

TABLE 10.—CREDIT SUBSIDY RATES BY LTV AND FICO SCORE
[In percent]

Loan-to-value ratio	FICO score range							
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None
LE 90	-2.95	-1.89	-2.00	-0.69	-0.54	-0.01	2.41	0.10
90–95	-2.56	-1.08	-0.94	0.90	1.26	2.62	6.70	1.65
95–97	-2.22	-0.18	-0.04	2.49	2.88	4.80	10.74	3.37
SFDPA*	-0.20	3.73	4.07	8.97	9.57	12.63	20.41	10.12

* Loans with seller-funded downpayment assistance.

TABLE 11.—BREAKEVEN UP-FRONT AND ANNUAL INSURANCE PREMIUMS FOR SELLER-FUNDED DOWNPAYMENT ASSISTANCE LOANS
[In percent]

	FICO score range							
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None
Up-front Premium	0.95	5.56	5.99	5.92	6.88	12.09	28.95	7.77
Annual Premium	0.55	0.55	0.55	2.00	2.00	2.00	2.00	2.00

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DEPARTMENT OF JUSTICE

28 CFR Part 0

[Docket No. USMS 102; AG Order No. 2974–2008]

RIN 1105–AB14

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to increase the fee from \$45 per person per hour to \$55 per person per hour for process served or executed personally by a United States Marshals Service employee, agent, or contractor. This proposed fee increase reflects the current costs to the United States Marshals Service for service of process in federal court proceedings.

DATES: Written comments must be submitted on or before August 15, 2008.

ADDRESSES: Please submit written comments to the Office of General Counsel, United States Marshals Service, Washington, DC 20530–1000. To ensure proper handling, please reference Docket No. USMS 102 on your correspondence.

Comments may also be submitted electronically to: usmsregs@usdoj.gov or to <http://www.regulations.gov> by using the electronic comment form provided on that site. Comments submitted electronically must include Docket No.

USMS 102 in the subject box. You may also view an electronic version of this rule at the <http://www.regulations.gov> site.

Comments are also available for public inspection at the Office of General Counsel by calling (202) 307–9054 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, Washington, DC 20530–1000, telephone number (202) 307–9054.

SUPPLEMENTARY INFORMATION:

Legal Authority for the U.S. Marshals Service To Charge Fees

The Attorney General must establish fees to be taxed and collected for certain services rendered by the U.S. Marshals Service in connection with federal court proceedings. 28 U.S.C. 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. 28 U.S.C. 1921(a). To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. 28 U.S.C. 1921(b).

The Attorney General initially established the fee schedule in 1991 based on the actual costs, e.g., salaries, overhead, etc., of the services rendered and the hours expended at that time. 56 FR 2436 (Jan. 23, 1991). Due to an increase in the salaries and benefits of U.S. Marshals Service personnel over time, the initial fee schedule was amended in 2000. 65 FR 47859 (Aug. 4, 2000). The current fee schedule is inadequate and no longer reflects the

actual and reasonable costs of the services rendered.

Federal Cost Accounting and Fee Setting Standards and Guidelines Being Used

When developing fees for services, the U.S. Marshals Service adheres to the principles contained in Office of Management and Budget Circular No. A–25 Revised (“Circular No. A–25”). Circular No. A–25 states that, as a general policy, a “user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.” *Id.* § 6.

The U.S. Marshals Service follows the guidance contained in Circular No. A–25 to the extent that it is not inconsistent with any federal statute. Specific legislative authority to charge fees for services takes precedence over Circular No. A–25 when the statute “prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited).” *Id.* § 4(b). When a statute does not address issues of how to calculate fees or what costs to include in fee calculations, Circular No. A–25 instructs that its principles and guidance should be followed “to the extent permitted by law.” *Id.* According to Circular No. A–25, federal agencies should charge the full cost or the market price of providing services that provide a special benefit to identifiable recipients. *Id.* § 6. Circular No. A–25 defines full cost as including “all direct and indirect costs to any part of the Federal Government of providing

a good, resource, or service. These costs include, but are not limited to, an appropriate share of¹:

- Direct or indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;

- The management and supervisory costs; and

- The costs of enforcement, collection, research, establishment of standards, and regulation. *Id.* § 6(d).

Processes Used To Determine the Amount of the Fee Revision

The Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The fee schedule was revised in 2000. The 2000 rates, which still currently are charged are:

- (1) For process forwarded for service from one U.S Marshals Service office or suboffice to another—\$8 per item forwarded;
- (2) For process served by mail—\$8 per item mailed;
- (3) For process served or executed personally—\$45 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service employee, agent, or contractor who is needed to serve process—\$45 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.
- (4) For copies at the request of any party—\$.10 per page;
- (5) For preparing notice of sale, bill of sale, or U.S. Marshal deed—\$20 per item;
- (6) For keeping and advertisement of property attached—actual expenses incurred in seizing, maintaining, and disposing of the property.

In 2007, the U.S. Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over the previous seven-year time period, the existing fee schedule continued to reflect the costs of serving process. The following cost module was designed to reflect the average hourly cost of serving process in person on behalf of a requesting party.

	Cost module
Hourly Wage	\$33.00
Fringe Benefits	14.18
Indirect Costs	10.28
Total Personnel Costs	57.46

The hourly wage was determined by dividing the annual salary, including locality pay, of the average Deputy U.S. Marshal in 2007 who served process into the Deputy's total work hours for the year. The cost of Law Enforcement Availability Pay also was factored into the hourly wage of an average Deputy U.S. Marshal.¹ The fringe benefits rate reflected 43 percent of wage costs. Finally, the indirect costs, which reflected the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, comprised approximately 22 percent of the total wage and benefits costs. As a result of the cost module, the U.S. Marshals Service determined that the existing fee schedule no longer reflected the actual and reasonable costs of serving process.

