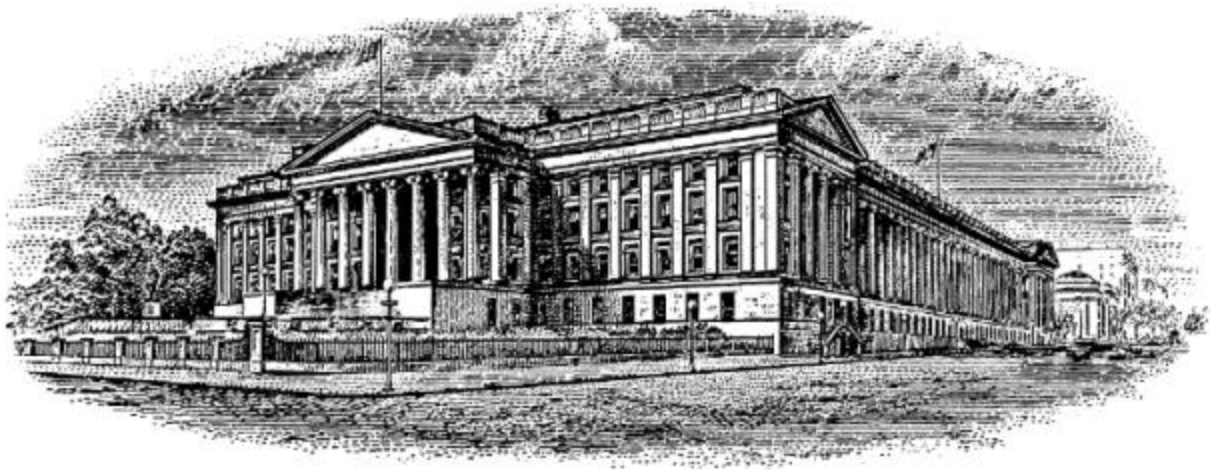


DEPARTMENT OF THE TREASURY
Office of the Under Secretary for Enforcement



*Guidelines for Seized and
Forfeited Property*

Revised Edition
JULY 2001

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Executive Office for Asset Forfeiture (EOAF) Policy Directives Referred to in the Guidelines:

- Directive 4 Seized Cash Management Policy
- Directive 9 Weed and Seed Initiative; Transfers of Real Property
- Directive 14 Expeditious Payment of Liens, Mortgages and Taxes by the Department of the Treasury
- Directive 18 Policy for Payment(s) to Local, County, and State Police Officers Participating with Treasury Law Enforcement Agencies
- Directive 27 Processing Interlocutory Sales
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EOAF Policy Directives are periodically revised due to changes in the law or to improve the efficiency and effectiveness of Treasury Forfeiture Fund operations. To obtain a complete set of EOAF Policy Directives, contact EOAF at (202) 622-9600.

INTRODUCTION

This revised edition of the Department of the Treasury Guidelines for Seized and Forfeited Property (*Guidelines*) is applicable to all forfeitures. There are several significant changes to the *Guidelines* from the October 1, 1993 edition. Some of the changes were necessitated by changes in the law while others were *Executive Office for Asset Forfeiture* deemed necessary for the operation of a more effective and efficient Treasury Forfeiture Fund.

- Payment of joint operation costs of state or local law enforcement officers that are incurred in operations with a Department of the Treasury law enforcement organization are now a mandatory category expense.
- The purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program), training, printing, and contracting for services directly related to (1) the identification of forfeitable assets, (2) the processing of and accounting for forfeitures, and (3) the storage, maintenance, protection, and destruction of controlled substances are now mandatory expense categories.

These *Guidelines* are not intended to create or confer any rights, privileges, or benefits on prospective or actual claimants, defendants, or petitioners.

This revised edition supersedes the information provided in the October 1, 1993 edition. Questions regarding these *Guidelines* should be addressed to:

Department of the Treasury Executive Office for Asset Forfeiture 740 15 th Street, N.W., Suite 700 Washington, D.C. 20220 Phone: (202) 622-9600 Fax: (202) 622-9610

STRATEGIC OBJECTIVE AND GOALS OF THE TREASURY FORFEITURE PROGRAM

The mission of the Treasury Forfeiture Fund is to affirmatively influence the consistent and strategic use of asset forfeiture by Treasury law enforcement bureaus to disrupt and dismantle criminal enterprises.

Within the context of the strategic objective identified above, the Department of the Treasury Asset Forfeiture Program has four primary goals:

1. Deprive criminals of property used in or acquired through illegal activities.
2. Encourage joint operations among federal, state and local law enforcement agencies, as well as foreign countries.
3. Strengthen law enforcement.
4. Protect the rights of the individual.

To achieve these goals, the program must be administered in a fiscally responsible manner that seeks to minimize the administrative costs incurred, thereby maximizing the benefits for law enforcement and the society it protects. Moreover, recognizing that the continued viability of the program rests upon public confidence in its integrity, safeguarding the rights of affected individuals constitutes an overriding concern in the administration of the program.

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DEFINITIONS

Adoptive Seizures are only those seizures where 100 percent of the pre-seizure activity was performed by the seizing state, local or foreign law enforcement agency. Joint investigation or task force cases are not adoptive seizures.

