UNITED STATES COURT CLERK'S OFFICE
UNITED STATES PROBATION OFFICE
UNITED STATES ATTORNEY'S OFFICE
FOR THE
MIDDLE DISTRICT OF ALABAMA

MEMORANDUM OF UNDERSTANDING FOR THE COLLECTION AND PROCESSING OF CRIMINAL FINES, RESTITUTION, SPECIAL ASSESSMENTS AND PRETRIAL DIVERSION ORDERS

July 5, 2012

This Memorandum of Understanding for the collection and processing of criminal fines, restitution and special assessments, and when appropriate, pretrial diversion orders, are entered into by the United States Attorney's Office for the Middle District of Alabama (the "USAO"), the United States Probation Office for the Middle District of Alabama (the "USPO"), and the Office of the Clerk of the United States District Court for the Middle District of Alabama (the "Clerk's Office").

The parties are cognizant of the extensive changes in the manner in which the federal government will enforce the collection of Court-ordered federal and third-party restitution, brought about by the enactment of the Mandatory Victims Restitution Act of 1996, which is Title II of the Antiterrorism and Effective Death Penalty Act of 1996 (104th Congress, Public Law 104-132); i.e. (1) the Courts now must order restitution in the majority of violent crimes and fraud offenses where there is an identifiable victim, (2) all receipting, accounting and disbursement functions attendant to orders of restitution have been shifted to the Clerk's Office, and (3) the enforcement obligation upon the USAO and the USPO has been vastly increased.

The purpose of this Memorandum of Understanding is to maximize cooperation and coordination between the Clerk's Office, the USAO and the USPO, and to make the enforcement and processing of criminal fines, restitution and special assessments as efficient and effective as possible in the Middle District of Alabama.

The parties agree to cooperate fully with each of the entities who are signatories to this Memorandum of Understanding as follows:

Definitions

A. **Financial Litigation Unit (FLU)** refers to the FLU located within the USAO for the Middle District of Alabama. The FLU is responsible for enforcing the collection of debts owing to the United States as well as victims of crime.

B. **Judgment in a Criminal Case** (JCC) refers to the document filed with the Court at the termination of a criminal case. It was formerly known as a Judgment and Commitment Order (J&C).

C. **Mandatory Victims Restitution Act (MVRA)** refers to Title II of the Antiterrorism and Effective Death Penalty Act of 1996 (104th Congress, Public Law 104-132).

D. **Presentence Investigation Report (PSIR)** refers to the document prepared by the USPO prior to sentencing which generally includes personal, background, and financial information about the defendant.

E. **United States Attorney's Office (USAO)** refers to the USAO responsible for handling civil and criminal litigation for the entire district.

F. **United States Probation Office (USPO)** refers to the USPO for the Middle District of Alabama responsible for presentence investigation reports as well as supervising defendants sentenced to probation or supervised release.

G. **The Treasury Offset Program (TOP)** refers to a centralized debt collection program designed to assist agencies in the collection of delinquent debts wherein tax refunds, social security, etc., are offset and applied to criminal debts.

In view of the foregoing, the parties agree that their respective responsibilities will be as follows:

A. <u>Responsibilities of the USAO Criminal Division</u>:

1. The United States Attorney and the Chief of the USAO Criminal Division will frequently emphasize to all Criminal Assistant United States Attorneys ("Criminal AUSAs") the priority and importance of securing from investigative agencies and case agents information that specifically sets forth a defendant's financial status, together with assets and holdings. In turn, the Criminal AUSAs will continuously emphasize to case agents the priority and importance of securing complete and detailed information regarding a defendant's financial situation (the identification and location of real and personal assets, liabilities, sources of income, etc.), and to include all such information in their reports. Case agents' financial investigations should be oriented toward the potential forfeiture of the defendant's assets and toward the enforced collection of all restitution to victims ordered by the Court.

