

RE: FPS

Saltalamachea, Michael (b)(6)

Tue 6/2/2020 2:31 PM

To: (b)(6)

Thank you. This makes sense.

Mike

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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From: (b)(6)

Sent: Tuesday, June 2, 2020 2:28 PM

To: (b)(6) Saltalamachea, Michael (b)(6)

Subject: RE: FPS

Mike. (b)(5)

Thanks

(b)(6) Attorney Advisor - Federal Protective Service

(b)(6)

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From: (b)(6)

Date: Tuesday, Jun 02, 2020, 2:25 PM

To: Saltalamachea, Michael (b)(6)

Cc: (b)(6)

Subject: RE: FPS

Mike,

(b)(5)

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

(b)(6)

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From: Saltalamachea, Michael

(b)(6)

Sent: Tuesday, June 2, 2020 2:11 PM

To:

(b)(6)

Subject: FPS

(b)(5)

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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DHS LE support fiscal law update

Swartz, Neal (b)(6)

Fri 6/26/2020 1:33 PM

To: Marcott, Stacy (b)(6)

Cc: Saltalamachea, Michael (b)(6)

Attorney-Client and Deliberative Process Privileged

Stacy,

(b)(5)

Thank you,
Neal

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Support to protect federal property

Swartz, Neal (b)(6)

Fri 6/26/2020 2:56 PM

To: Walsh, Heather V. (b)(6)

Cc: (b)(6) Saltalamachea, Michael (b)(6)

Attorney-Client and Deliberative Process Privileged

Heather,

(b)(5)

(b)(5)



Thank you,
Neal

Neal J. Swartz
Associate General Counsel for General Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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FW: Support to protect federal property

Swartz, Neal (b)(6)

Fri 6/26/2020 2:58 PM

To: Maher, Joseph (b)(6) Mizelle, Chad (b)(6) Havranek, John

(b)(6)

Cc: (b)(6) Saltalamachea, Michael (b)(6)

Chad, Joe, and John,
FYSA.Thank you,
Neal~~*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***~~~~This message and any attachments may contain attorney-client communications, attorney work product, and agency deliberative communications, all of which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security, Office of General Counsel before disclosing any information contained in this email.~~**From:** Swartz, Neal**Sent:** Friday, June 26, 2020 2:56 PM**To:** Walsh, Heather V. (b)(6)**Cc:** (b)(6) Saltalamachea, Michael (b)(6)**Subject:** Support to protect federal property~~Attorney-Client and Deliberative Process Privileged~~

Heather,

(b)(5)

(b)(6)

(b)(5)

(b)(5)

Thank you,
Neal

Neal J. Swartz
Associate General Counsel for General Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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RE: Support to protect federal property

Havranek, John (b)(6)

Fri 6/26/2020 4:18 PM

To: Swartz, Neal (b)(6) Maher, Joseph (b)(6) Mizelle, Chad

(b)(6)

Cc: (b)(6) Saltalamachea, Michael (b)(6)

(b)(5)

John

John F. Havranek
DHS Office of the General Counsel

(b)(6)

From: Swartz, Neal (b)(6)**Sent:** Friday, June 26, 2020 2:58 PM**To:** Maher, Joseph (b)(6) Mizelle, Chad (b)(6) Havranek, John

(b)(6)

Cc: (b)(6) Saltalamachea, Michael (b)(6)**Subject:** FW: Support to protect federal propertyChad, Joe, and John,
FYSA.Thank you,
Neal~~*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***~~~~This message and any attachments may contain attorney-client communications, attorney work product, and agency deliberative communications, all of which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security, Office of General Counsel before disclosing any information contained in this email.~~**From:** Swartz, Neal**Sent:** Friday, June 26, 2020 2:56 PM**To:** Walsh, Heather V. (b)(6)**Cc:** (b)(6) Saltalamachea, Michael (b)(6)**Subject:** Support to protect federal property*Attorney-Client and Deliberative Process Privileged*

Heather,

(b)(5)

(b)(5)



(b)(5)

Thank you,
Neal

Neal J. Swartz
Associate General Counsel for General Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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RE: Support to protect federal property

Havranek, John (b)(6)

Sat 6/27/2020 8:36 AM

To: Swartz, Neal (b)(6) Maher, Joseph (b)(6) Mizelle, Chad**Cc:** (b)(6) Saltalamachea, Michael (b)(6)

(b)(5); (b)(7)(E)

John

John F. Havranek
DHS Office of the General Counsel

(b)(6)

From: Havranek, John**Sent:** Friday, June 26, 2020 4:18 PM**To:** Swartz, Neal (b)(6) Maher, Joseph (b)(6) Mizelle, Chad

(b)(6)

Cc: (b)(6); Saltalamachea, Michael (b)(6)**Subject:** RE: Support to protect federal property

(b)(5)

John

John F. Havranek
DHS Office of the General Counsel

(b)(6)

From: Swartz, Neal (b)(6)**Sent:** Friday, June 26, 2020 2:58 PM**To:** Maher, Joseph (b)(6) Mizelle, Chad (b)(6) Havranek, John

(b)(6)

Cc: Corle, Ryan (b)(6) Saltalamachea, Michael (b)(6)**Subject:** FW: Support to protect federal propertyChad, Joe, and John,
FYSA.

Thank you,
Neal

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From: Swartz, Neal

Sent: Friday, June 26, 2020 2:56 PM

To: Walsh, Heather V. (b)(6)

Cc: (b)(6) Saltalamachea, Michael (b)(6)

Subject: Support to protect federal property

Attorney-Client and Deliberative Process Privileged

Heather,

(b)(5)



(b)(5)



Thank you,
Neal

Neal J. Swartz
Associate General Counsel for General Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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FW: Warning Order: Civil Unrest Support

(b)(6)

Tue 6/30/2020 9:39 AM

To: Swartz, Neal (b)(6)**Cc:** Saltalamachea, Michael (b)(6)

Neal,

Can I share this yet with CBP and ICE? They are starting to get restless.

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

(b)(6)

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From: Swartz, Neal (b)(6)**Sent:** Wednesday, June 24, 2020 6:52 PM**To:** Havranek, John (b)(6) Mizelle, Chad (b)(6) Maher, Joseph

(b)(6) (b)(6) Palmer, David

(b)(6)

Cc: Gereski Jr, John (b)(6) Saltalamachea, Michael

(b)(6) (b)(6)

Subject: RE: Warning Order: Civil Unrest Support

~~Attorney-Client and Deliberative Process Privileged~~

Chad,

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Thank you,
Neal

(b)(6)

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From: Havranek, John (b)(6)

Sent: Wednesday, June 24, 2020 6:29 PM

To: Mizelle, Chad (b)(6) Maher, Joseph (b)(6) (b)(6)

(b)(6) Palmer, David (b)(6) Swartz, Neal (b)(6)

Cc: Gereski Jr, John (b)(6) Saltalamachea, Michael (b)(6)

Subject: FW: Warning Order: Civil Unrest Support

Chad,

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

John F. Havranek
DHS Office of the General Counsel

(b)(6)

From: Phillips, Shawn (b)(6)**Sent:** Wednesday, June 24, 2020 4:55 PM**To:** Evetts, Mark (b)(6) McGough, Daniel (b)(6) NOC.NDD

(b)(6) Abbott, Christian (b)(6) Rohr, Karl

(b)(6) Havranek, John (b)(6)

Cc: DiFalco, Frank (b)(6) Heinz, Todd (b)(6) Tomney, Christopher

(b)(6) DHSCAT (b)(6) (b)(6)

NOC.SWO.Restricted (b)(6)

Subject: Warning Order: Civil Unrest Support

All,

Wanted to give you as much heads up as possible. AS1 just called Director Tomney after receiving a call from the WH COS reference DHS LE support for civil unrest.

All that is known right now is that a general request for DHS to provide LE support (b)(7)(E) DC and across the country (b)(7)(E)

Director Tomney has been in touch with a few components (TSA, FPS, USSS) regarding this warno while he is awaiting a call back from DOJ on more specifics, (b)(7)(E)

(b)(7)(E) All the same types of information we coordinated before.

In light of this information please begin initial planning on how will/would work another round of support: Specifically:

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Thank you.

Shawn

Shawn A. Phillips
Deputy Chief of Staff (Operations)
Office of Operations Coordination (OPS)
Department of Homeland Security

(b)(6)

From: Evetts, Mark

(b)(6)

Sent: Wednesday, June 3, 2020 8:37 AM

To: DiFalco, Frank

(b)(6)

Heinz, Todd

(b)(6)

Cc: McGough, Daniel

(b)(6)

Phillips, Shawn

(b)(6)

Subject: DHS Coverage of FBI SIOC Shifts

Frank,

(b)(6); (b)(7)(E)

Director Tomney called me a few minutes ago shared that he and you are scheduled to visit WFO this afternoon and he invited me to go as well.

(b)(7)(E)

(b)(7)(E)

From: NOC.NDD

(b)(6)

Sent: Wednesday, June 3, 2020 7:16 AM

To: Evetts, Mark

(b)(6)

McGough, Daniel

(b)(6)

Cc: NOC.NDD

(b)(6)

Subject: RE: DHS Coverage of FBI SIOC Shifts

(b)(7)(E)

Vr, Chip

Charles V. (Chip) Strangfeld
Duty Director

(b)(7)(E)

**DHS Office of Operations Coordination
National Operations Center**

(b)(6)

From: DiFalco, Frank (b)(6)**Sent:** Wednesday, June 3, 2020 6:48 AM**To:** NOC.NDD (b)(6)**Cc:** Heinz, Todd (b)(6)

Evetts, Mark (b)(6)

Phillips, Shawn

(b)(6) McGough, Daniel (b)(6)

NOC.SWO.Restricted

(b)(6)

Subject: RE: DHS Coverage of FBI SIOC Shifts

NDD/Chip, roger and thank you for the follow-up. R/Frank

From: NOC.NDD (b)(6)**Sent:** Wednesday, June 3, 2020 6:39 AM**To:** DiFalco, Frank (b)(6)**Cc:** Heinz, Todd (b)(6)

Evetts, Mark (b)(6)

Phillips, Shawn

(b)(6) McGough, Daniel (b)(6)

NOC.NDD

(b)(6) NOC.SWO.Restricted (b)(6)

Subject: RE: DHS Coverage of FBI SIOC Shifts

Good morning, sir,

Update from Dan McGough on SIOC / WFO staffing status:

He worked it out yesterday afternoon (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Vr, Chip

Charles V. (Chip) Strangfeld

Duty Director

DHS Office of Operations Coordination

National Operations Center

(b)(6)

From: NOC.NDD (b)(6)**Sent:** Tuesday, June 2, 2020 11:34 PM**To:** DiFalco, Frank (b)(6)

NOC.NDD (b)(6)

NOC.SWO.Restricted

(b)(6)

Cc: Evetts, Mark (b)(6)

McGough, Daniel (b)(6)

Subject: RE: DHS Coverage of FBI SIOC Shifts

Sir,

(b)(7)(E)

V/R

Mark Pankow

Duty Director

National Operations Center

Department of Homeland Security

(b)(6)

From: DiFalco, Frank

(b)(6)

Sent: Tuesday, June 2, 2020 10:44 PM

To: NOC.NDD (b)(6) NOC.SWO.Restricted (b)(6)

Cc: Evetts, Mark (b)(6) McGough, Daniel (b)(6)

Subject: DHS Coverage of FBI SIOC Shifts

(b)(7)(E)

R/Frank

Frank J. DiFalco

Deputy Director

DHS OPS

(b)(6)

RE: Warning Order: Civil Unrest Support

Swartz, Neal (b)(6)

Tue 6/30/2020 5:38 PM

To: Saltalamachea, Michael (b)(6)

(b)(5)

Thank you,
Neal

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From: Saltalamachea, Michael (b)(6)**Sent:** Tuesday, June 30, 2020 5:36 PM**To:** Swartz, Neal (b)(6)**Subject:** RE: Warning Order: Civil Unrest Support

Neal-

(b)(5)

Thanks.

