available from the Support Services Office of the Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys.

B. On U.S. Attorney letterhead, one main FTS and one main commercial phone number and the return address of the office may be printed. The standard format and size accepted and designated by the Joint Committee on Printing and the Department of Justice Design Standards must be used.

#### 10-4.222 Consultation Services on Publishing Projects

Justice Publications Service is available to consult with the user on printing and publishing methods and sources. When a publication is required, the Chief of the Publications Management Unit, FTS 633-3215, should be consulted for preliminary guidance.

Follow the guidelines on page 23 of the Justice Publications and Printing Guide for preparation of material to be typeset. For camera ready copy, see additional guidelines on page 24 of the Printing Guide. In addition, the folio numbers on all camera ready copy should be in non-photo blue pencil.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.223 Printing of Official Court Instruments

The printing of official court instruments should always receive advance approval. Such approval and requisition number should be obtained from the Publications Management Unit (JPS), FTS 633-3215 and the Executive Office. This can be done by telephone. If the need is recurring, a DOJ-2 should be forwarded to the Executive Office requesting that a contract be negotiated through the Government Printing Office for a fiscal year period. On the basis of such contracts, U.S. Attorneys may place orders directly with the public printer. (U.S. Government Printing Office, Regional Printing Procurement Offices.)

Commercial printing bills, other than for services obtained through a regional Government Printing Office, should be paid through the U.S. Marshal. Upon completion of the work, the printer should execute a voucher on SF 1034. The printing charges must be itemized therein. The following certification must be on or attached to all vouchers involving payment for field printing. It must be signed by the responsible officer in the field under whose authority field printing is procured.

I hereby certify as responsible officer that the field printing covered by this voucher was procured in accordance with the applicable Government Printing and Binding regulations of the Joint Committee on Printing.

Signed: \_\_\_\_\_  
United States Attorney

The voucher should be certified by an authorized certifying officer and transmitted to the U.S. Marshal for payment.

Services approved by JPS and obtained through a regional government printing office are always billed to and paid in Washington, D.C.

28 U.S.C. §915(b) provides that "In any civil or criminal case the court may, upon the filing of like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts." Printing expenses in such cases are not payable from Department of Justice appropriations but must be paid by the Administrative Office of the U.S. Courts.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.224 Reporting Requirements

The following reports should be submitted to:

Assistant Director for Publications Services  
Records and Publications Staff/OPA/JMD  
Room B-244, 10th and Pennsylvania Avenue, NW  
U.S. Department of Justice  
Washington, D.C. 20530

A. Commercial Printing Report (JCP Form 2)

This report is required on a semi-annual basis and covers all transactions concerning composition, printing, binding and blank book work procured from commercial sources other than those obtained through a regional Government Printing Office during the reporting period. The period October through March is due in the Publications Management Unit (JPS) on or before April 15 and the reporting period April through September is due in JPS on or before October 15. The JPS Form No. 2 is filed in triplicate. A negative report is necessary and may be submitted by memorandum. See Department of Justice Order 2510.9 (Nov. 24, 1975), paragraph 40b. Any questions may be addressed to the Chief, Publication Management Unit on FTS 633-3215.

B. Duplicating Production (Form DOJ-369)

This report covers all production data for duplicating equipment in headquarters and field offices used to produce reportable duplicating. This is defined as any job exceeding 500 production units of any one page or 25,000 production units in the aggregate of multiple pages. This form should be submitted to JPS within 20 days after the close of each quarter, i.e., January 20, April 20, July 20 and October 20. Negative reports should be sent. See Department of Justice Order 2510.9 (Nov. 24, 1975), para. 40e.

10-4.230 Purchase of Equipment (Other Than Word Processing)

10-4.231 General

This category includes furniture, machines, draperies, carpets, pictures, and other miscellaneous items. All requests for equipment, machines, etc., with the exception of books and other publications, and notwithstanding instructions from other offices, must be submitted to the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Support Services Office of the Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys in advance of the purchase. These requests must be submitted on an OBD-186, "Requisition for Equipment, Supplies, or Services."

10-4.232 Criteria

Some criteria for approval of requests for equipment are listed below. Standards are listed by priority.

A. Equipment Purchase (furniture, machines)

1. New furniture for newly-allocated positions. Standard items approved with justification and reference to date of new allocation(s):

ATTORNEY PERSONNEL	NON-ATTORNEY PERSONNEL
desk	desk
chair	chair
chairmat	chairmat
2 side chairs	typewriter
credenza and/or table	transcriber
dictating machine	(if use is standard
(if use is standard	operating policy)
office policy)	

Traditional executive furniture is approved for the U.S. Attorney and the U.S. Attorney's secretary, (and paid supervisory Assistants in larger districts) and "unitized" wood furniture for other staff. Other items must be specifically justified.

2. New equipment essential to office operation. Example: calculators, new systems such as dictation equipment, items of furniture not listed in standards.

Specific justification is required on all requests in this category. Justification should include such information as what is requested, who will use item and for what specific purpose, what conditions have changed within the office making the equipment currently used inadequate or creating the need for new types of equipment, and how is need currently handled.

3. Replacement of worn out furniture and equipment used by a specific staff member.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Required justification should include age and general description of equipment to be replaced, history of repair costs if deemed appropriate, planned disposition of old equipment (excess, trade-in, etc.). See 41 C.F.R. §101 for standards to replace furniture and equipment. See also 41 C.F.R. §101-25.403 and PROPERTY MANAGEMENT, USAM 10-4.300.

4. Replacement, or new purchase of furniture not used by specific staff members that are not essential to daily office operations. Example: conference room furniture, library furniture, carpet, draperies, etc.

Required justification should include: whether an item is a replacement or a new purchase, where it will be used and for what purpose, plus any additional information deemed appropriate to include.

Furniture standards for these types of items are as follows:

B. LIBRARY. Sufficient freestanding bookshelves (wood if desired) for all existing volumes and approximately 200 linear feet for expansion, work space within the library, such as tables and chairs or carrels for a limited number of people, depending on the size of the library.

C. CONFERENCE ROOM. Conference table, 8-12 chairs, telephone stand.

D. RECEPTION AREA. Coffee or end table, 6-8 chairs, smoking stand. In the headquarters office only, a settee may be substituted for 3-4 chairs.

E. VISITING ATTORNEY OFFICE (if applicable). Desk, chair, chairmat, side chair.

F. CARPET. Provided for all office space except closets, storage rooms, etc. Cost limits are \$10.00 per square yard plus padding and installation costs. The U.S. Attorney's private suite may have any carpet on the General Services Administration schedule.

G. DRAPERIES. Provided for offices of the U.S. Attorney, his/her secretary and designated division chiefs/paid supervisors/Assistants. Requests for draperies in other offices are reviewed and approved depending on availability of funds and justification provided.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

H. FILING EQUIPMENT. Basic types of filing equipment are:

1. Standard legal and letter-size filing cabinets;
  2. Lateral file cabinets;
  3. Power files (e.g., Lektrievers);
  4. Space-saver files which are not automated (e.g., Times II);
- and
5. Security file cabinets with combination lock or lock bar.

Justification for filing equipment must include answers to the following:

1. How long are closed files kept before forwarding to the Federal Records Center?
2. When were files last sent to the Center?
3. How many filing inches in your office at present? What is the anticipated increase over the next year?
4. Are any cabinets on present inventory being replaced by those requested?
5. In the case of power files, the following information is also required:
  - a. A floor load study by the building manager must be included in the request.
  - b. Why will other types of filing equipment not meet office needs? Power files are quite expensive, require maintenance, cost approximately \$2,500 to move, and cause stress to floor space. Only one person at a time can use a power file and, in the case of breakdowns, they can be used either with great difficulty or not at all.
6. Special requirements - e.g., security storage for grand jury material.

See 41 C.F.R. §101-25.301 for details of justification requirements.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.233 Procedure

All items must be purchased under the General Services Administration's (GSA) Mandatory Use Contract Schedules. Open market procedures may be used if no GSA schedules are available for item(s) desired or if a waiver is requested and obtained from GSA. The Support Services Office of the Facilities Management and Support Services Staff will work closely with any office involved in an open market procurement. All approvals for purchases are dependent on the availability of funds. Although these standards constitute basic office policy, they are subject to change due to special or unusual circumstances.

When submitting requests, please note the following:

A. Information for requesting supplies and equipment can be obtained from the following sources: Regional GSA customer service. Numbers are located in GSA supply catalogs; and Federal Supply Schedules (GSA contractor listings) and various brochures. These may be obtained on a regular basis from GSA in Denver by submitting GSA Form 457. See instructions in the back of the GSA Supply Catalog marked GUIDE.

B. Requests on Form OBD-186 should be as complete as possible including estimated price. Provide stock and model numbers, color selection, and any other information necessary to place an accurate order with the vendor. In the case of typewriters, provide model number, carriage width, requirement for legal keyboards, and tpestyles selected. In the case of books, indicate whether or not you wish updates to be ordered automatically. If this is the case, please type the following in the body of the request: "Please put this publication on automatic continuation."

There is a distinction in the justification required. The Executive Office for U.S. Attorneys requires a Justification of Need. This is then compared with other U.S. Attorneys' needs and against available funds. After a request is funded by the Executive Office, further justification is usually required to meet federal procurement regulations. All administrative officers should become familiar with 41 C.F.R. §101. Keep in mind that the justification at this point should contain the salient characteristics necessary to meet the requirements of the activity and the reason for each particular characteristic. This is especially important if a specific characteristic limits the range of competition. When Justice Procurement does a cost analysis with the various products on schedule which meet the requirements, the administrative officer may be called on to compare the lowest priced item with the suggested source. Once this is accomplished, either a written acceptance of the lowest priced item or a justification stating specifically why the lowest priced

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

item cannot meet the requirements must be submitted to Justice Procurement for further determination.

A description of the flow of requests submitted to the Executive Office follows. Note that requests for various items are routed differently. Please put items from different categories or vendors on separate request forms. This will avoid the need for Executive Office personnel to rewrite or return requests and will eliminate delays in filling needs of the U.S. Attorneys.

OBD-186 need only be used for the first page of each request. If continuation sheets are necessary for itemization and/or justification, plain bond paper may be used. Indicate the requisition number on each sheet and provide an original plus three copies.

Flow Charts for Various Requests:

A. Standard furniture/equipment/supply requests:

1. Received in the Support Services Office of the Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys,
2. Reviewed by Support Services Manager for appropriate justification and availability of funds,
3. Approved or disapproved, and
4. Support Services Office then:
  - a. returns denied or incomplete request to U.S. Attorney with explanation, or
  - b. arranges for document control number to be assigned and status letter to be sent to the district, and forwards two copies of approved request to the Procurement Unit, one copy to the Fiscal Services Unit, Justice Management Division (JMD) for obligation purposes, and retains one copy for Executive Office files.

B. Printing requests:

1. Received in Support Services Office of the Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys,
2. Reviewed by Support Services Manager, and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. As above, steps 3 and 4.

C. Copier requests:

1. Received by Support Services Office of the Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys,

2. Reviewed by Support Services Manager,

3. Forwarded to Justice Publications Service for review and approval by Copying Specialist,

4. Returned to the Executive Office, and

5. As above, steps 3 and 4.

NOTE: Material Management Staff, (JMD) reviews all requests, both purchase and rental, before being forwarded to the Procurement Unit.

For all requests processed through the Procurement Unit: A copy of the purchase order is received in the Executive Office and matched with a copy of the original request. The amount on the purchase order is compared with the amount on the request and an appropriate adjustment is made. The request and purchase order are filed by district.

When goods are received or services rendered, a copy of the receipt package is sent to the Support Services Office of the Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys for proper closing of the action filed.

10-4.240 Books

Historically, in excess of one-half of the budget provided for equipment purchase has been spent on new publications or upkeep for existing ones. Because of this expense, the following should be considered before requesting books:

A. Does the office already have at least one copy/set of the item requested? If so, what is the need for multiple copies?

B. How often will this publication be used? If use is infrequent, is there another library where the book/set could be borrowed as needed?

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Will upkeep (e.g., pocket parts) be necessary? If so, how much will they cost?

D. What will be the consequences if the book/set is not purchased?

SUGGESTION: Periodically review publications being received on a regular basis. If publications are found to be no longer needed, consider stopping subscriptions and excessing inventory. In all cases, review carefully the complete subscription listing sent to each office approximately each July for unnecessary books/sets.

At the beginning of the fiscal year a budget will be allocated to each U.S. Attorney by the Executive Office for use during that fiscal year. This budget includes the cost of all continuing subscriptions, pocket parts, bound volumes and new purchases, legal or other. Each U.S. Attorney will be provided a monthly list of all items ordered on a continuing basis to date in the current fiscal year as well as new one-time publications ordered to date. The September listing will contain all publications ordered for the entire year and should be saved from one year to the next. One person should be delegated in each office to be responsible for maintenance of this budget, i.e., to verify lists as described above, and to sign all requests.

#### 10-4.241 Ordering Procedures

Ordering procedures for publications are as follows:

A. Complete Form OBD-186 (requisition form) as usual, with the following exceptions:

1. Block 1 - assign a sequential number, beginning with "1" each fiscal year for library purchases only.
2. Block 11 - assign appropriation or cost center code only as follows: Fiscal Year - E40 99 - district number - city code. Example: A FY 1982 request for Newark, New Jersey, would read 2E409950ne. (City codes are listed in this section.)
3. Block 12 - only the person designated to be responsible for the publications budget and to authorize purchase against it should sign.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

4. Block 21 - Fill in the "ship to" address ONLY if there is a permanent change to the address or if a new branch office has been established. Otherwise, this block should be left blank.

B. Forward request DIRECTLY to the Department of Justice Library for processing. (Executive Office approval is no longer required.)

C. Library staff will prepare purchase order and forward to publisher.

D. Invoices will be sent directly to the library and forwarded to the Fiscal Services Unit, Justice Management Division for payment with or without the receipt copy. Refunds will later be sought should it become necessary. Where necessary, advance payments will be made.

E. Questions concerning status or problems should be referred to the Acquisitions Section, Main Justice Library on FTS 633-3775.

F. Any publication which is on an automatic renewal status will appear in the reports with a beginning and ending subscription date. These will not require a new OBD-186 each new fiscal year. Any publication which shows only one subscription date does require a new OBD-186 at the beginning of each fiscal year. Please check the September reports carefully for the exact status of each publication. If there is a question, it may be referred to the library on FTS 633-3115.

The following items are provided automatically, without request, and with distribution as shown. Cost of these items (initial supplies only) is not deducted from district library budgets.

A. Public and Private Laws - One copy to each U.S. Attorney's headquarters office as printed.

B. Position Classification Standards - One set currently located in all U.S. Attorneys' headquarters offices; upkeep ordered automatically.

C. Handbook X-118 - Same as item B.

D. U.S. Government Manual - One copy ordered annually for each U.S. Attorney's Office, both headquarters and branch offices.

E. 831-1 (Retirement), 871-0 (Life Insurance) and 891 Federal Employee Health Benefits Program - Same as item B.

F. Federal Criminal Trials - One copy ordered automatically at original printing for each U.S. Attorney and each Assistant U.S. Attorney.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Additional copies available through Support Services Office of the Facilities Management and Support Services Staff, Executive Office. For other than U.S. Attorney personnel, copies are available through the Government Printing Office, Superintendent of Documents.

G. Federal Rules of Civil Procedure - One copy ordered automatically at original printing for each U.S. Attorney and each Assistant U.S. Attorney handling civil cases. Additional copies are available by telephone request to the Support Services Office.

H. Federal Rules of Criminal Procedure - Same as item G, but for attorneys handling criminal cases.

I. Georgetown Law Journal - An initial supply is ordered for each U.S. Attorney's office. Additional copies are available through the Support Services Office.

J. From time to time, other publications are ordered and distributed to U.S. Attorneys' offices as deemed appropriate. When such orders are placed, U.S. Attorneys will be notified that individual requests are not required.

A basic list of library materials is provided below for reference. All districts will not require all items on the list; it is merely a guide. Additional information or assistance may be obtained by calling the Department of Justice Library.

U.S. Code	State Reports **
U.S. Code Annotated	State Statutes Annotated **
Code of Federal Regulations*	Regional Reporter**
Federal Register	Shepard's Regional Reporter
U.S. Reports*	Citations**
Supreme Court Digest (West)	American Jurisprudence
Shepard's U.S. Citations	Moore's Federal Practice or Wright's Federal Practice
Federal Reporter	Law Week and Criminal Law Reporter
Federal Reporter, 2d	



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Federal Supplement	Witmore on Evidence or McCormack on Evidence
Shepard's Federal Reporter	Wharton's Criminal Evidence and Procedure
Federal Rules Decisions	Devitt & Blackmar's Federal Jury Instructions
Modern Federal Practice Digest	West's Federal Forms
West's Federal Digest 2d	Subscriptions to two law reviews, if desired

\*From Distribution Unit, Department of Justice, through Executive Office.  
\*\*State or regional publication appropriate for the area involved.

CITY CODES

<u>City</u>	<u>Code</u>	<u>City</u>	<u>Code</u>
ALABAMA, Birmingham	bi	DELAWARE, Wilmington	wi
Mobile	mb		
Montgomery	mn	DISTRICT OF COLUMBIA	
		District Ct.	wa
ALASKA, Anchorage	an	Superior Ct.	sco
Fairbanks	fa	Superior Ct. Library	scl
ARIZONA, Phoenix	ph	FLORIDA, Ft. Lauderdale	fl
Tucson	tu		
		Jacksonville	ja
ARKANSAS, Fort Smith	fs	Miami	mi
Little Rock	lr	Orlando	or.
		Pensacola	pe
CALIFORNIA, Fresno	fr	Tallahassee	tl
Los Angeles	la	Tampa	tm
Sacramento	sa	West Palm Beach	pb
San Diego	sd		
San Francisco	sf	GEORGIA, Atlanta	at
San Jose	sj	Augusta	au
		Macon	ma
COLORADO, Denver	de	Savannah	sa
Grand Junction	gj		
CONNECTICUT, Hartford	ha		
New Haven	nh		

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

CITY CODES

<u>City</u>	<u>Code</u>	<u>City</u>	<u>Code</u>
GUAM	ag	MICHIGAN, Bay City	bc
HAWAII, Honolulu	ho	Detroit	de
IDAHO, Boise	bo	Flint	fl
ILLINOIS, Chicago	ch	Grand Rapids	gr
Danville	da	MINNESOTA, Minneapolis	mi
East St. Louis	es	St. Paul	sp
Peoria	pe	MISSISSIPPI, Aberdeen	ab
Springfield	sp	Biloxi	bi
INDIANA, Fort Wayne	fw	Jackson	ja
Hammond	ha	Oxford	ox
Indianapolis	in	MISSOURI, Kansas City	kc
South Bend	sb	St. Louis	sl
IOWA, Cedar Rapids	cr	Springfield	sp
Des Moines	dm	MONTANA, Billings	bi
Sioux City	sc	Butte	bu
KANSAS, Kansas City	kc	NEBRASKA, Lincoln	li
Topeka	to	Omaha	om
Wichita	wi	NEVADA, Las Vegas	lv
KENTUCKY, Lexington	le	Reno	re
Louisville	lo	NEW HAMPSHIRE, Concord	co
LOUISIANA, Baton Rouge	br	NEW JERSEY, Camden	ca
Lafayette	la	Newark	ne
New Orleans	no	Trenton	tr
Shreveport	sh	NEW MEXICO, Albuquerque	al
MAINE, Bangor	ba	NEW YORK, Albany	al
Portland	po	Brooklyn	br
MARIANA ISLANDS	mi	Buffalo	bu
MARYLAND, Baltimore	ba	New York City	ny
MASSACHUSETTS, Boston	bo	Rochester	ro
Springfield	sp	Syracuse	sy

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

CITY CODES

<u>City</u>	<u>Code</u>	<u>City</u>	<u>Code</u>
NORTH CAROLINA, Asheville	as	TENNESSEE, Chattanooga	ch
Charlotte	ch	Greenville	gr
Greensboro	gr	Knoxville	kn
Raleigh	ra	Memphis	me
		Nashville	na
NORTH DAKOTA, Bismark	bi		
Fargo	fa	TEXAS, Austin	au
		Beaumont	be
OHIO, Akron	ak	Brownsville	br
Cincinnati	ci	Corpus Christi	cc
Cleveland	cl	Dallas	da
Columbus	co	El Paso	ep
Dayton	da	Fort Worth	fw
Toledo	to	Houston	ho
		Laredo	la
OKLAHOMA, Muskogee	mu	Lubbock	lu
Oklahoma City	oc	San Antonio	sa
Tulsa	tu	Tyler	ty
OREGON, Eugene	eu	UTAH, Salt Lake City	sl
Portland	po		
PENNSYLVANIA, Erie	er	VERMONT, Burlington	bu
Harrisburg	ha	Rutland	ru
Lewisburg	le		
Philadelphia	ph	VIRGIN ISLANDS, Christiansted	ch
Pittsburg	pi	Charlotte Amalie	ca
Scranton	sc	St. Thomas	st
PUERTO RICO, Hato Rey	hr		
		VIRGINIA, Alexandria	al
RHODE ISLAND, Providence	pr	Newport News	nn
		Norfolk	no
SOUTH CAROLINA, Charleston	ch	Richmond	ri
Columbia	co	Roanoke	ro
Greensville	gr		
SOUTH DAKOTA, Pierre	pi	WASHINGTON, Seattle	se
Rapid City	rc	Spokane	sp
Sioux Falls	sf	Takoma	ta
		Yakima	ya

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

CITY CODES

<u>City</u>	<u>Code</u>	<u>City</u>	<u>Code</u>
WEST VIRGINIA, Charleston	ch	WISCONSIN, Madison	ma
Elkins	el	Milwaukee	mi
Huntington	hu		
Wheeling	wh	WYOMING, Cheyenne	ch

10-4.250 Rental of Equipment (Other Than Word Processing)

10-4.251 General

This category includes copy machines and miscellaneous equipment.