2. To assist the USPO and the Clerk's Office, Criminal AUSAs will request that investigating agencies/case agents obtain and provide the names, social security numbers, dates of birth, addresses and telephone numbers of all individual restitution victims, and the precise amount of loss suffered by each victim; and, when the victim is a government agency or a business entity, its name, tax identification number, address, telephone number, name of contact person, applicable account number or claim number, and amount of loss and provide this information to USPO.

3. The lead Criminal AUSA assigned to the case will review the information regarding the defendant's financial status and the information regarding restitution victims (with the assistance of the USAO Victim-Witness Coordinator) and ensure that appropriate information is timely shared with the USAO Asset Forfeiture Unit when applicable, the USAO Affirmative Civil Enforcement (ACE) Unit when applicable, the USAO Bankruptcy Unit when applicable, and in all cases, the USAO Financial Litigation Unit (the "FLU"). Following pronouncement of guilt by the Court, such financial information is to be shared with the USPO to the fullest extent possible for inclusion in the Presentence Investigation Report (the "PSIR"), and with the Clerk's Office upon request to aid in the processing of restitution payments.

4. In all cases when a criminal fine and/or restitution in excess of $25,000 is expected, the Criminal AUSA shall consult with the FLU Paralegal and/or FLU AUSA to explore enforced collection strategies and payment options (see paragraph 7 at Responsibilities of the USAO FLU below).

5. The Criminal AUSA shall consult with the ACE AUSA and the FLU AUSA prior to finalization of plea negotiations in fraud, personal injury and property damage cases when monetary losses are suffered by an agency of the federal government for the purpose of obtaining a civil judgment or a settlement in lieu of restitution.

6. In cases where the defendant has sufficient financial ability, the Criminal AUSA will request the Court to order the criminal fine and/or restitution to be paid immediately, or if the imposition cannot be paid immediately, the Criminal AUSA will request a realistic, but specific, payment schedule to be ordered by the Court and clearly and expressly included in the Criminal Judgment. In cases when the defendant has no ability to pay a criminal fine or restitution, the Criminal AUSA will so notify the Court and recommend that no monetary penalty be imposed (other than the mandatory special assessment and any mandatory restitution).

7. In all cases when a criminal fine or restitution is likely to be ordered by the Court, the Criminal AUSA will direct that the FLU receive a copy of the PSIR when it first comes into the USAO – that is, during the period for objections to the PSIR – so that the defendant's ability to pay may be evaluated and the best time for payment may be determined. The Criminal AUSA will also ask the defendant's permission for FLU to run a credit report pre-judgment, and will provide the FLU with as much information available regarding the defendant's assets and liability to pay any monetary penalty ordered.

8. As soon as possible following sentencing, in all cases when a criminal fine or restitution is imposed against the defendant which is not paid in full at the time of sentencing, the Criminal AUSAs, Support Staff, lead criminal assistant, or supervisory criminal legal assistant will ensure that the FLU receives a copy of the Judgment in a Criminal Case (the "Criminal Judgment") and the PSIR.

9. Criminal AUSAs will, when appropriate, enter an objection to all Court-ordered, in-kind restitution, if such restitution must be received, processed, tracked or disbursed by the Clerk's Office.

10. The USAO Criminal Division will direct that all Plea Agreements require payment in full of the applicable special assessments at or before the time of sentencing in those cases where the defendant has retained counsel.

11. In all cases, criminal fines and restitution will be paid immediately unless the defendant's financial circumstances prevent immediate payment. 18 U.S.C. § 3572(d)(1)

12. The Criminal AUSA will require a defendant to make a complete financial disclosure by executing an approved Executive Office for United States Attorneys' Financial Statement ("Financial Statement OBD 500") <u>at or before</u> execution of a Plea Agreement or a Pretrial Diversion Agreement if provisions for the imposition and/or payment of a criminal fine or restitution are contained therein so that the defendant will be prevented from concealing or transferring assets. The Financial Statement will be made an exhibit to the Plea Agreement.

13. The USAO Criminal Division will ensure that all Plea Agreements state that the defendant must provide complete information regarding all restitution victims and that the defendant will execute a Financial Statement, as well as any release-of-information authorizations which may be necessary, and/or submit to depositions/interviews as requested by the FLU.