Appraised Value is the estimated value of the property at the time of seizure. The seizing agency or a certified third party establishes the appraised value.

Cash refers to currency or monetary instruments.

Costs are those expenses paid out of the Treasury Forfeiture Fund.

Department Component refers to agencies, divisions, offices, sections or units of the Department of the Treasury.

District refers to the federal judicial district.

Equitable Sharing refers to the transfer of seized and forfeited cash, property or net proceeds to participating law enforcement agencies, pursuant to these *Guidelines* and the detailed policies and practices set forth in the “*Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies.*”

Fair Market Value refers to the current value of property in a given market at which both buyers and sellers are willing to do business with neither being under a compulsion to buy or sell. The national seized property contractor assigns the estimated fair market value.

The Fund refers to the Department of the Treasury Forfeiture Fund, which was created by Section 638 of Public Law 102-393 (1992), codified at 31 U.S.C. §9703.

Joint Investigation refers to cases in which one or more foreign, federal, state or local law enforcement agencies participate in an investigation with a Treasury investigative agency.

Net Proceeds refer to the forfeited cash or gross receipts from the sale of forfeited property less expense.

Official Use refers to the utilization of property in the performance of the activities of an agency.

Purchase of Evidence (POE) refers to the purchase of evidence that is pursuant to an investigation.

Purchase of Information (POI) refers to the purchase of information that is pursuant to an investigation.

Property refers to tangible and real property, other than cash.

Property Custodian is the individual, agency, or firm, which has custody of the seized property.

Reverse Asset Sharing is the cash, property, or sales proceeds received by a Treasury law enforcement organization representing the agency's participation in a forfeiture investigation made by a non-Treasury investigative agency.

State and Local Agencies refer to state and local law enforcement agencies that participate in an investigation with a federal agency.

Suspense Account refers to the holding account that is administered by the U.S. Customs Service in its capacity as Executive Agent for the Treasury Forfeiture Fund for seized cash pending resolution of forfeiture cases.

Task Force refers to the joining of multi-agency resources for the purpose of cooperating in investigations.

Treasury Investigative Agency refers to the United States Customs Service; the United States Secret Service; the Bureau of Alcohol, Tobacco, and Firearms; and the Internal Revenue Service. For purposes of this text, the United States Coast Guard is also considered an investigative agency.

Treasury Law Enforcement Organization refers to the United States Customs Service; the United States Secret Service; the Bureau of Alcohol, Tobacco and Firearms; the Internal Revenue Service; the Federal Law Enforcement Training Center; the Financial Crimes Enforcement Network; or any other enforcement component of the Department of the Treasury so designated by the Secretary.

Weed and Seed refers to the initiative designed to reclaim and rejuvenate embattled neighborhoods and communities.

GENERAL PROVISIONS

- A. Whenever reference is made to a specific Department official, such reference also includes any duly authorized person acting for that official by law, regulation, or delegation. References to the Executive Office for Asset Forfeiture (EOAF) include any successor organization.

- B. The Secretary of the Treasury, or designee, may issue supplementary and interpretive guidance to address issues that arise under these *Guidelines*. EOAF shall provide assistance to the Secretary of the Treasury in the oversight and management of the asset forfeiture program. Requests for interpretive guidance should be addressed to the **Executive Office for Asset Forfeiture, Department of the Treasury, 740 15th Street, N.W., Suite 700, Washington, D.C. 20220.**

- C. In the event of any unresolved dispute between the Department of the Treasury and the Department of Justice, the Under Secretary (Enforcement), and the Deputy Attorney General, or their designees, shall resolve the issue.

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OVERVIEW OF THE TREASURY FORFEITURE FUND

Administration of the Fund

The Secretary of the Treasury has delegated responsibility for the operation and administration of the Fund to the Under Secretary (Enforcement) who has redelegated these functions and duties to the Director of EOAF.

The Under Secretary (Enforcement), or designee, shall make all determinations regarding distributions from the Fund. As part of this process, EOAF shall prepare annual budget estimates for the Fund based on information submitted by the requesting agencies.

EOAF shall be responsible for annual reports submitted to the Congress on the Fund. Treasury law enforcement agencies shall provide necessary information to EOAF for the preparation of these reports.

Spending Authority of the Fund

The Treasury Forfeiture Fund is a *special fund*. *Special funds* are federal fund collections that are earmarked by law for specific purposes. The enabling legislation for the Treasury Forfeiture Fund defines those purposes for which Treasury forfeited revenue may be used. The revenue may be allocated and used without the enactment of an annual appropriation by Congress. Forfeited revenue comprises the budget authority for meeting expenses of the Treasury asset forfeiture program.

There are three types of spending authority of the Fund:

- The **Mandatory Authority** items are used to meet business expenses of the Fund. The mandatory expenses of the Fund are set in a relative priority so that unavoidable or mandatory costs are met first.
- **Secretary's Enforcement Fund (SEF)** is derived from equitable shares received from the Department of Justice or U.S. Postal Inspection Service (USPIS) for work done by Treasury law enforcement bureaus leading to Justice or USPIS forfeitures and is available for federal law enforcement related purposes of the Department of Treasury law enforcement bureaus.
- **Super Surplus** represents the remaining unobligated balance after an amount is reserved for Fund operations in the next fiscal year and is available for the law enforcement activities of any federal agency.