Mike

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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(b)(6)

DRAFT LE Authority for Protection of Federal Property for Component Counsel

(b)(6)

Tue 6/30/2020 10:55 PM

To: Saltalamachea, Michael (b)(6)

Mike,

(b)(5)

Thanks,

(b)(6)

All,

(b)(5)

(b)(5)



(b)(5)

Thanks,

(b)(6)

(b)(6)

Acting Assistant General Counsel for Appropriations and Fiscal Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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(b)(6)

RE: DRAFT LE Authority for Protection of Federal Property for Components

Swartz, Neal <(b)(6)>

Wed 7/1/2020 9:02 AM

To: (b)(6)

Cc: Saltalamachea, Michael (b)(6)

(b)(6)

(b)(5)

Thank you,
Neal

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From: (b)(6)

Sent: Tuesday, June 30, 2020 11:47 PM

To: Swartz, Neal (b)(6)

Cc: Saltalamachea, Michael (b)(6)

Subject: DRAFT LE Authority for Protection of Federal Property for Components

Neal,

(b)(5)

Thanks,

(b)(6)

All,

(b)(5)

(b)(5)

(b)(5)

Thanks,

(b)(6)

(b)(6)

Acting Assistant General Counsel for Appropriations and Fiscal Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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RE: DRAFT LE Authority for Protection of Federal Property for Components

Swartz, Neal (b)(6)

Wed 7/1/2020 10:30 AM

To: (b)(6) Palmer, David (b)(6)

Cc: Saltalamachea, Michael (b)(6)

David,

(b)(5)

Thank you,
Neal

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From: (b)(6)

Sent: Tuesday, June 30, 2020 11:47 PM

To: Swartz, Neal (b)(6)

Cc: Saltalamachea, Michael (b)(6)

Subject: DRAFT LE Authority for Protection of Federal Property for Components

All,

(b)(5)

[Redacted content]

(b)(5)

Thanks,

(b)(6)

(b)(6)

Acting Assistant General Counsel for Appropriations and Fiscal Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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RE: DRAFT LE Authority for Protection of Federal Property for Components

(b)(6)

Wed 7/1/2020 9:04 AM

To: Swartz, Neal (b)(6)**Cc:** Saltalamachea, Michael (b)(6)

Neal,

(b)(5)

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

(b)(6)

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From: Swartz, Neal (b)(6)**Sent:** Wednesday, July 1, 2020 9:02 AM**To:** (b)(6)**Cc:** Saltalamachea, Michael (b)(6)**Subject:** RE: DRAFT LE Authority for Protection of Federal Property for Components

(b)(6)

(b)(5)

Thank you,
Neal~~*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***~~

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6/9/2021

(b)(6)

From: Corle, Ryan

(b)(6)

Sent: Tuesday, June 30, 2020 11:47 PM

To: Swartz, Neal

(b)(6)

Cc: Saltalamachea, Michael

(b)(6)

Subject: DRAFT LE Authority for Protection of Federal Property for Components

Neal,

(b)(5)

Thanks,

Ryan

All,

(b)(5)

(b)(5)



(b)(5)

Thanks,

(b)(6)

(b)(6)

Acting Assistant General Counsel for Appropriations and Fiscal Law
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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DHS law enforcement assistance in DC

Swartz, Neal (b)(6)

Thu 6/4/2020 5:31 PM

To: Maher, Joseph (b)(6)

Cc: Gereski Jr, John (b)(6)

Saltalamachea, Michael (b)(6)

(b)(6)

(b)(6)

; Havranek, John

(b)(6)

Attorney-Client and Deliberative Process Privileged

Joe,

(b)(5)

(b)(6)

(b)(5)

Thank you,
Neal

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From: Havranek, John

(b)(6)

Sent: Monday, June 1, 2020 12:10 AM

To: Mizelle, Chad

(b)(6)

(b)(6)

Maher, Joseph

(b)(6)

Cc: Swartz, Neal

(b)(6)

Gereski Jr, John

(b)(6)

Subject: RE: (time sensitive) Connecting DOJ and DHS

Chad,

(b)(5)

RE: CBP/ICE Cross Designation/Support

(b)(6)

Fri 6/5/2020 10:48 AM

To: (b)(6) Saltalamachea, Michael (b)(6) Lessord, Jeffrey

(b)(6)

Thanks, I'll throw out a tele con meeting for 11:30. Don't think it should take long.

From: (b)(6)**Sent:** Friday, June 5, 2020 10:38 AM**To:** (b)(6) Saltalamachea, Michael (b)(6)

LESSORD, JEFFREY (b)(6)

Subject: RE: CBP/ICE Cross Designation/Support

(b)(6)

I am in the CFO council meeting until 11:30. I could talk, if it ends early.

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

(b)(6)

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From: (b)(6)**Sent:** Friday, June 5, 2020 10:37 AM**To:** (b)(6) Saltalamachea, Michael (b)(6)

LESSORD, JEFFREY (b)(6)

Subject: RE: CBP/ICE Cross Designation/Support

(b)(6) Mike-

Are you free to have a quick call on this before 11:30 with Budget and FO? Just want to make sure all parties are synced before we provide info to DCFO. If so I can send a tele con....

From: (b)(6)**Sent:** Friday, June 5, 2020 9:57 AM**To:** (b)(6)**Cc:** Toms, Christopher (b)(6) Saltalamachea, Michael

(b)(6)

Subject: RE: CBP/ICE Cross Designation/Support

(b)(6)

(b)(5)

(b)(6)

Office of the General Counsel

(b)(6)

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From:

(b)(6)

Sent: Friday, June 5, 2020 8:37 AM**To:**

(b)(6)

Cc:

(b)(6)

Subject: RE: CBP/ICE Cross Designation/Support

(b)(6)

(b)(5); (b)(7)(E)

From:

(b)(6)

Sent: Friday, June 5, 2020 8:06 AM

6/9/2021

(b)(6)

To: (b)(6)

Subject: FW: CBP/ICE Cross Designation/Support

(b)(6)

(b)(5); (b)(7)(E)

From: Cline, Richard K (b)(6)

Sent: Thursday, June 4, 2020 11:04

To: Alles, Randolph (b)(6)

Cc: (b)(6)

(b)(6)

Cline, Richard K (b)(6)

Subject: CBP/ICE Cross Designation/Support

(b)(5); (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

We will keep you posted.

Kris Cline
Principal Deputy Director
Federal Protective Service
Department of Homeland Security

(b)(6)



**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE U.S. DEPARTMENT OF HOMELAND SECURITY
AND
THE U.S. GENERAL SERVICES ADMINISTRATION**

This Memorandum of Agreement (Agreement) is made and entered into by and between the U.S. Department of Homeland Security (DHS), acting by and through the National Protection and Program Directorate (NPPD) and the Federal Protective Service (FPS), and the U.S. General Services Administration (GSA).

1. PARTIES. The Parties to this Agreement are DHS/NPPD/FPS (FPS) and GSA.
2. EFFECTIVE DATE. This Agreement will become effective upon execution by both Parties. The date of execution by the last Party to sign will be deemed to be the effective date of this Agreement (the "Effective Date").
3. CANCELLATION. This Agreement supersedes and cancels the Memorandum of Agreement by and between DHS and GSA that was effective as of June 2006.
4. AUTHORITY. This Agreement is authorized under the provisions of sections 102(b), 422 and 1706 of the Homeland Security Act of 2002, Public Law 107-296 (the "Act"), and 40 U.S.C. §§ 301 note, 581 and 1315. This Agreement, in and of itself, does not result in the transfer of funds or other financial obligations between GSA and DHS. No provision of this Agreement is to be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
5. PURPOSE. The purpose of this Agreement is to identify, define and address roles, responsibilities and operational relationships between FPS and GSA concerning the protection of federally owned and leased buildings, grounds and property under the jurisdiction, custody or control of GSA.
6. BACKGROUND. DHS is charged with providing law enforcement and related security services to facilities, grounds and property that are under the jurisdiction, custody or control of GSA. GSA manages these facilities, which are occupied by various executive, legislative and judicial branch agencies. As such, FPS and GSA must closely coordinate facility management with security and law enforcement efforts to the extent that both FPS and GSA are able to carry out their respective responsibilities.
7. ROLES AND RESPONSIBILITIES. 40 U.S.C. § 1315 charges the Secretary of Homeland Security to "protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property." The Secretary of Homeland Security delegated these functions to FPS. Section 422 of the Act (6 U.S.C. § 232) further provides that "except for the law enforcement and related security functions transferred [to the Secretary of DHS]," the GSA Administrator retains "all powers, functions, and authorities ... that are necessary for the operation, maintenance, and protection of such buildings and grounds."
8. INTERAGENCY SECURITY COMMITTEE RESPONSIBILITIES. In 1995, Executive Order 12977 created the Interagency Security Committee (ISC). The ISC's mandate is to enhance the quality and effectiveness of physical security and the protection of

buildings and non-military federal facilities in the United States. The ISC standards apply to all non-military federal facilities in the United States, whether government-owned, leased or managed, to be constructed, modernized or purchased. The ISC is responsible for developing and evaluating security standards for federal facilities. The ISC is currently composed of 54 federal agencies and departments, including DHS and GSA. DHS and GSA each have roles in obtaining and maintaining ISC-compliant space for leased or owned federal facilities.

