



# NAAUSA

National Association of  
Assistant U.S. Attorneys

#### Board of Directors

Steven B. Wasserman  
*President*  
(DC)

Adam E. Hanna  
*Vice President*  
(S.D. IL)

Mark Vincent  
*Treasurer*  
(UT)

Karen Escobar  
*Secretary*  
(E.D. CA)

Kevan Cleary  
(E.D. NY)

Joseph Koehler  
(AZ)

**Executive Director**  
Chad Hooper

**Washington Reps.**  
Jason Briefel  
Natalia Castro

**Counsel**  
Debra Roth

May 12, 2023

**Chair Jeanne Shaheen**

**Ranking Member Jerry Moran**

Subcommittee on Commerce, Justice, Science, and Related Agencies  
Committee on Appropriations  
U.S. Senate  
Washington, DC 20510

**Re: National Association of Assistant U.S. Attorneys Written Testimony on  
FY24 Department of Justice Funding**

Dear Chair Shaheen, Ranking Member Moran, and Subcommittee Members:

On behalf of the National Association of Assistant United States Attorneys (NAAUSA), representing the interests of over 6,000 Assistant U.S. Attorneys working in the 94 U.S. Attorney Offices, I write to express concerns about the Department of Justice's ability to recruit and retain the personnel necessary to prosecute federal criminal and civil violations and uphold the fair administration of justice. We write the Subcommittee on Commerce, Justice, Science and Related Agencies Appropriations relating to FY2024 appropriations for the Department of Justice to highlight ongoing workforce challenges and offer solutions.

For over thirty years, Assistant U.S. Attorneys (AUSAs) have asked their employer—the Department of Justice—for one thing: to be paid the same as other lawyers within DOJ who have the same experience, the same years out of law school, and the same years of service. Indeed, it was AUSAs frustrated by pay inequities who founded NAAUSA. **Today, AUSAs are paid significantly less than other DOJ attorneys with the same experience and responsibilities, often as much as \$40,000 per year.** This pay gap is profoundly unfair, widely known, and deeply destructive to morale. Many AUSAs forego much higher-paying legal jobs in the private sector to serve in our federal criminal justice system and support our nation's homeland security needs.

As law enforcement professionals, AUSAs are vital to maintaining the rule of law in our nation. And the administration of justice suffers when AUSAs cannot afford to remain in their roles. For example, AUSAs play a lead role in First Step Act implementation. Unfortunately, as the workload of AUSAs has increased with expansions in compassionate release and other First Step Act provisions, the cadre of experienced AUSAs has been depleted. AUSAs are being asked to do more with less compensation and less resources. The current pay structure relies far too heavily on the goodwill of AUSAs and has often turned U.S. Attorneys' Offices into training grounds for large defense firms who will pay AUSAs far more than the Department of Justice is willing. This hinders U.S. Attorney Offices' ability to

fully implement the law as Congress intended and on the timelines that Congress has required.

That AUSAs around the country are systematically paid far less than their colleagues — many of whom work shoulder-to-shoulder on the same cases, and sometimes in the same cities and even in the same offices — is indefensible. NAAUSA calls upon Congress to investigate and rectify this inequity.

This pay disparity has existed since the 1980s and occurs, in part, because AUSAs are paid on a different pay scale than other DOJ attorneys, and most other federal government employees. AUSAs are paid on the Administratively Determined (AD) pay scale. Nearly all other DOJ attorneys and employees are paid under the General Schedule (GS) or are members of the Senior Executive Service (SES). The AD scale has historically resulted in less pay.

This split pay system has allowed significant pay disparities to develop and grow between attorneys who have the same experience and, in turn, drives chronic, costly, and disruptive retention problems in U.S. Attorneys' Offices across the country. More than that, though, it is unfair and undermines our government's role as a model employer focused on equity across the workforce.

In the Partnership for Public Service's Best Places to Work in the Federal Government, U.S. Attorneys' Offices reported above median and upper quartile scores in nearly every category since 2007. AUSAs are dedicated and generally happy public servants. Yet, pay satisfaction has fallen into the lowest quartile of scores in 12 of the last 13 survey years—bolstering the argument that concerns around pay are the primary barrier to retaining qualified AUSAs. In 2022, U.S. Attorneys' Offices ranked [363 of 428](#) in agency subcomponents regarding attitudes toward pay.