14. If a defendant posts a cash bond or a non-surety bond as bail, the Criminal AUSA will notify the FLU as soon as possible.

15. If a cash bond has been posted as bail and a criminal fine or restitution is imposed upon the defendant at sentencing, the Criminal AUSA will, when appropriate, make a motion to transfer the defendant's interest in the bail toward payment of the monetary imposition. 28 U.S.C. § 2044

16. The Criminal AUSA will oppose a defendant's request for a stay of fine or restitution pending appeal unless a cash or performance bond is posted in the District Court pursuant to Fed. Rule Crim. Proc. 38.

17. Pursuant to the Mandatory Victims Restitution Act of 1996, the Criminal AUSA will, when requested to do so by the USPO, provide a listing of the amounts subject to restitution no later than 60 days prior to sentencing.

18. Pursuant to the Mandatory Victims Restitution Act of 1996, if a victim's losses are not ascertainable within 10 days of the sentencing hearing, the Criminal AUSA or the USPO must inform the Court and a date for final determination of the losses can be set for up to 90 days after the sentencing. 18 U.S.C. § 3664(d)(5). In such cases, the Criminal AUSA will undertake

the burden of proving the amount of the loss sustained by all victims as a result of the offense. 18 U.S.C. § 3664(e).

19. Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant is required to notify the Court and the USAO of any material change in economic circumstances which might affect his or her ability to pay restitution. Victims and the United States may also notify the court of any change in the defendant's economic condition. The USAO must then certify to the court that all of the victims have been notified of the change in the defendant's economic circumstances. After receiving this notification, the court may on its own or on motion of any party, adjust the repayment schedule. 18 U.S.C. § 3664(k).

20. In all cases when there is a supplemental, corrected or amended Criminal Judgment, in order that collection thereof is not precluded, the Criminal AUSA will work with the USPO to ensure that the monetary penalties imposed in the original Criminal Judgment are included in the new Criminal Judgment when applicable.

21. The Criminal AUSA or supervisory legal assistant will provide to the FLU copies of all post-judgment pleadings, documents or events that impact upon a defendant's obligation or ability to pay a criminal fine, restitution or special assessment, and all proceedings that result in the setting aside of convictions, the amendment of the amount of the criminal fine, restitution, or special assessments to be paid, changing the restitution victims to be paid, or changing the terms of payment.

22. The Criminal AUSA and the USPO will endeavor to have included in all Criminal Judgments language to the effect that the Clerk's Office may hold and accumulate restitution payments, without distribution, until the amount accumulated is such that the minimum distribution to any restitution victim will be not less than $25.00 (an amount left to the discretion of the district).

23. When the defendant is an alien and is to be deported, and it is unlikely that the defendant will be able to pay a special assessment or any other court-imposed financial penalties, the Criminal AUSA will request that the special assessment and other court-imposed financial penalties be remitted at the time of sentencing.

B. <u>Responsibilities of the USAO FLU</u>:

1. The FLU will be available to the USPO and to the Clerk's Office at all times for cooperation and consultation concerning the collection and processing of criminal fines, restitution and special assessments. Questions regarding specific cases may be referred to the FLU Agent responsible for the file, while questions regarding general policy matters will be directed to the FLU Supervisory Paralegal. The FLU AUSA and staff will meet with the USAO Criminal Division, Probation, and the Clerk's Office upon request as well as to review procedures when changes in the law or in policies warrant such meetings

2. The FLU will assist the Clerk's Office in every way possible to affect the orderly transfer of payment and accounting records in all criminal cases from the FLU to the Clerk's Office.

3. The FLU will continue to maintain full case files in criminal cases until further notice from the Executive Office for United States Attorneys.

4. In cases when the defendant/debtor is incarcerated, the FLU staff will work with prison caseworkers to maximize the collection of criminal fines and restitution and will work diligently to locate assets to satisfy the debt.