9. FEDERAL FACILITIES' CONTROLS SYSTEM CYBERSECURITY. Within 180 days of the effective date of this MOA, FPS, GSA and DHS's Office of Cybersecurity and Communications (CS&C) (which houses the National Cybersecurity & Communications Integration Center and the National Cybersecurity Assessment and Technical Services) will sign a separate Federal facilities' controls system cybersecurity agreement. The written agreement will identify, define and address roles, responsibilities and operational relationships between FPS, CS&C and GSA, and address access to facilities' building systems information, including cybersecurity assessments, reports, inventories, and system security plans, and prioritization of resources for jointly accomplishing cybersecurity.
10. SERVICES PROVIDED BY FPS. Consistent with the Act, FPS will provide law enforcement and related security services, as outlined below, to buildings, grounds and properties under the jurisdiction, custody or control of GSA.
 - A. Basic Security. The Basic Security services provided by FPS consist of Law Enforcement, Physical Security, Facility Security Committee (FSC) Participation, Security Assistance, and Tenant Training.
 1. Law Enforcement. FPS will provide law enforcement services, including, but not limited to,:
 - a. Providing an armed law enforcement officer presence at federal facilities to the extent that funding and staffing allow in federally owned and leased space;
 - b. Responding to calls for service from occupant agencies or personnel;
 - c. Enforcing applicable laws and regulations;
 - d. Conducting criminal investigations for offenses committed against property or persons on the property;
 - e. Participating on Federal Bureau of Investigation Joint Terrorism Task Forces;
 - f. Participating with other federal, state and local agencies in the sharing of intelligence information related to threats against property or persons on the property;
 - g. Assisting in the prosecution of crimes committed against property or persons on the property;
 - h. Issuing parking and traffic violation notices for vehicles on or impacting federal property;
 - i. Coordinating with other federal, state or local law enforcement agencies for the protection of property and persons on the property;

- j. Providing law enforcement and emergency dispatch services, including alarm monitoring, to federal facilities through FPS MegaCenters;
 - k. Providing enhanced protection services for facilities during demonstrations, threats or natural disasters; and
 - l. Responding to all crimes and suspicious circumstances occurring on property under the jurisdiction, custody or control of GSA.
2. Physical Security. FPS will provide physical security services, including, but not limited to,:
- a. Acting as the security organization for all property under the jurisdiction, custody or control of GSA;
 - b. Procuring and overseeing all contracts for contract security guards, including Protective Security Officers (PSO);
 - c. Conducting Facility Security Assessments (FSA) of all property under the jurisdiction, custody or control of GSA in accordance with ISC standards and schedules;
 - d. Providing electronic access, an e-copy or a printed copy of the FSA to the GSA Office of Mission Assurance, Physical Security Division (OMA), the Public Buildings Service (PBS) property manager and the FSC chairpersons;
 - e. Meeting with GSA property managers prior to FSC meetings to discuss potential countermeasure project coordination, funding mechanisms and installation feasibility;
 - f. Coordinating with GSA property managers prior to implementing FSC-approved and occupant agency-funded countermeasures;
 - g. Conducting functionality tests of countermeasures;
 - h. Coordinating repair or replacement of non-functional countermeasures for which FPS has responsibility, including notification to OMA;
 - i. Notifying OMA and the GSA property manager upon discovery of non-functional countermeasures for which GSA has responsibility; and
 - j. Coordinating with GSA and the occupant agencies during the program development phase for new construction, major repairs and alterations projects and new leases that exceed 10,000 rentable square feet by determining the anticipated ISC Facility Security Level (FSL), assisting to develop a custom level of protection based on the ISC Design Basis Threat and providing a prioritized list of corresponding ISC-recommended countermeasures necessary to meet the baseline level of protection to be included in the solicitation documents. The Parties reserve the option to extend this provision to leases of 10,000 rentable square feet and below upon mutual consent of the Parties.
3. Facility Security Committee Participation. FPS will provide services to FSCs, including, but not limited to:
- a. Attending FSC meetings as a non-voting member (unless FPS is an

occupant of that particular facility, in which case FPS becomes a voting member) to provide technical advice on ISC standards and information on other security or law enforcement issues as the FSC may require;

- b. Providing the FSC Chairperson with a copy of the completed FSA;
 - c. Providing a briefing to the FSC on the results of the FSA and any countermeasure recommendations, including cost estimates for each occupant agency, in accordance with ISC standards; and
 - d. Providing the FSC with alternative countermeasure recommendations in the event the baseline level of protection is not achievable.
4. Security Assistance. FPS will provide security assistance services, in coordination with GSA, including, but not limited to,:
- a. Providing technical guidance, security input and training to assist the Designated Official (as defined in 41 C.F.R. § 102-71.20) for GSA facilities with the development and exercise of an Occupant Emergency Plan (OEP) and facility security plan for the facility;
 - b. Assisting GSA Continuity of Operations Plan (COOP) preparedness efforts by providing technical support and joint planning and participating in COOP exercises;
 - c. Providing assistance to GSA during fire drills and facility evacuation exercises;
 - d. Providing law enforcement and security assistance in support of the Code ADAM Alert program;
 - e. Presenting occupant agencies with the DHS "See Something, Say Something" campaign or other similar departmental programs and campaigns; and
 - f. Managing the radio frequency program for GSA property managers through a GSA Frequency Representative at GSA Central Office. FPS will maintain a listing of GSA Radio Frequency Authorizations (RFA), maintain GSA's RFA five-year review program, provide guidance to GSA on radio rules and regulations and radio selection (mobile/handheld), assist in preparation of GSA's RFA requests, and process RFA requests to the National Telecommunications and Information Administration. FPS will provide these services at no cost to GSA in return for no-cost antennae/repeater space in federally owned facilities.
5. Occupant Agency Training. Upon request of GSA or the occupant agencies, FPS will provide training for the occupant agencies, including, but not limited to,:
- a. Security Awareness and Crime Prevention Training;
 - b. Active Shooter Awareness Training; and
 - c. Active Shooter tabletop or field training exercises.
- B. Building-Specific Security. Building-Specific Security is in addition to Basic Security and is provided in a specific facility as a result of FSC-funded and approved

countermeasures or through funding provided by specific agencies. Building-Specific Security includes the following:

1. Protective Security Officers.

- a. FPS will provide PSOs for GSA-controlled facilities, as approved by either the FSC or the occupant agency in a single occupant agency facility and funded by the occupant agency or agencies.
- b. PSOs will provide access control, security screening, patrol and response, and other activities as specifically outlined in post orders for each approved and funded PSO post.
- c. Oversight of PSO performance, direction, instruction, and contract compliance is the responsibility of FPS and will be managed in accordance with contract requirements, as well as FPS policy.
- d. FPS will coordinate with local GSA property managers when developing or updating post orders to ensure appropriate building emergency procedures are in place and vital facility equipment locations are documented (e.g., heating, ventilation and air conditioning (HVAC) emergency shutoff). Shut down of this vital equipment and use of the facility public address system will be the responsibility of GSA.

2. Security Equipment.

- a. Security equipment is defined as security countermeasures that are not part of a building and easily removable from the building, such as x-ray machines, magnetometers, closed circuit video systems, and intrusion detection and alarm systems.
- b. In existing facilities, FPS is responsible for the design, installation, testing, maintenance, and repair of security equipment that is approved by the FSC or the occupant agency in a single occupant agency facility and funded by the occupant agency or agencies. FPS is responsible for security equipment installation and will coordinate with GSA property managers. FPS will bill occupant agencies for security equipment either through monthly building-specific charges or a security work authorization, as requested by the occupant agencies.
- c. For new construction, major repairs and alterations and new leased facilities over the prospectus threshold, as such threshold may be adjusted by GSA from time to time in accordance with 40 U.S.C. § 3307(g), GSA, in coordination with FPS, will purchase and install the security equipment (excluding magnetometers and x-ray machines) that is approved by the FSC or the occupant agency in a single occupant agency facility and funded by the occupant agency or agencies as part of the project. Upon completion of the project, GSA will transfer custody and control of the security equipment (excluding physical access control systems (PACS)), as well as responsibility for its operation, maintenance, repair, and collection of funds for the operation, maintenance and repair of this equipment, to FPS. For such projects below the prospectus threshold, FPS will purchase and install the security equipment (excluding PACS) that is approved by the FSC or the occupant agency in a single occupant agency facility and funded by the occupant agency or agencies. GSA will coordinate with FPS during the design phase and acquisition

process to confirm the compatibility and interoperability of any such equipment. In the event of a disagreement as to the security equipment selected, FPS and GSA will invoke the dispute resolution procedures described in section 16, below.

- d. All security equipment will meet any applicable ISC standards and will be selected from an Approved Product List (APL) and off the GSA schedule, where available.
 - e. Upon discovery by FPS or notification by GSA of inoperable security equipment, FPS will attempt to bring the security equipment into an operational status within 48 hours. If FPS is unable to repair or replace the security equipment within 48 hours, FPS will notify OMA and provide status updates every 30 days until the security equipment is operational.
- C. Occupant Agency-Specific Security. Occupant Agency-Specific Security includes additional, reimbursable services and equipment for federal agencies to meet any additional or unique security needs. Occupant Agency-Specific Security may include other requirements, such as agency-specific PSOs (under FPS direction) and the design, purchase, installation, and maintenance of additional security equipment or fixtures. As resources permit, FPS (or GSA, in the case of building fixtures) may provide these types of services upon receipt of funds from the requesting agency. When the work is to be performed by FPS, FPS will coordinate with the GSA property manager and make any necessary repair to damage to the occupant agency's space or the building caused by, or incidental to, the installation, maintenance, repair, removal, or replacement of security equipment.
- D. Access to FPS Data. Access to FPS data will be provided either through direct interface by GSA to selected FPS systems or through electronic media in accordance with applicable law, regulation and policy. GSA requests for access to FPS databases or data, or both, should be made to the FPS National Headquarters and not to individual regions.
- E. Provided Reports.
- 1. On a semi-annual basis, FPS will provide OMA with reported incident/offense data for facilities or property under the jurisdiction, custody or control of GSA. The report for the first half of the fiscal year will be due on or before April 30 and the report for the previous fiscal year will be due on or before October 31.
 - 2. On a semi-annual basis (by April 30 and October 31), FPS will provide GSA with an electronic update of Inspectors assigned to each facility along with their contact information, as well as a list of regional leadership contacts.
 - 3. On a semi-annual basis (by April 30 and October 31), FPS will provide OMA with a report detailing the status of all security equipment for which FPS is responsible that is installed in facilities under the jurisdiction, custody or control of GSA. The report will consist of the overall percentage of fully operational security equipment in place for which FPS is responsible.
 - 4. Once annually (by October 31), FPS will provide OMA with an annual schedule of upcoming FSAs and a listing of those FSAs completed the prior fiscal year. All assessments will be conducted in a timely manner and according to ISC recommendations (i.e., three or five years according to the FSL).

5. Once annually (by October 31), FPS, in coordination with OMA, will provide the GSA Administrator, or the Administrator's designee, with an intelligence and threat analysis briefing regarding facilities and property under the jurisdiction, custody or control of GSA.
11. SERVICES PROVIDED BY GSA. Consistent with the Act, GSA will provide services necessary for the operation, maintenance and protection of buildings and grounds under the jurisdiction, custody or control of GSA, as described in greater detail below.

A. Billing.

1. FPS will directly bill occupant agencies for the services it provides.
2. GSA will provide occupant agency information to FPS on a monthly basis in support of the FPS billing system. FPS will provide GSA, on a monthly basis, information regarding the basic security rate to be billed and building-specific amounts to be billed. GSA will use this information to produce a monthly bill that will be posted on GSA's Rent on the Web and a billing file in electronic media that will be sent monthly to FPS so that FPS can bill occupant agencies directly.
3. All occupant agency questions and concerns regarding security charges on the FPS bill will be directed to FPS for action. Questions regarding amortized security fixture charges on the GSA Rent bill for the occupant agency will be either coordinated through or handled by GSA. The GSA Occupancy Agreements (OA) with the occupant agencies will identify FPS as the security organization for facilities under the jurisdiction, custody or control of GSA and, in those instances, the OA will state:

Security Services – The Federal Protective Service (FPS), Department of Homeland Security, is responsible for the law enforcement and security services relating to the property listed in this Occupancy Agreement. The payment for FPS-provided Basic and Building-Specific Security will be made to FPS and will be separate from Rent payments to GSA (Office of Management and Budget (OMB) Object Class 23.1). Charges for FPS-provided security are determined by, and may be obtained from, FPS.

- B. FPS Occupied Space. FPS will be furnished and charged for space and services equivalent to those provided to other occupant agencies in GSA-controlled space in accordance with GSA's standard operating procedures and the *PBS Pricing Desk Guide*, as such guide may be revised from time to time. Space for control rooms, screening stations, guard booths, and other similar space serving the security needs of all the occupant agencies in the building is not considered FPS space and will be treated and billed as Joint Use Space.