The Fund is not available to reimburse Treasury law enforcement bureaus for expenses that those bureaus do not have legal authority to pay from an appropriation.

Payments and Reimbursements from the Fund**Mandatory Authority Expenses**

- A. Payment of all proper expenses of seizure and forfeiture including the expenses of detention, inventory, security, maintenance, advertisement, sale or disposal of the property.
- All such expenses must be directly attributable to a particular seizure and normally would not have been incurred but for the law enforcement activity leading to the seizure.
 - Investigative costs may include travel, transportation of objects, rentals, communication expenses, translation/transcription expenses, supplies and purchases of evidence or information. Such costs must have been incurred prior to forfeiture. The cost of equipment and supplies are payable if they were incurred in a particular operation or investigation leading to forfeiture and they are consumed or expended in support of said forfeiture. Salaries of Treasury personnel participating in investigations leading to seizures are not payable from the Fund.
 - Purchases of evidence or information may be payable if: a particular seizure is associated with each payment for information or evidence, the case file of the investigating bureau field office in which the seizure is made contains detailed documentation describing the relationship between particular seizures and payments, and the amount paid bears a reasonable relationship to the value of the evidence or information to the government. Purchase of evidence or information of \$250,000 or more must be approved by the Under Secretary (Enforcement) or designee.
 - Costs of detention are payable if the property has been seized.
 - Security expenses are payable if the security features have no regular agency use and would not have been incurred but for a particular seizure.
 - Generally, the expenses of property disposal are incurred under the terms of the contract with the national seized property contractor and are paid under that contract.
- B. Payment for
1. contract services;
 2. the employment of outside contractors to operate and manage properties or to provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and
 3. reimbursing any federal, state, or local agency for any functions described in this subparagraph.

It is the policy of EOAF to use this authority for storage, maintenance and disposition of seized property only.

- C. Awards of compensation to informers under Section 619 of the Tariff Act of 1930.
- D. Satisfaction of
 - 1. liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate Customs officer according to law; and
 - 2. subject to the discretion of the Secretary of the Treasury, other valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by a Department of the Treasury law enforcement organization.
 - To determine the validity of any such lien or mortgage, the amount of payment to be made, and to carry out the functions described in this subparagraph, the Secretary may employ and compensate attorneys and other personnel skilled in state real estate law.
 - Liens and mortgages shall be satisfied after a final order of forfeiture has been attained except in the case of an interlocutory sale or where the court orders otherwise (see EOAF Directives 14 and 27, both dated October 1, 1995).
 - Any payment of a lien or mortgage shall not exceed the fair market value of the property at the time of seizure.
 - Liens or mortgages on real property placed into federal official use or shared with state and local agencies are not payable from the Fund unless approved by the Director of EOAF.
 - Liens on personal property placed into official use by investigative agencies may be paid from the Fund provided there is intent to place the property into official use for at least one year.
 - Requests for exceptions must be submitted in writing to the Director of EOAF (see EOAF Directive 33, dated June 7, 1999).
- E. Payment of amounts authorized by law with respect to remission and mitigation.
 - Payments for remission or mitigation may not exceed the value of the property at the time of seizure. Payments will be made pursuant to a court order or a petition determination letter.
- F. Payment of claims of parties in interest to property disposed of under Section 612(b) of the Tariff Act of 1930, in amounts applicable to such claims at the time of seizure.

- Payments shall not exceed the fair market value of the property at the time of seizure, or the gross proceeds of sale.
- G. Equitable sharing payments made to other federal agencies, state and local law enforcement agencies, and foreign countries.
 - Payment shall not exceed the net value of the forfeited property at the time of disposition (See *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies*).
- H. Payment for services of experts and consultants needed by a Department of the Treasury law enforcement organization to carry out the organization's duties relating to seizure and forfeiture.
 - Payment for these services is subject to the terms and conditions of signed contracts and in accordance with Federal Acquisition Regulations (FAR).
- I. Payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of state or local law enforcement officers that are incurred in joint law enforcement operations with a Department of the Treasury law enforcement organization (See EOAF Directive 18, dated October 7, 1994).
- J. Payments made pursuant to *Guidelines* promulgated by the Secretary of the Treasury, if such payments are necessary and directly related to seizure and forfeiture program expenses. Such payments include but are not limited to:
 1. The purchase or lease of automatic data processing systems (not less than a majority of which use will be related to the seizure and forfeiture program).
 2. Training;
 - The Treasury Forfeiture Fund may be used to finance training expenses directly related to the Asset Forfeiture Program. The Director of EOAF may grant exceptions on a case-by-case basis.
 3. Printing; and
 4. Contracting for services directly related to:
 - a. the identification of forfeitable assets;
 - b. the processing of and accounting for seizure and forfeitures; and
 - c. the storage, maintenance, protection, and destruction of controlled substances.
- Given the variance in annual revenues experienced by the Fund, critical and recurring expenses relating to the storage, maintenance, protection and destruction of

contraband (i.e., controlled substances, counterfeit currency, weapons) are best funded by each agency's annual Salaries and Expenses (S&E) appropriation.

