

## Southwest/Northern Border Prosecution Initiative Webinar: Fiscal Year 2013 Webinar Transcript

Good afternoon. My name is Maria Anderson. I am a State Policy Advisor for the Northern and Southern Districts of California and the Northwest District of Texas. I'm also a Manager of the Southwest and Northern Border Prosecution Initiative Reimbursement Programs. Today I will be going over the Fiscal Year 2013 guidelines, the registration, our review, eligibility, and prosecution cost guidelines. I will talk about the types of documents that specifically outline the name of the federal agency that referred the case. I'll talk about supporting information and documentation, documents that support Agency arrests or investigation, briefly discuss some audit findings from the Department of Justice Office of the Inspector General.

And I'll also give you the web addresses for the SWBPI, NBPI site, email addresses and contact information. For FY 2013, the Bureau of Justice Assistance will only reimburse prosecution cost and no longer reimburse detention costs. There are several reasons for this. Number one, we have less funding, and removing detention costs allows us to reimburse prosecution costs at a higher percentage. OIG audits net issues regarding supporting documentation for detention costs.

And then number three, in a world of shrinking funds and supplying the needs to the most, we must look at duplicative efforts. The State Criminal Alien Assistance Program, SCAAP, allows for detention, so with the removal of the detention costs from the SWBPI/NBPI programs, that will eliminate the time-consuming process of testing the SCAAP claims against the SWBPI/NBPI claims to check for duplication. In prior years these duplications have ranged into several million dollars, a duplicate of detention costs that have had to be removed before the reimbursements can be generated. This slide just talks about the registration for any of the new SWBPI/NBPI participants.

To begin with an overview, the Southwest Border Prosecution and Northern Border Prosecution Initiative provides funds to eligible jurisdictions in the four southwest states, California, New Mexico, Arizona and Texas, and 14 northern border states qualifying for federally-initiated and decline referred criminal cases. And here again is a slide that kind of defines what the NBPI states are in addition to the southern states. A county or state government may participate if the jurisdiction prosecuted a defendant in a federally-initiated and decline referred criminal case that was disposed of during the applicable reporting period.

For prosecution cases that need to be entered more than once in the SWBPI/NBPI application as a result of multiple defendants, please follow the instructions below. Each defendant represents a separate case, and if a qualifying case has more than one defendant, the jurisdiction may select the same docket number for multiple defendants and one defendant charged in multiple cases should be claimed as only one case to the extent that the defendant's cases are being investigated and are prosecuted during the concurrent periods of time. Eligible cases are a federally-initiated criminal case that has been declined or referred to a county or state jurisdiction. It is going to be prosecuted by a state or county prosecutor.

And it will be disposed of during a designated reporting period. A case is eligible regardless of 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 declined or referred through a blanket referral, accepted federal law enforcement practice or federal prosecutorial discretion or whether state law enforcement participated with federal authorities in the investigation or the arrest. Ineligible cases are cases that were federally declined and not prosecuted by the state or county prosecutors. They are probation or parole violation or revocation hearings. They are extradition cases. Or the cases were not accepted the state or county prosecutors. Federally-initiated cases.

A federally-initiated case results from a criminal investigation or an arrest involving a federal law enforcement authority. And please take special attention, a federal agency or officer must participate in the investigation or arrest process in order for the case to be federally initiated. The case must be federally declined or referred by a U.S. attorney or a federal law enforcement official decides not to pursue the case and requests that the state or local jurisdiction prosecute. The supporting documentation to start a claim. The county must have an arrest or investigative report from a federal referring agency. That means you need a letter, you need a Border Patrol checklist, you need something that specifically says that there was a

federal arrest. The U.S. Attorney's Office must decline the case. And the county or state must decide to prosecute the state. Jurisdictions unable to provide a declination referral from the U.S. Attorney for their area will not be eligible to receive the SWBPI/NBPI funds. Supporting information needed for a claim. You need the total number of felonies in your jurisdiction and the total number of felonies declined, total number of misdemeanors, and the total number of misdemeanors declined. Supporting documentation for FY 2013 are for payroll records for prosecutors, judges, paralegals, public defenders and clerical staff. Only costs incurred by the individual jurisdiction may be claimed. Documents that support agency arrests or investigation.