C. Access to GSA Data.

1. Access to GSA data will be provided either through direct interface by FPS to selected GSA systems or through electronic media in accordance with applicable law, regulation and policy. FPS requests for access to GSA databases or data, or both, should be made to the GSA OMA Central Office and not to individual regions.
2. All occupant agency questions and concerns regarding security charges on the FPS Customer Billing Record will be directed to FPS for action, with the

exception of those issues specific to space measurement (*i.e.*, square footage), which will be handled by PBS. GSA Central Office will provide building and occupant agency data using its "Real Estate Across the U.S." (REXUS) database and OA tools through a secure file transfer protocol to support the update of information.

D. Provided Reports.

1. On a semi-annual basis (by April 30 and October 31), GSA will provide FPS an electronic update of Property Managers assigned to each facility along with their contact information, as well as a list of regional leadership contacts.
2. On a semi-annual basis (by April 30 and October 31), GSA will provide FPS with a report detailing the status of all security fixtures installed in facilities under the jurisdiction, custody or control of GSA. The report will consist of the overall percentage of fully operational security fixtures in place for which GSA is responsible.

E. Occupant Agency Survey Results. Within 30 days of its annual completion, GSA will provide to FPS the security question-related results of the Occupant Agency Security Satisfaction Survey. GSA will coordinate with FPS to revise the security-related questions included in the survey, as necessary.

F. Facilities Maintenance. GSA is responsible for providing FPS designated personnel advance notice of situations such as power outages and scheduled building maintenance that will affect the operation of building security equipment. If GSA performs building maintenance, repairs or alterations that damage FPS security equipment, GSA, at its sole cost and expense, will make any necessary repairs to or replace, as applicable, the FPS security equipment.

G. Building Plans. FPS will occasionally require access to building plans for security systems and emergency response or other official purposes. GSA will provide FPS with building plans for such purposes to the extent they are available. In support of the FPS Technical Countermeasures, GSA will provide shop drawings and requirements that define the proposed demarcation points. The requirements and drawings will define interconnection points for power and data mediums (switches), including wiring specifications defining Twisted Pair Copper, CAT 5 or 6 and Fiber Optics. GSA's established policies and procedures for handling Sensitive But Unclassified (SBU) documents and Controlled Unclassified Information (CUI) will apply, and FPS will be informed accordingly.

H. Security Fixtures.

1. Security fixtures are defined as physical security measures that are either part of the building or attached and not easily removable from the building. Security fixtures include vehicular barriers, such as bollards, pop-up and arm gates, doors, locks, HVAC security items (including filtration systems), exterior lighting, PACS, garage doors, security fencing and gates, guard booths (both attached to the building and free standing), and blast-resistant countermeasures. Card readers that serve solely as a locking mechanism at the building entrance, data closets, stairwells, roof access, and GSA space also are considered fixtures.
2. FPS will provide security consultation to GSA on Building-Specific Security fixtures, except as related to PACS. Compliant PACS are required by executive order and, as such, no FSC determination is required. In existing facilities, GSA

will be responsible for the installation, maintenance and repair of security fixtures that are approved by the FSC or the occupant agency in a single occupant agency facility, in consultation with FPS, and funded by the occupant agency or agencies. GSA will be responsible for the operation and maintenance funding throughout the life-cycle of such security fixtures. GSA will bill occupant agencies for security fixtures either through monthly building specific Rent charges or a reimbursable work authorization, as appropriate. FPS, in conjunction with GSA, will conduct functionality testing of security fixtures, except for those fixtures that reside on the GSA Intranet and are monitored by the GSA Office of the Chief Information Officer. GSA or, in the case of a leased facility, the lessor, depending on the terms and conditions of the lease, will provide project execution, maintenance and repair of security fixtures.

3. For new construction, major repairs and alterations and leased facilities, GSA, in consultation with FPS, will purchase and install security fixtures as part of the project. Upon project completion, custody and control of the security fixtures, as well as responsibility for their operation, maintenance, repair, and collection of funds for the operation, maintenance and repair, will be maintained by GSA.
 4. Upon discovery by GSA or notification by FPS of an inoperable security fixture, GSA will attempt to bring the security fixture into an operational status within 48 hours. If GSA is unable to repair or replace the security fixture within 48 hours, GSA will notify FPS and provide status updates every 30 days until the security fixture is operational.
 5. All security fixtures and equipment funded by GSA as part of new construction, major repairs and alterations projects and new leases are subject to the capitalization threshold and will be amortized into the GSA Rent bill in accordance with the PBS Pricing Desk Guide, as such guide may be revised from time to time. All requirements for security fixtures funded by GSA will be coordinated with FPS in advance.
- I. Additional Assistance. OMA will provide additional services, in coordination with FPS, including:
1. As described in 41 C.F.R. §§ 102-74.230 through 102-74.260, providing technical guidance and training to assist the Designated Official (as defined in 41 C.F.R. § 102-71.20) for each GSA facility with the development and exercise of an OEP for the facility;
 2. Assisting GSA COOP preparedness efforts by providing technical support and joint planning and participating in COOP exercises;
 3. Providing assistance to FPS during fire drills or facility evacuation exercises;
 4. As the entity responsible for the Code ADAM Alert program, coordinating with FPS;
 5. Assisting FPS with presenting occupant agencies with the DHS "See Something, Say Something" campaign and other similar departmental programs and campaigns, as well as posting appropriate notices regarding conduct on federal property and closed-circuit television systems in operation at facilities; and
 6. In coordination with PBS, providing to FPS, at no cost, radio antenna/repeater space in federally owned facilities under the jurisdiction, custody or control of

GSA in return for FPS management of the GSA radio frequency program.

J. New Construction, Major Repairs and Alterations and Leasing.

1. For leases, GSA will notify FPS at the time a market survey is planned and GSA will coordinate the implementation of security countermeasures with FPS for all FSL 3, 4 and 5 facilities. Security countermeasures for FSL 1 and 2 facilities will use the baseline level of protection, unless the occupant agency requires a customized level of protection and additional countermeasures. The GSA lease governs the terms and conditions of the Government leased space and, accordingly, GSA acts for the Federal Government in all non-law enforcement and related security matters pertaining to the lease. GSA will ensure that the lease complies with ISC standards and that the lease will permit implementation of all FSC or, in a single occupant agency facility, the occupant agency-approved and funded security measures. The GSA Leasing Specialist will coordinate with FPS when determining which lease template paragraphs related to security to use in the Request for Lease Proposals and the lease. In all leased space, FPS will work with and through GSA Contracting Officers or their representatives on matters that may affect or pertain to the lease. With respect to those matters requiring coordination between GSA and FPS, neither Party will take any action that will incur liability or cost to the other Party without the express written consent of the other Party.
2. For new construction, major repairs and alterations and new leased facilities under GSA's jurisdiction, custody or control, GSA will notify and coordinate all security-related plans and project development information with FPS. GSA and FPS will coordinate and provide recommendations to the FSC or the occupant agency in a single occupant agency facility based on the ISC standards. In identifying the FSL, FPS will use the FSL factors and criteria as outlined in *The Risk Management Process for Federal Facilities: An Interagency Security Committee Standard*. Security recommendations accepted by the FSC or the occupant agency in a single occupant agency facility will be selected based on the ability to integrate into a single platform or repository and price and will be procured from an APL and off the GSA schedule, where available.
3. For leases where, in total, GSA does not occupy 75% or more of the rentable square feet in the building, FPS recognizes that GSA may not be able to obtain rights to implement all of the FPS-recommended and FSC-approved countermeasures. In such situations, GSA will use its best efforts to coordinate with and provide for FPS-recommended and FSC-approved countermeasures in connection with the lease and the Federal Government's demised premises under the lease. However, in situations where GSA, despite its best efforts, is unable to provide all of the FPS-recommended and FSC-approved countermeasures, as the tenant under the lease, GSA retains the right to address physical security issues in accordance with the ISC process pursuant to GSA's retained "operation, maintenance, and protection" authorities under section 422 of the Homeland Security Act of 2002 (codified at 6 U.S.C. § 232) and will coordinate with FPS and the FSC to implement the countermeasures.

12. CREDENTIALS.

- A. Specifications and Standards. FPS and GSA will comply with Homeland Security Presidential Directive 12 (HSPD-12) specifications. GSA is responsible for verifying that all aspects of HSPD-12 compliant systems are installed, utilized and maintained in all facilities under the jurisdiction, custody or control of GSA. GSA will comply with all published standards issued by the National Institute of Standards and Technology and OMB and the Federal Identity, Credential and Access Management Roadmap and Implementation Guidance issued by the Office of the Chief Information Officer Council.
- B. Building Entry and Exit Procedures. The FSC, in consultation with GSA and FPS, will develop building entry and exit procedures that comply with HSPD-12 requirements and ISC Standards for Federal Government employees, contractors and visitors.
- C. Identification Credentials. GSA is responsible for issuing identification credentials to all GSA contractors and employees, including any personnel providing services to leased space by the lessor under terms of the lease, with the exception of those contractors or employees who are provided a properly credentialed escort. FPS is responsible for issuing identification credentials to all contract PSOs.
- D. Adjudication Confirmation and Validation. GSA will provide adjudication confirmation and validation upon request by FPS concerning any GSA contractor found by FPS to not be in possession of proper credentials or under proper escort. GSA will take immediate corrective action on any contractor found to have unauthorized access to a facility.

13. PRICING PROVISIONS FOR SECURITY SERVICES.

- A. Basic Security. Basic Security charges are billed by FPS based on program costs of FPS for each building or complex and prorated to each occupant agency by its total rentable square footage in the building or complex. FPS is responsible for notifying occupant agencies of the charges. GSA will pay FPS only for the Basic Security in GSA-occupied space, vacant space in occupied buildings, buildings that are in the process of disposal, and space leased to non-federal tenants in federally owned facilities.
- B. Building-Specific Security. Building-Specific Security charges are billed by FPS based on the program costs of FPS for each building or complex and prorated to each occupant agency by its total rentable square footage in the building or complex. FPS is responsible for notifying occupant agencies of these charges. GSA will pay FPS only for Building-Specific Security in GSA-occupied space, vacant space in occupied buildings, buildings that are in the process of disposal, and space leased to non-federal tenants in federally owned facilities.

14. COORDINATION MEETINGS. One month from the Effective Date of this Agreement and every month thereafter, the GSA OMA Associate Administrator, or his or her designee, will meet with the FPS Principal Deputy Director, or his or her designee, to discuss issues affecting both agencies.

15. NONDISCLOSURE OF DATA. GSA and FPS agree that documents containing SBU information and CUI received from the other Party, such as floor plans and REXUS

data, will be handled by FPS in accordance with DHS Management Directive 11042.1 and by GSA in accordance with GSA Management Directive PBS 3490.2, as such policies may be revised from time to time.