10-4.252 Copier Equipment

A. Normal Procedures

Procedures for rental and criteria for approval are as follows: Requests for copying equipment should be submitted on Form OBD-186 and justification must be submitted on Form DOJ-450 (See Department of Justice Order 2510.9 (Nov. 24, 1975) and accompanying Justice Publications and Printing Guide). On request form, list any equipment to be replaced by serial number(s), model number or name, and purchase order in effect at the time of request. Give a complete description of the item(s) requested, including any accessories, and specify rental plan desired. In the case of most lease plans, removal of equipment will not be authorized before the end of the lease period if any cancellation penalty is involved. If help is needed in selecting equipment, contact the Support Services Manager, Executive Office, or the Copy Specialist in the Justice Publications Service. Generally, the most economical equipment (based on number of copies per month and special features required) will be selected. If there are special reasons for selection of a certain brand or model which is not the most economical, justification should be provided. Refer to Copier Matrix which is provided yearly by the Copy Specialist as a guide to copier selection.

B. Emergency Temporary Procedure

In the case of an emergency temporary requirement (90 days maximum) rentals under SF 44 authority may be used. Executive Office approval must

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

be requested in writing prior to renting. This may be accomplished by teletype and should be followed up with a confirming Form DOJ-450. Additionally, telephic approval by the Copy Specialist on the selection must be obtained.

C. Reporting Requirements

Form DOJ-369, "Copying/Duplicating Inventory," must be completed quarterly (See Department of Justice Order 2510.9 (Nov. 24, 1975)) by all offices who have copier equipment regardless of brand. October through December 31 report is due January 30, January through March 30 is due April 30, April through June 30 is due July 30 and July through September 30 is due October 30. All reports are mandatory and should be submitted directly to the Support Services Office of the Facilities Management and Support Services Staff, Executive Office. Any question may be addressed to the Support Services Manager or the Copy Specialist.

D. Charges for Outside Use of Copier Equipment

Copy/duplicating equipment rented for U.S. Attorney offices is intended for use by U.S. Attorney staff in the conduct of official business. In the case of outside use of this equipment, the following information should be considered: charges collected for outside use of the equipment are not refunded to the U.S. Attorney's appropriation but are returned directly to the U.S. Treasury. Any cost for use of this equipment (whether or not a charge is levied against the user) is paid from U.S. Attorney funds.

Opposing counsel and other non-government users should be charged according to instructions given in USAM 1-5.130 (FOIA requests). In the case of voluminous documents to be copied, consideration should be given to reproducing the documents commercially, and billing the recipient directly.

Use by other government offices/agencies should be considered only at the convenience of the U.S. Attorney's staff. In the case of extensive use, U.S. Attorneys are encouraged to make informal agreements with the users to replace supplies and/or to provide operators.

10-4.253 Miscellaneous Equipment

Miscellaneous equipment such as telecopiers, stitchers, water coolers, etc. should be submitted on Form OBD-186 with a sufficient

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

justification stating need, how need was met prior to request, etc. See USAM 10-4.233 on procurement procedures.

10-4.260 Supplies and Services

10-4.261 Supplies

One person in each U.S. Attorney's office should be assigned the responsibility of ordering supplies and maintaining a simple inventory system. Quantity requirements should be estimated carefully, to avoid overstocking and to keep the number of special requisitions at a minimum.

10-4.262 Procedures for Obtaining Supplies

A. General Services Administration (GSA) Self-Service Stores: In those cities where the GSA Federal Supply Service operates retail stores convenient to U.S. Attorneys' offices, such stores should be patronized. Applications for GSA store charge plates should be sent, in memorandum form, to the Support Services Office of the Facilities Management and Support Services Staff, Executive Office. Indicate in the memorandum both the GSA account code (refer to Department of Justice Order 2300.3 (July 2, 1973)) and the appropriation code of your office. Use of these stores is limited to purchase of "consumable" supplies. Bills are sent from GSA directly to the Fiscal Services Unit in Washington, D.C.

B. National Blanket Purchase Agreements: The Procurement Unit, Justice Management Division, automatically issues a number of National Blanket Purchase Agreements for supplies used Department-wide. Copies are provided to all potential users who may then place telephone or memorandum orders for items listed on the various agreements. The number of the agreement and "call number" of work should be given with each order and noted by the vendor on all invoices. There is a \$500.00 limit on most of these orders unless otherwise noted on the agreement. Bills will be sent to the U.S. Attorney and should be receipted with the order numbers noted and forwarded to the Fiscal Services Unit, Accounting Section, Washington, D.C.

C. Local Blanket Purchase Agreements: These agreements should be obtained when there is a recurring need for supplies from a particular vendor. The term "local" refers to a need of a particular U.S. Attorney's office, not the geographic location of the vendor. Some examples of local blanket purchase agreements are a charge account at a nearby office supply

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

store or an agreement with a vendor for a particular or specialized item such as brief covers or exhibit labels. These purchase agreements have an indefinite status and do not need to be renewed yearly. Cancellation is made only at the request of the vendor or the U.S. Attorney's office. Efforts should be made to maintain the names of the individuals authorized to make purchases against the agreements current. Changes to or cancellation of an agreement can be accomplished by submission of Form OBD-186. Make sure agreement number is referenced.

The number of agreements is not limited; however, purchases are restricted to "consumable" supplies and services. No equipment may be ordered against these agreements. Bills are sent directly from the vendor to the Fiscal Services Unit, together with copies of individual sales slips.

D. GSA Depots: These orders are limited to "consumable" supplies. They may be placed via the FEDSTRIP (SF-344) using procedures set forth in Department of Justice Order 2300.3 (July 2, 1973). Bills are sent directly from GSA to Fiscal Services Unit.

10-4.263 44 Authority

A concerted effort should be made to use one of the four sources referenced in USAM 10-4.262. If a particular item is not available through one of these sources, additional authority in the form of Form SF-44 is available. Upon written request by the U.S. Attorney, one specific individual in a given office may receive Contracting Officer delegation to use the SF-44. This authority is NOT transferable. If any change is necessary, a memorandum requesting this change should be submitted to the Support Services Office of the Facilities Management and Support Services Staff. Please list the name of the individual who should receive this delegation as well as the name of the individual who is having this delegation rescinded.

Form SF-44 may be used to purchase emergency supplies and services under the following conditions:

- A. The amount of each individual purchase is \$500 or less;
- B. The supplies or services are immediately (locally) available;
- C. One delivery and one payment is made; and
- D. Use of an SF-44 is determined to be more economical and efficient than use of other small-purchase procurement methods.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The SF-44 is limited to use outside of the Department for purchase of small quantities of materials, supplies and services necessary to accomplish the objectives of the operation, provided such expenditures are limited to emergency situations when normal channels are not available. It cannot be used as a means to circumvent purchase from a primary source in the absence of adequate written justification, or to make "split" purchase of like commodities in order to avoid monetary limitations. Additionally, the SF-44 may not be used for the purchase of supplies or services in the following categories:

- A. Office machines and equipment;
- B. Furniture, carpet, draperies, pictures, planter, etc; and
- C. Items of foreign manufacture.

Rental of equipment and furniture via an SF-44 on an emergency basis for periods not to exceed 90 days is permissible only after written request to and approval from the Executive Office has been obtained. Requests may be made by teletype if time does not permit normal channels of communication.

A copy of all orders placed on Form SF-44 must be sent to the Executive Office immediately on issue of the order. Authority includes emergency purchase of books when they also meet the above criteria.

All payments against Form SF-44 will be made from Washington, D.C.

#### 10-4.264 Services

Services include repair or rehabilitation of equipment, cleaning services, local labor services, etc. Requests for these services should be submitted on Form OBD-186. See USAM 10-4.263. The same guidelines and procedures apply to the use of Form SF-44 to obtain services. In all cases, General Services Administration contractors must be used when applicable and available.



10-4.270 Word Processing

10-4.271 General

Word processing involves the application of the latest electronic technology to the production of documents. Modern word processing equipment normally includes the following features:

- A. A typewriter-like keyboard with special purpose function keys;
- B. A cathode ray tube (CRT) screen display unit on which the document to be prepared or revised appears;
- C. An electronic storage medium which holds pre-recorded documents;
- D. A printing device;
- E. A processing unit. In a "standalone" word processor, the processing unit is combined with the CRT, the disk drives and sometimes the keyboard into one component. In a shared logic system the processing unit is a separate component and is shared by all terminals (CRT/keyboard, printer); and
- F. A software program(s).

Other special-purpose features may include:

- A. The ability to communicate electronically with other, remote word processing machines, computers, or optical character recognition (OCR) devices;
- B. The ability to perform record keeping functions (sort and select); and
- C. The ability to perform arithmetic computations.

U. S. Attorneys' offices can benefit substantially from the appropriate application of this technology to meet their typing needs. The benefits of a good word processing operation should include production of higher quality work, faster turn-around time on typing jobs, and better administrative support from the secretarial staff. Offices implementing word processing

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

systems, however, must be prepared to invest time in planning and managing the equipment to make it maximally cost effective and efficient.

Word processing equipment is particularly useful in the production of two types of documents:

A. Standardized forms, letters, motions, etc., which require only minor variations such as defendant name, dates, etc.

B. Long, original documents which require revisions before they are approved in final form.

Short, one-of-a-kind types of documents are just as effectively produced on standard typing equipment.

To make efficient use of the equipment, it is necessary to analyze typing requirements and the distribution of clerical work in the office. It will often be necessary to reorganize the clerical support staff and/or reassign certain typing responsibilities. It may also be useful, especially in large offices, to establish a word processing center or several mini centers to handle high volume document production. In all offices it will be necessary to appoint system managers, train word processing operators and develop procedures which will ensure efficient use of the word processing system.

The staff of the Office of Management Information Systems and Support (OMISS) is available to assist individual offices in their efforts to implement efficient, effective word processing systems by providing technical and/or management consultation services. OMISS staff will also assist offices in determining how much and what type of equipment they need, in procuring equipment and in upgrading equipment as new software becomes available.

Because of the increasing costs of word processing equipment and increasing demands that government agencies manage their resources well; U.S. Attorneys' offices will have to verify the productivity of their word processing operations before lease agreements for the equipment can be renewed. Similarly, all requests for new or additional word processing equipment will have to be justified. The type and quantity of equipment approved for an office depends on several factors:

A. The volume and type of written work produced in the office;

B. The proposed organization of word processing operations in the office;

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

C. Any special records management applications planned for the equipment; and

D. The personnel resources of the office.

Information on these variables must accompany every request for continued lease of word processing equipment or additional equipment as outlined in USAM 10-4.272 through 10-4.275, infra.

The following sections will detail the Lanier contract and the information required for new or additional equipment for:

A. Lanier PROMIS contract (all small, most medium, and some large sized offices); and

B. All other vendors (most large and some medium sized offices).

Information will also be provided regarding a new yearly report that is being required as well as definitive requirements for the report.

#### 10-4.272 Ordering Procedure

The procurement process for word processing items, which are now classified as ADP (automated data processing) equipment, is quite elaborate. Word processing equipment is currently located on GSA's ADP schedule. Procedures for justifying and ordering ADP equipment are described in Orders DOJ 2830.3, Word Processing Program, and DOJ 2830.1C, Automated Information Systems Policies. Justification requirements are mandated by 41 C.F.R. 101-26.408, paragraphs 2 and 3.

All word processing procurement requests should be directed to:

Department of Justice  
Procurement Specialist  
OMISS/EOUSA - Room 1035  
Universal North Building  
Washington, D.C. 20530

When your equipment request package is received in OMISS, it will be logged into a tickler system by the Procurement Specialist and reviewed by one of the Management Analysts. The request will then be approved or disapproved. If disapproved, it will be returned to the requesting office. If the request is approved, in the case of Lanier equipment, the Contracting Officer's Technical Representative (COTR) will request an appropriate contract modification and contact Lanier to arrange a time for delivery of

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

the equipment. If the request is approved for other vendors, the package will be forwarded to Justice Procurement for action.

A. PROMIS Equipment Contract: OMISS has awarded a contract for equipment (hardware, software, and associated support), #3C00016, to Lanier Business Products for the Shared System II. In conjunction with the PROMIS case-tracking project, all small and most medium sized U.S. Attorneys' offices will be provided with Lanier Contract equipment. This equipment is capable of performing records processing (the PROMIS application) and word processing (text creation and editing applications).

This contract includes terms and conditions which are unique to the lease of Lanier systems in U.S. Attorneys' offices. All aspects of word processing implementation, including, but not limited to, training, support, and service, are included in these terms and conditions. Contract 3C00016 information is available to Administrative Officers and designated Word Processing System Managers in a notebook from the Contracting Officer's Technical Representative, Office of Management Information Systems and Support, EOUSA.

Each request for Lanier equipment should include:

1. Equipment request, (a memorandum listing contract line items requested.);
2. Justification of need; and
3. Productivity report.

B. Other Than PROMIS Contract Equipment: All large offices and some medium sized offices are using the computer-based version of PROMIS for case tracking. Most of these offices are not covered by the Lanier contract. Equipment orders from those offices should include:

1. Equipment Request, (OBD-186, "Requisition for Equipment and Services");
2. Justification of need; and
3. Equipment Justification:
  - a. For procurement in excess of \$10,000; and
  - b. For procurement less than \$10,000.

4. Productivity report.

10-4.273 Definition Of Requirements.

This section breaks down and describes the components of the word processing procurement request packages.

A. Equipment Requests:

1. For Lanier PROMIS equipment, a memorandum listing the additional Lanier equipment needed by line item as spelled out in the PROMIS Hardware Contract Manual on pages 7 and 8.

2. For all other equipment, submit an OBD-186, "Requisition for Equipment, Supplies, or Services." The 186 should include the following:

a. Provide stock and model numbers. Provide typestyle, cable lengths, and any other information necessary to place an accurate order with the vendor. Your vendor sales representative should prepare an exact equipment component list.

b. Description of Articles, Block (15), should include the quantity requested after each line item description.

c. Quantity, Block (16), should be the number of months in the fiscal year that the procurement will be applicable (allow at least ten weeks from the time your procurement package is mailed to EOUSA).

d. Unit, Block (17), should read "month" for leased items and one-time for purchase items and installation or destination charges.

e. Estimated Unit Price, Block (18), is the total one month lease charge for the quantity of each line item described.

f. Amount, Block (19), is the Estimated Unit Price times the number of months lease or the one-time charges.

B. Justification of Need: The following Word Processing System Outline is the designated format for representing your present office system and your need for additional equipment. This information is required by EOUSA.

WORD PROCESSING SYSTEM OUTLINE

I. DESCRIPTION OF PRESENT SYSTEM

A. Equipment. Describe each system component [including serial number, date installed and location in the office]:

1. Where is the equipment physically located? Provide a floor plan if possible.
2. Where is the equipment located organizationally? In what section[s]?
3. Is the equipment used in a word processing center, shared by several individuals, or assigned to a particular individual?
4. What specific types of work are done on this equipment?

B. Operators. Who is [are] the operator[s] of each work station? Is this person a full-time operator? If not, how is use time divided?

C. Management of the System. Who is the word processing system manager? Is this a manager, supervisor, lead operator, or other position?

D. Procedures. Please describe in some detail the procedures [standard and emergency] used in managing the system. Include a description of your training program. Include as well a description of your guidelines regarding retention, deletion, and archiving of documents. What is the retention time frame? Who maintains archived media? How are archived materials reclaimed?

E. Function. What is the average turn-around time on a routine typing job?

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

II. DESCRIPTION OF ADDITIONAL EQUIPMENT REQUESTED AND ITS PLANNED USE.

Please list each additional piece of equipment requested and provide a detailed description of how the new equipment will affect use of other items already in place. What work is targeted for this equipment? How is that work being performed now? Have there been any personnel increases and do you expect any personnel changes as a result of this procurement?

C. Productivity Report: A standard word processing management procedure for determining productive utilization is to require word processing productivity reports. A productivity report is a count of pages or lines input and output on a word processing terminal over an extended period of time. Productivity reports covering at least a two month period of time will now be required for the annual word processing report as well as for all requests for new or additional equipment. This information can be gathered in a couple of ways. A few word processing systems keep administrative records automatically as part of the indexing of typing jobs. Most word processors, however, do not currently have this capability and so the information must be gathered manually by productivity logs.

We recommend that productivity logs be maintained for each terminal as well as for each operator. We also recommend that these logs be maintained on an ongoing basis so that they can serve as a management tool for the U.S. Attorneys' offices as well as for the EOUSA. For the offices, the logs can be used to:

1. Evaluate employee performance;
2. Determine if additional equipment is necessary;
3. Pinpoint what documents are done repetitively and should be kept on-line;
4. Measure effectiveness of department achievements and standards; and
5. Enable a supervisor to measure the effectiveness and learning rate of new employees, etc.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

For the EOUSA, the logs will be used to:

1. Provide statistical verification of the productive use of word processing equipment to justify continued lease of equipment.
2. Justify additional equipment needs for U.S. Attorney offices.

These logs may be in any form as long as the end result is a line or page count of typing input and output on the word processing equipment. A sample log is included in the forms appendix for your information/use. You should count any page that is more than half full and not count any pages that are less than half full. Page counts can be converted to line counts by using the formula described on the report form and below.

Single space, 8 1/2 x 11	counts	50 lines
Double space, 8 1/2 x 11	counts	25 lines
Mixed spacing	counts	40 lines
Fill in form	counts	15 lines
Envelope	counts	5 lines

The Productivity Report submitted to OMISS should include the following:

1. Total number of pages produced (printed).
2. Breakdown of lines of input by the following categories:
  - a. One-time only
  - b. Draft
  - c. Revision
  - d. Standard form
  - e. Miscellaneous charts, tabular typing, data input, etc.
3. Special application. For example, designing files; report how much time was spent on these applications.

We are requesting the productivity information in this manner so that we may qualify it. For example, a word processing operator who does extensive revision work can have a significantly lower line count than one who does mostly fill-in or standard document generation, although both may be spending the same amount of time on the typing station. Designing files can tie up a typing station and a line count would not be applicable. If you cannot categorize a job you are doing, please provide a narrative



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

explanation under Special Applications. Most typing jobs should fit into one of the designated categories as described below.

One-time only typing jobs are those first typed in a final format, are very short (one or two pages) and usually not retained on magnetic media.

Draft typing jobs are those more lengthy and are stored on magnetic media in anticipation of revisions or for manipulation into a new format. This would include the production of lists of variables used in list/merge applications or block of information used as glossaries or building blocks. If you are doing a list/merge application for a mailing as an example, count your new input (the list of addresses) and your total output (quantity of letters produced). It would be helpful if you would add the statement, list/merge, as a comment.

Revisions are typing jobs that involve editing a previous effort. Only a portion of the lines in the job will presumably be edited and only a portion of the pages in the document are therefore counted. You should count those number of pages that are being worked on. For example, a fifty page brief is returned with revisions on twenty pages. On the sample work log, you would list the job as twenty pages input, check the category "revision", and count all fifty pages as output (printed).

Standard form typing jobs are those jobs that involve filling variables into a standard document. These standard documents may be forms, letters, documents, etc. Filled-in standard forms are usually not stored on magnetic media.

Miscellaneous charts, tabular typing, and data input are typing jobs that are more difficult to create and usually include at least one numeric column of information. Some Lists of Exhibits may fit into this category as would data input into budget or inventory files.

D. Equipment Justification: Title 41 of the United States Code requires competition in the procurement of goods and services for the federal government except in those rare circumstances where the governments requirement is available from only one source.

The fact that a desired source is considered the best source does not mitigate the statutory requirement to afford all qualified sources the opportunity to set forth in a bid or proposal their respective capabilities for our unbiased consideration.

Following are outlines for preparing a justification when your office has designated a preferred vendor source. This information is required by Justice Procurement.

Equipment Justification Outline Value of  
Procurement in Excess of \$10,000

I. INTRODUCTION - (Identify originating office, requirement, and proposed contractor)

II. ORGANIZATION OR VENDOR HAS UNIQUE QUALIFICATIONS

A. Unique knowledge or capability.

B. Unique facilities or personnel.

C. Relate unique qualifications to your distinct program.

III. PROPOSED ORGANIZATION OR VENDOR IS ONLY KNOWN SOURCE

A. (Include the following statement: "The required equipment is only available from \_\_\_\_\_. This equipment (or service) possesses the following characteristics which are not found in any other type of equipment." Describe the characteristics.)

B. (Include the following statement: "These characteristics or features are essential to our program for the following reasons:" Describe these reasons.)

IV. URGENCY OF REQUIREMENT

(Note: If claim for urgency is made, it must be substantiated. A mere recitation of an administratively established deadline or implementation schedule is NOT sufficient. If urgency is not a factor, state that such is the case.)

A. The need for this requirement was realized about (date) \_\_\_\_\_.

B. Failure to complete this requirement on schedule would cause the following losses to the originating office's program.

V. OTHER FACTORS TO BE CONSIDERED

A. Continuation of previous effort.

B. Technical data and information.

C. Other sources considered (List other sources considered and the essential capabilities which they lacked—i.e. basis for their elimination from further consideration.)

D. The proposed vendor is the only source able to fill the requirement and meet the requested delivery schedule based upon the following (as applicable):

1. Particular capabilities of vendor
2. Facilities and/or specialized equipment
3. Substantial investment made by vendor
4. Patents, data, copyrights held by vendor
5. Follow-on procurement (phasing)

VI. SUMMARY AND SIGNATURE

Equipment Justification Outline—Value of  
Procurement is Less Than \$10,000

With respect to those actions for which item III does not apply, please so indicate.

I. A brief description of the procurement objective and the purpose the proposed acquisition will serve. Include all compatibility requirements or salient characteristics, when appropriate, and all plans for subsequent

phases which will proceed from, but are not included within, the scope of the proposed procurement objective.

II. A description of the essential capabilities or facilities which a firm must possess in order to successfully accomplish the proposed procurement objective.

III. An explanation as to what characteristics the required equipment possesses which are not available from any other type of equipment together with a discussion as to why such characteristics are essential to your program.