Again, Border Patrol checklists, a district attorney complaint assignment form, criminal docket records from court, maybe a case management system printout, or a letter or memo from a federal agency. Top four findings from the OIG audit. Number one, cases were not federally initiated. Jurisdictions were not able to support that a federal agency initiated the arrest or investigation. Number two, defendants were held in jail less than 24 hours. The arrest records indicate that the defendants were held less than 24 hours before release. Number three, the number of detention days were inaccurately determined. The date of detention starts on the date of incarceration and ends on the date of sentencing. And then cases were not federally declined. Jurisdictions were not able to provide support from the U.S. Attorney's Office that the cases were declined. For more information, you can contact myself.

My name is Maria Anderson. Here's my phone number and my email address. You can also contact the SWBPI Help Desk at [southwest@usdoj.gov](mailto:southwest@usdoj.gov) or the Northern Border Help Desk at [vjaborderinitiatives@usdoj.gov](mailto:vjaborderinitiatives@usdoj.gov). Are there any questions?

There was a question for audit findings two and three. These were both specifically detention costs. When we received the supporting documentation for the defendants, we could tell the check-in time and we could tell the check-out time, and these were less than a 24-hour period.

So the first rule is that you have to have the defendant in jail for 24 hours before you can claim a day. Detention days, this is where we have the SWBPI/SCAAP duplication. The defendants were -- the date of the incarceration was usually the date that the detention started, but it would continue after the case was deposed, so if the guy or woman was sentenced to six months after the date of sentencing, you would go ahead and add those days too, which are not paid according to the SWBPI/NBPI guidelines. I am not the SCAAP program manager, so we will write down this question about the SCAAP. I understand that the SCAAP authority closed their reporting period on the 20th, I believe, but I will get an answer back to you. We can post this presentation online.

Also, if you need some samples of what a federal declination letter looks like, I had put some in this presentation and I had redacted so much information it just looked like a bunch of black lines, so I did take it out because I wanted it to be a nice presentation. But if you guys need a copy of samples of federal declination letters or federal initiation or investigative reports, they'll be very redacted but I can send you copies if you'll leave your email address. For the question about attorney hours, what we're wanting in prosecution costs is a total year's salary for the prosecutor. It doesn't matter how much time is spent on each case. We're just wanting a total yearly amount.

So for a judge, we would want a yearly salary. For your clerical staff working on these SWBPI cases, a yearly salary. For the public defenders, a yearly salary. You do not have to go to the trouble to try to divide into hours the time it took to prosecute a specific case. A federal agency, as long as they're part of the federal spectrum, I believe the federal Department of Indian Affairs would be part of the State Department, so they would qualify. We're talking about FBI, DEA, Department of Homeland Security with the Border Patrol folks. We're talking HUD, U.S. Marshall Service, Secret Service. Anyone that is a federal initiating agency if -- you know, there's just so many different circumstances, it's hard to kind of nail it down. What I mostly see in these samplings are drug cases that we would really need to see something from where the DEA initiated, or FBI initiated an investigation or initiated the arrest.

If a task force is involved, we need to see that a federal agency was an active participant in the task force. You can't just say you have a task force so therefore all your cases are federal in nature. You must prove

that the case started with a federal agency. The question is, is how do you document that a federal agency has declined a prosecution?

The U.S. Attorney's Office is who will decline the prosecution, so it would need to be either by a letter. I know that some of the states have blanket declination letters that U.S. Attorneys have where if, for example, if it's a drug stop and it's so many grams of marijuana, the state will prosecute it if it's over a certain amount, but under a certain amount they'll decline it and ask the county or state to prosecute. The same with money laundering or if there is cases of Border Patrol. Border Patrol is a big one that are declined because they're so numerous and the amounts of drugs are so small usually.

You know, it just really depends, but you've got like one question talking about two different things. So the federal declination would be from the U.S. Attorney's Office. The federal initiating agency would be who does the investigation or the arrest. Audit issues that I discussed earlier are basically about detention costs. We have turned off the button where you had to enter all of the detention -- your source documents, your case number, and your person's name, and how many days they were incarcerated and such. So no longer, for this year, will you be required to enter each of the cases and all of the information that follows. But I kind of pointed it out because we've had 25 OIG audits in the past three years, and so I don't really see them stopping suddenly, so I just kind of wanted you to be prepared in case you're suddenly being audited by the OIG.

These slides and the video will be available online later, a couple days from now. I have answered a lot of these questions and I don't seem to be getting -- you don't understand, so, again, for the prosecutor's hours, we want a yearly salary. It does not matter how many cases the prosecutor has tried, and it does not matter how long he or she has worked on specific cases. We are wanting their yearly salary. You shouldn't have to -- you know, you just should look at what their yearly salary is. Once you're sending in supporting documentation we might be seeing a monthly payroll register or something. It's simple. It's not, you know, meant to be hard.