16. DISPUTE RESOLUTION PROCEDURES. GSA and FPS agree that disputes will be resolved at the lowest level possible. In the event that a dispute cannot be resolved informally at the OMA and FPS regional staff levels within 60 days, the dispute will be referred, in writing, along with a description of the matter, including each Party's position and copies of any supporting information, to the OMA Associate Administrator and the FPS Deputy Director for Operations. The OMA Associate Administrator and the FPS Deputy Director for Operations also will be the point of resolution for conflicts that impact more than one region.
17. POINTS OF CONTACT.
 - A. DHS. FPS, Chief of Staff, 800 North Capitol Street, N.W., Washington, DC 20002; (b)(6)
 - B. GSA. OMA, Associate Administrator, 1800 F Street, N.W., Washington, DC 20405; (202) 219-0338.
18. DURATION OF AGREEMENT. This Agreement, when executed by both Parties, will be effective for a period of three calendar years, beginning on the date signed and ending three years later, unless sooner terminated or extended as provided herein. Upon expiration of the initial term, this Agreement will automatically be renewed for another three-year period on the same terms and conditions as were in effect as of the expiration date. Any Party may terminate its participation in this Agreement upon 90 days' advance written notice to the other Party.
19. CONFLICTS. Nothing in this Agreement is intended to supersede current law or any validly issued order of the Administrator of General Services or the Secretary of Homeland Security. If a term of this Agreement is inconsistent with such authorities, then that term will be invalid, but the remaining terms and conditions of this Agreement will remain in effect.
20. MODIFICATIONS. This Agreement may be modified or amended only by written, mutual agreement of GSA and DHS. Any Party can initiate the amendment process by providing written notice describing the proposed amendment to the other Party. During the ensuing 30-day period, the Parties will actively coordinate to try to reach consensus on the proposed amendment.
21. COUNTERPARTS AND SIGNATURE PAGE. This Agreement may be executed in counterparts, each of which will be deemed to be a duplicate original, and which together will constitute one and the same instrument.

*[Remainder of page intentionally left blank.
Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates hereinafter identified.

APPROVED, ACKNOWLEDGED AND AGREED TO BY:

FOR THE U.S. DEPARTMENT OF HOMELAND SECURITY



Christopher C. Krebs
Under Secretary
National Protection and Programs Directorate
U.S. Department of Homeland Security

SEP 27 2018

Date

FOR THE U.S. GENERAL SERVICES ADMINISTRATION



Emily W. Murphy
Administrator
U.S. General Services Administration

August 2, 2018

Date

Re: IMMEDIATE REQUEST FOR ASSISTANCE DURING NATIONWIDE CIVIL UNREST

(b)(6)

Fri 6/5/2020 11:43 AM

To: (b)(6)

Cc: Saltalamachea, Michael (b)(6)

(b)(6)

(b)(6)

 2 attachments (2 MB)

Pricing Desk Guide 5th Edition November 16, 2019_0.pdf; DHS - GSA MOA Signed 09272018.pdf;

(b)(5)

(b)(5)

Do you see anything that I am missing here?

Thanks

(b)(6) Attorney Advisor - Federal Protective Service

(b)(6)

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From: (b)(6)

Sent: Friday, June 5, 2020 10:51 AM

To: Davidson, Michael J (b)(6)

(b)(6)

Cc: Saltalamachea, Michael (b)(6)

Kirsch, John

(b)(6)

Subject: RE: IMMEDIATE REQUEST FOR ASSISTANCE DURING NATIONWIDE CIVIL UNREST

Mike,

(b)(5)

ADA emergency exception/DOJ funding update

Swartz, Neal (b)(6)

Wed 6/3/2020 11:16 AM

To: Maher, Joseph (b)(6)

Cc: Saltalamachea, Michael (b)(6)

(b)(6)

Havranek, John

(b)(6)

Joe,

(b)(5)

Thank you,
Neal

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RE: Proposed FPS Directive on External Support

(b)(6)

Thu 6/4/2020 12:32 PM

To: (b)(6)

Cc: Saltalamachea, Michael (b)(6) Swartz, Neal (b)(6) Gereski Jr, John

(b)(6)

(b)(6)

(b)(6)

1 attachments (517 KB)

DHS Interim Force Management Process 31 March 2016.pdf;

(b)(6)

Dave Olson, FPS's Assistant Director, Rapid Protection Force is the FPS Lead on the working group with MGMT and OPS. According to the FPS Ops law folks, John Gereski has been engaged for OLED.

(b)(5)

Thanks

(b)(6)

Attorney Advisor - Federal Protective Service

(b)(6)

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From: (b)(6)

Sent: Thursday, June 4, 2020 10:01 AM

To: (b)(6) Gereski Jr, John (b)(6)

Cc: Saltalamachea, Michael (b)(6); Swartz, Neal (b)(6)

Subject: Proposed FPS Directive on External Support

Gentlemen

(b)(5)

Thx

chip

(b)(6)

Assistant General Counsel, Administrative Law
Office of the General Counsel
Department of Homeland Security
Washington, DC 20528

(b)(6)

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RE: Proposed FPS Directive on External Support

Gereski Jr, John (b)(6)

Thu 6/4/2020 1:11 PM

To: (b)(6) (b)(6)**Cc:** Saltalamachea, Michael (b)(6)

Swartz, Neal (b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(5)

From: (b)(6)**Sent:** Thursday, June 4, 2020 12:32 PM**To:** (b)(6)**Cc:** Saltalamachea, Michael (b)(6)

Swartz, Neal (b)(6)

Gereski Jr, John (b)(6)

(b)(6)

(b)(6)

(b)(6)

Subject: RE: Proposed FPS Directive on External Support

(b)(6)

Dave Olson, FPS's Assistant Director, Rapid Protection Force is the FPS Lead on the working group with MGMT and OPS. According to the FPS Ops law folks, John Gereski has been engaged for OLED.

(b)(5)

Thanks

(b)(6)

Attorney Advisor - Federal Protective Service

(b)(6)

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From: (b)(6)**Sent:** Thursday, June 4, 2020 10:01 AM**To:** (b)(6)

Gereski Jr, John (b)(6)

Cc: Saltalamachea, Michael (b)(6)

Swartz, Neal (b)(6)

Subject: Proposed FPS Directive on External Support

Gentlemen

(b)(5)

Thx

(b)(6)

(b)(6)

Assistant General Counsel, Administrative Law
Office of the General Counsel
Department of Homeland Security
Washington, DC 20528

(b)(6)

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RE: Proposed FPS Directive on External Support

(b)(6)

Thu 6/4/2020 1:23 PM

To: Gereski Jr, John (b)(6)

(b)(6)

Cc: Saltalamachea, Michael (b)(6)

Swartz, Neal (b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(5)

Thanks

(b)(6)

Attorney Advisor - Federal Protective Service

(b)(6)

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From: Gereski Jr, John (b)(6)**Date:** Thursday, Jun 04, 2020, 1:11 PM**To:** (b)(6)

(b)(6)

Cc: Saltalamachea, Michael (b)(6)

Swartz, Neal (b)(6)

(b)(6)

Subject: RE: Proposed FPS Directive on External Support

(b)(5)

From: (b)(6)**Sent:** Thursday, June 4, 2020 12:32 PM**To:** (b)(6)**Cc:** Saltalamachea, Michael (b)(6)

Swartz, Neal (b)(6)

Gereski Jr, John (b)(6)

(b)(6)

(b)(6)

Subject: RE: Proposed FPS Directive on External Support

(b)(5)

Thanks

(b)(6)

Attorney Advisor - Federal Protective Service

(b)(6)

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From: (b)(6)

Sent: Thursday, June 4, 2020 10:01 AM

To: (b)(6) Gereski Jr, John <(b)(6)>

Cc: Saltalamachea, Michael <(b)(6)> Swartz, Neal <(b)(6)>

Subject: Proposed FPS Directive on External Support

Gentlemen

(b)(5)

Thx
chip

(b)(6)

Assistant General Counsel, Administrative Law
Office of the General Counsel
Department of Homeland Security
Washington, DC 20528

(b)(6)

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RE: (time sensitive) Connecting DOJ and DHS

Havranek, John (b)(6)

Tue 6/2/2020 11:37 AM

To: Saltalamachea, Michael (b)(6)

Mike,

What is your cell number and I will give you a call.

John

(b)(6)

From: Saltalamachea, Michael (b)(6)**Sent:** Sunday, May 31, 2020 9:28 PM**To:** Swartz, Neal (b)(6) Havranek, John (b)(6)**Cc:** (b)(6)**Subject:** Re: (time sensitive) Connecting DOJ and DHS

Ok. Thank you.

Mike

Michael H. Saltalamachea

Deputy Associate General Counsel for General Law

Office of the General Counsel

(b)(6)

From: Swartz, Neal (b)(6)**Sent:** Sunday, May 31, 2020 9:26:56 PM**To:** Havranek, John (b)(6) Saltalamachea, Michael

(b)(6)

Cc: (b)(6)**Subject:** Re: (time sensitive) Connecting DOJ and DHS

Mike and (b)(6)

(b)(5)

Thank you,

Neal

Sent from my DHS iPhone

~~*** Warning *** Attorney/Client Privileged *** Attorney Work Product ***~~

From: Havranek, John (b)(6)**Sent:** Sunday, May 31, 2020 9:23:27 PM**To:** Swartz, Neal (b)(6) Saltalamachea, Michael (b)(6)**Cc:** (b)(6)**Subject:** RE: (time sensitive) Connecting DOJ and DHS

Calling now.

From: Swartz, Neal (b)(6)
Sent: Sunday, May 31, 2020 9:04 PM
To: Saltalamachea, Michael (b)(6) Havranek, John (b)(6)
Cc: Corle, Ryan (b)(6)
Subject: Re: (time sensitive) Connecting DOJ and DHS

John,

(b)(5)

Thank you,
Neal

Sent from my DHS iPhone

~~*** Warning *** Attorney/Client Privileged *** Attorney Work Product ***~~

From: Saltalamachea, Michael (b)(6)
Sent: Sunday, May 31, 2020 9:01:38 PM
To: Swartz, Neal (b)(6)
Cc: (b)(6)
Subject: RE: (time sensitive) Connecting DOJ and DHS

Neal-

I am talking to (b)(6) on this now – do you need this this evening or in the morning?

Mike

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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From: Saltalamachea, Michael
Sent: Sunday, May 31, 2020 8:38 PM
To: Swartz, Neal (b)(6) (b)(6) Havranek, John (b)(6)
(b)(6) Gereski Jr, John (b)(6)
Subject: RE: (time sensitive) Connecting DOJ and DHS

Got it.

Mike

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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From: Swartz, Neal

(b)(6)

Sent: Sunday, May 31, 2020 8:37 PM

To: Saltalamachea, Michael

(b)(6)

(b)(6)

Havranek, John

(b)(6)

Gereski Jr, John

(b)(6)

Subject: FW: (time sensitive) Connecting DOJ and DHS

Mike

(b)(6)

(b)(5)

Thank you,
Neal

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From: Mizelle, Chad

(b)(6)

Sent: Sunday, May 31, 2020 7:49 PM

To: Havranek, John

(b)(6)

Maher, Joseph

(b)(6)

(b)(6)

(b)(6)

Swartz, Neal

(b)(6)

Subject: Fwd: (time sensitive) Connecting DOJ and DHS

FYI — please see the chain below. Also, let's work off of this chart. You can see based on the columns the type of operational experiences DOJ is looking for.

RE: FPS

(b)(6)

Tue 6/2/2020 2:25 PM

To: Saltalamachea, Michael (b)(6)**Cc:** (b)(6)

Mike,

(b)(5)

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

Desk: (b)(6)

Mobile: (b)(6)

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From: Saltalamachea, Michael (b)(6)**Sent:** Tuesday, June 2, 2020 2:11 PM**To:** (b)(6)**Subject:** FPS

(b)(5)

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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6/9/2021

(b)(6)

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(b)(7)(E)

RE: FPS Cross-Designation

(b)(6)

Tue 6/2/2020 2:26 PM

To: Saltalamachea, Michael (b)(6)

(b)(5)

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

(b)(6)

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From: Saltalamachea, Michael (b)(6)**Sent:** Tuesday, June 2, 2020 2:25 PM**To:** (b)(6)**Subject:** FW: FPS Cross-Designation

FYSA.

Will call after the Chief Counsel call.