Limitations on the Mandatory Spending Authority

Expenses *not* payable from the Fund include, but are not limited to:

- (1) purchase of real property or any interest therein except to acquire full title to or to satisfy liens or mortgages;
- (2) expenses of equipping or improving property transferred to non-Treasury agencies;
- (3) reception and representation expenses; and
- (4) claims of unsecured creditors generally may not be paid from the Fund, particularly if such payment may jeopardize the claims of existing lien holders.

Discretionary Category Expenses

The Secretary of the Treasury has the discretion to make payments from the Fund for other specifically authorized expenses when funds are appropriated for that purpose. Congress has not appropriated funds for such purpose since fiscal year 1997. Should funds be appropriated for this purpose, those funds shall be made available to meet the authorized expenses identified by the law.

Allocation of Funds and Payment of Expenses

Financial transactions between the Fund and each agency are coordinated pursuant to the provisions of a Memorandum of Understanding with EOAF.

Cash Management

Seized cash, except where it is to be used as evidence, is to be deposited promptly into the Suspense Account pending forfeiture. (See EOAF Directive 4, dated June 19, 1996). Seized cash valued at \$5,000 or less may be held only upon the approval of the United States Attorney and amounts more than \$5,000 may be held only upon approval of the Chief of the Department of Justice's Asset Forfeiture and Money Laundering Section.

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RETENTION AND USE OF FORFEITED PROPERTY

General Authorization

The Secretary of the Treasury has the authority to retain or transfer any forfeited property for official use by any federal agency. No seized property shall be placed into official use until a final decree or final order of forfeiture has been made and the request to place the property into official use has been approved by the appropriate official. Property forfeited for a trademark violation may be donated by the Customs Service to charitable organizations in accordance with established procedures.

Cash

Forfeited cash or proceeds from the sale of forfeited property may not be retained by any Treasury investigative agency.

Non-Cash Personal Property

The Secretary of the Treasury has delegated the authority to place non-cash personal property into official use to the head of the Treasury investigative agency responsible for the seizure. The agency head, or designee, will determine whether to place such forfeited property into official use.

Real Property

The Secretary of the Treasury has delegated the authority to place real property into official use to the Under Secretary (Enforcement). The Under Secretary (Enforcement) has delegated this authority to the Director of EOAF. Requests to place real property into official use must be submitted in writing to the Director of EOAF. Transfers of real property to other federal agencies may be considered if such transfers will serve a significant and continuing federal purpose.

Treasury Law Enforcement Official Use Policies

Each Treasury law enforcement organization shall establish internal guidelines consistent with this section governing the placement of property into official use.

All official use guidelines shall:

1. Prohibit the placement into official use of any seized property prior to the entry of a final determination of forfeiture and the appropriate approval of the request to place the property into official use;

2. require that a written justification be prepared in each instance detailing the reasons why the forfeited property should be placed into official use and that these documents be retained for three years;
3. require that a specific supervisory-level official be responsible and accountable for the decision to place each item of forfeited property into official use and for ensuring appropriate official use of such property following its transfer;
4. require that property placed into official use be identified and tracked in an accountable property system; and
5. state that the property may not be retained if it is primarily for purposes of exchange/sale or other uses not expressly authorized for property acquired through the expenditure of appropriated funds. There must be an intent to use the property for official purposes for at least one year.

Requests for Property

When the head of a Treasury investigative agency, or designee, seeks to place forfeited property into official use and a federal, state, local agency or foreign country has filed a request for an equitable share of the property, the head of the investigative agency, or designee, shall consider the following factors in making a determination regarding the disposition of the property:

1. The relative need of the requesting agency and the investigative agency for the particular property;
2. the uniqueness of the property and the likelihood of securing similar property through seizure and forfeiture in the near future;
3. the relative percentage of the requesting agency's participation in the case;
4. the likelihood that the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from seizures in other cases in the near future;
5. the impact that a decision to place the property into official use might have on federal, state, local, or foreign relations; and
6. the number and value of past equitable sharings with the federal, state, local agency or foreign country.

If more than one Department component seeks to retain the same property for official use and the matter cannot be resolved by the agency heads, the Under Secretary (Enforcement), or designee, shall determine which agency may place the property into official use.

TRANSFER OF FORFEITED PROPERTY
(To Federal Agencies that did not Participate in the Acts that Led to Seizure)

Careful consideration shall be given to the value of the property requested, its potential benefit to the United States for law enforcement purposes, and its impact on the Fund.

The head of the seizing investigative agency, or designee, may transfer for official use personal property valued at \$25,000 or less to an agency that did not participate in the seizure or forfeiture. A decision to grant a request for any property valued at more than \$25,000 shall be approved in writing by the Director of EOAF. If the recipient agency is a not a Treasury law enforcement agency, they shall pay costs incurred by the Fund in connection with the forfeiture and transfer of such property.