IV. A description of the degree to which the proposed source possesses such capabilities.

V. An evaluation of the degree to which the essential capabilities are available from other sources.

#### 10-4.274 Receipt of Equipment Procedure

Receipt delivery of word processing equipment (excluding PROMIS hardware contract equipment) as described in USAM 10-4.331, *infra*, "Deliveries to Field Offices". The EOUSA copy of the receipt package, however, should be sent to the Procurement Specialist, OMISS/EOUSA.

Receipt delivery of PROMIS hardware contract equipment (Lanier) using a copy of the manual's "Equipment List by Line Item" found on pages 7 and 8. Write the quantity and serial numbers of each item received next to the appropriate line item description. Two copies should be sent to the Procurement Specialist, OMISS/EOUSA.

Receipt partial deliveries if any portion of the system is operational. Receipt additional equipment as it is installed.

#### 10-4.275 Annual Reporting Requirement

Because of the ever-increasing cost to lease sophisticated, automated word processing equipment and the limited funds available we must be certain that use of this equipment is optimal. To accomplish this goal and to provide an annual word processing equipment inventory to the EOUSA, annual renewal of equipment leases must be justified.

Please provide the following on or before June 1, 1984, and each June 1 thereafter.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

- A. Word Processing System Outline; and
- B. Productivity Report.

Both of these items were described in USAM 10-4.273, supra, and the information should be readily available from your word processing system manager. This report should be directed to the Procurement Specialist, OMISS/EOUSA.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

WORD PROCESSING WORKLOAD REPORT

For the Period: \_\_\_\_\_ Through: \_\_\_\_\_ Total # Work Days:

# Pages one time only \_\_\_\_\_ = \_\_\_\_\_ lines

# Pages first draft \_\_\_\_\_ = \_\_\_\_\_ lines

# Pages revised \_\_\_\_\_ = \_\_\_\_\_ lines

# Standard documents \_\_\_\_\_ = \_\_\_\_\_ lines

# Miscellaneous \_\_\_\_\_ = \_\_\_\_\_ lines

TOTAL INPUT \_\_\_\_\_ = \_\_\_\_\_ lines

# Special applications \_\_\_\_\_

Description of Special Applications:

---

---

---

---

---

---

---

---

---

---

TOTAL OUTPUT \_\_\_\_\_ pages



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.300 PROPERTY MANAGEMENT

The Department of Justice has established principles, standards, procedures, and related requirements with respect to the maintenance of inventory records and the control of personal property. Personal property management involves the acquisition, receipt, storage, issue, utilization, maintenance, protection, accountability, and disposal of personal property. Proper management of property will achieve a greater degree of efficiency within acceptable economical limitations.

10-4.310 Definitions

For purposes of clarifications regarding nomenclature used in this section, the following definitions apply:

Accountability: The responsibility for personal property control and records maintenance according to a prescribed auditable system. (See OBD Order 2450.1, Jan. 8, 1981).

Property Management Officer (PMO): The individual responsible for the overall administration, coordination and control of the Property Management Program for the Offices, Boards and Divisions (OBD). The PMO for the OBD is the Assistant Director for the Property Management Group, Administrative Staff (PMG), Justice Management Division (JMD).

Accountable Officer (AO): The principal officer of any OBD or field office who is responsible for the accountability and control of personal property. The AO for each U.S. Attorney's office is the U.S. Attorney.

Property Custodian (PC): An individual responsible for the immediate physical custody of personal property under his/her control and for providing documentation as required of all actions affecting the property within his/her jurisdiction. In each U.S. Attorneys' office the PC is the administrative officer.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Property Control Officer (PCO): An individual responsible for the overall administration, liaison activities and coordination of personal property within the Executive Office and all U.S. Attorneys' offices. The PCO is the Support Services Manager in the Executive Office for U.S. Attorneys.

Personal Property: Any property owned or controlled by the federal government other than land, buildings, and building fixtures. Does not refer to property owned by employees.

Expendable Property: An article of personal property which has only incidental value and which, when applied to use, is consumed, loses its identity or becomes a component part of other property.

Accountable Property: An article of personal property which has a useful life of one year or longer and has a distinct identity.

Accountable personal property includes:

A. Property with a minimum unit acquisition cost of \$1000 or more (capitalized).

B. Property with a minimum unit acquisition cost under \$1000 if it is included either in the controlled (sensitive) property listing or in the aggregate furniture property listing (noncapitalized).

C. All leased property regardless of rental cost.

A listing of example sensitive items as well as the listing of aggregate items follows:

SAMPLE LISTING OF CONTROLLED (SENSITIVE) ITEMS

Adding machines  
Air conditioners  
Calculators  
Clocks  
Communications equipment (owned)  
Dictator/Transcriber  
Dehumidifier  
Electronic Data Processing Equipment such as Acoustical coupler, Disk pack, program cassette  
Humidifier  
Mail handling equipment  
Material handling equipment, such as hand truck

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Paper shredder  
Phonograph and equipment  
Photographic projection equipment  
Readers, microfiche/microfilm  
Tape recorder, audio  
Telephone message recorder  
Television  
Typewriter

ITEMS TO BE ENTERED INTO THE AGGREGATE ACCOUNT

Bookcase	7110-00-000-0300
Bookcase, sectional	7110-00-000-0375
Bookrack	7110-00-000-1050
Cabinet file, card	7110-00-000-1700
Cabinet file, lateral	7110-00-000-2500
Cabinet file, legal	7110-00-000-4300
Cabinet file, letter	7110-00-000-4850
Cabinet file, security	7110-00-000-5800
Cabinet storage	7125-00-000-1100
Cabinet telephone	7110-00-001-0450
Chair, miscellaneous	7110-00-001-3750
Chair, rotary professional	7110-00-001-4550
Chair, rotary secretarial	7110-00-001-4650
Costumer	7110-00-001-7050
Credenza	7110-00-001-7100
Davenport	7110-00-002-0400
Desk, double pedestal	7110-00-002-9300
Desk, secretarial left ped.	7110-00-003-3725
Desk, secretarial right ped.	7110-00-003-3750
Divider	7110-00-003-6450
Magazine rack	7110-00-003-7200
Screen, folding	7110-00-003-8150
Stand office machine	7110-00-003-9425
Storage unit	7110-00-003-9650
Table	7110-00-003-9775
Table, coffee	7110-00-004-0100
Table, end	7110-00-004-3825
Table, round	7110-00-004-4950

Individual items listed above MUST cost less than \$1000 to be considered in the aggregate count.

The following items are not included in inventories as aggregate items but should be included if costing more than \$1000.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Blackboards  
Bulletin boards  
Easels  
Flags and stands  
Lamps  
Mirrors

Pencil sharpeners  
Planters  
Shelving  
Smoking stands  
Wastebaskets

10-4.320 Responsibilities

Accountable Officer: U.S. Attorneys, as Accountable Officers, are responsible for the accountability of personal property, supervision of property recordkeeping and the certification of correctness of the annual inventory report submissions for all offices under their supervision.

Property Custodian: The administrative officers, as Property Custodian, are responsible for the immediate physical custody of all property under their control, and for providing the Accountable Officer documentation on all actions affecting the property. Specific responsibilities include:

A. The proper use, maintenance and protection of personal property under their control.

B. Selecting the most economical and efficient method of repair or rehabilitation of property within their jurisdiction.

C. Initiating repair requests for property in their jurisdiction.

D. When property passes are not controlled elsewhere, issuing a property pass, such as OF 7 "Property Pass Form" for removal of government property from the building. This form should be filled out as an original and one copy. The original should be given to the individual removing the property and the copy held by the Property Custodian until the property is returned.

E. Designating employees to conduct actual physical inventories whenever necessary and providing technical guidance and assistance to those employees. The Property Custodian as well as the Accountable Officer may not conduct the actual inventory.

F. Initiating report of survey action as prescribed by OBD Order 2450.1 (January 8, 1981), in connection with the loss, theft, damage, or destruction of personal property.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

G. Ensuring that all employees are properly instructed on their responsibilities for the proper use, maintenance and protection of government property.

10-4.330 Property Accountability

10-4.331 Deliveries to Field Offices

When furniture, supplies, equipment and/or services are delivered directly to an office, the following procedures apply:

A. Complete Delivery

1. Verify the quantity delivered versus the quantity ordered.
2. List the manufacturer's serial number for all equipment next to the appropriate line item.
3. Assign a decal number to furniture or non-serialized equipment costing \$1000 (capitalization criteria) or more and write the number(s) on the face of the receipt document next to the appropriate line item.
4. Write or stamp "approved for payment" on the receipt package.
5. The Property Custodian should sign and date the receipt package.
6. Make three photocopies of the receipt package and mail two to the Department of Justice, Accounting Operations Group, PO Box 7405, Ben Franklin Station, Washington, D.C. 20044. The Accounting Operations Group will forward a copy to Property Management (PMG) so that the item(s) may be entered into the Property Management System (PMS). The third copy should be sent to the Support Services Office of the Facilities Management and Support Services Staff.

B. Partial Delivery

When the delivery is only a portion of the total amount of the purchase order:

1. Indicate the exact quantity received and date the entry on each separate affected line item on the receipt package.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. Record the manufacturer's serial number or Department decal number, as appropriate, next to the correct line item.

3. Make three photocopies of the receipt package and write or stamp on two copies "approved for payment - partial receipt" and indicate the specific line items involved.

4. The Property Custodian should sign and date the receipt package.

5. Mail copies as indicated under USAM 10-4.331(A)(6) "Complete Delivery," item 6, supra.

6. Repeat this process for subsequent deliveries until complete. The last partial receipt package should be marked or stamped "final". A copy of the new completed "original" receipt package should be kept on file by the receiving office to prevent any possibility of making duplicate payments to vendors for the same delivery.

C. Lease/rental agreements

Receipt packages for either initial or renewal leases or rentals of equipment should be verified for accuracy, signed, dated and returned to the Accounting Operations Group immediately. A copy of the receipt package must also be sent to the Facilities Management and Support Services Staff, Executive Office.

10-4.332 Delivery Problems

If a contract vendor other than the General Services Administration (GSA) refuses to effect inside delivery, and if the above statement appears on the purchase order, shipment can be refused until delivery is correct according to the order. To expedite this process it may be wise to call the vendor while the carrier is present so the problem can be resolved immediately.

In the case of failure to execute inside delivery from GSA (fedstrip) order, do not refuse the shipment. Call the regional customer service representative while the carrier is on the premises. If necessary, obtain local labor using Form SF 44 contracting authority. Indicate on the receipt package and the bill of lading that delivery was not effected according to the original request.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

If goods from a contract vendor other than GSA are obviously damaged (see 41 C.F.R. §101-26.8), do not accept delivery. The fact that goods were not accepted because of obvious damage should be noted on the delivery ticket. For items shipped from GSA depots, accept delivery but indicate on the delivery ticket that items were in obviously damaged condition. If the carrier is obviously responsible, settlement may be made locally and directly by check. If so, send the check with request for replacement through the usual procedure.

If damage is not detected until delivery is accepted, obtain a cargo inspection report from the carrier and send that, with all support documents (fedstrip or purchase order, packing with all correct slips, etc.) to the Procurement Management Unit, Department of Justice, 10th & Constitution Avenue, NW, Washington, D.C. 20530, requesting that appropriate adjustments be made. In the case of GSA depot shipments, contact GSA customer service before proceeding to the last step. In general, if you can handle the matter locally it will be resolved much faster. If there is a problem, either the Executive Office or the Procurement Unit staff will be glad to help but, as "middlemen," will not be as well informed in the situation as are the parties involved. If adjustments can not be made immediately, submit Form OBD-186 for replacement of the damaged goods pending settlement.

10-4.333 Determination of Accountable Property

Each item obtained whether by purchase/delivery order, contract action or fedstrip is coded on the document to assist in the identification of accountable property. If coding is missing, a call should be placed to Property Management Group (PMG) for appropriate coding if the item is in question. These identification codes are:

- AC Accountable Capitalized (items on purchase/delivery orders or contracts)
- A Accountable Capitalized (items on fedstrips)
- AS Accountable Sensitive
- G Accountable Non-capitalized (items on fedstrips)
- AN Accountable Non-capitalized (items on purchase/delivery orders)
- N Not accountable
- S Supplies
- R Lease items

Items received with codes AC, AS, A and R require the receiving office to either assign a Department of Justice decal or to record the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

full manufacturer's serial number on the receipt document prior to forwarding.

Items coded AN or G will be accounted for in aggregate and will not be identified in the inventory with a decal or serial number. The location of the coding on fedstrips is in Position 40 "serial" field. See also listing at end of USAM 10-4.310.

10-4.340 Physical Inventories

Physical inventories are required to assure reconciliation of accountable personal property on hand with the quantities on the property accountability records. Inventories will generally be performed on an annual basis. In addition, they are required upon the change of U.S. Attorney (Accountable Officer) and administrative officer (Property Custodian). The outgoing individual must conduct a physical inventory prior to departing. The incoming individual is not required to conduct an inventory on arrival, but is advised to do so if at all possible.

10-4.341 Conducting Physical Inventories

The physical inventory must be performed by a team of at least two members designated by the Accountable Officer and the Property Custodian. Neither of these individuals can participate on the team. Each team member is required to sign a statement describing his/her role in the inventory process as briefly and accurately as possible. This statement must be forwarded to PMG together with other inventory documentation upon completion of the inventory.

Based on property overages and shortages determined during the inventory, the Property Custodian should complete Form OBD-215, "Inventory Adjustment Voucher," providing a complete explanation of each overage or shortage and attaching appropriate backup documentation. For overage, this would mean a copy of the purchase order (for trade-ins); Form SF 122, "Transfer Order-Excess Personal Property;" Form OBD-14, "Property Transfer Request;" Form OBD-216, "Report of Survey;" or other documentation in the case of lost, stolen, damaged or destroyed property.

The inventory must be completed within 30 calendar days from the date of the memorandum from PMG transmitting the computer printout. All accountable property on hand must be inventoried and Reports of Survey promptly initiated to account for any lost, stolen, damaged or destroyed property. When completed, that inventory will be matched to the computer

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

printout. Discrepancies will be rechecked by a different person. The computer printout, annotated with current information, should then be returned to PMG, together with the following documentation:

A. Form OBD 217, "Certification of Inventory" signed by U.S. Attorney;

B. Form OBD 215, "Inventory Adjustment Voucher," and all supporting documentation;

C. Statement from inventory team members describing their role in the inventory process.

10-4.342 Summary of Records to be Maintained

A. Physical Inventory Report

As discussed previously, physical inventories will generally be performed on an annual basis. Additionally, when a U.S. Attorney, therefore an Accountable Officer, or an administrative officer, therefore a Property Custodian, is being replaced, a physical inventory must be accomplished. The incoming U.S. Attorney and/or administrative officer may elect to perform a property inventory also.

B. Monthly Customer Activity Transaction Listing

This is a monthly computer printout reflecting all additions, changes and deletions to the office's accountable personal property during a given month. All documents relating to flow of property such as Forms OBD-14, and SF 120, copies of receipts, etc. should be maintained in a separate file. Each month's Transaction Listing should be reconciled with the documents on file. When the item(s) appear properly on the Listing, the documents may then be filed away in the appropriate files. If there is a discrepancy, please contact PMG immediately.

C. Annual Customer Activity Transaction Listing

The Annual Customer Activity Transaction Listing summarizes on an annual basis the Monthly listing.

D. Individual Records

Individual record files should be maintained on all capitalized property and controlled property. This file should reflect the physical



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

location of the item(s). Documents reconciled with the Monthly Activity Listing should be placed in this file as indicated above.

The same type or records should be maintained on aggregate items as well as leased items.

10-4.343 Reporting Lost or Stolen Property

In addition to any security reporting requirements, each office is responsible for promptly reporting to PMG losses, thefts, damages, or the destruction of property. This type of report is most commonly required when property cannot be found during a physical inventory.

When loss, theft, damage or destruction involves personal property carried on Property Management System (PMS) property accountability records (capitalized personal property valued at \$1000 or more; controlled personal property valued at under \$1000; and furniture valued at under \$1000), a Form OBD-216, Report of Survey must be completed and forwarded to PMG. All other property losses, thefts, damages or destruction may be reported by memorandum.

10-4.344 Property Control

As previously stated the Accountable Officer or Property Custodian shall control all property and safeguard it from loss, theft, breakage, or undue deterioration until the property is removed, on proper authority, from his/her jurisdiction.

10-4.350 Permanent Issue of Accountable Personal Property

Whenever accountable personal property is issued by the Property Custodian to an employee for his/her exclusive use, the employee shall be required to sign a Custodial Receipt for Personal Property. This form is as yet unnumbered but will be available through Department of Justice Warehouse stock. The form will appear in the following format:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

1. DESCRIPTION OF ITEM			2. SERIAL OR DECAL NO.	
PROPERTY ISSUED TO:				
3. NAME - Last	First	Middle	4. S/S/N	5. Div/Section
6. Room/Bldg	7. Phone No.	8. Signature of Property Custodian		9. Date Issued

The Department of Justice property identified above has been declared accountable, and the signer agrees to exercise the care necessary to safeguard this property. The signer will be relieved of accountability for this property by surrendering it to the Property Custodian in exchange for this receipt upon demand, transfer, or separation from the Government.

I understand that I am personally accountable for the property identified above, and that I may be held pecuniarily liable for its loss or damage in accordance with paragraph 84, OBD Order 2450.1 (Jan. 8, 1981), unless otherwise relieved by board of survey action.

10. Signature of Person Receiving Property:

Date:

CUSTODIAL RECEIPT FOR PERSONAL PROPERTY

Sample of proposed form

A separate form shall be completed for each item of property costing \$1000 or more; each item or property under \$1000 in value which is included on the controlled (sensitive) property listing; and each item of leased property.

A separate form shall also be completed for each individual line item of property on the aggregate furniture property listing. However, if an employee is issued two or more of a specific line item, only one form is required, showing the number issued.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The form shall be completed in triplicate. After it has been signed by both the Property Custodian and the employee receiving the property, the original is retained by the Property Custodian; copy two should be retained with employees personal folder and copy 3 is given to the employee upon receipt of the property.

Whenever it is not practical to issue an item of accountable personal property to an employee for his/her exclusive use, the property may be issued by the Property Custodian to the employee's supervisor who would then sign the Receipt Form. Property within common use areas such as the library, copy room, and conference room should be issued in this manner to the person in charge of the area.

Upon an employee's transfer or termination of employment, the Accountable Officer and Property Custodian shall ensure during the clearance process that all accountable personal property issued to the employee has been returned to the Property Custodian's control.

10-4.351 Temporary Issue

If the Accountable Officer or Property Custodian maintains a loan pool of accountable personal property for temporary issue to employees, such property shall be issued under the same procedures used for the permanent issue of property.

10-4.352 Use By U.S. Attorney Offices of Forfeited Vehicles and Other Property

Title 40 U.S.C. Section 304h authorizes a federal agency to retain forfeited property for official use. Title 28 U.S.C. §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 judgement 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 U.S. Attorney's office of any type of forfeited property shall be submitted to this office for prior approval. This includes any vehicle or other property which may presently be utilized without prior approval.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Since the Department of Justice appropriation language does not specifically authorize the U.S. Attorney's office to own vehicles, it will be necessary for any U.S. Attorney's office seeking assignment of such a vehicle for official use to obtain a written memorandum of understanding with an investigative organization, such as the Federal Bureau of Investigation, Drug Enforcement Agency, Internal Revenue Service, Customs, and Alcohol Tobacco and Firearms, which has authority to own vehicles, to assign the use of a forfeited vehicle to the U.S. Attorney's office.

The memorandum of understanding should include an agreement with the investigative organization that the U.S. Attorney's office will be responsible for providing only normal daily upkeep of the vehicle, such as, gas, oil, and repairs in the event of an accident. Periodic maintenance check-ups, required by the manufacturers warranty, tune-ups, ignition controls, brakes, etc., will be the responsibility of the investigative organization.

A copy of the written memorandum of understanding, for the assignment of the vehicle, must be submitted with a sufficient justification to this office, including a comparison of monthly cost for rental of GSA Motor Pool vehicles, commercial vehicles, and reimbursement for use of employees' personally owned vehicles, (POV), as well as the anticipated savings to be realized in the U.S. Attorney's travel budget, and description of the vehicles to be assigned. Any request for use of a motor vehicle other than a domestically produced compact or medium size sedan will not be approved.

All such requests should be submitted to this office, Attention: Assistant Director, Facilities Management and Support Services Staff. Questions concerning such requests may be directed to FTS: 272-6942.

10-4.360 Disposition of Personal Property

10-4.361 Transfer of Property

All transfers of property to transferees outside the Accountable Officer's jurisdiction but within the Department of Justice must be coordinated in advance with Property Management Group (PMG). Form OBD-14, "OBD Property Transfer Request" must be used to authorize and document the transfer of accountable property between districts. This form should be completed by the acquiring office and forwarded through the Support Services Manager to PMG. Upon approval by PMG, Form OBD-14 is returned to the acquiring office. At the time of receipt of items, the OBD-14 should be signed in block 20 by the Property Custodian and returned to PMG directly. Additionally, a copy of the receipted form should be mailed to the releasing office.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

If a federal, state or local government agency or a Department of Justice bureau has expressed a desire to obtain some item of personal property, advise the acquiring agency to complete Form SF 122, Transfer Order-Excess Personal Property, for inclusion with your Form SF 120, Report of Excess Personal Property, at the time of submission. If the agency requesting the property is state or local government, please indicate on the SF 120.

When it is determined that property is excess to the needs of an office, it must be reported to the Executive Office and PMG in the following manner:

A Standard Form 120, Report of Excess Personal Property must be completed and sent to the Support Services Office of the Facilities Management and Support Services Staff. The form will be approved and forwarded to PMG.

Upon receipt of the excess report, PMG will screen the property for further utilization within the Department of Justice; if no utilization within the Department is practicable it will be determined if the property is reportable or nonreportable to GSA.

If reportable, PMG will prepare an Form SF 122 and transmit it to General Services Administration (GSA) who then assumes control of the property. However, the Accountable Officer remains accountable for the property until it is actually removed by an authorized recipient designated by GSA, and the office may take no action with the property unless authorized by GSA. For property determined to be nonreportable by PMG, PMG may report such items to GSA for sale purposes. If sold, appropriate disposal instructions will be issued by GSA to PMG who will transmit them to the Accountable Officer.