Mike

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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(b)(6)

RE: FPS

(b)(6)

Tue 6/2/2020 2:29 PM

To: (b)(6) Saltalamachea, Michael (b)(6)

Mike. I concur completely with what (b)(6) said.

Thanks

(b)(6) Attorney Advisor - Federal Protective Service

(b)(6) (office)

(cell)

(fax)

(b)(6)

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From: (b)(6)**Date:** Tuesday, Jun 02, 2020, 2:25 PM**To:** Saltalamachea, Michael (b)(6)**Cc:** (b)(6)**Subject:** RE: FPS

Mike,

(b)(5)

Thanks,

(b)(6)

(b)(6)

Office of the General Counsel

(b)(6)

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(b)(7)(E)

~~otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the General Counsel, U.S. Department of Homeland Security. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(5), (b)(7).~~

From: Saltalamachea, Michael (b)(6)

Sent: Tuesday, June 2, 2020 2:11 PM

To: (b)(6)

Subject: FPS

(b)(5)

Michael H. Saltalamachea
Deputy Associate General Counsel for General Law
Office of the General Counsel, General Law
U.S. Department of Homeland Security

(b)(6)

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2012 WL 1123840 (O.L.C.)

Office of Legal Counsel

U.S. Department of Justice

STATE AND LOCAL DEPUTATION OF FEDERAL LAW ENFORCEMENT OFFICERS DURING **STAFFORD ACT** DEPLOYMENTS

March 5, 2012

*Where federal law enforcement officers have been deployed pursuant to the **Stafford Act** and are properly carrying out federal disaster relief in a local community, they may accept deputation under state laws that expressly authorize them to make state law arrests, where such arrests would bear a logical relationship to or advance the purposes of the **Stafford Act** deployment.*

*1 Memorandum Opinion for the Acting Chief Counsel Bureau of Alcohol, Tobacco, Firearms and Explosives

You have asked whether federal law enforcement officers (“FLEOs”) may accept deputation, conferred by state or local law, to make arrests for violations of state or local criminal laws, when they have been deployed to provide either disaster or emergency relief, or assistance in the aftermath of an act of terrorism.¹ Such deployments generally occur after a Presidential declaration of a major disaster or emergency under the Robert T. **Stafford** Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5208 (2006 & Supp. IV 2010) (“**Stafford Act**”). As an operational matter, we understand that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) coordinates the deployment of certain FLEOs under the auspices of Emergency Support Function 13 (“ESF-13”), the public safety and security component of the National Response Framework (“NRF”), which is the set of comprehensive plans and protocols that structure the federal government’s response to disasters and emergencies.

We conclude that FLEOs may accept the deputation conferred by state law² and make arrests for violations of state law, as authorized by state deputation statutes,³ when two conditions are met: Authority to make arrests under state law must be granted *expressly* by either federal or state law; and the FLEOs’ exercise of authority must comply with the Purpose Act, 31 U.S.C. § 1301(a) (2006), which requires that federal funds be used only for the purposes for which they were appropriated. With respect to the first condition, we find that ATF’s organic statute does not expressly grant FLEOs authority to make arrests for *state* law violations, and that the **Stafford Act** does not expressly grant federal officials *any* arrest authority, much less authority to make arrests for violations of state law. But state deputation laws that expressly authorize federal officials to make arrests for state law violations may fulfill the federal law requirement that FLEOs’ arrest authority be expressly granted. With respect to the second condition, although state law may authorize FLEOs to make arrests for state law violations, state law cannot authorize the expenditure of federal resources. We conclude, however, that arrests made by FLEOs pursuant to express state law authorization and in the context of a **Stafford Act** deployment satisfy the Purpose Act when the arrests bear a “logical relationship to the objectives” of the **Stafford Act**. See *Use of General Agency Appropriations to Purchase Employee Business Cards*, 21 Op. O.L.C. 150 (1997) (“*Employee Business Cards*”); *Indemnification of Department of Justice Employees*, 10 Op. O.L.C. 6, 8 (1986) (“*Indemnification*”).

I.

*2 The **Stafford Act** is the principal federal statute relied upon to deploy federal officials to assist state and local communities with disaster or emergency relief (collectively, “emergency relief”). Pursuant to the Act, the President may direct federal personnel, including FLEOs, to undertake various activities in support of state and local authorities in the event of any “major disaster.” See 42 U.S.C. §§ 5170a, 5170b, 5192. The Act defines “major disaster” as “any natural catastrophe ... or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this [Act].” *Id.* § 5122(2). The Act authorizes executive departments and agencies, under the direction of the Federal Emergency Management Agency within the Department of Homeland Security (“DHS”), to provide various forms of assistance to state and local communities. See *id.* § 5170a(1) (authorizing the President in “any major disaster” to “direct any Federal agency, with or

without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance response or recovery efforts"); *id.* § 5170b(a) (authorizing federal agencies to "provide assistance essential to meeting immediate threats to life and property resulting from a major disaster," including "[p]erforming ... any work or services essential to saving lives and protecting and preserving property or public health and safety"); *id.* § 5192 (authorizing similar federal assistance in "any emergency").

The federal government coordinates its emergency response efforts using the National Response Framework, a comprehensive set of planning documents and annexes that has been in place since January 2008. *See* Dep't of Homeland Security, *National Response Framework* (Jan. 2008), available at <http://www.fema.gov/emergency/nrf/>. ATF agents, in particular, are deployed pursuant to ESF-13, the annex that sets out the federal resources that may be used to secure public safety and security in the event of an emergency.⁴ *Emergency Support Function #13—Public Safety and Security Annex* at 13-14 (Jan. 2008) ("ESF-13"), available at <http://www.fema.gov/pdf/emergency/nrf/nrf-esf-13.pdf>. This annex designates the Department of Justice as the lead agency during response efforts, and the Department has, in turn, designated ATF to implement ESF-13 by coordinating federal security planning and general law enforcement efforts. According to the annex, State, tribal, local, and private-sector authorities "have primary responsibility for public safety and security." ESF-13, however, enables FLEOs to provide "public safety and security assistance to support preparedness, response, and recovery priorities in circumstances where State, tribal, and local resources are overwhelmed or inadequate, or where Federal-to-Federal support is needed or a unique Federal capability is required." ESF-13, at 4.

*3 You have asked us whether FLEOs have the authority pursuant to state deputation laws to make arrests for violations of state criminal law during an ESF-13 deployment. As you have explained, to fulfill their public safety and security mission during such a deployment, FLEOs currently "polic[e] [certain] misdemeanor offenses," as authorized by state peace officer statutes. ATF Modified Request at 1. We concluded in a prior opinion that such statutes may confer arrest authority on federal officials in certain circumstances. *See infra* p. 6. But, as you have also explained, those peace officer statutes generally confer on FLEOs only authority to enforce state felony or violent misdemeanor laws. The state peace officer statutes may therefore leave FLEOs unable to fully address security threats in the wake of disasters, because the statutes do not provide FLEOs with authority to make arrests for non-violent misdemeanors, which could include violations associated with the "looting of businesses, pharmacies, banks, and homes." ATF Modified Request at 2. You have advised us that certain state deputation statutes, in contrast, would authorize FLEOs to exercise the same law enforcement authority that state officials possess, thus providing FLEOs with the authority to fully enforce state laws when deployed under ESF-13. *Id.*

Before turning to the question you have raised, we note that there is an additional federal statute that authorizes federal emergency assistance to States. The Emergency Federal Law Enforcement Assistance Act ("EFLEA"), 42 U.S.C. §§ 10501-10513 (2006), authorizes the Attorney General to provide federal law enforcement assistance to States during crime emergencies, in a manner analogous to the federal provision of assistance through the **Stafford Act**. Under EFLEA, upon receipt of a written application for assistance from a state governor, the Attorney General may provide "Federal law enforcement assistance" to a State overwhelmed by a "law enforcement emergency," where "State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law." *Id.* §§ 10501, 10502(3). Such assistance may include "funds, equipment, training, intelligence information, [[or] personnel." *Id.* §§ 10501(a)-(b), 10502(1). Congress made clear, however, that EFLEA is not the exclusive source of authority for federal emergency assistance to States and would not displace federal emergency assistance under the **Stafford Act**, by providing that "[n]othing" in the statute should "be construed to limit any authority to provide emergency assistance otherwise provided by law." *Id.* § 10503(e). Because EFLEA does not displace the **Stafford Act**, and because your request for advice concerns FLEOs' authority during an ESF-13 activation following a **Stafford Act** declaration, we do not consider whether EFLEA might provide FLEOs with express authority to make arrests for violations of state law. *See also infra* n. 12.

II.

*4 To determine whether FLEOs may make arrests for violations of state law during **Stafford Act** deployments, we begin with the well-established premise that federal authority to exercise law enforcement powers, including the authority to make arrests, "must be conferred expressly by statute." *Authority of the State Department Office of Security to Investigate Passport and Visa Fraud*, 8 Op. O.L.C. 175, 181 (1984) ("*Visa Fraud*"); *see* Memorandum for the Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Request by the Department of Justice for Assistance from*

the Department of Treasury in the Enforcement of the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, and the Controlled Substances Import and Export Act, 21 U.S.C. §§ 951 *et seq.* at 7 (Dec. 23, 1983) (“special law enforcement powers such as the right to make arrests without warrant and execute search warrants must be conferred expressly by statute”). This requirement derives in part from the fact that the power to arrest is an “awesome power.” *Moore v. Marketplace Restaurant, Inc.*, 754 F.2d 1336, 1346 (7th Cir. 1985). The requirement accordingly ensures that this power is exercised only pursuant to specific legislative authorization. See also *Wallis v. Spencer*, 202 F.3d 1126, 1138 (9th Cir. 2000); *Guffey v. Wyatt*, 18 F.3d 869, 872 (10th Cir. 1994).

Numerous federal statutes expressly authorize various federal officers to make arrests for specified types of violations, but we are aware of no authority for the proposition that “a federal officer may exercise these powers without express statutory authority.” Memorandum for Robert Davis, Special Assistant to the Deputy Attorney General, from Jim Hirschhorn, Attorney, Office of Legal Counsel, *Re: Present Statutory Authority for DEA Deputization Arrangements* (May 31, 1979); see also Memorandum for William H. Webster, Director, Federal Bureau of Investigation, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Use of FBI Support Personnel to Monitor Title III Surveillance* at 19 (Oct. 31, 1984) (“law enforcement powers such as the right to carry firearms, make arrests without warrant, execute search warrants, and seize evidence, are expressly conferred by statute on ‘agents’ of the responsible agency”).

Moreover, though many federal statutes expressly confer arrest authority on FLEOs, as a general rule these statutes expressly authorize FLEOs to enforce only *federal* law.⁵ For example, in reviewing the authorities that define the jurisdiction of the Federal Bureau of Investigation (“FBI”), we have emphasized that they provide FBI agents with authority to enforce federal law, *not* to take action with respect to violations of state law. See *Federal Bureau of Investigation—Statutory Jurisdiction—Authority of Agents Concerning Non-Federal Offenses*, 2 Op. O.L.C. 47, 47-48 (1978) (“FBI”). As we also have observed, “[s]everal courts have noted that, in the absence of a congressional mandate, Federal agents have no power under Federal law to arrest for State offenses.” *Id.* at 48; cf. *Authority of the Federal Bureau of Investigation to Investigate Police Killings*, 5 Op. O.L.C. 45, 48-49 (1981) (“Police Killings”) (reaffirming conclusions of FBI opinion). We accordingly have advised that, if no explicit federal authority to arrest for State offenses exists, “FBI agents cannot act under Federal authority and must rely instead on State law.” *FBI*, 2 Op. O.L.C. at 48; see also *Authority of FBI Agents, Serving as Special Deputy United States Marshals, to Pursue Non-Federal Fugitives*, 19 Op. O.L.C. 33, 45 (1995) (advising that U.S. Marshals “generally lack any inherent or common law authority to pursue or arrest fugitives wanted solely for state law violations,” where there is no “reason to believe that the pursuit or arrest will prevent the commission of a federal felony”).