5. In cases when the defendant is on probation or supervised release, the FLU staff will work with the USPO to maximize collection of criminal fines and restitution and to provide USPO with notice whenever a debtor is three payments delinquent. The FLU Agent and/or Paralegal Specialist will meet with the probation officer, restitution victims and the debtor as needed.

6. The FLU will enforce collection through treasury offset payments (TOP), garnishments, levy against a defendant's property, notices to appear, and debtor exams, in consultation with the USPO.

7. The FLU will give priority processing to criminal fines and restitution over $100,000.00. Upon receipt of the Criminal Judgment, the PSIR and other required information from the USAO Criminal Division, a case file will be opened and docketed in the case tracking system within 30 working days.

8. The FLU will, when applicable, send a demand letter to the defendant immediately following the entry of the Criminal Judgment and will work diligently to locate assets to satisfy the debt.

9. The FLU will file a Notice of Lien, to be recorded in the county of the defendant's residence, and all other counties where the defendant is believed to own assets, within 30 days following entry of the Criminal Judgment in all cases when the monetary penalties imposed exceed $500. For convictions on or after April 24, 1996, liens must be filed in <u>all</u> cases involving restitution orders to nonfederal victims regardless of the amount. 18 U.S.C. § 3613©.

10. The FLU will, as requested to do so, provide to the Clerk's Office and to the USPO copies of all payment agreements with debtors and copies of all communications to debtors regarding debt accounting and payments.

11. If it appears that the defendant is unable to make regular payments, or can only make nominal payments, the FLU will suspend all criminal fines, restitution, and special assessments pursuant to 3-12.400 of the U. S. Attorney's Manual. Upon consultation with the Criminal AUSA and Probation, the FLU will seek to remit uncollectible criminal fines and special assessments in accordance with USAM 3-12.510 and 3-12.520 and USAO policy.

12. The FLU will notify debtors regarding payment delinquencies and defaults, and the imposition of delinquent and default penalties on criminal fines and restitution, if applicable. Interest will accrue on restitution debts for offenses committed after April 24, 1996, on amounts over $2,500.00. 18 U.S.C. § 3612(f)

13. All payments on special assessments, criminal fines and restitution which are inadvertently received in the USAO will be forwarded to the Clerk's Office on the day of receipt or not later than the morning of the next business day.

14. The FLU will review every criminal fine and/or restitution file according to the priority code and pursuant to their suspense policy on the debts in suspense.

15. Pursuant to the Mandatory Victims Restitution Act of 1996, the FLU will enforce "to the fullest extent of the law" all criminal fine orders and federal and non-federal restitution orders, all of which are enforceable for a period of twenty years plus any period of incarceration or until the death of the defendant. 18 U.S.C. § 3613©

16. The FLU will provide the Clerk's Office with interest computations and the FLU will impose penalties on delinquent and defaulted debts in accordance with 18 U.S.C. 3612(f)(g), and provide same to the Clerk's office, until the Clerk's Office is ready to assume this responsibility. The computations provided by the USAO on interest and penalties will be used in place of those provided by any other source.

17. Upon request, the FLU will provide the Clerk's Office a FMIS report reflecting payments received via TOP.

18. The FLU will ensure the release of all judgment liens when appropriate, i.e, paid in full, expired, etc.

19. Upon payment in full, the FLU will file a Satisfaction of Judgment with the U. S. District Court within 10 days after the judgment has been satisfied, with the exception of special assessment only cases.

C. <u>Responsibilities of the USPO</u>:

1. The USPO will obtain from the Criminal AUSA the listing of names, social security numbers, dates of birth, addresses and telephone numbers of all individual restitution victims, and the precise amount of loss suffered by each victim; and when the victim is a government agency or a business entity, its name, tax identification number, address, telephone number, name of contact person, applicable account number or claim number, and amount of loss from the Criminal AUSA (see paragraph 2 at Responsibilities of the USAO Criminal Division above).