Even the most committed AUSA lacks an incentive to remain in their office when they cannot adequately provide for their family or afford the high student loan payments many new attorneys face. While some AUSAs do join Main Justice or other parts of the Civil Service seeking improved compensation, often AUSAs are lured to the private defense bar and are immediately litigating against the government. The private defense bar sees AUSAs' experience as valuable and is willing to compensate AUSAs for their training at taxpayers' expense.

**NAAUSA calls on Congress to end this cycle by investing in our nation's career federal prosecutors by ensuring pay equity between AUSAs and DOJ attorneys.** Fairly compensating federal prosecutors so that they are paid the same as their attorney colleagues across DOJ who do the same or similar work on behalf of our citizens, would strengthen the rule of law, support national security, and is the right thing to do.

Congress has consistently allocated additional funds toward U.S. Attorneys' Offices to cover the salaries and expenses of Assistant U.S. Attorneys (AUSAs). However, this money has been overwhelmingly spent on hiring and onboarding additional AUSAs rather than toward appropriately compensating the current

cadre of AUSAs. This causes the pay inequity to persist following the initial hire and results in waste. U.S. Attorneys overemphasize hiring and fail to prioritize retention of experienced litigators who are critical to executing the Department's mission.

**To ensure Congressional appropriations are appropriately focused on the most efficient administration of justice, NAAUSA asks Congress to include the following report language in its FY24 CJS Appropriations bill.**

*DOJ Attorney Pay Comparability Study*

*The Department shall within 90 days conduct a pay comparability study between attorneys working on the General Schedule and the Administratively Determined pay scales. The Department shall issue the results of the pay comparability study to a public website.*

*The pay comparability study must:*

- 1. examine whether attorneys with similar education, experience, and years of service are compensated differently on the GS and AD scales,*
- 2. identify the cost required to rectify the inequity, and*
- 3. analyze key human capital metrics, such as retention and satisfaction, to determine if compensation issues affect workforce capacity necessary to achieve the Department's mission.*

Our nation faces increasingly evolved forms of federal criminal activity, such as domestic terrorism, cybercrime, and international drug smuggling networks. It is imperative we have a knowledgeable, experienced class of litigators working in U.S. Attorney Offices as AUSAs able to prosecute these criminals.

The current system invests in hiring and training new AUSAs but fails to incentivize experienced litigators to remain as federal prosecutors. This leaves the government, after having invested time and training in new employees, without some of the most skilled prosecutors for the job. The Department of Justice should want to retain experienced, skilled litigators to defend our nation against criminal activity, and that requires proper compensation of AUSAs for duties equivalent to many other DOJ attorneys.

NAAUSA has engaged the Attorney General's Advisory Committee (AGAC) on this topic over the years. We were heartened by some steps in recent years by the AGAC and the Department to address this issue, including in 2016 administratively elevating the minimum entry-level AUSA pay to compare to a GS-11. However, more than a single adjustment is needed to address the systemic pay inequity AUSAs face, including a need for the Department to share all the data and evidence upon which it is comparing attorney compensation under the GS and AD systems.

During the prior administration, the Department admitted to NAAUSA that the compensation disparity between AUSAs and Justice lawyers is real and could be closed with an investment of a mere \$42 million per year. NAAUSA calls on

Congress to cause the Department to promptly update its AUSA compensation study and provide details on its plans to close the gap.

Workforce churn, staff attrition with loss of expertise, and decreased morale have real costs for taxpayers, and undermine the capacity of U.S. Attorney Offices to accomplish their missions. The importance of AUSAs to DOJ's mission was amply demonstrated during the COVID pandemic when AUSAs were deemed essential and responded to thousands of compassionate release motions while zealously pursuing an ever-increasing load of criminal and civil cases. We must ensure the Department of Justice properly manages and compensates these important members of the federal law enforcement community.

Thank you for considering the perspective of NAAUSA. Please do not hesitate to reach out to our Washington representative Natalia Castro (ncaastro@shawbransford.com) regarding this matter.

Respectfully,



**Steven Wasserman**

NAAUSA President