*5 In light of this long-settled precedent, we must find an express statutory grant of authority to FLEOs to make arrests for state law violations in order to conclude that FLEOs mobilized during an ESF-13 activation have that power. We conclude that, while neither ATF’s organic statute nor the **Stafford Act** expressly provides such authority, certain state deputation laws may.

A.

As set forth above, the organic statutes of federal law enforcement agencies typically provide FLEOs with express authority to enforce federal but not state law. See *supra* n. 5 and accompanying text (collecting statutory authorities). Under its organic statute, ATF is charged primarily with investigating “criminal and regulatory violations of the *Federal* firearms, explosives, arson, alcohol, and tobacco smuggling laws.” 28 U.S.C. § 599A(b)(1) (2006) (emphasis added). By its terms, that statute does not confer on ATF agents the authority to make arrests for state law violations or otherwise to enforce state law.

We also conclude that the **Stafford Act** does not expressly authorize FLEOs to make state law arrests. The **Stafford Act** contains no reference at all to law enforcement or arrest authority. And the NRF and ESF-13 frameworks implementing FLEO deployments in disasters and emergencies are not themselves legal authorities that could provide the requisite express authorization. This determination is in accord with the conclusions of several of the agencies whose views we solicited.⁶

To be sure, certain provisions of the **Stafford Act**, if construed broadly, could be read to contemplate FLEO enforcement of some state laws. Section 5170b(a)(3) authorizes federal agencies to perform “any work or services essential to saving lives and protecting and preserving property or public health and safety,” and “includ[es],” as one example of such work, actions to “reduc[e] ... immediate threats to life, property, and public health and safety.” 42 U.S.C. § 5170b(a)(3). It could be argued, for example, that in certain circumstances, FLEOs’ enforcement of state criminal laws would be “‘essential’ to saving lives

and protecting public health and safety, and would “reduce” immediate threats to “life, property, and public health and safety.” *Id.* As a result, these provisions could be read to confer some law enforcement authority, including arrest authority, on deployed FLEOs. But, as detailed above, arrest authority must be “conferred expressly,” *Visa Fraud*, 8 Op. O.L.C. at 181, and the most one could say of these provisions is that the authority to enforce state criminal law, including through the making of arrests, may be inferred from them. In any event, the other examples of activities Congress expected federal agencies to perform, as listed in section 5170b(a)(3), include “debris removal,” “search and rescue,” “clearance of roads,” and “demolition of unsafe structures.” *Id.* These activities are different in kind from the enforcement of state criminal law, making it difficult to conclude that Congress intended the **Stafford Act** to authorize FLEOs to make arrests for state law violations. See *Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 8 (1985) (noting “familiar principle of statutory construction that words grouped in a list should be given related meaning” (internal quotation marks omitted)).

B.

*6 The fact that neither ATF’s organic statute nor the **Stafford Act** provides FLEOs with express authority to make arrests for state law violations does not end the analysis. As this Office explained in an opinion addressing the authority of FBI agents, although “agents may be without *Federal* authority to intervene in State offenses,” state law may supply the necessary authority to act in certain circumstances. *FBI*, 2 Op. O.L.C. at 47 (emphasis added). In particular, in the *FBI* opinion, we identified state laws conferring arrest authority upon “private citizens” and “peace officers” as examples of laws that might authorize “FBI agents ... in certain instances ... to arrest those who have violated State or local law,” depending upon their precise provisions. *Id.*

In neither the *FBI* opinion nor subsequent advice have we identified state deputation laws as potential sources of authority for FLEOs to make state law arrests. We do not, however, see a material difference between the peace officer and citizens’ arrest provisions we have assessed in the past and state deputation laws generally. As we discuss below, during a **Stafford Act** deployment, it may often serve a federal purpose for FLEOs to make arrests for violations of state law. See *infra* p. 10. In that setting, the requirement that legislation expressly confer arrest authority on FLEOs, as well as that requirement’s purpose—that the “awesome power,” *Moore*, 754 F.2d at 1346, to arrest and detain be clearly assigned and delineated—will have been fulfilled if state law expressly authorizes FLEOs to make such arrests. In other words, there is no requirement that FLEOs’ arrest authority come from a federal source, only that it be expressly conferred by a legislative act.

We therefore conclude that state deputation laws may provide FLEOs with the express authority to make arrests for violations of state criminal laws. You have not asked us about the scope of any particular state deputation law. As a result, we have not considered whether any such law would provide the requisite express authority. We emphasize, however, that whether a law confers express arrest authority in any given circumstance will depend on the details of the state law at issue, which may, for example, limit which federal officials may be deputized, or require that certain prerequisites be satisfied for deputation to be effective. See *FBI*, 2 Op. O.L.C. at 49 (“The authority granted by the States to peace officers and private citizens to arrest without warrant may ... vary from State to State.”); see, e.g., *Ok. Stat. Ann. tit. 19, § 547* (West 2011) (“The sheriff or the undersheriff may in writing depute certain persons to do particular acts.”); *N.C. Gen. Stat. § 15A-406* (2010) (authorizing particular federal officers to enforce state criminal laws at the request of various state officials). As a result, when deployed pursuant to an ESF-13 mobilization, FLEOs should carefully review any relevant state deputation law (or other state authorizing laws) to determine whether any prerequisites to the state deputation exist, and to identify the scope of the authority granted.

III.

*7 The final dimension of our inquiry concerns whether federal appropriations law precludes FLEOs mobilized pursuant to the **Stafford Act** from making arrests authorized by state law. Even if FLEOs have been expressly authorized to make arrests for violations of state criminal law by state statutes, they cannot exercise that authority if doing so would contravene the federal Purpose Act. State law cannot authorize federal officers to make “expenditures that would be incurred in the course of” enforcing state law. *Police Killings*, 5 Op. O.L.C. at 49. As explained below, under the Constitution and applicable statutes, only Congress may authorize expenditures of federal funds. Unlike arrest authority itself, however, the authority to expend funds to make state law arrests need not be expressly conferred. Instead, FLEOs may exercise state-conferred arrest authority: (1) when they have been properly deployed under federal law; and (2) when the arrest would advance the purposes of that federally authorized deployment.

The Constitution directs that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7. Congress has adopted several statutes reflecting this constitutional principle, among them the Purpose Act, which the Comptroller General has described as “one of the cornerstones” of federal appropriations law. 1 U.S. General Accounting Office, Office of General Counsel, *Principles of Federal Appropriations Laws* 4-6 (3d ed. 2004) (“*Federal Appropriations Law*”). The Purpose Act provides that “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” 31 U.S.C. § 1301(a). The Act reflects longstanding Supreme Court precedent under which it is an “established rule” that “the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.” *United States v. MacCollom*, 426 U.S. 317, 321 (1976); see also *Reeside v. Walker*, 52 U.S. 272, 291 (1850) (“However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion.”).

Equally well established, however, is the principle that the Purpose Act leaves federal agencies with “considerable discretion in determining whether expenditures further the agency’s authorized purposes and therefore constitute proper use of general or lump-sum appropriations.” *Employee Business Cards*, 21 Op. O.L.C. at 153. We have advised that, “[i]f the agency believes that [an] expenditure bears a logical relationship to the objectives of the general appropriation, and will make a direct contribution to the agency’s mission, the appropriation may be used,” unless some “specific provision limits the amount that may be expended on a particular object or activity within [the] general appropriation.” *Id.* at 153-54, 156 (quoting *Indemnification*, 10 Op. O.L.C. at 8); see also *Indemnification of Treasury Department Officers and Employees*, 15 Op. O.L.C. 57, 60 (1991) (an expenditure satisfies this doctrine if it “directly accomplishes the specific congressional purpose underlying the appropriation”; “incidentally accomplishes a specific congressional purpose”; or “is generally ‘necessary’ for the realization of broader agency objectives covered by the appropriation”).

*8 The Comptroller General has adopted a doctrine that mirrors this Office’s standard. The Comptroller General will find an expenditure permissible as a necessary expense if the expenditure, among other things, “bear[s] a logical relationship to the appropriation sought to be charged,” i.e., “it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available.” *Federal Appropriations Law* at 4-21; see also, e.g., *U.S. Commodity Futures Trading Commission—Availability of the Consumer Protection Fund*, B-321788, 2011 WL 3510145, at *3 (Comp. Gen. Aug. 8, 2011).⁷ With respect to this “logical relationship” requirement, the Comptroller General has explained that it is not “essential” that a federal agency have “specific statutory authority” to make an expenditure. *Federal Appropriations Law* at 4-26. If an expenditure “is directly connected with and is in furtherance of the purposes for which a particular appropriation has been made ... the appropriation is available for the expenditure.” *Id.*; see also *National Transportation Safety Board—Insurance for Employees Traveling on Official Business*, B-309715, 2007 WL 2792189, at *2 (Comp. Gen. 2007) (“The necessary expense rule recognizes that when Congress makes an appropriation for a particular purpose, by implication it authorizes the agency involved to incur expenses which are necessary or incident to the accomplishment of that purpose.”); *Department of Homeland Security—Use of Management Directorate Appropriations to Pay Costs of Component Agencies*, B-307382, 2006 WL 2567514, at *3 (Comp. Gen. Sept. 5, 2006) (“Even if a particular expenditure is not specifically provided for in the appropriation, the expenditure may be permissible under the necessary expense doctrine if it will contribute materially to the effective accomplishment of the [agency] function.”).⁸

To decide whether expenditures related to the exercise of state-conferred arrest authority would satisfy the “logical relationship” standard, we must first determine whether an appropriation is available to pay for such expenditures.⁹ We find that an appropriation would be available in certain circumstances. Actions taken by FLEOs in the course of their deployment pursuant to the **Stafford Act** would likely be funded by the appropriations available for the “salaries and expenses” of ATF officers. Thus, for example, ATF’s appropriation for “salaries and expenses” would be available to fund **Stafford Act**-related activity for which ATF officers were properly deployed. See Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011); see also 42 U.S.C. § 5170a(1) (“In any major disaster, the President may direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law ... in support of State and local assistance response”).¹⁰

*9 We thus conclude that the funds appropriated for ATF salaries and expenses may be used for expenditures arising from arrests expressly authorized by state law and made by deputized ATF officers deployed under the **Stafford Act**, as long as such expenditures bear “a logical relationship to the objectives” of the **Stafford Act** deployment. *Indemnification*, 10 Op.

O.L.C. at 8. Determining whether a logical relationship exists between an expenditure and the purposes of the **Stafford Act** will require an assessment of the factual circumstances that FLEOs encounter in connection with the disaster or emergency in question. ATF and appropriate Department of Justice officials will have to make the required determination based on the particular circumstances the ATF officers face during their deployment. *See Customs and Border Protection—Relocation Expenses*, B-306748, 2006 WL 1985415, at *3 (Comp. Gen. July 6, 2006) (noting the relevant agency “is in the best position to determine whether” an expenditure of funds is necessary to carry out the agency’s mission effectively); *Department of the Air Force—Purchase of Decals for Installation on Public Utility Water Tower*, B-301367, 2003 WL 22416499, at *2 (Comp. Gen. Oct. 23, 2003) (“The application of the necessary expense rule, in the first instance, is a matter of agency discretion.”).