Upon receipt of the SF 122, GSA initiates a screening cycle, and provides PMG with appropriate disposal instructions which are furnished to the Accountable Officer, and the property is then deleted from the accounting system.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Codes used to determine item condition on a SF 120 are as follows:

1 Unused-good	2 Unused-fair	3 Unused-poor
4 Used-good	5 Used-fair	6 Used-poor
7 Repairs required, under 20% of acquisition cost		
8 Repairs required, 21-40% of acquisition cost		
9 Repairs required, 41-65% of acquisition cost		
X Salvage		
S Scrap		

#### 10-4.362 Exchange/Sale Property

Certain kinds of property may be sold or exchanged (trade-in) and the proceeds from the sale applied toward the purchase of similar new property (FPMR 101-46.202).

FPMR 101-46.4801 lists property ineligible for exchange/sale. Furniture, guns, and office supplies are included on the ineligible list.

FPMR 101-46.4802 lists property eligible for exchange/sale. Adding and calculating machines, dictating and transcribing machines, typewriters, etc. are included in the eligible list.

Items sold or changed cannot be excess, but must be items for which a replacement is needed to conduct approved programs.

The Property Custodian must make a written determination (which may be documented directly on Form OBD-186) at the time replacement equipment is requested in order to apply the exchange/sale allowance or proceeds to the new purchase. Generally only one item may be traded in for a similar item.

#### 10-4.363 Acquisition of Excess Property

If an office wishes to obtain excess property from available excess sources, a memorandum listing all pertinent information including a complete description of the item(s) required, releasing office's excess report number, item number(s), contact and phone number should be forwarded to PMG through the Executive Office.

PMG will prepare Form SF 122 which will be forwarded to the releasing agency or office. A copy of the SF 122 will be sent to the acquiring office for signature upon receipt of the property. Return the signed copy

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

to PMG. If necessary, assign property decals or list serial number on the received copy.

10-4.370 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 U.S. 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 delay in termination.

10-4.380 Evidence

Normally, U.S. Attorneys' offices 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 agency 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 U.S. Marshal. U.S. Attorneys and Assistants should accept custody of evidence only for such short periods of time as are necessary to present the evidence to the court or grand jury. Except in extreme emergency situations, no evidence will be retained in the U.S. Attorney's office overnight.

Timely arrangements shall be made with the U.S. Marshal 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 shall remain in the custody of the Drug Enforcement Administration agent in charge of the case, who shall insure that the integrity of the evidence is secured and that all evidence is present at the court proceeding.

Generally, the only occasion when evidence might be stored in the U.S. Attorney's office is when documentary evidence, secured under grand jury subpoena, is delivered into the custody of the U.S. Attorney. As long as such 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. If additional space is needed to store such evidence, the usual procedures for procurement of space should be followed. See SPACE MANAGEMENT, USAM 10-5.000.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Whenever the court grants a petition by the GSA for delivery of a forfeited item to the government of official use, a copy of the decree must be transmitted immediately to the regional counsel of the GSA serving the area in which the action takes place. The GSA will take the proper steps to dispose of such property. The U.S. Marshal should also be notified of such decree so that he will be prepared to release such property to the GSA.

Title to all unreturned enemy alien contraband property is the custody of the U.S. Marshals, in consequence of the contraband property program of March 16, 1950. All questions regarding such property should be directed to the Assistant Attorney General for Administration.

U.S. Marshals are authorized to accept and store all valuable property seized as evidence by the FBI incident to an arrest or in connection with searches and seizures under warrants. In any case when a question exists as to whether particular property will be used as evidence, the U.S. Attorney in the district where the property is stored should be consulted. The U.S. Marshal will be guided by the U.S. Attorney's determination. Property not used as evidence should be returned to its owner promptly.

Exhibits or abandoned or unclaimed property, in connection with litigation, which the U.S. Attorney cannot return to its lawful owner should be turned over to the U.S. Marshal, who will be responsible for it in his report of abandoned and unclaimed personal property.

10-4.390 Shipment of Goods

This section covers all shipment of goods, with the exception of household moves. See TRAVEL, USAM 10-3.560.

Packages should be shipped by parcel post, freight, or express. Although shipment by freight is generally cheaper than by express, most freight charges are based on a minimum of 100 pounds. Care should be exercised to ship packages by the cheapest method.

In the case of shipments pertaining to specific litigation, or records to Federal Archives and Records Centers, such shipments may be authorized by the U.S. Attorney if the cost is less than \$100. Such shipments should be vouchered on Form OBD-50, "Voucher Cover Sheet." All other shipments should be requested via Form OBD-186 to the Support



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Services Office of the Facilities Management and Support Services Staff.  
Information required is as follows:

- A. Exact pick-up address and name and phone number of a contact in the office;
- B. Number of cartons (if records) or some description by which bulk and weight can be determined;
- C. Indicate whether or not goods must be professionally packed;
- D. Exact delivery address;
- E. If a General Services Administration contract carrier is known, give name, address, and phone number; and
- F. In the case of shipment of records to the Federal Archives and Records Center, note in the request if there is a deadline for shipping.

When a request is received in the Executive Office, it is usually approved and funded. Requests then are sent to the Material Management Section (PMG) for processing. The U.S. Attorney's office will be contacted either by phone or will be mailed a Government Bill of Lading (GBL) with complete shipping instructions.

10-4.400 OFFICE FILES AND RECORDS MANAGEMENT

10-4.410 Office Files

The records, and files of all U.S. Attorneys' offices should be maintained in current and orderly manner, consistent with OBD Orders 2710.1A (Dec. 28, 1978), and 2710.2A (Jan. 29, 1979).

10-4.411 Docket Records

A. Case dockets - The records prescribed by the U.S. Attorneys Docket and Reporting System, USA 2840.1 (Dec. 14, 1973, as amended Sept. 1, 1980), (see, MANAGEMENT REPORTS, Docketing and Reporting Procedures, USAM 10-6.212 and COLLECTIONS, USAM 10-8.000) or by the U.S. Attorneys PROMIS System (see, PROMIS Procedures Manuals) shall be maintained in the district on a current basis.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Grand jury dockets - A formal grand jury docket is not required by the Department and docket sheets will not be provided for this purpose. However, an agenda or calendar of matters to be presented to the grand jury should be prepared prior to the meeting of each grand jury and the action taken should be recorded in the U.S. Attorney's files. Form USA-179 is available for use in maintaining these files.

C. Witness docket - No witness docket as such should be maintained by U.S. Attorneys. Information regarding witnesses is available from copies of the "Witness Attendance Certificate," Form OBD-3.

10-4.412 Case Files

A criminal or civil case folder shall be set up for each case and should contain all reports and preliminary papers, copies of indictments or pleadings, etc., and all correspondence relating thereto. Each folder should reflect the complaint or claim number assigned under the numbering system established for reporting new matters. As a case progresses, the folder should be transferred from one file to another, according to the status of the case, under the following general arrangement of files:

A. Criminal:

1. Complaint File - for the filing of letters, reports, etc., relating to alleged violations of law, prior to the institution of criminal proceedings.
2. Grand Jury File - cases which are ready for presentation to the grand jury.
3. Pending Case File - all pending cases, after the filing of information or indictment.
4. Closed Case File - closed files.
5. Appeal File - cases which are pending in an appellate court.

B. Civil:

1. Preliminary matters.
2. Pending cases.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

3. Closed cases.
4. Appeals.

10-4.413 Official Receipt File

The quadruplicate copies of receipt Form USA-200, issued for collections made by U.S. Attorneys will be filed in accordance with instructions in Order USA 2840.1 (Dec. 14, 1973).

10-4.414 Debtor Index and Payment Record File

Offices which have not converted to the PROMIS system should follow instructions in Order USA 2840.1 (Dec. 14, 1973, as amended Sept. 1, 1980), U.S. Attorneys Docket and Reporting System, in maintaining the prescribed Debtor Index and Payment Record, done through forms USA-117A and 117B, Criminal and Civil Debtor Cards.

10-4.415 Miscellaneous Correspondence

Miscellaneous correspondence, including carbon copies of all outgoing telegrams, letters, etc., which do not relate to a case, should be separately filed in folders. Separate folders may be used for special subjects or for different departments or individual officials when necessary.

10-4.416 Personnel Files

Personnel folders maintained in the Department have been designated the official folders for all employees of the office of the U.S. Attorney. U.S. Attorneys should not maintain separate official files, but should forward all necessary personnel papers to the Executive Office for U.S. Attorneys for inclusion in the official folder. Duplicate personnel papers may be maintained in administrative files in accordance with the following paragraph. When an employee transfers to another government agency, his/her Official Personnel Folder will be forwarded to the employing agency by the Executive Office.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.417 Administrative Files

Copies of correspondence, office copies of personnel actions, position descriptions and other miscellaneous informational material relating to the office may be kept in a separate file to be designated as an administrative file. This file should not contain any material which is properly included in the official personnel folders maintained in the Executive Office. These files must be disposed of in accordance to the General Records Schedule.

10-4.418 Maintenance of Attorney-Client Information

A. Introduction: In the course of handling civil actions brought against employees in their individual capacities, notes, letters, and memoranda are often generated reflecting the substance of confidential communications between employees and the Justice Department counsel. Under the Attorney General's policy statement on representation of federal employees, this information is entitled to the protection of the attorney-client communication privilege. See 28 C.F.R. §50.15(a)(3). In order that this privilege be preserved, it shall be the responsibility of each Assistant U.S. Attorney assigned such a case to restrict access of such material to himself/herself, line supervisors and the U.S. Attorney. The following procedures, designed to assure adherence to this policy, only apply to communications with current or former government employees sued in their individual capacity. Records reflecting communications with employees sued only in their official capacity shall be placed in the non-restricted litigation files.

For purposes of this policy, the definition of "attorney-client confidential information" is that information which is protected by the attorney-client privilege under applicable law.

B. Contents of Files: In all instances where an attorney is responsible for a case involving the representation of a current or former government employee in his or her individual capacity, the attorney should maintain in the case file only those attorney-client communications which are necessary for the conduct of any pending or possible future litigation. All other privileged material should be destroyed.

1. Open Files: The exterior of every case file that contains attorney-client communications should be clearly marked with the following symbol:

INDIV. REP.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Each U.S. Attorney should insure that every employee in the office is aware that access to case files so marked is restricted to the case attorney responsible for the case; to employees expressly directed by the case attorney to have access to the file; and to the attorney's supervisors.

2. Closed Files: When a file containing attorney-client communications has been authorized to be closed, the attorney who handled the case shall place all material containing attorney-client communications inside an envelope. The envelope should be sealed and a stamp should be placed over the seal with the following statement:

This file contains privileged attorney-client information. Access is limited to assigned trial attorneys and their supervisors only.

The envelope containing the privileged information should then be made a permanent part of the file. This procedure should be repeated if the envelope containing the confidential attorney-client material is ever opened by authorized individuals.

C. Disclosure: Access to all files containing confidential attorney-client material is limited to:

1. Any individual acting on behalf of or with written permission of the client/represented defendant;
2. The attorney assigned to the case; and
3. The immediate supervisors of the attorney responsible for the case and the U.S. Attorney.

10-4.420 Directives

Department of Justice Order 0000.1 (July 14, 1971), Directives Subject Classification System, describes the numbering system for the Department of Justice directives and provides an alphabetical listing of subject categories.

A list of directives by number can be found in OBD 0000.2F (March 22, 1982) Directives Index as of April 30, 1977--U.S. Attorneys' and Marshals' Service. Distribution is also listed.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

To obtain missing or extra copies of these directives, complete a DOJ-182, Stocked Printed Items Requisition, and forward as directed for stocked forms. Should any directive be unavailable, call the Executive Office for help in obtaining a copy.

10-4.430 Disposal of Records

The Department's Records Management Program provides for the preservation of records of permanent value or historical interest, the retirement of records no longer needed for current operations, and the destruction of non-record material.

10-4.431 Closing Notice for Case Files

USA 207 entitled Notice to Close Legal Case files is the official closing notice for U.S. Attorney litigating case files. The use of this form by all U.S. Attorney offices is required and should, wherever possible, be prepared by the attorney responsible for the case or the legal clerk or technician assisting that attorney. Form USA 207 constitutes the official closing of the case file and shall be placed as the final document in the case folder. Form USA 207 shall be completed as follows:

A. Section I, General - This section includes the name of the division and/or section, case number and case title.

B. Section II, Disposition - This section should be completed as follows:

1. If the case involves no sentence or a sentence of ten years or less, indicate so in the first block under item number 1, or,

2. If the case involves a sentence of more than ten years, indicate the number of years (1 year after termination of sentence) that the case file may be destroyed, in the second block under item number 1, or,

3. If the case fully meets any one or more of the special criteria listed in OBD Order 2710.2 (Jan. 29, 1979), the attorney shall so indicate the appropriate criteria designating the case for permanent retention.

C. Section III, Method Closed - Use of this section is optional and may or may not be completed at the discretion of the U.S. Attorney.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

D. Section IV, Certification - After the form is accurately and completely filled out, the U.S. Attorney or designated representative shall sign and date the form.

USA 207 is available through the Department of Justice warehouse stock and may be obtained through normal procedures.

Additional information regarding the permanent retention of records may be found in Order OBD 2710.1A (Dec. 28, 1978), Records Disposition, para. 4.

Closed and inactive records should be retired to the Federal Archives and Records Centers (FRAC) for storage and maintenance, according to approved disposition schedules set forth in OBD Order 2710.2A (Jan. 29, 1979). Records that are obsolete or unnecessary for retention and are authorized for destruction should be destroyed and not sent to the FARC. FARC wants only those records which are closed or inactive and are being retired to the Center because they have reached the required retention period for destruction or have no authorization for destruction.

A well-organized systematic records retirement program will save valuable office space, release filing equipment, and make use of needed records more efficiently.

U.S. Attorneys should box and ship closed files to the regional FARC once or twice each year. Retention periods are found in OBD Order 2710.2A (Jan. 29, 1979), United States Attorneys' Records Disposition, Civil and Criminal Case Files. Further information concerning records disposition can be found in 41 C.F.R. §101-11.4. Cases which have been completed as to litigation or appeals but will be continued as to collection of fines or other matters should be retained. If a case or matter was closed for a period in excess of that shown for retention on the disposal schedule, consideration should be given to disposing of or destroying the files.

Such non-record material as obsolete forms, publications, extra copies of correspondence and duplicate copies may be destroyed without authority.

Information on the procedures for sending records to the FRAC is found in OBD Order 2710.1A (Dec. 28, 1978) Records Disposition. When records have been packed according to the instructions in the order and accession numbers requested from FRAC, follow the procedure described below. Send an OBD-186 to the Support Services Office of the Facilities Management and Support Services Staff, Executive Office, requesting shipping authority. See Shipment of Goods, USAM 10-4.390.

UNITED STATES ATTORNEYS' MANUAL  
- TITLE 10--EOUSA

The destruction of classified information, i.e., records requiring safe-guarding in the interest of national defense, is regulated by the Attorney General's Order No. 489-72. This order is located in 28 C.F.R. §§17.74-17.77.

10-4.440 Forms

10-4.441 Standardized Forms

Whenever possible, standardized forms provided by the Department of Justice or the clerk of the court should be used. See OBD Order 2730.1B (April 23, 1982), Forms Index for Offices, Boards, and Divisions, for a list of forms stocked by the Department warehouse. These forms are available on request from the warehouse stock, 4th and T Streets, NE, Washington, D.C. 20530. Form DJ-182, Requisition for Stocked Printed Items, should be used for such requests. There is no charge and authorization is not generally required. Emergency requests may be phoned in on FTS 633-3096. Suggestions for changes in OBD, DJ, DOJ, or USA forms should be sent to the Support Services Manager, Facilities Management and Support Services Staff, Executive Office. Standard forms and optional forms are available for purchase from the General Services Administration via feds trip.

A list of the forms available is located in the Office Products volume of the GSA catalog system.

Responsibility for the management of form letters in the U.S. Attorneys' offices rests with the administrative officer (AO). All requests for new or revised forms and the overprinting of any existing forms and form letters must be reviewed and controlled by the AO. The AO should also review local forms which have been printed for the office. Those which have served their purpose should be discontinued and removed from the system. Similarly, forms should be updated as circumstances change.

The AO should watch form usage rates carefully, and stock replenishment orders should be performed as necessary.

The AO should ensure that standardized forms are used when applicable. If, in the AO's judgment, a standardized form does not completely serve its purpose, he/she should submit a request for revision to the Executive Office, Support Services Manager. He/she may also call attention to areas where greater standardization is possible. For further information on forms management, see "Forms Management Tips for Administrative Officers," published by the Department of Justice.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-4.442 Special Forms

A special form, developed for use in a single district, can cost many times more than a standard stocked form. These special forms should be used only under the following circumstances:

A. Significant time savings can be realized in recording information.

B. No standardized form is available. (Special forms should not be printed merely to add the district name.)

C. Local rules or practices preclude use of a standardized form.

D. Information to be recorded is not available in other records or cannot be handled merely by revising an existing form.

E. Procedures relating to the Forms are in accord with regulations.

When it is determined that a special form is necessary, use the following procedure:

A. Develop the form.

B. Assign a number and date in the lower right hand corner. Numbers should be sequential, beginning with USA-40-district number-1; and in parentheses ED and date. For example: USA-40-96-1 (ED 8-1-81). Multiple-page forms should bear the same number, but page number should be indicated on all except page 1.

C. Complete a "Printing Requisition," DOJ-2, and forward, together with a brief justification, to the Support Services Manager, Executive Office.

Procedure for revision is the same except that the date will be preceded by REV date rather than ED. For example: USA 40-96-1 (REV 10-1-81).

A file consisting of an index and copies of all special or local forms should be maintained and kept up-to-date.

Should it be determined that a special form might be useful to all U.S. Attorneys' offices, a memorandum should be submitted to the Executive Office with a copy of the form.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DETAILED  
TABLE OF CONTENTS  
FOR CHAPTER 5

	<u>Page</u>
10-5.000 <u>SPACE MANAGEMENT/PHYSICAL SECURITY</u>	1
10-5.100 OFFICE SPACE	1
10-5.110 <u>General Description</u>	1
10-5.120 <u>Planning Criteria</u>	1
10-5.121 Policy	1
10-5.122 Planning Criteria	2
10-5.130 <u>Location</u>	2
10-5.140 <u>Procedures</u>	3
10-5.141 Additional Space	3
10-5.142 New Federal Buildings/Courthouses	3
10-5.143 Release of Space	3
10-5.200 PARKING SPACE	3
10-5.210 <u>Policy</u>	4
10-5.220 <u>Priority Assignment of Parking Spaces for Employee Owned Vehicles</u>	4
10-5.300 PHYSICAL SECURITY	4
10-5.310 <u>General</u>	4
10-5.315 PROMIS Computer Security Standards	5
10-5.320 <u>Tax Returns and Tax Return Information</u>	11
10-5.321 Purpose, Scope and Applicability	11
10-5.322 Individual Responsibility	12
10-5.323 Access to and Dissemination and Control of Tax and Tax Information	12
10-5.324 Physical Control over Tax Returns and Tax Return Information	12
10-5.325 General	13

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-5.330	<u>Facility Self-Protection Program</u>	18
10-5.400	UNITED STATES ATTORNEY'S OFFICE SECURITY PLAN	18
10-5.410	<u>Elements of Plan--Physical Security</u>	18
10-5.420	<u>Elements of Plan--Document Security</u>	19
10-5.430	<u>Elements of Plan--Tax Return Information</u>	20
10-5.440	<u>Elements of Plan--Personnel Security</u>	21
10-5.450	<u>Elements of Plan--Automated Data Processing (ADP) Security</u>	21
10-5.460	<u>Elements of Plan--Identification of Deficiencies and Remedies</u>	22
10-5.470	<u>Dissemination of Plan</u>	22

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.000 SPACE MANAGEMENT/PHYSICAL SECURITY

10-5.100 OFFICE SPACE

10-5.110 General Description

The office of the U.S. Attorney functions within the court basically as an independent law firm whose sole client is the United States government. The U.S. Attorney represents the government in all cases, both civil and criminal, to which the government is a party or in which it has an interest.

Functional arrangement of the U.S. Attorney's suite requires public access to the reception area. The circulation within the suite to areas used by all attorneys should be semi-private. Such access should be provided to library, conference room and file areas.

10-5.120 Planning Criteria

10-5.121 Policy

The planning criteria are subject to the following policy statement:

The planning criteria are excerpted from "United States Courts Design Guide, Chapter 15, United States Attorney," issued by the General Services Administration (GSA) on May 1, 1979.

On March 8, 1983, GSA issued, "FPMR Temporary Regulation D-68; Assignment and Utilization of Space," requiring agencies to work toward the goal of 135 square feet per person or a ten percent minimum reduction in space utilized and to submit an agency-wide space plan. A Department of Justice Space Plan was presented to GSA. GSA's response to the Department's space plan is conditional approval requiring among other things, a ten percent overall reduction of space utilized. The 1979 United States Courts Design Guide is effective until modified by GSA.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.122 Planning Criteria

The offices of the U.S. Attorneys differ in size in accordance with the amount of work in the district. The recommended suite (medium in size) includes the following spaces:

U.S. Attorney's office	
private office	-300 square feet
toilet	- 25 square feet maximum
Secretary's office	
work area/reception area	-250 square feet
Chief Assistant U.S. Attorney's office	-250 square feet
Assistant U.S. Attorneys' offices	-180 square feet each
Stenographers' office or area (for two stenographers 100 square feet each)	-200 square feet
Administrative Officer's office	-180 square feet
Conference room/Library	-to be determined in Space Directive
Evidence storage room	-200 square feet
Clerks and files room	-250 square feet
Visiting attorney's office	-180 square feet each
Supply and storage room	-200 square feet
Work room or area	-200 square feet
Witness room	-200 square feet

10-5.130 Location

The U.S. Attorney's suite should be located in proximity to the courtrooms and the grand jury suite, but need not be on the same floor with the courtrooms or with the grand jury.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.140 Procedures

10-5.141 Additional Space

If a determination is made that additional office space is required, the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys, should be contacted. In a letter, sufficient justification for the request should be provided, such as additional personnel authorized (specify type, i.e. attorney, support, number of each) or overcrowded or insufficient space to house presently authorized staff.