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TRANSFER OF REAL PROPERTY THROUGH THE WEED AND SEED PROGRAM

The sharing of federally forfeited real property is discouraged. However, where a requesting law enforcement agency substantially participated in the acts that led to the seizure or forfeiture of real property, and there is a compelling law enforcement need for the property, sharing of forfeited real property may be approved under the Weed and Seed Program.

The Weed and Seed is an initiative designed to reclaim and rejuvenate embattled neighborhoods and communities. Weed and Seed uses a neighborhood focused two-part strategy to control violent crime and to provide social and economic support to communities where high crime rates and social ills are prevalent. The initiative first removes or “weeds” violent criminals and drug dealers from the neighborhoods. Second, the initiative prevents a re-infestation of criminal activity by “seeding” the neighborhoods with public and private-services, community-based policing, and incentives for new businesses.

Weed and Seed is founded on the premise that community organizations, social service providers, and criminal justice agencies must work together with community residents to regain control and revitalize crime-ridden and drug-plagued neighborhoods. Weed and Seed includes both specifically funded projects, as well as cooperative initiatives not receiving targeted federal funding.

To transfer forfeited real property in this way the following steps must be followed:

- ***Asset Sharing Context*** – A state or local law enforcement agency that contributed to the investigation leading to the forfeiture of the real property must request the real property as a Weed and Seed asset sharing, noting its intent to use the property for Seed purposes or to transfer it to a public or non-profit recipient for these same Seed purposes.
- ***Consent of other Involved Agencies*** – The requesting state or local law enforcement agency must obtain and present the written agreement of all other law enforcement agencies participating in the investigation leading to forfeiture that they will waive their claims to sharing in the property or its proceeds in deference to the Weed and Seed request.
- ***Appropriate Use*** – The requestor must explain the anticipated use of the property and how it will help realize the Seed goals of the Weed and Seed initiative in a distressed or disadvantaged neighborhood. The property must be suited for the proposed use and the recipient must agree that the property will revert to the United States if it is not properly used for the stated purposes.

- **Payment of Costs** – The recipient or other agency shall pay all outstanding costs prior to the transfer of real property, including any mortgages, liens, and third-party interests against the property transferred. The recipient must pay all future liens, taxes, repairs, and maintenance. These costs may not be paid from the Fund.

- **Approvals** – Upon approval of the request for the transfer of forfeited real property by the head of the involved Treasury law enforcement bureau, the request will be forwarded for a final decision to the Director of EOAF. (See EOAF Directive 9, dated October 1, 1993).

ADOPTIONS OF STATE/LOCAL SEIZURES

Adoptive seizures are **only** those seizures where 100% of the pre-seizure activity and related investigation are performed by the state or local seizing agency before a request is made for a Treasury adoption. There must be a state violation and a federal basis for forfeiture in order for the seizure to be a true adoption. The federal share in adoptive cases is generally 20% of net proceeds and the state or local share is 80%. **Joint investigations or task force cases are not adoptive seizures.**

See EOAF Directive 34, dated January 17, 2001 and follow the procedures outlined in *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies*, dated October 1, 1996.

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EQUITABLE SHARING OF FORFEITED PROPERTY WITH FEDERAL, STATE AND LOCAL AGENCIES

Treasury has the authority to transfer forfeited cash, property, and sales proceeds of forfeited property to federal, state and local law enforcement agencies that participated in a seizure and forfeiture action. Requests for equitable sharing shall be filed on a Treasury Form TDF 92-22.46 (Request for Transfer of Property Seized/Forfeited by a Treasury Agency).

Sharing in General

1. Forfeited cash, property, and proceeds from the sale of forfeited property may be equitably shared with state and local investigative or prosecutive agencies.
2. All property shared with a participating agency, and any income generated by this property shall be used for law enforcement purposes.
3. A state or local agency may file a request for an equitable share of cash or property where it can demonstrate that it participated directly in the law enforcement effort that resulted in the seizure and/or forfeiture.
4. No sharing request shall be considered unless it is submitted within 60 calendar days of the seizure or the federal adoption of a state or local seizure. The 60 day rule can be waived based upon a written request to the seizing Treasury agency, stating the reasons for the late submission of the equitable sharing request outlining extraordinary circumstances which may have precluded timely submission of the request, and/or providing justification for the waiver.
5. Forfeited cash and/or property shall be equitably shared with a state or local agency only when it will increase and not supplant existing law enforcement resources of the specific state or local agency that participated in the forfeiture.
6. Forfeited cash and the net proceeds of forfeited property may be shared with participating non-Treasury federal agencies if the agency is a member of the Justice Assets Forfeiture Fund, and is authorized to receive the funds.

Factors Governing the Amount of Equitable Sharing

All equitable sharing shall be based on net proceeds of the forfeiture. Payments shall not exceed the fair market value of the forfeited property at the time of disposition.

In determining the amount of the equitable share for each participating agency, the following factors shall be considered:

1. Whether the seizure was adopted or the result of a joint investigation.

2. The requesting agency's participation in the law enforcement effort that led to the forfeiture. This should take into account the total value of all property forfeited and total law enforcement effort, including any related criminal prosecution.
3. Whether the requesting agency originated the information that led to the seizure.
4. Whether the requesting agency provided unique or indispensable assistance.
5. Whether the requesting agency seized additional assets pursuant to its jurisdiction during the same investigation.
6. Whether the requesting agency could have achieved forfeiture under its jurisdiction but joined forces with a Treasury agency to make a more effective investigation.

