

## **Southwest Border Prosecution Initiative Guidelines**

### **APPLICATION PROCESS**

All Southwest Border Prosecution Initiative (SWBPI) applications must be submitted online at <http://southwest.ojp.gov>. Eligible county and state governments in Arizona, California, New Mexico, and Texas may apply for funds, in accordance with established reporting periods and funding availability.

*To complete the online application and determine the maximum payment, eligible cases must be grouped according to the length of case disposition. Maximum payment levels increase in accordance with longer dispositions to reflect the increased cost of prosecuting and detaining defendants. The four case disposition categories are: 1 to 15 days; 16 to 30 days; 31 to 90 days; and more than 90 days.*

### **NON-COMPETITIVE APPROVAL PROCESS**

Applications are reviewed and approved on the basis of their adherence to program guidelines, and funding availability. Applicants will receive up to 100 percent of eligible case costs, based on the availability of funds. Should application amounts exceed available funds, applicants will receive funds on a uniform, pro-rata basis.

### **ELIGIBLE JURISDICTIONS**

A county or state government in Arizona, California, New Mexico, or Texas may participate if it prosecuted and/or detained a defendant in a federally initiated and declined/referred criminal case that was disposed of during the applicable reporting period. In New Mexico, only detention services may be reported in a county's on-line application. Prosecution services are provided through various state agencies and will be reflected in a state level application.

### **ELIGIBLE APPLICANTS**

An applicant must be the Chief Executive Officer (CEO) or an authorized designee of any eligible jurisdiction in Arizona, California, New Mexico, or Texas. CEO's are the highest ranking administrative or elected official of a unit of general government, such as the Governor, President of the County Commissioners, County Executive or, County Judge (for counties in Texas). Only employees, such as a Sheriff or County Prosecutor, of the applicant jurisdiction can serve as an authorized designee for SWBPI.

### **ELIGIBLE CASES**

- Federally initiated criminal case
- Declined/referred to a county or state jurisdiction after October 1, 2004
- Prosecuted by a state or county prosecutor
- Disposed of during a designated reporting period
- Provided pre-trial detention
- Each defendant represents a separate case; one case with multiple defendants should be claimed as separate cases
- One defendant charged in multiple cases should be claimed as only one case to the extent the defendant's cases are being investigated and/or prosecuted during concurrent periods of time

A case is eligible, regardless of:

- When the case was referred
- The level, type, or number of criminal offenses involved
- The defendant's age or citizenship status at the time of the federal referral

- Whether the case was formally declined/referred by a U.S. Attorney, or declined/referred through a blanket federal declination-referral policy; accepted federal law enforcement practice; or federal prosecutorial discretion
- Whether state or local law enforcement participated with federal authorities in the investigation or arrest (federal/state task forces)

### **INELIGIBLE CASES**

- Federally referred case declined and not prosecuted by state or county prosecutors.
- Probation or parole violation or revocation hearings<sup>1</sup>
- Extradition cases
- Cases not accepted by state or county prosecutors

### **CASE REPORTING PERIODS**

- October 1 to December 31
- January 1 to March 31
- April 1 to June 30
- July 1 to September 30

Cases are eligible for SWBPI submission only during the reporting period in which the case was resolved.

### **FEDERALLY INITIATED CASES**

A federally initiated case results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law, including task forces on which a federal agency or officer participates in the investigation or arrest process.

### **FEDERAL DECLINATION/REFERRAL**

A federal declination/referral occurs when, during an investigation or following an arrest, a U.S. Attorney or a federal law enforcement official decides not to pursue federal criminal charges against a defendant (declination) and requests that a state or local jurisdiction prosecute the defendant for possible violation of state or local criminal statutes (referral).

Should a decision be made by a U.S. Attorney to subsequently pursue federal charges against a previously-referred defendant, the time spent by the state or local jurisdiction in their prosecution and/or detention of the defendant on state criminal charges is eligible for SWBPI funding.

### **CASE RESOLUTION**

For SWBPI purposes, case resolution refers to the time between a suspect's arrest and the resolution through dismissal, plea, conviction, or sentencing of the criminal charges through a county or state judicial or prosecutorial process. For defendants not physically arrested, alternative start dates are the date of indictment, date of the initial criminal summons, or date of the summons to appear.

### **PAYMENT PER CASE**

*Each eligible case may receive the following payment based on length of time from declination/referral to resolution; availability of funds; and the provision of both prosecution services and pre-trial detention services:*

*\$2,500 for each case of 1 to 15 days  
 \$5,000 for each case of 16 to 30 days  
 \$7,500 for each case of 31 to 90 days  
 \$10,000 for each case of 91+ days*

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<sup>1</sup> A new charge(s) not independently prosecuted, but used as a basis for a probation or parole revocation hearing is ineligible for reimbursement.

**PROSECUTION SERVICES**

Prosecution services are defined as judicial, prosecution, and defense services.

**PRE-TRIAL DETENTION SERVICES**

An eligible jurisdiction must have held the case defendant in a secure facility for 24 hours or more.

**DOCUMENTATION**

Documentation supporting a federally initiated and declined/referred case must be retained for three years after the submission of the case for SWBPI funds. Documentation can include paper or electronic case files, e-mails from the U.S. Attorney's Office, case notes, or documentation of telephone or face-to-face meetings with U.S. Attorney's Office staff or Federal law enforcement officials.

**ELECTRONIC PAYMENTS**

Electronic SWBPI payments will be sent to an applicant's bank account of record. Jurisdiction contacts, including the financial point of contact, will be notified each time a payment is processed.

**USE OF FUNDS**

While funds from SWBPI federal payments may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law, using funds for the support and enhancement of prosecutorial and detention services is encouraged.

**UNALLOWABLE COSTS**

- Time spent by prosecutors on judicial appeals<sup>2</sup>
- Incarceration time for sentenced offenders

**PARTICIPATION IN SCAAP**

SWBPI participants are also eligible to apply for State Criminal Alien Assistance Program (SCAAP) funds; however, the combined total of SCAAP and SWBPI payments cannot exceed 100 percent of the actual cost of the pre-trial detention period.

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<sup>2</sup> Time spent by prosecutors on interlocutory appeals brought prior to trial, plea, or dismissal is allowable.