Authority for acquisition and/or relocation of space has not been delegated to the U.S. Attorneys. Such actions may be accomplished only by and with the approval of the Executive Office.

10-5.142 New Federal Buildings/Courthouses

GSA requests the Department to provide space requirements for the U.S. Attorney and other tenants when it contemplates construction of a new federal building and/or courthouse. The Executive Office contacts the U.S. Attorney's Office to obtain input, prior to compiling and submitting specific space requirements.

When copies of proposed office space layouts are received by the Executive Office, they are forwarded to the U.S. Attorney's Office for concurrence, comment, and/or suggestions for improvement and return.

10-5.143 Release of Space

If contacted by the General Services Administration (GSA), U.S. Courts, or others requesting the release of space or relocation of your office, please contact the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys, immediately. Authority for release or relocation of space has not been delegated to the U.S. Attorneys and can be accomplished only through the Executive Office.

10-5.200 PARKING SPACE

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.210 Policy

It is the general policy of the Executive Branch 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.

10-5.220 Priority Assignment of Parking Space for Employee Owned Vehicles

1. U.S. Attorney.

2. Handicap government employees for whom assigned parking spaces are necessary shall be given priority over all other employee parking. Non-handicap drivers who provide transportation for severely handicapped employees shall also be assigned parking spaces.

3. All Paid Supervisory Assistant U.S. Attorneys.

4. Administrative Officer.

5. One operational space.

10-5.300 PHYSICAL SECURITY

10-5.310 General

Security Programs. See Department of Justice Orders 2600.2A (Sept. 16, 1977), and 2620.4 (Sept. 29, 1977).

There are six major programs which the administrative officer or other designated official is responsible for implementing in accordance with USAM 10-5.400:

A. Personnel Security: Pursuant to Executive Order 10450, 5 U.S.C. §§7531, 7532, FPM Chapters 731, 732, and 736. See USAM 10-2.000.

B. Document Security: Classification, declassification, and control of national security information, including sensitive compartmented information pursuant to Executive Order 12065, and protection of non-national defense sensitive information and information for which safeguarding is required by the Privacy Act of 1974.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

C. Physical Security: Safety and physical security of personnel, property, and information. See 41 C.F.R. §101-20.504.2, Executive Order 12065, 5 U.S.C. §552a, and §300.

D. Automated Data Processing (ADP) Security: Information which is investigative in nature is considered sensitive and must be protected against uncontrolled release or access. If an office is using a computer terminal to access a remote computer facility, such as the Department of Justice Data Center in Washington, D.C., in order to analyze or retrieve sensitive data, the attorney in charge of the matter must establish and maintain procedures to limit access to the data to authorized users.

U.S. Attorneys' Offices which have an ADP facility on-site must have security safeguards which include the designation of an individual responsible for this security, controlled access to the facility, the implementation of fire protection measures, contingency plans with emergency back-up, and recovery procedures, and development of procedures to ensure data security and system integrity. USAM 10-5.315 specifies security safeguards for on-site Prime Computers installed to operate the PROMIS caseload and collections management system.

Departmental policies concerning ADP security are outlined in Department of Justice Order 2640.2A (Sept. 17, 1982).

E. Tax Returns and Tax Return Information: See USAM 10-5.320, infra.

F. Identification of Deficiencies and Remedies

10-5.315 PROMIS Computer Security Standards

The instructions below reflect minimum standards for PROMIS computer installations. Variations from these minimum standards are permissible so long as they equal or exceed the minimum.

1. PHYSICAL SECURITY

1.1 Location

1.1.1 The computer must be located within the confines of the U.S. Attorney's Office, or at least, within a controlled access area.

The computer must be protected from unauthorized access, especially by non-office personnel.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- 1.1.2 Similarly, all terminals and printers must be located in an area of controlled access. For terminal screens that can be viewed by persons from outside of the U.S. Attorney's Office (such as a screen at a receptionist's desk), special security restrictions must be invoked, preventing the display of any investigative or other sensitive information in order to avoid inadvertent disclosure.
- 1.1.3 If possible, the computer should be located in an isolated computer room. If the computer is located in an isolated computer room, the door to that room must be equipped with a push-button simplex lock or equivalent. The code to the lock should be known only to the PROMIS System Manager, the Administrative Officer, and those personnel whose duties require uncontrolled access to the computer room. A key override system is desirable.
- 1.2 Alarm Systems.
- 1.2.1 The computer system will be largely running in an unattended mode. Therefore, the room in which the computer is located must be equipped with both smoke and heat detector alarms.
- 1.2.2 If a sprinkler system exists, the heat detector alarm must be set at least fifteen degrees Fahrenheit (15° F.), lower than the sprinkler trigger.
- 1.2.3 The smoke and heat detectors must produce an audible alarm which can be detected by office personnel during normal duty hours. For after hours notification, the detectors must trigger an alarm in the office of the responsible building guard or building manager. It is recommended notification unit be installed. These units dial one or more pre-programmed telephone numbers and provide voice notification of the problem condition.
- 1.2.4 The building guard or building manager must be provided with a sealed envelope which contains the names and home telephone numbers of the System Manager, Administrative Officer, and other responsible office personnel. The envelope must also contain instructions regarding notification of the fire department and responsible office personnel; the keys or lock combinations for any doors which must be opened to access the computer; and specific instructions for shutting down the machine.
- 1.3 Emergency Power Shutdown

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- 1.3.1 The use of heat and smoke detectors which trigger the automatic disconnection of power from the computer and any associated peripheral devices are highly desirable. Such detectors must provide a delay period between the time the alarm is triggered and the shutdown occurs, to allow for appropriate human intervention.
- 1.3.2 A clearly marked emergency shutdown switch, which can be used to disconnect the power from the computer is also highly desirable.
- 2. DATA AND SYSTEMS SECURITY
  - 2.1 Backup (Note: Details on backup procedure are provided in the PROMIS System Manager's Manual, Section VI.)
    - 2.1.1 The System Manager must create a daily tape backup of the PROMIS log file for the preceding work period.
    - 2.1.2 All daily backup tapes must be created either after or before regular work hours, or during lunch break while no data entry is in progress. The time of day during which backups are made should be the same from one backup to the next.
    - 2.1.3 The minimum retention period of the daily backup tapes is two (2) calendar weeks. Each daily backup for a given week must cumulate the preceding backups for that week. Extension of this retention period is a recommended local option.
    - 2.1.4 Once each week the System Manager should save all PROMIS files. A minimum of the previous three PROMIS file saves should be retained. This corresponds with retaining daily backups for two calendar weeks. Retention of earlier file saves is recommended as a local option.
    - 2.1.5 All PRIMOS systems software, PROMIS system software, and other non-PROMIS materials stored on disk must be saved on a periodic basis. The frequency of such saves should be governed by the number of changes made to such information. A full backup of such materials must be accomplished at least once every three months. More frequent backup is encouraged. A minimum of the previous two backups must be retained.
    - 2.1.6 At least one set of PROMIS weekly backup tapes and one set of software backup tapes must be stored off site at all times.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Off-site storage is to be located at another building at an environmentally controlled location, i.e., at an air-conditioned office and not exposed to direct sunlight or to degaussing magnetic fields.

- 2.1.7 The System Manager, together with the Administrative Officer, is responsible for assuring that the off-site storage is protected from unauthorized access. Also, authorized access for the retrieval of tapes must be assured at least during the USAO's normal business hours and preferable around the clock.
- 2.2 Hard Copy Backup
  - 2.2.1 As a safeguard against prolonged system failure, the System Manager must periodically create hard copy index GIP listings of defendant/litigant related information, which can be used to access case files and route requests for information and documents to appropriate office personnel.
  - 2.2.2 As a minimum, civil litigant, criminal defendant, and collections debtor listings should be run weekly. Listings should be in order by litigant, defendant, or debtor as appropriate. Each listing should contain the following minimum additional information as appropriate: USAO No., Court No., AUSA, Closing Date, Criminal Lead Charge, Civil Cause of Action. These listings should include all matters and cases added, updated or closed during the preceding week. On a bi-weekly (or more frequent) basis, they should be cumulated to list all pending cases and cases closed during that period.
  - 2.2.3 Additional index listings which contain different data elements or are produced in different sequences may be required to fulfill other local requirements. Production of such additional listings is encouraged.
- 2.3 Documents
  - 2.3.1 All computer produced reports which contain sensitive information, e.g., listings of investigative matters, juvenile cases, sealed records, etc., must be marked "Limited Official Use" and must be protected and destroyed in accordance with provisions of DOJ Order 2620.7, Control and Protection of Limited Official Use Information. This includes shredding prior to disposal.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- 2.3.2 The System Manager is responsible for assuring that the reports are marked and the Administrative Officer is responsible for assuring that recipients of all sensitive reports are instructed regarding the provisions of DOJ Order 2620.7.
- 2.4 Access Codes
- 2.4.1 Assignment and safeguarding of access codes must be in conformance with the District's policy regarding the protection of sensitive information. Reference U.S. Attorneys' Manual, Title 10, and DOJ Order 2620.7, Sept. 82, based on:
- (a) 26 U.S.C. §6103, Publicity of returns and disclosures of information as to persons filing income tax returns.
  - (b) Federal Rules of Criminal Procedure, Rule 6(e), Grand Jury Secrecy of Proceedings and Disclosure.
- 2.4.2 Access to the Prime system is controlled by a PRIMOS user-id and password. The password should be randomly selected and must be changed at intervals not to exceed six months. The user-id, which is commonly made up of the user's last name, may be assigned permanently.
- 2.4.3 Access to PROMIS is also controlled by two codes. The PROMIS group password which also internally controls access to the different kinds of case information, must be changed at intervals not to exceed six months. The personal i.d., which commonly is made up of the user's initials, may be assigned permanently.
- 2.4.4 The "PASSWORD" program, available from the EOUSA, may be used as a convenient tool for generating PRIMOS passwords and PROMIS group passwords.
- 2.5 Procedures
- 2.5.1 If the computer is located in a room with a push-button simplex lock, the door combination must be changed at intervals no greater than three months, or at any time the combination has been disclosed to an unauthorized person such as a security guard.
- 2.5.2 Whenever a terminal is left unattended for any period, such as lunch break, the terminal must be logged off. However, it is neither necessary nor desirable to turn off the power.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- 2.5.3 Upon termination of employment by the U.S. Attorney's Office, an individual's PRIMOS and PROMIS user-ids must be deleted. In addition, the PROMIS group password must be changed if the former employee has had access to sensitive information. Cancelled passwords may not be reassigned for a period of at least two years.
- 2.5.4 The System Manager is responsible for password control. The Administrative Officer is responsible for advising the System Manager of the forth coming departure of any employee of the U.S. Attorney's Office who may have had access to the PROMIS system.
- 2.5.5 If any record of active or closed passwords is maintained, it must be protected with at least the same level of security as that of the most sensitive password in the entire list (usually the System Manager's password).
- 2.6 Communications
- 2.6.1 A single modem will be installed at each site to accommodate dial access into the Prime system. This communication facility will be used only by the EOUSA for software support. When an EOUSA software support representative requires access, voice verification must be made and positive action must be taken by the System Manager before data communications is established.
- 2.6.2 Data communications with branch offices will use only direct, unswitched, dedicated telephone lines.
- 2.6.3 In addition to the use of dedicated lines, Prime supplied multiplexers will be installed at each end of the line so that only multiplexed information will be communicated.
3. PERSONNEL SECURITY
- 3.1 DOJ Order 2640.2A, Automated Information Systems Security, establishes a uniform policy for protecting systems such as PROMIS. Section 17.C of the order addresses personnel security.
- 3.2 As a minimum, this section requires a National Agency Check with Inquiries (NACI) for Prime employees, such as systems analysts and field engineers who will have occasional unsupervised access to the computer facility and/of its software system.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- 3.3 The System Manager is responsible (through the Administrative Officer) for making arrangements for the appropriate Prime employees to complete fingerprint cards (FD-258) and an SF-86.
- 3.4 The fingerprint card and SF-86 will be processed in accordance with procedure specified in USAM Title 10.

10-5.320 Tax Returns and Tax Return Information

10-5.321 Purpose, Scope and Applicability

The policies and procedures herein established are designed to preclude the unauthorized disclosures of tax returns and tax return information coming into the custody of the Executive Office for U.S. Attorneys and offices of the U.S. Attorneys. This is to establish minimum standards governing the transmission, custody, and disclosure of tax returns and tax return information, consistent with the provisions of safeguard requirements of Section 6130(p) (4) of the Internal Revenue Code.

A. References throughout this memorandum to the safeguarding of tax returns and tax return information means that safeguarding of information so as to preclude disclosure of tax returns and tax return information in any form which will enable association with or identification of a particular taxpayer.

B. Nothing in this memorandum will be construed as authorizing disclosure, dissemination, release, handling, or transmission of tax returns and tax return information contrary to the specific provisions of any law.

C. References

1. Section 6103(p) (4) of the Internal Revenue Code.
2. 18 U.S.C. §1905.
3. 26 U.S.C. §7213.
4. Department of Justice Order 2620.5A (February 23, 1981).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.322 Individual Responsibility

The effectiveness of this tax return and tax return information security program depends upon the alertness, reliability, and discretion of every individual who receives tax returns and tax return information. The importance of effective security and of the position of trust imposed upon each individual who has possession, access, or control of such information is indicated by the criminal penalties imposed by 18 U.S.C §1905 and 26 U.S.C §7213.

10-5.323 Access to and Dissemination and Control of Tax and Tax Information

The following principles and requirements will be adhered to in the Executive Office for U.S. Attorneys and the offices of the U.S. Attorneys.

A. Access to tax returns and tax return information shall be limited to those employees of the Executive Office designated by the Director or the Director's designee and in the case of U.S. Attorneys' Offices, by the U.S. Attorney, or his/her designee(s) as having a need for such returns and information in connection with the carrying out of their official duties. No person shall be entitled to knowledge or possession of access to, tax returns and tax return information solely by virtue of his/her office or position.

B. Tax returns and tax return information shall not be disseminated to or discussed with or in the presence of unauthorized persons.

C. Any person who has knowledge of the loss or possible compromise of any tax return or tax return information shall promptly report the circumstances to the Director in the case of the Executive Office for U.S. Attorneys, and to the U.S. Attorney in the case of reports from the offices of the U.S. Attorney. The U.S. Attorney shall report to the Director of the Executive Office for U.S. Attorneys who will be responsible for investigating and preparing recommendations to the Deputy Attorney General as to any follow-up action that may be required.

10-5.324 Physical Control Over Tax Returns and Tax Return Information

The Director, Executive Office for U.S. Attorneys, and the U.S. Attorneys or their designees shall be responsible for maintaining, as a minimum, control over tax returns and tax return information consistent with security requirements provided below.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

A. When documents cannot be personally transmitted between authorized recipients, the transmittal of tax returns and tax return information and related working papers shall be transferred by registered mail with a return receipt requested and labeled "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY ADDRESSEE ONLY" to be signed by the receiver or a designated representative who is authorized access to tax returns and tax return information.

B. To avoid inadvertent disclosures to unauthorized persons, federal tax information must be kept separate from other information to the maximum extent. In situations where physical separation is impractical, such files should be clearly labeled to indicate that federal tax information is included and care should be taken to remove all such federal tax data to preclude access by any unauthorized persons.

Tax returns and tax return information and related information and related working papers shall be stored under the sole control of designated employees who are authorized access to tax returns and tax return information. When copies of tax returns and tax return information and related working papers are no longer needed, they shall be, in lieu of any other written directive, destroyed under the supervision of a designated representative who is authorized access to tax returns and tax return information. A written report of this destruction, identifying the papers will be retained for a period of 10 years and later incorporated into the respective Records Disposal Programs of the office in question. Original IRS documents shall be returned to the IRS. No office is authorized to retain custody of original tax returns except by special arrangement with the Commissioner of Internal Revenue or his/her designee.

10-5.325 General

The following guidelines are to assist in developing procedures and standards to insure compliance with this Order/memorandum and in conformance with Section 6103(p)(4) of the Internal Revenue Code. If assistance or equipment, such as locked files are required, please contact the Assistant Director, Facilities Management and Support Services Staff, in writing, stating your specific requirements.

A. Disposal of Tax Information Upon Completion of Use: The Tax Reform Act of 1976 requires that certain actions be taken by users of federal tax information in order to protect its confidentiality.

Recipients will either return the information (including any copies made) to the office from which it was originally obtained or make the

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

information undisclosable and furnish a written report describing the manner in which the information was made undisclosable to such office.

The following precautions should be observed when federal tax information is destroyed:

1. Material furnished by the Internal Revenue Service and recipient-generated material such as extra copies, photo impressions, computer printouts, carbon paper, notes and work papers should be destroyed by burning, mulching, pulping, shredding, disintegrating, or handcutting.

2. Burning precautions: The material is to be either burned in an incinerator that produces enough heat to burn the entire bundle or the pages should be separated to insure that all papers are consumed.

3. Shredding precautions to make reconstruction more difficult--the paper should be inserted so that lines of print are perpendicular to the cutting line; small amounts of shredded paper should not be allowed to accumulate in the shredder bin. The paper should be shredded to effect 1/4 inch wide or smaller strips, microfilm should be shredded to effect 1/35-inch by 3/8-inch strip.

4. Pulping should be accomplished in such a manner that all material is reduced to particles one inch or smaller.

5. Disintegrating should be accomplished with a 1/2 inch or smaller screen.

6. Federal tax data in identifiable form must never be released to private contractors for unsupervised destruction. Destruction of the data should be witnessed by an employee authorized access to tax returns and tax return information.

7. After it has served its purpose, magnetic tape containing federal tax data must not be made available for reuse by other offices or released for destruction without first being subjected to electromagnetic erasing. If reuse is not intended, the tape should be destroyed by cutting into lengths of 18 inches or less or by burning to effect complete incineration.

8. If it is necessary to have magnetic disc packs which contain federal tax data refurbished by the manufacturer, the work must be accomplished on site. If this cannot be done, the disc pack should be purposely and obviously damaged prior to discard.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

B. Inspections: Periodic inspections will be conducted during the year by the Executive Office for U.S. Attorneys and the IRS Auditing Teams to ascertain that safeguards are adequate. These safeguard reviews will be accomplished pursuant to written procedures which provide for inspection of all U.S. Attorneys' Offices and the Executive Office for U.S. Attorneys.

If there are inspections other than those performed internally or by the IRS or GAO, access to federal tax information may not normally be permitted.

Safeguard inspections will include such items as:

1. The storage and handling of federal tax information;
2. A review of how access to federal tax information is granted to employees;
3. An assessment of physical security;
4. Verification that federal tax information has not been commingled with other information in such a way that its confidentiality could be inadvertently compromised;
5. After-hours security;
6. Review of who has access to combination safes and changing of combination;
7. Analysis of security procedure and instructions to employees;
8. Examination of waste disposal procedures;
9. Interviews of those charged with security responsibilities;
10. Review of planned organizational changes to assure that security considerations are covered.

The Tax Reform Act of 1976 provides that safeguards are subject to review by the Internal Revenue Service and the General Accounting Office (GAO), including your written procedures and inspection findings.

C. Control Over Tape Processing: Processing of federal tax information in magnetic tape mode (including tape reformatting or

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

reproduction, or conversion to punch cards or hard copy printout) must be performed only under the immediate supervision and control of authorized employees of the Executive Office for U.S. Attorneys and offices of the U.S. Attorneys in a manner which will protect the confidentiality of the information on the magnetic tape file.

Accordingly, in those cases where computer facilities are shared with other agencies, the Executive Office for U.S. Attorneys and the offices of the U.S. Attorneys may only permit their own employees access to magnetic tapes containing federal taxpayer information.

If it is necessary to use the services of a private contractor or employees of another office which does not have designated access from the Executive Office for U.S. Attorneys and offices of the U.S. Attorneys, an employee designated access to tax returns and tax return information must be present at all times during the computer run. Under no circumstances should private contractors or non-Executive Office for U.S. Attorneys and U.S. Attorneys' employees be permitted unsupervised access to the tapes or any access to output generated by computer as a result of processing such tapes.

Control over tapes must never be relinquished to a private contractor (or another office) even if the purpose is merely to erase old tapes for reuse.

D. Security of Magnetic Tapes: Magnetic tape files should be kept in a secured area under the immediate protection and control of an employee having access to tax returns and tax return information and who has been properly designated that access by competent authority.

If you cannot maintain an area to house the tapes which is restricted solely to your office, special measures must be taken to protect the confidentiality of the data. For example, if the master file tape is kept in a general data processing facility, the tape must be stored in a locked cabinet and the keys must be only in the possession of employees so designated access to tax returns and tax return information.

Tape reels, when not in storage, must never be left unattended. When not in use they are to be promptly returned to the storage area.

Good security practice requires that inventory records of tapes be maintained for purposes of control and accountability. Such records should show the receipt, movement and ultimate disposition of our magnetic tapes.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

E. Employee Awareness of the Need for Security: All employees should be thoroughly briefed on all security procedures and instructions on tax returns and tax return information requiring their awareness and compliance. Periodic reorientation sessions should be conducted to insure that all appropriate employees adhere to all security requirements.

Employees should be advised of the provisions of §7213(a) of the Internal Revenue Code which makes unauthorized disclosure of information from a federal income tax return a crime that may be punishable by a \$5,000 fine, five years imprisonment, or both. As part of the awareness program copies of the law should be provided to each affected employee.

Employees who have access to federal tax information should also be advised of the provisions of §7217 of the Internal Revenue Code which permits a taxpayer to bring suit for civil damages in a United States district court for unauthorized disclosure of returns and return information. This section allows for punitive damages, as well as actual damages, and provides that in no case shall a plaintiff entitled to recovery be awarded less than the sum of \$1,000 with respect to each instance of unauthorized disclosure as well as the costs of the action.