Sharing Percentages

1. Sharing percentages will be determined by considering the factors delineated in the previous section. Normally, the sharing percentage is initially computed by comparing the number of hours worked by the requesting agencies. Appropriate adjustments are made to that percentage if other factors were present in the investigation. The hours worked include all hours worked through the perfection of the forfeiture and any related activities. The final determination of sharing percentages must not be done until after the property has been forfeited and the total contribution of all the participants has been determined.
2. In cases where property is forfeited and an agency requests an item in lieu of proceeds from the disposition of the property, the determining official shall ensure that costs are recovered and Treasury receives its equitable share. If the requesting agency is unable to pay the costs and Treasury's share, the property shall be sold and the proceeds distributed in accordance with these Guidelines. Exceptions to this requirement may be granted by the deciding official upon assurance that (1) the requesting agency lacks funds or authority to satisfy the costs and Treasury's share, and (2) the forfeited item will fill a demonstrable need of the requesting agency. Such exceptions shall be granted conservatively.

Task Force Agreements

1. No agreement that is inconsistent with Treasury sharing policy should be entered into. All such agreements should be in written form and signed by officials from the participating agencies. These agreements should be reviewed annually to ensure they are reflective of current situations and equitable in their treatment of all participants.
2. The lead agency should normally conduct the seizure/forfeiture and any Treasury agency contributing to the seizure efforts of a given task force must be entitled to a share of the forfeitures that is reflective of the assistance rendered by that agency.

3. Sharing percentages that are pre-determined are normally discouraged because those pre-determined percentages might not be consistent with the assistance rendered (i.e., in the case of a local department agreeing to receive 7% of all shares yet does not participate in a given case and/or contributes less than 7% of the work involved). However, for ease and simplicity of operation, pre-determined percentages within a task force may be agreed to if those percentages generally reflect the overall contributions of the involved agencies (i.e., in a 20 person Task Force, IRS assigns 2 members so IRS can agree to a pre-determined percentage of 10%). Lastly, it is acceptable if one of the federal agencies (whether Treasury or DOJ) – again, for ease of operation – agrees to execute all the forfeitures and receives a fair and appropriate percentage to cover that administrative burden. When an investigation becomes protracted, and the moment of sharing occurs long after an initial agreement has been generated, said agreement should be revisited to ensure that the interests of all parties are fairly addressed.
4. All Memoranda of Understanding (MOUs) should be reviewed annually to ensure that the provisions continue to be acceptable to ALL participating agencies. If any one of the participating agencies wishes to raise an issue, it should be able to do so without prejudice.

Deciding Officials

Decision-making authority shall be as follows:

1. Forfeited Assets Less Than \$1,000,000

The authority to approve equitable sharing of assets forfeited in a single forfeiture proceeding where the appraised value of the assets is less than \$1,000,000 has been delegated to the individual bureaus. Exceptions are those involving foreign sharing or real property, which requires approval from the Director of EOAF.

2. Forfeited Assets More Than \$1,000,000

Where the forfeited assets are valued at \$1,000,000 or more, and in all cases involving the transfer of real property, the Director of EOAF must approve the amount of the equitable share. Further, Treasury field offices' equitable sharing recommendations on judicial forfeitures shall be conveyed to the U.S. Attorney.

The recommendation of the U.S. Attorney is highly valued and shall be considered by the Treasury decision-making authority.

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EQUITABLE SHARING WITH FOREIGN COUNTRIES

The Secretary of the Treasury is authorized by statute to share any forfeited currency, the sale proceeds, or property with the foreign country that participated in the seizure or forfeiture, if such transfer:

1. Has been agreed to by the Department of Justice,
2. has been approved by the Secretary of State,
3. is authorized in an international agreement between the United States and the foreign country; and
4. is made to a country that, where applicable, has been certified under 481(h) of the Foreign Assistance Act of 1961.

Unless dictated otherwise by the provisions of a Mutual Legal Assistance Treaty (MLAT), equitable sharing requests from a foreign country shall be forwarded to the Director of EOAF with a recommendation from the seizing agency.

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REVERSE ASSET SHARING

Forfeited Property

Treasury investigative agencies may request their equitable share of forfeited property resulting from joint Treasury and Justice investigations in which a Justice agency handles the seizure, and forfeiture. Property received from a federal agency may be placed into service in accordance with the agency guidelines. **Federal agencies do not have the authority to accept equitable shares of property or tangible items from state, local or foreign agencies.** Such shares have to be treated as gifts to the Federal Government and permission to accept the gift must be sought from the Assistant Secretary (Management) of the Treasury prior to accepting any such property.