2. Pursuant to the Mandatory Victims Restitution Act of 1996, it is the responsibility of the USPO to obtain and include in PSIRs (1) a complete accounting of the losses suffered by each restitution victim, (2) amounts of restitution to be paid pursuant to a Plea Agreement, and (3) information relating to the economic circumstances of each defendant. (To be obtained by an affidavit filed by the defendant with the probation officer pursuant to amended 18 U.S.C. § 3664(d)(3).

3. Pursuant to the Mandatory Victims Restitution Act of 1996, the USPO will provide notice to all identified restitution victims of (1) the offense of which the defendant was convicted, (2) the amounts subject to restitution submitted to the probation officer, (3) the opportunity of a restitution victim to submit information to the USPO concerning the amount of a victim's losses, (4) the scheduled date, time and place of the sentencing hearing, (5) the availability of a lien in favor of the restitution victim pursuant to 18 U.S.C. § 3664(m)(1)(B), and (6) the opportunity of a restitution victim to file with the USPO a separate affidavit (provided by the USPO) relating to the amount of the victim's losses subject to restitution. 18 U.S.C. § 3664(d)(2)

4. Pursuant to the Mandatory Victims Restitution Act of 1996, if a victim's losses are not ascertainable within 10 days of the sentencing hearing, the USPO will inform the Court and a date for final determination of the losses will be set within 90 days after the sentencing. 18 U.S.C. § 3664(d)(5)

5. Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant will prepare and file with the USPO an affidavit fully describing his/her financial resources, including a complete listing of all assets owned or controlled by the defendant as of the date on which he/she was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information which the court deems appropriate. 18 U.S.C. §3664(d)(3) The USPO will investigate and include in PSIRs all such information relating to the defendant's ability to pay a criminal fine and/or restitution.

6. In any case in which the USPO anticipates that the defendant will receive a fine or restitution, the USPO will provide the FLU with as much information as possible, prior to sentencing, regarding the defendant's assets and ability to pay. The USPO will also attempt to acquire permission from the defendant for the FLU to run a credit report prior to sentencing.

7. In all cases when the facts so warrant, the USPO will recommend to the Court payment of an appropriate criminal fine and/or restitution. Immediate payment in full by the defendant will be sought in all cases. If, in the interest of justice, the Court orders other than immediate payment, such as installments or payment on a date certain, the length of time over which scheduled payments are made will be the shortest time in which full payment can reasonably be made. 18 U.S.C. § 3572(d)(1) and (2). In these cases, the USPO will recommend specific payment dates/schedules.

8. In restitution cases when there are multiple victims, the USPO will recommend to the Court the order in which the victims are to be paid when the facts of the case warrant something other than standard pro rata payment.

9. In restitution cases, where the USPO recommends to the Court community restitution, the USPO is responsible for providing the names, addresses, and contact persons for the state agencies designated by law to receive community restitution and the amounts (percentages), to the Court at sentencing and to the Clerk's office for preparation of the JCC.

10. In all cases when the consideration of in-kind restitution is warranted by the facts, the USPO will not recommend in-kind restitution if the property involved must be received, processed, tracked, or disbursed by the Clerk's Office.

11. The USPO will include in all PSIRs the address (at least county and state) of all real properties owned in whole or in part by the defendant to facilitate the filing of liens by the FLU.

12. The USPO will routinely review each defendant's payments to determine whether to modify the defendant's payment schedule and if necessary, seek a modification of court-ordered payment terms.

13. The USPO will send the FLU copies of all payment agreements and all forms providing for changes of address, supervision and modification of payment schedules.

14. The USPO will advise the FLU at least six months prior to the expiration of a defendant's probationary period or period of supervised release when there is a delinquent unpaid balance of the criminal fine and/or restitution, or if the payment schedule will not completely satisfy the obligation prior to expiration.

15. In all cases when resentencing of the defendant occurs because of appeal, revocation of probation, or any other reason, the USPO will ensure that the monetary penalties imposed in the original Criminal Judgment are included in the new Criminal Judgment so that collection of the penalties will not be precluded.