The total personnel costs of serving process were rounded to the nearest five-dollar increment. Thus, in order to recover the actual and reasonable costs of serving process, the U.S. Marshals Service is proposing to charge \$55 per hour (or portion thereof) for each item served by one Deputy U.S. Marshal. This represents a 20 percent increase (\$10 per hour) from the existing fee for serving process revised in 2000.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the U.S. Marshals Service collected \$1,610,552.72 in service of process fees in FY 2007.² The implementation of this proposed rule will provide the U.S. Marshals Service with an estimated additional \$325,000 in revenue over the

¹ The Law Enforcement Availability Pay Act of 1994, Pub. L. No. 103-329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. 5545a), provides that law enforcement officers, such as Deputy U.S. Marshals, who are required to work unscheduled hours in excess of each regular work day, are entitled to a 25% premium pay in addition to their base salary.

² This amount does not include \$534,518 in U.S. Marshal commissions collected and the recovery of out-of-pocket expenses for sales during FY 2007. This proposed rule does not affect commissions, only the fees charged for service of process.

revenue that would be collected under the current fee structure. This revenue increase represents a recovery of costs based on an increase in salaries, expenses, and employee benefits over the previous seven-year period.

The economic impact on individual entities that utilize the services of the U.S. Marshals Service will be minimal. The service of process fees only will affect entities that pursue litigation in federal court and, in most instances, seek to have the U.S. Marshals levy upon or seize property. The service of process fees will be increased by only \$10 per hour from the previous rate increase seven years ago. The fees will be consonant with similar fees already paid by these entities in state court litigation.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866 (Regulatory Planning and Review), section 1(b) (Principles of Regulation). The Department of Justice has determined that this proposed rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 concerning civil justice reform.

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501–20).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, Title 28, Part 0, Subpart T of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.114 [Amended]

2. In § 0.114, paragraph (a)(3) is amended by removing the fee “\$45” and adding the fee “\$55” in its place wherever it occurs.

Dated: June 5, 2008.

Michael B. Mukasey,
Attorney General.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1088–P]

RIN 1120–AB20

Psychiatric Evaluation and Treatment

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to revise its regulations on providing psychiatric

treatment and medication to inmates. We propose these revised regulations to clarify and update the regulations in light of more recent caselaw.

DATES: Comments are due by August 15, 2008.

ADDRESSES: Our e-mail address is BOPRULES@BOP.GOV. Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this regulation at <http://www.regulations.gov>. You may also comment via the Internet to BOP at BOPRULES@BOP.GOV or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its regulations on providing psychiatric treatment and medication to inmates. We published a proposed regulation document on this subject in the **Federal Register** on December 29, 2003 (68 FR 74892). We now withdraw that proposed regulation document and propose these revised regulations.

First, we rename the subpart “Psychiatric Evaluation and Treatment” to more accurately reflect the substance of the regulations. The previous title, “Administrative Safeguards for Psychiatric Treatment and Medication,” did not reflect the Bureau’s ability to conduct psychiatric evaluations before involuntary hospitalization in a suitable facility for care and treatment.

Below, we provide a section-by-section analysis of the proposed regulations.

Section 549.40 Purpose and scope. This section states that the purpose of the subpart is to describe procedures for voluntary and involuntary psychiatric evaluation, hospitalization, care, and treatment, in a suitable facility for persons in Bureau custody. These procedures are authorized by 18 U.S.C. Chapter 313 and 18 U.S.C. 4042.

Current 28 CFR 549.43 refers to Title 18 U.S.C. 4241–4247, which comprised Chapter 313. The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) (Walsh Act), enacted on July 27, 2006, amended title 18 of the United States Code, Chapter 313, to add a new section 4248, related to sexual offenders. We therefore refer now to 18 U.S.C. Chapter 313 as a whole, instead

of referring to specific sections of the statute.

This section also notes that this subpart applies to inmates in Bureau custody as defined by 28 CFR part 500, specifically § 500.1(c), which defines inmates as “all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise.”

Section 549.41 Hospitalization in a suitable facility. This section explains that, as used in 18 U.S.C. Chapter 313 and this subpart, “hospitalization in a suitable facility” includes the Bureau’s designation of inmates to medical referral centers or correctional institutions which provide the required care or treatment.

Section 549.42 Use of psychiatric medications. This section describes how psychiatric medications will be used. Psychiatric medications will only be used for treatment of diagnosable mental illnesses and disorders, and their symptoms, for which such medication is accepted treatment, and that psychiatric medication will be administered only after following the applicable procedures in this subpart. This section is derived from current § 549.40.

In this regulation, we clarify that psychiatric medication is to be used only for a diagnosable psychiatric disorder or symptoms for which such medication is accepted treatment. Previously, the regulation allowed medication for “symptomatic behavior.” The word “symptoms” is more accurate medical terminology.

Section 549.43 Transfer for psychiatric or psychological examination. This section describes the Bureau’s transfer authority. Pursuant to 18 U.S.C. Chapter 229, Subchapter C (§ 3621(b)), the Bureau is authorized to transfer inmates between facilities. Accordingly, the Bureau may transfer an inmate to a suitable facility for psychiatric or psychological examination to determine whether hospitalization in a suitable facility for psychiatric care or treatment is needed.

Section 549.44 Voluntary hospitalization in a suitable facility for psychiatric care or treatment, and voluntary administration of psychiatric medication. This section derives from current § 549.41. In this section, we state that an inmate may be hospitalized in a suitable facility for psychiatric care or treatment after providing informed and voluntary consent when, in the professional medical judgment of qualified health services staff, such care or treatment is required and prescribed.