Cash and Proceeds of Forfeited Property

It is the responsibility of Treasury investigative agencies to file a request for an equitable share of forfeited cash and the proceeds of forfeited property resulting from investigations in which they participated with Department of Justice Assets Forfeiture Fund. Sharing requests should be submitted to the seizing agency within 60 calendar days of the seizure. The 60-day rule can be waived only upon a written request provided to the seizing DOJ agency, stating the reasons for the late submission of the request and/or providing justification for the waiver. In those circumstances where an agency's principal contribution occurs after the seizure, but during the period of time in which the forfeiture is being perfected, it would be appropriate to request a waiver to the 60-day rule or to amend a previous request. A copy of the DAG-71 or similar document must be sent to EOAF in accordance with bureau policy. These copies will be kept on file by EOAF and will be used to confirm the receipt of the equitable sharing payment.

Treasury agencies that are denied the ability to apply for equitable sharing by a DOJ agency, or fail to receive an equitable share in return for their participation are encouraged to attempt resolution at the principal field office level. If resolution cannot be achieved, the issue should be forwarded to EOAF (in accordance with bureau policy) for resolution at the Treasury/Justice level. **Reverse asset sharing monies must be forwarded immediately to EOAF in accordance with bureau policy.**

Use of Reverse Asset Sharings

The use of reverse asset sharing funds is limited to the authority of the Secretary of the Treasury under 31 U.S.C. § 9703(b)(5), which states “amounts transferred by the Attorney General..., or by the Postmaster General..., and deposited into the Fund...are available to the Secretary of the Treasury for federal law enforcement purposes of the Department of the Treasury law enforcement organizations.”

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DISCONTINUANCE OF FEDERAL FORFEITURE PROCEEDINGS

Federal Judicial Forfeiture Proceedings

A decision to discontinue a federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the presenting investigative agency.

In making this decision, the United States Attorney should consider the impact of such a decision on the financial status of the Fund.

Decisions to discontinue judicial forfeitures in favor of state or local proceedings are to be documented.

Federal Administrative Forfeiture Proceedings

A decision to discontinue a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the investigative agency, or designee.

In making this decision, the head of the investigative agency, or designee, should consider the impact of such a decision on the financial status of the Fund, and where appropriate, consult with the Director of EOAF.

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APPENDIX

<i>Directive Number</i>	<i>Directive Title</i>
Directive No. 4	Seized Cash Management Policy
Directive No. 9	Weed and Seed Initiative; Transfers of Real Property
Directive No. 14	Expeditious Payment of Liens, Mortgages and Taxes by the Department of the Treasury
Directive No. 18	Policy for Payment(s) to Local, County, and State Police Officers Participating with Treasury Law Enforcement Agencies
Directive No. 27	Processing Interlocutory Sales
Directive No. 33	Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements
Directive No. 34	Adoptive Seizure Policies and Procedures

NOTE: If you require additional EOAF Directives or the attachments, please refer to the EOAF Directives Manual or you may contact EOAF at (202) 622-9600.

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NUMBER: 4

REVISED DATE: June 19, 1996

SUBJECT: Seized Cash Management Policy

I. BACKGROUND

The security, budgetary, and accounting problems caused by retention of large amounts of cash has caused great concern within the Department and the Congress and raises both financial management and internal control issues.

The timely deposit of cash assets is important to the effective management of the Treasury Forfeiture Fund. This directive establishes Treasury policy on the management of seized cash. Treasury law enforcement agency management and supervisory personnel are responsible for ensuring compliance with this policy. While this directive will address the deposits as "cash", the term "cash" shall include currency, personal and commercial checks, cashiers checks, bank checks, travelers checks, money orders, etc.

Currency seized for Title 26 violations may not be deposited into the U.S. Customs Suspense Account or the Treasury Forfeiture Fund.

II. DISPOSITION OF CASH SEIZED FOR FORFEITURE

Cash seized for forfeiture, except where it is to be used as evidence, is to be deposited either within sixty (60) days after seizure or ten (10) days after indictment; or within five days after the seizing agency learns that the cash may be deposited, whichever occurs first, into the U.S. Customs Suspense Account pending forfeiture. The Director, Executive Office for Asset Forfeiture, may grant exceptions to this policy in extraordinary circumstances. Transfer of cash to the United States Customs Service Suspense Account shall be accomplished in accordance with these instructions.

- A. In some instances currency has a significant, independent, tangible, evidentiary purpose. This may be due to the presence of fingerprints, packaging in an incriminating fashion, or presence of notations or other writings. *In most cases, however, photographs or videotapes of the seized currency should be taken for later use in court as evidence.*

Where it is required that seized currency be held for evidentiary purposes, the following must be adhered to¹:

1. If the amount of seized cash to be retained for evidentiary purposes is less than \$5,000, written approval to retain the cash must be granted at a supervisory level within the appropriate U.S. Attorney's Office. Such approval must be presented to the Treasury law enforcement agency within 60 days of seizure or within 10 days of indictment whichever comes first.
2. If the amount of seized cash to be retained for evidentiary purposes is more than \$5,000, the Treasury law enforcement office shall obtain a copy of the required approval document issued by the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice, who has authority to approve exceptions to the DOJ Seized Cash Management Policy. *(This document is obtained by the AUSA.)* Treasury law enforcement field offices shall promptly submit a copy of the document to: Director, Executive Office for Asset Forfeiture, Suite 700, 740-15th Street, NW, Washington, D.C. 20220. FAX: (202) 622-9610.