Okay, as far as the declination letters from the U.S. Attorney's Office, a blanket letter is fine. I know that we've received from several jurisdictions really neat and complete declination letters, and then we get some letters that just say all the cases that this jurisdiction has claimed, we decline. So if you want more information about a declination letter, please send me an email and ask me for that information and I'll be glad to forward it to you. I'm going to talk shortly here about funding. Last year we had around \$10 million for SWBPI and NBPI. This year we have less than \$5 million. We will have about \$3.9 million for SWBPI and then about \$461,000.00 or so for the NBPI. This is all that we were allocated this year in the budget. You know that Congress has been going through a lot of restructuring of our budgets and stuff, so this is all the money that we'll have this year.

Last year we were able to pay 47% with \$10 million, we only paid 40% of the claims that came in, so this year we're quite aware that we're not going to be able to pay as much as we would like to pay, but there just isn't any funding. Follow up with the rest of the questions. There was a question about multiple defendants, and I will get back with you about that answer. It's really -- I think you don't have to put A, B, C or D, but I want to check with the former program manager and make sure that that's correct information. Okay, we've gotten a question about the timetable after submission. You guys have from now through June 17th, I believe, to enter your application information in. Once that information is closed, we will look for anomalies, make sure that all of the cases look good, and we'll be sending out emails if there's any questions about a big sway in costs.

From that point, I'll still have to pick a sample of the prosecution costs, and it will probably be five to ten jurisdictions. Those jurisdictions will be put on hold. The awards will go ahead and be generated so we know what you guys are going to get. Then we have to obligate the funds past September 30th, and so you should be getting your awards within the October/November time frame. There was a question about if a case needed to be resolved in the reporting period. That answer is yes, the case needs to be completed before you claim the case. There was a question about if there was -- if immigration related has been redacted. I'm not sure. I'll have to get back with you on that. I'll have to ask General Counsel. Cases do not have to be submitted from a task force. They are allowable if a task force had action in the investigation and arrest, but

just because there is a task force doesn't make the claim eligible because it is federally initiated. You need to show the federal initiating agency. There was a question about when the case is eligible to be claimed. Cases are eligible for submission only during the reporting period in which the case was resolved. There is a question about if the submission will become more electronic.

Unfortunately the system that we're running off of is a legacy system, it's just kind of sitting out there for us to use for SWBPI and NBPI, so we don't have any money for updates. We had hoped that we would make it a little more automated but there's just no funding, so no, what we have is what's going to be there for as long as we have the funding. Okay, we have a question of if the case is started prior to the reporting period but was resolved during the reporting period, you are able to submit that claim for the current reporting period. About the prosecutorial cost.

Again, we're going for a yearly salary amount. We are not including fringe benefits. We're only including the salaries, so whatever a specific prosecutor makes for the year would be the dollar amount that you put in. If you've got three prosecutors that make different amounts during the year, you would add those three amounts together and put on the prosecutor line for the claim. Cases that are eligible for reporting are felony cases that have been declined by the U.S. Attorney's Office that were initiated by a federal initiating agency.

As far as the federal initiation of an arrest or investigation, the Border folks are deputized, I believe, so they're federal officials, so they have the right to, in most of the Border Patrol cases I've seen, it says at the bottom of the report that it's been declined by the U.S. Attorney and they've called the sheriff's department. So as long as you have the proof that -- what you cannot do is easier to explain than what you can do. You cannot have a county deputy sheriff stop a car on an interstate that has drugs and call the DEA agent and say, Hey, DEA agent, I have a case here of a car with drugs in it. I'm going to arrest this person. Is this a SWBPI case?

That will not be a SWBPI case. The DEA agent, if he arrests the person with the drugs, then that would be a federal initiation. But a deputy cannot make an arrest and then call a DEA agent and just have them put it into their system as, yeah, he called me. There needs to be some involvement with the arrest or the investigation of the case by a federal official.

For FY 2013, the case reporting periods are from July 1, 2011, through June 30, 2012. That kind of coincides with the SCAAP reporting period. We kind of had a problem when we were doing the SCAAP duplications, SWBPI/SCAAP duplications, and so we moved all of the reporting periods to be the same date. Okay, I don't have any other questions that are coming through right now.

If you have any questions that you want to send me, you can send them to my email address. My email address is Maria, M -- A -- R -- I -- A, dot Anderson, A -- N -- D -- E -- R -- S -- O -- N, at usdoj.gov. If I don't know the answers, I know lots of people, and I can find the answers for you. I thank you for your attention, and I'll be [audio break]. The webinar is now complete. Thank you.