In the context of some **Stafford Act** deployments, it may be clear from the outset that particular expenditures will directly further, and thus logically relate to and materially advance, the purposes of the relevant deployment. In enacting the **Stafford Act**, Congress found that “disasters often disrupt the normal functioning of governments and communities” and that “special measures, designed to aid the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.” 42 U.S.C. § 5121(a); *see id.* § 5121(b). Thus, for example, we think it likely that ATF could reasonably conclude that federal assistance in maintaining law and order by making arrests for violations of state criminal law in the aftermath of an emergency (as when FLEOs are deployed to prevent looting and maintain order in a populated area following a natural disaster) would advance those **Stafford Act** objectives.¹¹ It is also easy to envision situations in which state law arrests by FLEOs would be incident to or necessary to carry out an activity expressly authorized by the **Stafford Act**, such as “assist[ing] State and local government in the distribution of medicine, food, and other consumable supplies,” *id.* § 5170a(4), or “[p]erforming ... work or services essential to saving lives and protecting and preserving property or public health and safety,” *id.* § 5170b(a)(3). *See also* DHS Memorandum at 13 (suggesting that state law arrests by deputized FLEOs would be “eligible for reimbursement from the [Disaster Relief Fund] because it furthers a specific purpose authorized by the **Stafford Act**—meeting an immediate threat to life and property”).

IV.

*10 We underscore that appropriated funds are available to pay for ATF’s exercise of state-conferred arrest authority only when FLEOs have been deployed pursuant to the **Stafford Act** to carry out a federal mission and are therefore in a position to make arrests for state law violations in the course of their deployment. Our analysis would not support the dispatch of FLEOs to make arrests for state law violations in the absence of a valid **Stafford Act** deployment. *See supra* n. 10. We conclude only that, where FLEOs have been deployed pursuant to the **Stafford Act** and are properly carrying out federal disaster relief in a local community, FLEOs may accept deputation under state laws that expressly authorize them to make state law arrests, where such arrests would bear a logical relationship to or advance the purposes of the **Stafford Act** deployment.¹²

Virginia A. Seitz
Assistant Attorney General

Footnotes

¹ *See* Memorandum for Kelly Dunbar, Attorney-Adviser, Office of Legal Counsel, from Stephen R. Rubenstein, Chief Counsel, Bureau of Alcohol, Tobacco, Firearms, and Explosives (Dec. 22, 2010) (“ATF Modified Request”). This request for advice superseded an earlier ATF request. *See* Memorandum for David Barron, Principal Deputy Assistant Attorney General, Office of Legal Counsel, from Stephen R. Rubenstein, Chief Counsel, Bureau of Alcohol, Tobacco, Firearms, and Explosives (July 16, 2010). In preparing our advice in response to the modified request, we solicited and received views from the Department of Homeland Security, *see* Memorandum for Cristina M. Rodríguez, Deputy Assistant Attorney General, Office of Legal Counsel, from the Office of the General Counsel, Department of Homeland Security (May 2, 2011) (“DHS Memorandum”); the Drug Enforcement Administration, *see* Memorandum for Cristina M. Rodríguez, Deputy Assistant Attorney General, Office of Legal Counsel, from Wendy H. Goggin, Chief Counsel, Drug Enforcement Administration (Mar. 4, 2011) (“DEA Memorandum”); the Federal Bureau of Investigation, *see* Memorandum for the Deputy Assistant Attorney General, Office of Legal Counsel, from Valerie Caproni, General Counsel, Federal Bureau of Investigation (Mar. 15, 2011) (“FBI Memorandum”); the Department of Agriculture, *see* Email for Cristina M. Rodríguez, Deputy Assistant Attorney General, Office of Legal Counsel, from Thomas Millet, Associate General Counsel, Natural Resources, Department of Agriculture (Mar. 8, 2011) (“Forest Service Memorandum”);

and the United States Marshals Service, *see* Email for Cristina M. Rodriguez, Deputy Assistant Attorney General, Office of Legal Counsel, from Gerald Auerbach, General Counsel, United States Marshals Service (Feb. 24, 2011) (“USMS Memorandum”).

² You requested advice concerning state and local deputation laws. For ease of exposition, we will refer to state deputation laws throughout, but our analysis is equally applicable to valid local laws.

³ Our conclusions in this memorandum pertain solely to FLEOs’ authority to make arrests pursuant to state deputation laws during a **Stafford Act** deployment. Although our analysis may have implications for FLEOs’ authority to perform other state law enforcement functions, such as the execution of search warrants, the seizure of evidence, or other investigatory activities, we do not address those authorities in this opinion.

⁴ Your request concerns circumstances in which an ESF-13 activation has occurred upon the request of the appropriate state official and after the President has made a **Stafford Act** declaration. *See* ATF Modified Request at 1; 42 U.S.C. § 5170.

⁵ *See* 28 U.S.C. § 533 (2006 & Supp. III 2009) (authorizing Attorney General to appoint officials to “detect and prosecute crimes against the United States”; “assist in the protection of the person of the President” and the “Attorney General”; and conduct “other investigations regarding official matters under the control of” the Departments of Justice and State); 28 C.F.R. § 0.85(a) (2008) (authorizing the Federal Bureau of Investigation to investigate violations of federal law unless jurisdiction is specifically assigned to another agency); 18 U.S.C. § 3052 (2006) (authorizing certain officials, and “inspectors and agents” of the Federal Bureau of Investigation to “carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony”); 28 U.S.C. § 566(d) (2006) (“[e]ach United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for [certain federal offenses]”); 21 U.S.C. § 878 (2006) (authorizing any “officer or employee of the Drug Enforcement Agency” to “carry firearms”; “execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the United States”; and “make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony”).

⁶ *See* DEA Memorandum at 3 (“Neither ESF-13 nor the **Stafford Act** appears to provide authority for [FLEOs] to enforce state laws.”); DHS Memorandum at 4 (“[T]he **Stafford Act** contains no explicit provision authorizing [federal law enforcement officers] to make arrests and detentions in connection with violations of State criminal law in a manner other than in accordance with State or local law, such as State law regulating deputation.”); FBI Memorandum at 3 (“We do not believe that the **Stafford Act** provides authority for federal law enforcement officials to make arrests in connection with an ESF-13 activation.”); Forest Service Memorandum at 5 (“We have not interpreted [the **Stafford Act**] alone as authorizing Forest Service [law enforcement officers] to investigate or enforce violations of state criminal law.”); USMS Memorandum at 2 n.4 (“[T]he ‘**Stafford Act**’ does not appear to provide for federal law enforcement assistance during national emergencies.”).

⁷ The Comptroller General’s test for necessary expenses also requires that the expenditure “must not be prohibited by law” and “must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.” *Federal Appropriations Law* at 4-21-22. We have found no prohibition on the expenses that might be implicated here, and we discuss below the requirement that the expenditure not fall within the scope of some other appropriation. *See infra* n. 13.

⁸ Though not binding on Executive Branch agencies, “[t]he opinions and legal interpretations of the General Accounting Office and the Comptroller General often provide helpful guidance on appropriations matters and related issues.” Memorandum for Edward A. Frankle, General Counsel, National Aeronautics and Space Administration, and Robert G. Damus, General Counsel, Office of Management and Budget, from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, *Re: Applicability of Government Corporation Control Act to Gain Sharing Benefit Agreement* at 5 n.3 (Sept. 18, 2000).

⁹ In our *Police Killings* opinion, we interpreted the Purpose Act to limit FLEOs’ exercise of authority to engage in state law enforcement activity, concluding that no matter how expansive the scope of authority conferred by state law, federal appropriations law would bar such officers from generally exercising that authority except “in an emergency situation” that “involve[s] no extraordinary expenses.” 5 Op. O.L.C. at 49 n.7 (citing *FBI*). In the *FBI* opinion, we defined such emergency situations as those in which a federal agent “witnesses, or is in the immediate vicinity of, [a state law] crime, and immediate action is required to detain or arrest the offender.” 2 Op. O.L.C. at 47. But you have asked not whether FLEOs *generally* have authority to make arrests for state law violations, but instead whether FLEOs properly deployed under the **Stafford Act** may make arrests for state law offenses after they have been deputized under state laws. *See* Modified ATF Request at 1-2. Thus, the Purpose Act inquiry here differs from our inquiry in the *Police Killings* opinion because our analysis here turns on the logical relationship between the FLEOs’ state law enforcement activity and the specific purposes of the federally authorized deployment of those FLEOs.

- ¹⁰ As DHS has explained to us, to fulfill its responsibilities under the **Stafford Act**, DHS “receives an appropriation known as the Disaster Relief Fund (DRF).” DHS Memorandum at 12. Pursuant to the **Stafford Act**, agencies other than DHS may seek reimbursement from the DRF for expenditures undertaken in the context of a **Stafford Act** deployment to “provide assistance essential to meeting immediate threats to life and property resulting from a major disaster,” 42 U.S.C. § 5170b(a), including “any work or services essential to saving lives and protecting and preserving property or public health and safety.” *Id.* § 5170b(a)(3). But regardless of whether reimbursement from the DRF is sought, ATF’s expenditures during a **Stafford Act** deployment would be covered in the first instance by its appropriation for salaries and expenses.
- ¹¹ In light of this analysis, we need not determine whether arrests in the circumstances you have identified might fall within the exigent circumstances exception discussed in our *FBI* opinion, *see supra* n. 10. If the relevant FLEOs have been deputized by a state law that expressly confers arrest authority, and if the arrests you describe will advance the objectives of the relevant **Stafford Act** deployment, there is no need to invoke exigent circumstances to support arrest authority.
- ¹² As noted above, *see supra* p. 8, this Office has indicated that a general appropriation may not be used if some “specific provision limits the amount that may be expended on a particular object or activity within [the] general appropriation.” *Employee Business Cards*, 21 Op. O.L.C. at 156 (quoting *Indemnification*, 10 Op. O.L.C. at 8). Similarly, under the Comptroller General’s formulation of the doctrine, “the existence of a more specific source of funds, or a more specific statutory mechanism for getting them” can “‘override[] the ‘necessary expense’ considerations.” *Federal Appropriations Law* at 4-30; *see also supra* n. 8. We previously observed, *see supra* p. 3, that another federal statute, EFLEA, may be relevant to FLEOs’ authority to make arrests for violations of state criminal laws in the specific law enforcement emergencies that EFLEA identifies. This raises the potential concern that, where EFLEA applies, funds appropriated under EFLEA must be used for deployments, and invocation of the necessary expense doctrine in relation to the **Stafford Act** would be precluded. In fact, however, Congress has clearly indicated that EFLEA is not exclusive, even where it applies, and therefore that EFLEA does not limit the President’s authority to provide emergency assistance under the **Stafford Act**. *See* 42 U.S.C. § 10503(e) (“Nothing” in EFLEA should “be construed to limit any authority to provide emergency assistance otherwise provided by law.”). Thus, the President may always elect to respond to emergencies under the **Stafford Act**, using appropriated funds that are available to further the purposes of **Stafford Act** deployments. *Cf. Securities and Exchange Commission— Supplemental Appropriation*, B-322062, 2011 WL 6076288, at *3 (Comp. Gen. Dec. 5, 2011) (“where one appropriation clearly supplements another appropriation, then both appropriations may be used for the same purpose”).

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