F. Recordkeeping and Reporting Requirements of the Tax Reform Act of 1976: U.S. Attorneys' Offices are required to establish a permanent system of standardized records of requests by or to it for disclosure of federal tax returns or return information. Thus the U.S. Attorneys' records will not only reflect what was obtained from the Internal Revenue Service, but also what additional disclosures were made. These records are to be maintained for a ten year period and must set forth the reason for such request by or to it, and any disclosure made by or to it.

A written report describing the safeguard procedures established and utilized to ensure the confidentiality of federal tax information is to be sent annually to the Director, Disclosure and Security Division, Internal Revenue Service, Room 1603, PM:S:DS, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Copies of this report are to be directed to the Director, Office of Legal Services, Executive Office for U.S. Attorneys. The initial report should be provided within one month of receipt of such information.

The administrative officer or designated official is responsible for enforcing and, when necessary, implementing security regulations or procedures within each office.

Detailed security standards are being developed by the Executive Office for U.S. Attorneys in conjunction with the Justice Management

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Division. Once standards are published, it will be the responsibility of the administrative officer of each U.S. Attorney's Office to ensure that such standards are met. Work authorizations will be sent out by the Executive Office for U.S. Attorneys to enable U.S. Attorneys' Offices to authorize GSA to perform necessary work. The Department of Justice, Washington, D.C., will be billed directly by GSA.

10-5.330 Facility Self-Protection Program

See Department of Justice Order 2630.4B (February 2, 1982).

A. A facility self-protection plan shall be developed for every building where the U.S. Attorney is the primary tenant.

B. Where the U.S. Attorney's Office is not the prime tenant, the administrative officer or designated official is responsible for bringing to the attention of the appropriate official the need for developing an effective facility self-protection plan. The General Services Administration building manager will assist in arranging for implementation of a plan and is responsible for the installation and maintenance of protective equipment, such as warning devices, alarm system, and fire-fighting apparatus.

10-5.400 UNITED STATES ATTORNEY'S OFFICE SECURITY PLAN

Each U.S. Attorney's Office is to develop and implement an office security plan. The plan is to contain the elements set forth below. The plan is to be submitted in duplicate to the Executive Office for U.S. Attorneys.

Each U.S. Attorney is to review the office security plan for the district on or before May 1, of each year and report to the Executive Office for U.S. Attorneys of any changes made in the plan.

10-5.410 Elements of Plan--Physical Security

A. Perimeter Security: This section of the report should consist of an assessment of the general security of the building in which the U.S. Attorney's Office is located and the specific security of the space immediately surrounding the office. It should cover restrictions on building access both during work and non-work hours and any building security personnel. The review of the U.S. Attorney's Office section of the building should assess vulnerability to unauthorized entry of all

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

external surfaces to the office including windows, walls, entrances, doors other than entrance doors, elevator lobbies, etc. It also should describe all locks and other protective devices.

B. Access Controls: This section should include a description of the procedures by which persons gain access to the U.S. Attorney's Office during both work and non-work hours. It also should depict access controls within the U.S. Attorney's Office, including locks on doors, restricted areas, and other access restriction equipment and practices. It also should be noted the extent to which non-Department of Justice personnel, such as the cleaning staff, have access to the office.

C. Grand Jury Room: In this section of the report the location and physical security of the grand jury room should be described. The physical security description should include an evaluation of the susceptibility of the grand jury room to physical penetration during both work and non-work hours, and an evaluation of the vulnerability of the grand jury to over-hearing, without the aid of electronic equipment. A description of the ease with which witnesses may be brought into the grand jury room without being publicly detected also should be included.

10-5.420 Elements of Plan--Document Security

A. Document Security System

1. Open File Security

This section should cover the location of file cabinets containing case files and other sensitive information. It also should describe who is authorized access to such files and how that access is monitored. In addition, the section should discuss office practices with respect to the protection of case files and files containing other sensitive information when such files are not in their storage containers, both during work and non-work hours. Finally, it should be noted whether the office has, or has not considered implementing, a two or more tiered security system to provide extra security for especially sensitive non-classified information.

2. Closed File Security

This section should include a description of the location and contents of closed file storage containers, including their location, contents, and access restrictions. In addition, the section should

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

briefly explain the time at which files are placed in the closed file section and when closed files are shipped out of the office.

3. Document Destruction

This section should describe the equipment and procedures that are used for document destruction. It should also discuss office practices for ensuring that the equipment and procedures are followed properly.

B. Specialized Files

1. Grand Jury Information

This section should include a description of how grand jury information is used and stored. It should discuss any special precautions taken with respect to grand jury information, as opposed to other sensitive, non-classified information. It also should note how office personnel are made aware of the security requirements with respect to grand jury information imposed by Federal Rules of Criminal Procedure 6(e). This section also should cover the security of grand jury transcripts while they are in the hands of grand jury reporters, particularly when transcribing is being performed outside the office.

2. Classified Information

This section should contain a description of how much and how often the office has received classified information. If the office has had classified information recently, the section also should describe the procedures for use and storage of such information. Finally, the section should state which personnel in the office are responsible for being aware of the rules and regulations governing proper use and storage of classified information.

10-5.430 Elements of Plan--Tax Return Information

This section should summarize the office practices and procedures for compliance with Internal Revenue Service requirements for the security of tax information and files. It should be stated whether annual reports on tax information security have been filed with the district director of the Internal Revenue Service. If so, the date of the last report should be noted.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.440 Elements of Plan--Personnel Security

A. Employment Clearances

1. Attorney Personnel

This section should include a brief description of the procedures employed by the office for obtaining employment clearances for attorney personnel. Any problems in obtaining such clearances should be noted.

2. Non-Attorney Personnel

This section should include a description of the office practices for obtaining employment clearances for non-attorney personnel, including paralegals. Any problems in obtaining such clearances should be noted.

B. Security Clearances

This section should include a description of office practices and procedures for obtaining and maintaining security clearances for office personnel. The section should include a depiction of the number of office personnel who currently have security clearances and the level of clearances. Do not state any specific levels of Sensitive Compartmented Information clearances.

C. Grand Jury Reporter Clearances

This section should contain a description of the procedures used by the office for obtaining employment and security clearances for grand jury reporters. Any problems in obtaining such clearances or in cooperation by reporters should be noted.

10-5.450 Elements of Plan--Automated Data Processing (ADP) Security

This section of the plan should identify the office, if an ADP facility exists, practices and procedures for security safeguards to control access to the facility, system integrity, implementation of fire protection measures, contingency plans with emergency back-up and recovery procedures.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-5.460 Elements of Plan--Identification of Deficiencies and Remedies

This section of the plan should identify office security deficiencies for each of the elements of the plan. It should be noted whether the deficiency is due to office procedures, resource limitations, or other factors such as building design. Following the description of each deficiency, the remedial steps being taken with respect to it should be described.

10-5.470 Dissemination of Plan

In addition to submission of the plan to the Executive Office as described in USAM 10-5.400, the plan should be disseminated to the staff of the office to ensure that each of them is familiar with office security practices and procedures.

USAM (superseded)

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DETAILED  
TABLE OF CONTENTS  
FOR CHAPTER 6

	<u>Page</u>
10-6.000 <u>COMMUNICATIONS</u>	1
10-6.100 CORRESPONDENCE	1
10-6.200 MANAGEMENT REPORTS	4
10-6.210 <u>Automated Case Management Systems</u>	4
10-6.211 PROMIS Procedures	6
10-6.212 Docketing and Reporting Procedures	6
10-6.220 <u>U.S. Attorneys' Monthly Resource Summary Report</u>	8
10-6.230 <u>Report of Taxable Costs</u>	10
10-6.300 RELATIONS WITH EXTERNAL PARTIES	11
10-6.310 <u>Relations with Congress</u>	11
10-6.320 <u>Processing Freedom of Information Act Requests</u>	13
10-6.330 <u>Press Releases</u>	17
10-6.340 <u>Questionnaires from Outside the Department of Justice</u>	18
10-6.350 <u>Speeches and Articles</u>	18
10-6.400 TELECOMMUNICATIONS	19
10-6.410 <u>Departmental Communications Center</u>	19
10-6.420 <u>Advanced Records System (ARS)</u>	19
10-6.430 <u>Facsimile Service</u>	19
10-6.440 <u>Government Teletype Service (JUST System)</u>	20
10-6.450 <u>Reporting Requirements for FTS Intercity Voice Networks</u>	20

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

		<u>Page</u>
10-6.460	<u>Secure Communications</u>	21
10-6.461	Access to the National Crime Information Center	21
10-6.470	<u>Telephone Service</u>	21
10-6.480	<u>Western Union</u>	24

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-6.000 COMMUNICATIONS

General inquiries to the Executive Office for U.S. Attorneys should be directed to the Communications Center of the Office of the Director. Callers should direct those calls which deal with specific issues to the section of the Executive Office to which the issues pertain.

A general telephone listing of Executive Office staff will be sent to all U.S. Attorneys' offices on a monthly basis. An Executive Office Staff Directory listing will also be published on a semi-annual basis to aid the caller in locating the person and/or section which will handle specific issues.

10-6.100 CORRESPONDENCE

A. Correspondence directed to the Executive Office for U.S. Attorneys should be addressed as follows:

Executive Office for U.S. Attorneys  
U.S. Department of Justice  
Section  
Room Number  
Building Address

Attention:

B. To determine the appropriate section for addressing correspondence to the Executive Office for U.S. Attorneys, the following is a breakdown of the major responsibilities and the correct street address for each section:

1. DIRECTOR--Policy, U.S. Attorney appointments, reports, U.S. Attorney conferences, sensitive personnel matters.

2. DEPUTY DIRECTOR--Assists Director, attorney hiring, financial disclosure matters, policy and management review of daily and long range functions of Executive Office.

3. SPECIAL COUNSEL--Attorney General's Advisory Committee of U.S. Attorneys, Law Enforcement Coordinating Committees.

4. LEGAL EDUCATION--Attorney Training, Attorney General's Advocacy Institute, Legal Education Institute, continuing legal education.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

5. LEGAL SERVICES--United States Attorneys' Bulletin, United States Attorneys' Manual, Freedom of Information and Privacy Acts, legislative inquiries, allegations of misconduct/Assistant U.S. Attorneys, performance appraisal grievances/Assistant U.S. Attorneys, Ethics in Government Act, general legal services.

6. ADMINISTRATIVE SERVICES--Space management, procurement, office furnishings, equipment (other than Word Processing, JURIS), libraries, printing, repairs, records disposal, physical security, budget, overtime, travel, litigation expenses, personnel, training, security clearances, awards, leave, health benefits, Youth Opportunity Campaigns (YOC's).

The street address for the above sections is:

Executive Office for U.S. Attorneys  
U.S. Department of Justice  
Attn:  
10th Street and Pennsylvania Ave., N.W.  
Washington, D.C. 20530

7. FIELD ACTIVITIES--Consultation and assistance to U.S. Attorneys on site of all aspects of operations.

8. DEBT COLLECTIONS--Consultation and assistance to U.S. Attorneys concerning collections efforts.

The street address for the above sections is:

Executive Office for U.S. Attorneys  
Attn:  
Suite 800A  
5205 Leesburg Pike  
Falls Church, VA 22041

9. OFFICE OF MANAGEMENT INFORMATION SYSTEMS AND SUPPORT (OMISS)--PROMIS, Docket and Reporting, Word Processing equipment, litigation support projects, JURIS. (Room 1035)

10. EQUAL EMPLOYMENT OPPORTUNITY (EEO) OFFICE--Development of EEO Policy, complaints of discrimination, EEO counseling and investigating, special emphasis programs, EEO plans and reports, monitoring and recruitment process. (Room 1170)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

The street address for the above sections is:

1875 Connecticut Avenue, N.W.  
Room Number  
Universal Building North  
Washington, D.C. 20009

C. General Correspondence: Correspondence directed to the Department of Justice (unless other instructions are given for specific matters) should be addressed as follows (See OBD Order 2770.4, Sept. 24, 1982):

Section  
Division  
Department of Justice  
Street Address  
Washington, D.C. 20530

D. Acknowledgements

1. Offices of the Director and Deputy Director: Acknowledgement Cards (USA-255), issued by the Communications Center upon receipt of correspondence which necessitates action by a particular section of the Executive Office. Inquiries concerning this correspondence should be directed to the Communications Center.

2. Administrative Services:

a. Space Management--Requisition Acknowledgement card\*, Form USA-210, when included with the requisition, will be assigned a Control Number and section to the response will be completed by Facilities Management and Support Services Staff and returned to district to verify receipt.

b. Personnel--"Receipt Acknowledgement" letter, Form USA-204, when included with Personnel requests, will be signed by Personnel Staff and returned to district to verify receipt.

E. Consolidated Mailings: Pursuant to OBD Order 2770.4 (Sept. 24, 1982), mail may be sent to the Department in one envelope and addressed to the Mail Receipt and Dispatch Unit. However, each piece of mail in the consolidated envelope shall contain the specific title of the organization for which it is intended.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

In order to avoid delay, the Executive Office for U.S. Attorneys suggests that consolidated mailings to the Department's Mail Receipt and Dispatch Unit be avoided where possible. Consolidated mailings may be sent to the Executive Office for various individuals within that office and such mail will be routed to those individuals by the Communications Center in the Office of the Director.

10-6.200 MANAGEMENT REPORTS

10-6.210 Automated Case Management Systems

A. Docket and Reporting (D&R) System: The Executive Office for U.S. Attorneys is presently engaged in a project to improve case tracking capabilities in U.S. Attorneys' offices and, thereby, to improve the ability of the Executive Office and the Department of Justice to report accurately to Congress and the Office of Management and Budget (OMB) on the activities of the U.S. Attorneys' offices nationwide. The U.S. Attorneys have maintained a centralized automated system for developing caseload statistics since the early 1950's as part of their responsibility to "make such reports as the Attorney General may direct," 28 U.S.C. §547(5). This system, known as the Docket and Reporting (D&R) System, requires U.S. Attorneys to maintain manual docket records of cases in their offices and to mail copies of docket cards to Washington, D.C. Once a month, the Justice Data Center processes these docket cards through a computer and mails caseload printouts and error/verification listings back to the districts.

The D&R System serves a number of important functions. It is used to respond to requests for statistical information, to produce management reports for use within the Department of Justice, to justify budget requests, and to meet the requirements for proper accounting of debts collected by U.S. Attorneys. The D&R System, however, has several important shortcomings. It does not supply sufficiently detailed or accurate information to satisfy OMB or Congress, and it does not provide U.S. Attorneys with the information they need to effectively manage their caseloads.

B. PROMIS: Because of these deficiencies, the D&R System is being replaced by the Prosecutors Management Information System (PROMIS), an automated case management system which can be tailored to meet the reporting needs of individual U.S. Attorneys' offices while still supplying the core information needed in Washington, D.C. PROMIS was developed for the Superior Court Section of the U.S. Attorney's office for the District of Columbia in the early 1970s. PROMIS software technology and development became an exemplary project of the Law Enforcement

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Assistance Administration, and versions of PROMIS are now being used in many state and local prosecutors' offices.

A federal version of PROMIS was developed during a pilot project sponsored by the Executive Office for U.S. Attorneys in Fiscal Years 1980 and 1981. During that pilot project, the D&R System was replaced by PROMIS in four districts. In two--the Southern District of California and the District of New Jersey--PROMIS was installed locally on small computers. In the Southern District of West Virginia and the District of Vermont, where the U.S. Attorneys' offices were not large enough to warrant the use of mini-computers, smaller scale systems were installed using word processing equipment. Each of the four districts received a version of PROMIS which contained the essential data elements required by the Department of Justice plus additional data elements and reporting requirements peculiar to that district. The basic principles behind this plan were that a case-tracking system for U.S. Attorneys should contain information needed by offices for their own management purposes, and that information should be under their control and available to them immediately. All districts under this plan would be able both to produce management reports for local use and to send selected information to Washington, D.C.

This same basic plan is now being implemented in the remaining 90 U.S. Attorneys' offices. Twenty to thirty of the largest offices will have computer-based systems. The remaining districts will utilize word processing equipment. The benefits to be realized from implementation of this new case management system are substantial. Conversion to the new system will improve the accuracy, timeliness, and level of detail of workload statistics available for review and planning purposes to the Executive Office for U.S. Attorneys and the Department of Justice. No less important, the system will provide a valuable management tool to individual U.S. Attorneys. It will allow U.S. Attorneys' offices to respond instantaneously to questions concerning a particular case, defendant, or scheduled event. It will allow an office to conduct workload analyses, check the progress of investigations, and monitor compliance with special mandates, such as the Speedy Trial Act. The system will print calendars for court appearances and other scheduled events to avoid scheduling conflicts. The system will also keep track of all claims by the United States for money and produce information on amount-paid-to-date, interest accrued, balance due, etc. Finally, it will automatically print debtor statements, letters and other standardized forms and documents, with substantial savings in time and labor to an office.

Implementation efforts, which began in March of 1982, are scheduled for completion in March of 1985. Until that time, some U.S. Attorneys' offices will be operating on the PROMIS system while others continue to

operate on the D&R System. For that reason, procedures associated with the use of both systems are discussed below at USAM 10.6.211, 212.

#### 10-6.211 PROMIS Procedures

Detailed instruction on use of the PROMIS system is contained in criminal, civil, and collections procedures manuals left with each office at the time of implementation. Reporting to Washington, D.C., will be scheduled by the designated PROMIS System Manager for each district. He/she will run a program at the end of each month to extract selected information from the data base in machine-readable form. The tapes or floppy disks containing this information should be forwarded to the Caseload/Collections Unit, Office of Management Information Systems and Support, Executive Office for U.S. Attorneys.

#### 10-6.212 Docketing and Reporting Procedures

The following is in no way intended as a substitute for the Docketing and Reporting Order, USA 2840.121 (Sept. 1, 1980). Rather, it is a brief outline of the system, meant as an introduction. All docketing clerks should refer to the Order.

References to the collections system will be made below, since it is part of the D&R System. Please refer to USAM 10-8.000 for elaboration.

Reports of cases and collections are forwarded to the Caseload/Collections Unit, Office of Management Information Systems and Support, Executive Office for U.S. Attorneys. In addition, USA-5, Monthly Resource Summary Report, must be forwarded to the same location no later than the fifth of each month.

A. Criminal Prosecution: USA-115 is the Criminal Docket Card. When authorized to open a matter or case, prepare a USA-115 for each person named in the complaint. This card is the basic source of all input information and each card should contain all of the required reportable information.

Do not prepare a Docket Card, USA-115, on a criminal complaint which requires less than one hour of time on the part of the attorney and on which prosecution is immediately declined. Hold such items in a monthly folder, and at the end of the month prepare a Monthly Report of immediate Declinations of Criminal Prosecutions, USA-114, and forward it to the Caseload/Collections Unit, Office of Management Information Systems and Support, Executive Office for U.S. Attorneys, retaining a copy for office files. If a complaint is closed after submission of a USA-115, do not

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

include it in this report, rather it should be closed in the normal manner by use of a Criminal Activity Card (USA-163). USA-115's (carbon copies) should be sent to the Caseload/Collections Unit daily.

Whenever activity occurs in a criminal prosecution, two steps must be taken. First, it must be noted on the Docket Card, USA-115. Circle or write in the appropriate code number and enter the date of the activity on the card. Be sure to indicate Method of Initiation of Court Action and the date for cases. The reverse side of the card contains spaces and codes for recording information on cases on appeal. Second, whenever there is a status change in a case or matter, it must be recorded on a Criminal Activity Card, USA-163, which then should be sent immediately to the Caseload/Collections Unit. In order for the computer system to match the USA-163 with the computer record in the system, the USA-163 must include the control number. The control number is entered into blocks 1, 2, 3, and 4.

B. Civil Matter of Case: A Civil Docket Card, USA-116, should be prepared when a civil matter or case is authorized.

Whenever activity occurs in a civil matter or case, two steps must be taken. First, it must be noted on the USA-116, the date, Action Code, and nature of the proceedings or actions taken must be recorded in chronological order. Form-116A may be used as an extension when necessary. Second, whenever a status change occurs, action must be recorded on a Civil Activity Card, USA-164. In order for the computer system to match the USA-164 with the computer record in the system, the USA-164 must include the control number. The control number is entered into blocks 1, 2, 3, and 4.

C. The following is a general outline of the steps in the D&R System:

Information should be sent on a daily basis to the Caseload/Collections Unit. Whenever a Docket Card, USA-115 or 116, is prepared, the snapout carbon copy should be sent to the Caseload/Collections Unit, and the original should be placed in a "Hold" file.

The Docket Cards are recorded at the Caseload/Collections Unit and a semi-monthly Verification and Error List is prepared and returned to the U.S. Attorney's office, so that documents may be checked to determine that the new information has been entered correctly in the Attorney General's records. If there was an error in the new information sent to the Caseload/Collections Unit, it will not appear on the Verification List but instead will appear on the Error list. Docketing clerks should check their records and make any changes necessary. If USA-115s and 116s

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

require correction, the appropriate changes should be made on them and the correction immediately sent in on an Activity Card, USA-163 or 164. The corrected Docket Card should be replaced in the "Hold" file until it has been verified in a subsequent semi-monthly report.

Any changes in the case or matter reflecting actions taken or additions and corrections to the records are sent to the Caseload/Collections Unit daily on Activity Cards. In this way, new matters, cases, and collections (the above procedure also applies roughly to collections, see USAM 10-8.000) are added to the files, older items are updated, and all are verified.

Each matter, case, or collection is controlled by a unique number which is distinctly identified as its Control Number. It is a combination of the District Number, Division Number, Claim Number or Complaint Number, and Opposing Party Number or Defendant Number, and for collections, the Type of Imposition Number is added.

At the end of each month, various reports are produced by the Caseload/Collections Unit for the U.S. Attorneys and the Executive Office for U.S. Attorneys. It is of vital importance, therefore, that snapout copies of Docket Cards and Activity Cards be sent to the Unit promptly. Also, certain monthly printouts will be issued to all U.S. Attorneys' offices by the Caseload/Collections Unit. To be included on these printouts, all Docket Cards, Debtor Cards, Activity Cards, Monthly Resource Summary Reports (USA-5), and Reports of Declinations or Prosecutions (USA-114), must be mailed to the Caseload/Collections Unit on the last working day of the month.