16. The USPO will require a defendant under its supervision to execute a Financial Statement upon an oral or written request from the FLU.

17. The USPO will notify the FLU of the transfer of supervision of all criminal fine and/or restitution debtors into and out of the district within 30 days of transfer.

18. The USPO will deliver to the Clerk's Office Courtroom Deputy a copy of the sentencing recommendations, referred to as the "sentence and statement of reasons" as soon as possible following sentencing.

D. <u>Responsibilities of the Clerk's Office</u>:

1. As directed by the Court, the Clerk's Office will prepare and provide to the USAO and USPO Criminal Judgments requiring immediate payment in full, a payment due date, and/or

a payment schedule for all criminal cases (18 U.S.C. § 3572(d)(1)); and (2) impositions as well as the names of all restitution payees for all criminal restitution ordered by the Court.

2. The Clerk's Office will furnish the FLU and the USPO copies of all Orders in all cases when the Court alters a condition of probation or supervised release concerning a defendant who owes a criminal fine or restitution.

3. The Clerk's Office will maintain a financial system to calculate, collect, receipt and disburse payments of all criminal fines, restitution and special assessments (18 U.S.C. § 3611), and will provide copies of all pertinent information, to the FLU and to the USPO.

4. The Clerk's Office, on a weekly basis, will download all criminal payments, via CCAM, in all criminal cases.

5. The Clerk's Office will provide a copy of the receipt to the FLU whenever a cash bail is posted.

6. The Clerk's Office will apply payments in the following order: (1) special assessments; (2) restitution to all victims, including restitution interest and penalties -- all private, nonfederal victims must be paid in full before the United States is paid when the federal government is also a restitution victim; (3) criminal fine principal; (4) community restitution, (5) user fees such as costs of incarceration, costs of probation and costs of supervised release; (6) costs, including costs of prosecution and investigation as well as traditional court costs; (7) criminal fine interest and penalties; and (8) attorney fees. 18 U.S.C. § 3612©.

7. Pursuant to the Mandatory Victims Restitution Act of 1996, the Clerk's Office will, upon request by a restitution victim, issue an Abstract of Judgment which upon recordation in accordance with state law will be a lien on the defendant's property. 18 U.S.C. § 3664(m)(1)(B).

8. The Clerk's Office will collect, receipt, process and disburse all payments in criminal cases.

9. The Clerk's Office will provide the FLU with documentation concerning all transfer of jurisdiction orders.

PRETRIAL DIVERSION

In cases resolved by Pretrial Diversion when the defendant is ordered to pay restitution, the case will remain in the jurisdiction of the Probation Office unless the defendant violates the terms of the Pretrial Agreement. In the latter, the Chief of the Probation Office, the FLU AUSA, and the Criminal AUSA will discuss what further action to take.

The Clerk's Office will receipt, collect, process and disburse all Pretrial Diversion Restitution only if ordered to do so by court order.

E. Distribution

Each of the signatories to this MOU will make a copy available to appropriate personnel within their respective offices to ensure all employees are aware of this agreement.

F. Administration

1. This Memorandum of Understanding may be amended by written agreement of the parties.

2. The parties are aware of the Memorandum of Understanding (MOU) between the Department of Justice and the Administrative Office of the United States Courts (AOUSC) for the Analysis of Policies and Procedures for criminal Debt Data Management in the United States District Courts which was effective March 14, 1997.

3. The parties agree to meet annually or as needed to discuss modification to these Joint Guidelines resulting from changes in intra-office policies and procedures, changes in interoffice relationships, changes in federal statutory law, or other reasons.

E. Authorizing Signatures

IN WITNESS WHEREOF the parties hereunto set their hands to the foregoing Memorandum of Understanding.

Date: 7/11/12

GEORGE L. BECK, JR.
United States Attorney

Date: 7/12/12

DEBRA P. HACKETT
Clerk, U. S. District Court

Date: 7/17/12

DWAYNE SPURLOCK
Chief, U. S. Probation