To insure the accuracy of the U.S. Attorneys' and the Attorney General's records, a semi-annual inventory of all Pending Matters, Cases, Appeals and Collections is required. Printouts are issued as of the end of March and September for the purpose of taking this inventory.

10-6.220 U.S. Attorneys' Monthly Resource Summary Report

A. General: This report provides a means for reporting on the use of personnel resources in U.S. Attorneys' offices on a monthly basis. The information collected from this report will be used for budget formulation and justification and for responding to ad hoc inquiries concerning the allocation of U.S. Attorneys' resources to specific programs.

1. Instructions for completing the U.S. Attorneys' Resource Summary Report, Form USA-5, are provided below at USAM 10-6.220(B), (C).

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

2. The District Name, District Number as used in the Docket and Reporting System, and the date (month and year) are entered on the top line of the form.

B. Personnel Resource Distribution by Program Category. The top part of this form is used to report on the allocation of personnel resources in each district by program category.

1. The resource categories are divided into attorney, paraprofessional, and clerical positions. The paraprofessional category includes administrative officers, paralegals, librarians, personnel specialists, system managers, management analysts, and investigators. All employees who are not attorneys or paraprofessionals are considered clerical support.

2. Resources allocated to a particular program should be represented in terms of full-time positions. Positions may be divided into tenths (one decimal position) to represent individuals who split their time among several categories or who have not been in the office during the entire reporting period. For example, if the U.S. Attorney spends half (.5) of his/her time on management and administration and the First Assistant U.S. Attorney spends 20 percent (.2) of his/her time on management and administration, the total attorney resource for this category for the reporting period will be .7 positions.

3. The Management and Administration category includes attorney time spent on supervision of other attorneys as well as general management and administration of the office. This number will therefore be highest in the larger offices which have supervisory attorney positions. This category will also include paraprofessional and clerical personnel who are not involved in the direct support of litigation, such as administrative officers, librarians, docket clerks, messengers, mail clerks, receptionists, etc.

4. The remaining categories (Appellate, Criminal, Civil Litigation and Collections) should include the resources allocated to these programs for the reporting month. It is not expected that every office will always allocate resources to each of these categories; this is obviously not possible in a small office. If an office has a unit such as a word processing center that supports more than one category, the positions in that unit should be distributed

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

proportionately among the various categories that they support. For example, a three-person word processing unit that supports criminal litigation might be distributed as follows in the clerical column:

Official Corruption	.5
White Collar Crime	.5
Narcotics	.5
Other	1.5

5. The total Full-Time Employee (FTE) Positions line should reflect the average number of positions on duty in the office during the reporting period, including the U.S. Attorney. It will not include temporary positions, special assistants, students, vacancies, or any other personnel not included in the office's allocation of full-time employees.

C. Attorney Work Hours--Court Related Activity:

1. The lower part of this form, lines 1-9, will reflect the actual number of hours spent in each of the listed categories. Fractions of hours may be accumulated during the month but the work hour figures must be reported in whole hours only; anything that includes a fraction of one-half hour or more should be rounded to an hour; anything less than one-half hour should be dropped.

2. Court-related travel time will reflect the time traveling to and from court. Actual time in the courtroom will be included in one of the other categories. Travel time not related to court appearances will not be recorded.

3. This report is to be prepared monthly and sent to:

Caseload/Collections Unit  
OMISS/EOUSA  
Room 1132 CAB  
Department of Justice  
Washington, D.C. 20530

10-6.230 Report of Taxable Costs

When costs are taxable in favor of the government, U.S. Attorneys, their Assistants, or other Department attorneys through the office of the U.S. Attorney, every effort should be made to see that all taxable costs are reported to the clerk of the court. The U.S. Attorney must notify the U.S. Marshal in the district immediately when it has been determined that

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

application will be made for taxation of costs. The U.S. Marshal will submit the list of costs incurred by its office to the U.S. Attorney for inclusion in the bill of costs.

The U.S. Attorney should execute form AO-133, Bill of Costs, which may be obtained from the clerk of the court. All properly taxable items should be claimed. Unusual items of expense with which the government has been charged, as the result of frivolous or unnecessary moves on the part of the opposition, should be presented for taxation. The form must be filed with the clerk within the allowed time period in each instance.

In accordance with the prevailing rate charged by clerks for photostatic reproduction, the U.S. Attorney should include such items in the bill of costs at the same rate.

28 U.S.C. §1923 provides for the amounts of attorney fees which may be taxed as costs, and increases from \$10 to \$20 the docket fee for trial without jury. A fee of \$20 should be included in the attorney's bill of costs for default judgments when making up such bill for taxation purposes. This should be the rule, whether the judgment is entered by the judge or by the clerk. If any clerk declines to tax costs as a matter of course in these amounts, the facts should be reported promptly to the appropriate division of the Department in order that it may be determined whether to appeal the action of the clerk to secure a judicial determination of the issue.

10-6.300 RELATIONS WITH EXTERNAL PARTIES

10-6.310 Relations with Congress

A. Introduction: Relations between the Department of Justice, U.S. Attorneys' Offices and the Congress are the responsibility of the Assistant Attorney General for the Office of Legislative Affairs (OLA), subject to the general supervision of the Attorney General and the direction of the Deputy Attorney General. See 28 C.F.R. §0.27; USAM 1-8.000.

B. Notification of Significant Legislative Contacts: Any significant contact or inquiry (whether by telephone calls, meetings, correspondence or other methods) received from Members of Congress or their staffs shall be reported as soon as possible to the Office of Legislative Affairs. "Significant" contacts include those relating to existing or proposed legislation, congressional hearings or investigations on any matter of substantial sensitivity. Any question as to whether a



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

matter is significant should be referred to the Office of Legislative Affairs.

Any contact with Members of Congress or their staffs initiated by a Department employee should be cleared in advance with the Office of Legislative Affairs. Only through this procedure can we ensure that the Department speaks clearly and with one voice, and that we do not confuse or inadvertently mislead Congress as to our priorities and positions.

C. Requests for Briefings, Interviews, Testimony or Disclosure of Non-Public Information: Congressional requests for interviews with, or briefings or testimony by, Department employees concerning official matters, or requests for non-public information from Department files, should be in writing, signed by the chairman of the committee or subcommittee, and addressed to the Attorney General or the Assistant Attorney General for Legislative Affairs. Similarly, requests to visit field offices or facilities of the Department, or to have Department personnel accompany congressional delegations on official travel, should be in writing, and signed by the appropriate Member of Congress. The Assistant Attorney General for Legislative Affairs alone has authority to approve exceptions to these requirements.

Upon receipt of a Congressional request on legislative matters, the U.S. Attorney should acknowledge receipt immediately, indicating response will be forthcoming from the Department. Copies of the Congressional correspondence, accompanied by the U.S. Attorney's draft response on the merits, should be sent to the Deputy Attorney General and the Office of Legislative Affairs for coordination with the responses of other U.S. Attorneys and the divisions of the department.

Where formal testimony is sought from Department officials, we will continue to seek adherence to the "14-day rule". All units will also continue to comply with the policy that all draft testimony must be submitted to the Office of Legislative Affairs at least seven days prior to the hearing. This procedure will allow OMB the five days it requests for clearance, and also satisfy the typical congressional committee rule that written testimony be submitted at least 48 hours prior to a hearing. All testimony must be reviewed and approved by the Office of Legislative Affairs.

D. Processing of Congressional Correspondence: The Office of Legislative Affairs is not responsible for routine Congressional mail sent to U.S. Attorneys on specific cases or matters within that U.S. Attorney's Office. The U.S. Attorney should respond directly to such specific case inquiries and forward a copy of the correspondence and the response to the Executive Office for U.S. Attorneys.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

All correspondence between Department personnel and Members of Congress or their staffs shall continue to be routed to the Executive Secretariat, which serves all of the Executive Offices, including the Office of Legislative Affairs. In most instances, the correspondence will be referred to the affected components for response.

E. Submission of Department Legislative Proposals or Technical Legislative Drafting Assistance: Proposed amendments to existing law, proposals for new legislation, or requests for any legislative action shall not be submitted to Congress, or any committee, subcommittee or individual Member, unless approved by the Assistant Attorney General for the Office of Legislative Affairs. Provision of technical legislative drafting assistance must also be approved by that Office. Any request calling for action by the Congress, or by any committee or member thereof, shall be addressed to the Assistant Attorney General for the Office of Legislative Affairs, with copies to the Deputy Attorney General and the Attorney General, and shall contain full information concerning the legislative objective sought.

USAM (superseded)

JUNE 1, 1986  
Sec. 10-6.310  
Ch. 6, p. 12a

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

In all matters affecting any organizational unit of the Department, which are submitted for or under consideration by the Congress or any committee or member thereof, the affected organizational unit shall regularly inform the Assistant Attorney General for OLA of the status of the matter.

The scope and authority for OLA's Congressional liaison function can be found in the 28 C.F.R. §0.27 and USAM 1-8.000.

10-6.320 Processing Freedom of Information Act Requests

A. Introduction: General information regarding the Freedom of Information Act (FOIA) and Privacy Act (PA) can be found in USAM 1-5.000, *et seq.* The following section is intended only to provide guidance to U.S. Attorneys' offices regarding the administrative procedures which should be followed in processing a request under the Freedom of Information Act.

Typically, requests for disclosure will be made directly to one or more of the components of the Department, including U.S. Attorneys' offices. Upon receipt of the request, the request should be acknowledged immediately in the form of a letter to the requester. The letter also should state that the request has been forwarded to the Freedom of Information and Privacy Acts Unit, Justice Management Division. Copies of the request and acknowledgement letter should then be forwarded to the Freedom of Information and Privacy Acts Unit. This unit will then route the request to the appropriate office and/or division.

Once routed to a component, this component has 10-working days after the date of official receipt to make a determination as to whether to comply with the request for disclosure. Requests to be processed by U.S. Attorneys' offices become the responsibility of the Executive Office for U.S. Attorneys. The Executive Office will then contact the U.S. Attorneys' offices involved for assistance in processing the request within the required time period.

Once a request has been routed formally to the U.S. Attorney's office, usually by routing slip from the Executive Office for U.S. Attorneys, and the time has begun to run, offices should follow the procedures given below. These procedures are designed to assist U.S. Attorneys' offices in preparing an inventory of documents from which the Executive Office can prepare a response to the requester. Only the Director of the Executive Office for U.S. Attorneys or his/her designee

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

(i.e. Assistant Director for Legal Services) may respond to a request for records regarding the U.S. Attorneys' offices. However, the U.S. Attorney for the District of Columbia has been delegated authority to respond to Freedom of Information and Privacy Acts requests, but only as to records under his/her custody and control. Efforts in the U.S. Attorneys' offices will be directed at preparing and returning an appropriate inventory, any necessary attachment, and other required material, to the Executive Office for U.S. Attorneys within the time allowed.

B. Steps which should be followed in processing a request:

1. Check the files and indices of your office against the names and/or titles requested to see if the material requested exists.

a. If none of the requested material exists in your office, return the request with a short note advising of the search and negative results. Do not open a new file on the request.

(1) If you are aware of any other districts where the records may be, please advise the Executive Office for U.S. Attorneys in the return note.

(2) If your indices reflect that the records were destroyed by the General Services Administration or National Archives, please so note when returning the request.

b. If the indices indicate that the records are in storage in a GSA records center or other facility, they should be obtained for review and preparation of your inventory.

2. Having obtained the records, preparation of the inventory can begin by following the guidelines mailed out by the Executive Office with each Freedom of Information and Privacy Acts referral to a U.S. Attorney's office and given below:

a. Grand jury material. This is not releasable. Once the material is classified as originating in or from the grand jury, it does not need individual document inspection. However the existence and quantity of this material should be included in your inventory.

b. Public documents and court records. These must be acknowledged. The inventory should provide the complete address of the clerk of the court for all applicable courts from whom copies may be requested and a close estimate of the quantity of

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

documents and cost if ordered through this office. Do not make or forward copies of these documents. They will be furnished to requesters only on specific request and payment.

c. Federal Bureau of Investigation (FBI) reports (including forms 302). These need not be sent to the Executive Office for U.S. Attorneys. However, the date and case number on each report must be recorded and sent to the Executive Office for U.S. Attorneys. In old, closed cases, where the investigative reports are of no further value in your office, you may remove the reports and send them in with your inventory. This will reduce the storage of unnecessary documents and assist the FBI in processing the request. The requester will receive separate response from the FBI concerning their release or denial.

d. Other Department of Justice originated documents (i.e. Drug Enforcement Agency reports and correspondence with the Offices, Divisions, Services, etc.). These should be copied and attached to your inventory.

e. Executive Agency material which originated outside the Department of Justice. This should be copied and attached to the inventory, and forwarded to the Executive Office.

f. United States Court documents (i.e. confidential correspondence from a federal judge, a probation office report, etc.). These are not subject to the Act and should be separated out. You need not acknowledge them in your inventory.

g. Requester-originated documents (or documents originated by his attorney). These need not be sent to the Executive Office for U.S. Attorneys. However, the existence and quantity of this material should be included in the inventory.

h. Transcripts of trial or other public proceedings. These are not furnished under the Act. However, the inventory should acknowledge their presence in the file and provide the name and address of the reporter from whom copies may be purchased.

i. Exempt material. This is not available for release and is dealt with in USAM 10-6.320(c), infra.

3. The Act provides nine specific exemptions to mandatory disclosure. However, the Act, its legislative history, and the Attorney General have urged the greatest possible disclosure. The

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Attorney General has amended the policy regarding "demonstrable harm" as set forth in a Memorandum to all Heads of Federal Departments and Agencies dated May 5, 1977. The current policy is designed to permit government agencies, consistent with the legal requirements of the Act, to fashion their own release policies. The Department of Justice, in support of this exercise of agency discretion will defend all suits challenging an agency's decision denying a request under the FOIA, unless it is determined that:

the agency denial lacks a substantial legal basis; or  
defense of the agency's denial presents an unwarranted  
risk of adverse impact on the other agencies' ability  
to protect important records.

(Attorney General Memorandum to Heads of all Federal Departments and Agencies, dated May 4, 1981.)

Nevertheless, exempt material will primarily be of the nature and type indicated below. As in the case of non-exempt material, your inventory should identify it by category, cite the specific exemption claimed, and note the number of pages involved. Do not send material withheld in its entirety at the initial processing stage. It need not be sent unless an Administrative Appeal is made. Copies of documents requiring partial redaction should be attached to your inventory with the portion to be excised bracketed. Do not excise material before sending.

a. Active cases (cases pending indictment or trial) are exempt in total, except for any material in the file which is part of the public record (court file, newspaper clippings, etc.) or was provided voluntarily by the requester. Your inventory should note the active status of the case or matter and offer to search out the public portions of the file if the requester is willing to pay the necessary fee. See 28 C.F.R. §16.9.

(1) Cases pending appeal or Habeas Corpus action are not active cases for the purpose of administering this Act unless the prospect of a new trial can be shown with virtual certainty or co-defendants have not yet stood trial because of fugitive status, severance, or Speedy Trial Act problems. Files in these circumstances may still be considered active and thus exempt except for public records.

(2) The Privacy Act specifically exempts from disclosure "information compiled in reasonable anticipation of a civil action or proceeding." 5 U.S.C. §552a(d)(5). All references to cases herein refer to both civil and criminal cases.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

b. Income tax returns and return-related information is specifically subject to the Tax Reform Act and as such is not only exempt, but is not subject to discretionary or any other release except as specifically provided in that Act.

c. Names, addresses, phone numbers, or any identifying information on persons whose participation is not already known to the requester, or which would enable a person intimately familiar with the case to identify them, should be withheld for privacy reasons. Examples could include the names and initials of supporting staff or Assistant U.S. Attorneys not known to the requester, or investigative agents and citizens not known to the requester.

d. Local law enforcement agencies (investigative or prosecutive) providing materials may usually have that material exempted under subsection 7(D) as being from a confidential source.

e. Third-party information not known to the requester should be denied under subsection (6) or (7)(C) as a violation of that party's privacy.

(Note: If there is no offsetting public benefit flowing from release, or a private need so strong that it can be viewed as supported by a public interest, we will refuse to confirm or deny the existence of investigative files on the subjects of requests who are not also the requesters.)

4. Answers to specific questions may be obtained by calling the Executive Office for U.S. Attorneys, Legal Services Section.

10-6.330 Press Releases

It is essential that U.S. Attorneys' offices provide the Office of Public Information with sufficient and timely information concerning newsworthy items of potential national interest, in order to permit an appropriate announcement by or for the Attorney General. The Office of Public Affairs should be advised at least 48 hours in advance of important legal actions, and copies of the relevant legal instruments should be forwarded within the next 24 hours. If you have any doubt as to whether a particular item is sufficiently newsworthy for national release, contact the Office of Public Affairs by telephone. See USAM §1-5.530.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10—EOUSA

In many cases, national release will be inappropriate; however, in all cases, Departmental guidelines concerning the release of information must be complied with. See USAM 1-5.540; 1-5.550.

10-6.340 Questionnaires from Outside the Department of Justice

Proposed answers to inquiries or questionnaires from persons or organizations outside the federal government, which appear to be part of a survey addressed to other officials as well, should be sent to the Executive Office for further coordination. Department of Justice Order 2810.1 (June 13, 1980). For further explanation on handling such inquiries or questionnaires, see USAM 1-5.700.

10-6.350 Speeches and Articles

Any speech or article which relates to the policy, activities, or administration of the Department of Justice or any other federal agency should reflect Department policy and fact accurately. If there is doubt, the Office of Public Affairs will review your statement at your request. Fees for articles, speeches, appearances on panels, etc., may only be accepted if the provisions of 28 C.F.R. §45.735-12 are not violated. Ordinarily, U.S. Attorneys should not accept fees or honorariums for speechmaking. The provisions of 28 C.F.R. §45.735-12 require that the speech or article not be a part of regular duties, that the subject matter not be devoted substantially to the responsibilities, programs or operations of the Department of Justice and does not draw substantially from an official data base which has not become a part of the general body of public knowledge. Furthermore, no lecturing or writing which is dependent on information obtained as a result of government employment which has not been made available to the public by the Department, or where the Associate Attorney General has not given prior written authorization to the use of nonpublic information, may be performed, with or without fee. Questions concerning the propriety of accepting a fee, should be discussed with the Legal Services Section. Note that 28 CFR §45.735-12(d) prohibits employees from suggesting that such compensation be donated to a particular charity.



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-6.400 TELECOMMUNICATIONS

10-6.410 Departmental Communications Center

The Departmental Communications Center, Room 6224, Main Justice, is attended 24 hours daily, seven days a week. It is the control point for use of the facilities described in this section.

For advice or information pertaining to communications in this center, the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys, may be contacted.

10-6.420 Advanced Records System (ARS)

U.S. Attorneys' offices which do not have JUST system terminals may use the ARS by way of the General Services Administration's (GSA) Federal Telecommunications Service Centers. See list in Department of Justice Order 2423.1A, Appendix 2 (Sept. 29, 1972). The per word cost is \$.06. All messages should be prepared on Form SF-14.

Offices which have a JUST facility and wish to transmit to a point without JUST can use ARS at a cost considerable lower than the \$.06 per word charged by the GSA Federal Telecommunications Centers. Transmit the message via JUST to the Departmental Communication's Center. Furnish complete information as to where the message is to go. It will then be sent only to the specified destinations.

10-6.430 Facsimile Service

Many of the General Services Administration's (GSA) Federal Telecommunications Centers are equipped for facsimile transmission on a regular bases. See list in Department of Justice Order 2423.1A, Appendix 2 (Sept. 29, 1972). To direct the transmission to headquarters elements, instruct the local facsimile machine operator to call the Telecommunications Center at the Department of Justice.

Transmission via facsimile is limited because it is a slow, expensive process (approximately 6 minutes per page, at \$.20 per minute). Normally, documents of more than 15 pages will not be accepted. An SF-14 or other form locally prescribed by GSA should be prepared as a cover sheet for the pages to be transmitted. Assure that all documents are legible reproductions or originals. Carbon copies and hand written documents will not be accepted.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-6.440 Government Teletype Service (JUST System)

U.S. Attorneys and their staffs may send messages to Washington, D.C., and most other points through their district facilities on the JUST System. It is the policy of the Department to use these government facilities for official business when such business requires more rapid handling than afforded by the postal system. Teletype should be used instead of phones to transmit lengthy communications and whenever a written record is necessary.

U.S. Attorneys and U.S. Marshals may transmit messages via the JUST System directly to most headquarters elements, as well as to other locations having JUST facilities. See Department of Justice Order 2423.3A (Sept. 3, 1976) for routing indicators. Material transmitted via the JUST System is seen only by personnel who send or receive messages. If properly addressed, a message cannot go to other than its intended destination. Therefore, sensitive material, or material requiring privacy, may be transmitted. However, classified material, as defined by 28 C.F.R. §17, is not to be transmitted. See Department of Justice Order 2423.1A (Sept. 29, 1972).

Messages may be sent also to offices or individuals not served by the JUST System. Transmittal of these messages is accomplished by sending them to the Departmental Communications Center with the destination clearly indicated. Messages will be relayed through local channels or to remote points by other systems.

Overseas U.S. Attorneys' offices, served by non-JUST facilities, should simply address their outgoing headquarters messages to the appropriate action office in the Department. Use of a JUST terminal designation is unnecessary. SF-14, Telegraphic Message, is prescribed and may be used in preparing such messages. Generally, only the original SF-14 need be submitted to message centers. Carbons may be prepared in accordance with standard office operating procedures or to satisfy local communication center requirements. JUST System standard operating procedures and a complete list of routing indicators can be found in Department of Justice Order 2423.3A (Sept. 3, 1976).

10-6.450 Reporting Requirements for FTS Intercity Voice Networks

All U.S. Attorneys' offices are required to submit a report for data and facsimile transmission services effected through the use of the FTS Intercity Voice Network. The report will be recorded on General Services Administration (GSA) Form 2830, Individual Terminal Usage of FTS Intercity

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Voice Network Transmission. This is a quarterly report of minute usage. U.S. Attorneys should submit this report to the Department of Justice, Information Systems Staff, Justice Management Division, Washington, D.C. 20530.

A quarterly report of usage need not be submitted for that part of usage carried over the FTS Intercity Voice Network under the GSA Teleprocessing Services Contract; this usage will be reported to GSA by the contractor.

10-6.460 Secure Communications

Classified information should not be transmitted via the JUST system. U.S. Attorneys' offices may send classified messages from General Services Administration (GSA) communications centers at GSA regional offices. Most military installations will also accept such messages for transmission via the Military Switched Network, AUTODIN. The originator shall determine the appropriate security classification in accordance with 28 C.F.R. §17. The message should be prepared on an SF-14 if appropriate. See Department of Justice Order 2423.1A (Sept. 29, 1972).

10-6.461 Access to the National Crime Information Center

Access to the National Crime Information Center (NCIC) is granted only by the Attorney General.

10-6.470 Telephone Service

A. Introduction: The Department of Justice's long distance telephone network is a part of the Federal Telecommunications System (FTS). Federal employees can make official long distance calls to both government and non-government phones via FTS. The cost of the service is billed directly to the Department in Washington, D.C. FTS resembles commercial long distance telephone networks and uses facilities leased by the General Services Administration (GSA). FTS exists to provide government agencies with the means to reduce their long distance communications cost.

Each U.S. Attorney's office is assigned an FTS identification symbol by GSA. This symbol is changed periodically to avoid abuse. This symbol should be provided to employees authorized to place long distance calls. All Administrative Officers should have these symbols. For further

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

instructions, consult the Federal Telephone Users' Guide and Department of Justice Order 2421.1C (May 18, 1981).

GSA has implemented a new billing system for users of the FTS.

This system will distribute cost based on the duration of calls rather than the number of calls, and identify long distance calls by the telephone number of the caller and the party being called.

You are encouraged to review the GSA automatic message accounting reports sent to you and the FTS usage within your office and to remind your staff that FTS is to be used for official business only. Use of FTS for unofficial calls may result in disciplinary action, including suspension or dismissal. See 31 U.S.C. §608(a).

When placing calls, do not ask the FTS operator to place calls which can be dialed directly as described in the Federal Telephone Users' Guide. When speaking with the FTS operator from your office or while on travel status, be prepared to furnish the identification symbol of your office, so that it will be properly charged for the call. FTS operators are on duty in the field approximately 10 hours a day, five days a week. During non-duty hours, place calls commercially through the commercial operator, with instructions to bill the call to your office telephone number rather than your switchboard. Commercial long distance facilities should be used for calls which are expected to cost \$.50 or less. Use of credit cards to place commercial calls should be controlled by the Administrative Officer. See Department of Justice Order 2421.1C (May 18, 1981).

FTS may be used for the transmission of record data which unconditioned switched, voice grade channels can accommodate. Requirements for use of the FTS network for data and facsimile transmission should be submitted to the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys, for approval.

B. Increasing Level of Service: Requests for increase of existing telephone services should be submitted by letter to the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys. U.S. Attorneys are not authorized to approve increases in these services. A copy of the Order for Telephone Service, SF-145, should accompany the letter or memorandum. The SF-145 is usually prepared by the telephone company or GSA representative and should detail fully the precise equipment affected.

Authority for telephone service or equipment remains in effect without regard to fiscal year. Increases in telephone rates or charges

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

resulting from action of state regulatory bodies are not considered increases in service requiring a new request for authorization. Authorization for telephone service to be installed only for the duration of a term of court is not required, provided the service is disconnected at the close of the specific term. The following information should be shown on a request for authorization:

1. Description of additional item;
2. Monthly recurring rate applicable;
3. Non-recurring charge such as installation charge; and
4. Full justification of the need for such services.

C. Authority to Change Service: The Director, Executive Office for U.S. Attorneys, has been delegated the authority to approve the following types of additional telephone service:

1. Lines: Installation of from one to ten telephones lines, provided such installation can be accomplished on six-button key telephones;
2. Instruments: Instruments up to and including six-button telephones with holds and combined line lamp/busy lamp features; and
3. Intercoms: Either manual or single-path dial intercom equipment or its equivalent.

Requests for such authorization should be submitted to the Director, Executive Office for U.S. Attorneys. See Department of Justice Order 2421.6 (Sept. 3, 1971).

Other items, designated "Major Changes," must be authorized by the Telecommunications Management Unit. Submit requests to the Assistant Director, Facilities Management and Support Services Staff, Executive Office for U.S. Attorneys.

The Department of Justice forbids the use by any of its personnel of any mechanical or recording device attached to a telephone unless the connection and use of such equipment complies with existing law.

GSA telephone charges are collected through an interagency transfer of funds according to the SIBAC (Simplified Intragovernmental Billing and Collection) procedure. A monthly report on telephone charges paid for each location within the district is transmitted to the U.S. Attorney. The report should be reviewed for accuracy, and any errors should be reported to the following address so that "chargeback" (or refund) may be obtained from GSA:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Accounting Operations Group  
Justice Management Division  
P.O. Box 7405  
Ben Franklin Station  
Washington, D.C. 20044

In addition, any personal checks collected for unofficial toll calls and your certification as to the official nature of all other toll calls should be forwarded to the above address. Do not pay any GSA telephone charges through the U.S. Marshal or include any estimate for unpaid charges on your monthly report of unpaid obligations.

Any telephone charges paid directly to the local telephone company may be paid through the U.S. Marshal and an estimate of unpaid charges should be included on your monthly report of unpaid obligations.

10-6.480 Western Union

U.S. Attorneys and their staffs may direct telegrams to individuals or offices, both within the Department of Justice and outside, by contacting the local Western Union office, only if JUST is not available. The message should be prepared on form SF-14.

USAM (superseded)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

DETAILED  
TABLE OF CONTENTS  
FOR CHAPTER 7

	<u>Page</u>
10-7.000 <u>LEGAL COMPUTER SYSTEMS</u>	1
10-7.100            JURIS	1
10-7.110 <u>General Information</u>	1
10-7.120 <u>Terminal Access to JURIS</u>	1
10-7.130 <u>Information Needed to Make JURIS Research Request</u>	1
10-7.140 <u>How to Request JURIS Service Installation</u>	1
10-7.150 <u>Legal Research Using JURIS</u>	2
10-7.160 <u>Legal Documents Available in the JURIS System</u>	2
10-7.170 <u>On-Site Training Classes for U.S. Attorneys' Offices with JURIS Terminals</u>	8
10-7.180 <u>Training Materials Available to All U.S. Attorneys' Offices</u>	9
10-7.190 <u>Maintenance, Repairs and Supplies for JURIS Equipment</u>	9
10-7.200 <u>AUTOMATED LITIGATION SUPPORT SERVICES</u>	9
10-7.210 <u>Purpose</u>	9
10-7.220 <u>Procedures</u>	11
10-7.230 <u>Services Available</u>	11



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

10-7.000 LEGAL COMPUTER SYSTEMS

10-7.100 JURIS

10-7.110 General Information

The JURIS legal research system offers U.S. Attorneys' Offices instantaneous searches and printouts of legal documents (cases, statutes, digests) by means of a computer terminal using common words, phrases and citations. Many U.S. Attorneys' Offices have their own JURIS terminals for in-house computerized legal research. The JURIS data base includes federal court and Supreme Court decisions including slip opinions, headnotes to federal and state court decisions, federal statutes and regulations, decisions of administrative agencies, and selected briefs from U.S. Attorneys' Offices and the litigating divisions. JURIS terminals can also be used to access selected LEXIS and Westlaw data bases containing state court cases.

10-7.120 Terminal Access to JURIS

Custom JURIS terminals or IBM personal computers can be used to retrieve information from the available data bases. The custom terminals and the P.C. JURIS software, which allows an IBM Personal Computer to be used as a JURIS terminal, are available upon request.

10-7.130 Information Needed to Make JURIS Research Request

Research requests to the Executive Office should include the court or courts to be referenced, including a specific circuit if desired; the question to be answered; a brief statement of the facts; a listing of the pertinent words and phrases as they are expected to appear in an opinion or other document; and, when possible, the citations of any known leading cases, statutes, and any West Digest key numbers and headnote subject names which apply.

10-7.140 How to Request JURIS Service Installation

Any U.S. Attorney's Office desiring installation of a JURIS research terminal or the P.C. JURIS software should submit a memo from the U.S. Attorney to the Director, Office of Management Information Systems and

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

Support, Executive Office for U.S. Attorneys, requesting installation. The request should indicate the projected amount of use by the U.S. Attorney's staff, including the number of Assistant U.S. Attorneys and/or paralegals who would actually utilize the service, the availability and adequacy of law libraries, and the type and volume of caseload. The mailing address is:

Director  
Office of Management Information Systems and Support  
Executive Office for U.S. Attorneys  
U.S. Department of Justice  
Universal North Building, Room 1035  
Washington, D.C. 20530

The charge for JURIS service does not come from the individual U.S. Attorney's Office budget.

10-7.150 Legal Research Using JURIS

Searches may be performed using words, phrases, West Digest key numbers, case names, case statute citations, dates, circuits, courts, or even judge's or attorney's names.

A. The basic search method in JURIS is based on words or phrases that actually appear in the text documents rather than in general descriptive categories. For example, a search may be conducted for the admissibility into evidence of dying declarations by searching the documents in the data base directly for "dying declaration," rather than searching digest for "Evidence" and all sub-classifications.

B. West Digest materials may be searched by using West Digest key numbers, the West headnote subject name, or any other word or phrase contained in the headnote.

C. A data base provided by Shepard's Publishing Company allows users to shepardize cases on line.

10-7.160 Legal Documents Available in the JURIS System

A. Descriptions of the fifteen categories of documents (File Groups) available for searching and their JURIS code names are listed below:

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Name of File Group</u>	<u>Description</u>
1. CASELAW	Federal Caselaw Decisions
2. STATLAW	Federal Statutory Law
3. DIGEST	West Publishing Company's Federal and Regional Digests
4. TAX	Tax Caselaw Decisions and Administrative Materials
5. BRIEFS	Department of Justice Brief Bank
6. WRKPRDT	Department of Justice Work Product Materials
7. LEGHIST	Legislative Histories of Federal Laws
8. ADMIN	Administrative Law Decisions
9. REGS	Federal Regulations and Related Materials
10. TREATIES	U.S. Treaties and International Agreements
11. FOIA	Freedom of Information Act Materials
12. FORENS	Forensic Science Newsletters
13. INDLAW	Indian Law and Related Materials
14. REFERENZ	JURIS Reference Manual and Related Training Aids
15. MANUAL	U.S. Attorneys' Manual

B. Within each category (File Group) of documents, the following cases, statutes, regulations, and administrative decisions are available for the dates and volumes indicated. All of these files are updated periodically. To receive the most updated data base listing, please contact JURIS User Assistance on FTS 633-4537.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Group</u>	<u>Volumes and Dates</u>
1. <u>CASELAW</u>	
a. U.S. Supreme Court	178 U.S. through Slips (1900 - Present)
b. U.S. Courts of Appeals	300 F.2d through Slips (1962 - Present)
c. U.S. District Courts	322 F.Supp. through Slips (1971 - Present)
d. U.S. Court of Claims	134 Ct.Cl. through 231 Ct. Cl. 1956 - 1982)
e. Federal Rules Decisions	73 F.R.D. through Slips (1976 - Present)
f. Court of Military Review	1 C.M.R. through 50 C.M.R. (1951 - 1975)
g. Military Justice Reporter	1 M.J.R. through Slips 1975 - Present)
h. Atlantic 2d Reporter- D.C. Cases only	370 A.2d through Slips 1977 - Present)
i. Bankruptcy Reporter	1 B.R. through Slips (1979 - Present)
j. Claims Court Reporter	1 Cl. Ct. through Slips (1982 - Present)
2. <u>STATLAW</u>	
a. U.S. Public Laws	93rd - 98th Congress
b. United States Code	1982 Edition
c. Executive Orders of the President	1947 - Present
d. Civil Works Laws	Volumes 1 - 4 and Selected Public Laws through 9/83

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Group</u>	<u>Volumes and Dates</u>
e. Comprehensive Crime Control Act of 1984	Pub. L. No. 98-473 (CCCA), Pub. L. No. 98-573 (Tariff Act), Pub. L. No. 98-596 (Fine Enforcement Act) and the Criminal Division Handbook on the Comprehensive Crime Control Act of 1984
3. <u>DIGEST</u>	
a. U.S. Supreme Court	1960 - Present
b. U.S. Court of Appeals	1960 - Present
c. U.S. District Courts	1960 - Present
d. Federal Rules Decisions	1960 - Present
e. State Court Decisions Regional Reporters	1967 - Present
4. <u>TAX</u>	
a. U.S. Tax Court Decisions	1 T.C. - 66 T.C. (1942 - 1976)
b. U.S. Board of Tax Appeals Decisions	19 B.T.A. - 47 B.T.A. (1930 - 1942)
c. Enforcement Decisions	Tax Division's Summons Enforcement Decisions through March, 1984
d. Codelist	Tax Division's Summons Enforcement Codes
e. Protest	Tax Division's Tax Protest Decision List

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Group</u>	<u>Volumes and Dates</u>
5. <u>BRIEFS</u>	
a. Office of the Solicitor General Briefs	Briefs since the 10/82 Term
b. Civil Division Appellate Briefs	Selected Appellate Briefs (11/81 - Present)
c. Civil Division Trial Briefs	Selected Trial Briefs (1977 - Present)
d. Civil Rights Division Briefs	Selected Appellate Briefs (1/80 - Present)
e. Land and Natural Resources Division Briefs	Selected Appellate Briefs (12/83 - Present)
6. <u>WRKPRDT</u>	
a. Criminal Division	Selected Monographs
b. Civil Division Monographs	Selected Monographs
7. <u>LEGHIST</u>	
a. Equal Access to Justice Act Legislative History	
8. <u>ADMIN</u>	
a. Published Comptroller General Decisions	Volumes 1 - 63 (1921 - 1984)
b. Unpublished Comptroller General Decisions	(1955 - 1984)

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Group</u>	<u>Volumes and Dates</u>
c. Opinions of the Attorney General	Volumes 1 - 43 (1791 - 1983)
d. Office of Legal Counsel Memoranda	Volumes 1 - 3 (1977 - 1979)
e. Boards of Contract Appeals Decisions	Volumes 52-2 - 85-1 (1956 - 1985)
f. Federal Labor Relations Authority Decisions	1 FLRA through 14 FLRA (1979 - 1984) 1 FLRC through 6 FLRC (1970 - 1978) 1 A/SLMR through 8 A/SLMR (1973 - 1978) 1 R/R pgs. 67 - 466 (1970 - 1975)
g. HUD Administrative Law Decisions	Selected HUD Administrative Law Decisions
h. Merit Systems Protection Board Decisions	Volumes 1 - 13 (1979 - 1983)
i. Administrative Decisions under the Immigration and Nationality Laws of the United States	Volumes 1 - 18 (1940 - Present)
<u>9. REGS</u>	
a. Code of Federal Regulations	1984 and 1985 Editions
b. Unified Agenda of Federal Regulations	1985 Version

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Group</u>	<u>Volumes and Dates</u>
10. <u>TREATIES</u>	
a. U.S. Treaties and Other International Agreements	1 UST through 32 UST (1950 - 1981) Bevans: Volumes 1 - 12 (1776 - 1949)
b. Department of Defense Unpublished Inter- national Agreements	(1947 - 1984)
11. <u>FOIA</u>	
a. FOIA Newsletter	Vols. 1-1 through 5-3 (Fall 1979 - Summer 1984)
b. FOIA Short Guide	September 1983 Edition
12. <u>FORENS</u>	
a. Scientific Sleuthing Newsletter	(July 1976 - Winter 1985)
13. <u>INDLAW</u>	
a. Opinions of the Solicitor, Department of the Interior	Volumes 1 & 2 (1917 - 1974)
b. Ratified Treaties	(1778 - 1880)
c. Unratified Treaties	(1801 - 1868)
d. Presidential Proclamations	(1879 - 1968)
e. Executive Orders relating to Indians	(1871 - 1971)



UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

<u>Group</u>	<u>Volumes and Dates</u>
14. <u>REFERENZ</u>	
a. JURIS Reference Manual	Parts 1 - 5 November 1984 Edition
15. <u>MANUAL</u>	
a. U.S. Attorneys' Manual	Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10

10-7.170 On-Site Training Classes for U.S. Attorneys' Offices with JURIS Terminals

JURIS user training is available upon request. Request should be made to the JURIS User Assistance, Legal Research and Training Staff at FTS 633-4537.

10-7.180 Training Materials Available to All U.S. Attorneys' Offices

A. The JURIS Newsletter, a monthly publication, contains information on improvements and additions to JURIS research capabilities. The Newsletter also includes the most recent data base enhancements and any new search techniques. The JURIS Newsletter is distributed to all U.S. Attorneys' Offices which have JURIS terminals. Additional copies of the Newsletter are available on request from the JURIS User Assistance, Legal Research and Training Staff at FTS 633-4537.

B. A JURIS Information packet is also available to all users of the system. The information packet contains copies of the most recent JURIS data base, sample training questions and answers, an overview of the JURIS system, and a JURIS Reference Card. This packet may be obtained from the JURIS User Assistance Office on request.

10-7.190 Maintenance, Repairs and Supplies for JURIS Equipment

Maintenance, repairs and supplies for JURIS are the responsibility of the Legal Research and Training Service in Washington, D.C. Request for maintenance and repairs should be made by calling JURIS User Assistance at FTS 633-4537. The waiting period for repairs and/or replacement of a defective printer or terminal should not exceed 48 hours. On-site maintenance has been obtained for the repair of the Okidata printers. To

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

report a malfunctioning printer call (800) 638-6811. Okidata has guaranteed a four hour response time for any printer repair. Requests for supplies, such as printer paper, should also be made by phone to the User Assistance Staff. There is no charge to the U.S. Attorney's Office for repairs and maintenance.

JURIS User Assistance does not provide repair service or maintenance service for personal computers that are being used as JURIS terminals. Problems with the P.C. JURIS software, however, may be referred to the Legal Research and Training Service.

10-7.200 AUTOMATED LITIGATION SUPPORT SERVICES

10-7.210 Purpose

Automated litigation support is the application of computer technology to the type of case or matter which involves a large volume of documents, transcripts, reports, business records, or depositions. The computer is used to organize, control, correlate, index, retrieve and display data contained in these materials. It can be used, for instance, to quickly retrieve specific information from a large volume of documents according to complex pre-determined criteria, to locate specific documents which aid in the preparation for direct cross examination of witnesses, or to analyze telephone and business records. When an attorney is faced with litigation involving a large volume of evidentiary material requiring analysis, automated litigation support should be considered.

The average case or investigation in a U.S. Attorney's Office, of course, does not require this type of support since the documents can be screened and reduced in volume to proportions which can be handled by manual indexing and filing techniques. Automated litigation support is appropriate in those instances where the volume of materials found relevant to the case after the initial screening would overtax traditional manual methods of document control. Some of the factors to consider in evaluating whether the use of computer services is warranted include the following:

A. Number of documents to be managed: For example, case or matters which involve more than 5,000 pages of transcript and/or 10,000 documents are candidates for automated litigation support.

B. Type of documents to be managed: Photographs, technical drawings, and blueprints do not usually lend themselves to computer-aided analysis, for instance. On the other hand bank records, other types of financial records, telephone toll records, and transcripts do.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

- C. Type of data analysis, sorting, retrieval, etc., required.
- D. Complexity of the factual and legal issues involved.
- E. Personnel resources and time required if traditional methods are used.
- F. Potential financial liability to the government, or gravity of the offense.
- G. How long the automated services will be required.
- H. Significance of the investigation or case.
- I. If the evidence already exists or can be obtained in machine readable form, e.g., data on magnetic computer tape, computer-aided litigation support may well be cost effective.

10-7.220 Procedures

If you think a case or investigation requires automated litigation support, the Director of the Office of Management Information Systems and Support (OMISS) should be contacted immediately. OMISS is the organization within the Executive Office for U.S. Attorneys which has responsibility for evaluating and approving all requests for automated litigation support. The Executive Office will fund only automated litigation support projects which have been approved by OMISS. Request for litigation support should be directed to:

Director  
Office of Management Information Systems and Support  
Executive Office for U.S. Attorneys  
U.S. Department of Justice  
Universal North Building, Room 1035  
Washington, D.C. 20530

The telephone number is FTS 673-6379.

The request for automated litigation support should be made as early as possible because the time required to design and implement as an automated system can be substantial.

UNITED STATES ATTORNEYS' MANUAL  
TITLE 10--EOUSA

After the initial contact with OMISS has been made, the Litigation Systems Staff (LSS) of the Justice Management Division is available to assist in providing automated litigation support to the case. The services LSS provides include requirements analysis, system design and cost estimates. LSS can also assist in making arrangements for programming and securing the services of a contractor if that is necessary.

Upon request and after OMISS approval, LSS will prepare a proposal for automated litigation support. The proposal provides a basis for a reimbursement agreement which OMISS executes with LSS for their services or the services of any other vendors or organization required.

10-7.230 Services Available

The Litigation Systems Staff (LSS) of the Justice Management Division is comprised of several attorneys with backgrounds in data processing and experience in designing and implementing automated systems for litigation support. They will provide guidance on processing information so that the computer can be used for analysis or retrieval. They will also recommend the appropriate software and hardware to meet the users' needs. LSS has designed and implemented a wide variety of automated systems which make use of IBM mainframe computers located at the Justice Data Center in Washington, D.C. More recently LSS has employed mini- or micro-computers for litigation support applications.

A typical litigation support application might be using JURIS to provide on-line access to the full text of trial or deposition transcripts. This means that the JURIS terminals and protocol employed to do legal research can be used to retrieve information from a special transcript data base. Access to the special data base can be restricted to attorneys working on the case. Other applications have included computer-aided analysis of telephone toll records, business records, and tax returns. LSS has also assisted in the analysis of payroll records to establish patterns of sex and race discrimination in employment.