If an approval document is not provided to the Treasury law enforcement agency within 60 days from the date of seizure or ten (10) days after indictment, whichever occurs first, the Treasury law enforcement agency should take those steps

¹ See Department of Justice (DOJ) Seized Cash Policy 87-1, March 13, 1987, DOJ Seized Cash Management Policy 91-9, June 6, 1991; and DOJ Delegation of Authority Directive 91-166, December 13, 1991.

necessary to deposit the money into the U.S. Customs Suspense account immediately.

III. DEPOSITING SEIZED CASH TO THE U.S. CUSTOMS SUSPENSE ACCOUNT

The U.S. Customs Suspense Account is located at the Federal Reserve Bank of New York. There are several methods available to Treasury law enforcement agencies for the deposit of cash into the U.S. Customs Service Suspense account.

Processing Procedures

Cash seizures shall be expeditiously counted, processed and prepared for transfer to the U.S. Customs suspense account in accordance with each agency's procedures and the following two conditions.

The currency will be transported with appropriate security measures to ensure safe transportation to the physical site of the deposit. Agency personnel shall remain at the site until the currency is recounted if necessary, by the financial facility and a proper receipt is provided for the deposit.

Discrepancies shall be immediately resolved at the financial facility by the agency's representatives and the financial facility's representatives. Agency representatives will verify the count and retain a receipt for the deposit. All reports of shortages, overages, or counterfeit currency shall be appropriately resolved before agency representatives leave the facility.

A. U.S. Customs Service Seizures

Customs personnel will follow Customs policies and procedures to make deposits into the Suspense Account, to transfer the seized cash to the Forfeiture Fund, or return the seized cash.

B. Seizures made by IRS, ATF, and USSS

Methods and Procedures for Depositing Seized Cash to the U.S. Customs Suspense Account

[Any of the four methods shown below may be used for making deposits into the Customs Suspense Account. However, the fourth alternative is the least acceptable. Therefore, seizing agency representatives will make every attempt to comply with one of the first three methods before using the 4th alternative.]

1. Direct Deposits at Federal Reserve Banks

Direct deposits of funds may be made at Federal Reserve Banks. Agencies will be required to have the following information to deposit monies into the Customs Suspense Account.

- a. Suspense Account Number - **20X6875(06)**
- b. Agency Locator Code - **20060094**
- c. Title of Account - **U.S. Customs Suspense Account**
- d. Your Agency Class Code -

Seized Currency	Cost Bond
IRS = 732	IRS = 736
USSS = 733	USSS = 737
ATF = 734	ATF = 738

- e. Amount - Must be punctuated with commas and decimal points (e.g., \$247,186.58). The dollar sign is optional.
- f. Narrative - The narrative must be used to further identify the deposit (e.g., seizure number, district, depositor's name and phone number, and other pertinent information).

2. Fed Wire (Wire Transfers) Deposits

Fed Wire or Electronic Funds Transfers (EFT) can be accomplished by the agency utilizing a commercial bank to forward funds to the Customs Suspense Account at the Federal Reserve Bank in New York.

A copy of the Deposit Ticket and a copy of the Deposit Information Form, Attachment "A", shall be FAXED to the ASD Forfeiture Fund Team the same day the EFT is executed.

There is no standardized format or form in the banking industry for the processing of wire transfers. Each bank is able to design a system that suits the bank's needs while effecting the business of wire transfers.

Most banks require the agency to have an account with the bank from which wire transfers will be drawn. Banks also charge a 'fee" for the wire transfer which currently averages about \$12.00 per transfer. The agency cannot have this fee amount deducted from the monetary amount being transferred. Each agency shall implement procedures to provide for the payment of the fee as incurred. Some banks may allow the wire transfer of funds without the sender having an account with the bank. Treasury law enforcement agencies may wish to negotiate an agreement to have such a bank process the wire transfer without establishing an account with the bank when this is the process of choice.

Since there is latitude on the part of commercial banks in their handling of wire transfers, it will be necessary for agency personnel to develop a business relationship with a bank in their geographical area and process wire transfers in accordance with their protocols and requirements.

Most banks have specific wire transfer forms that must be completed by the sender (Treasury law enforcement agency), prior to the acceptance of the wire transfer order. Some banks don't require such a form, but do require information that is input into a data system that prints out a form. The following information is generally required to send wire transfers to the U.S. Customs Suspense Account.

- a. ABA Number of Bank Receiving Funds - **021030004**
- b. Name of Bank - **FEDERAL RESERVE BANK NEW YORK**
- c. Bank Address - **New York, New York**
- d. Amount of Transfer - **\$000,000.00**
- e. Title of Account Receiving Funds - **U.S. Customs Suspense Account**
- f. Account Number - **20X6875(06)**
- g. Special Instructions/Remarks: **Include Seizure Number, Agency Class Code** [See References in 1 .D. above.] **If not a seizure, provide other identifying information the agency feels is pertinent.**
- h. Account Number from which funds are being drawn on (If Applicable)
- i. Account Name (**Your Agency Account Name**) - If Applicable
- j. Name, Address, Telephone Number of Sender
- k. A copy of the Wire Transfer Form shall be FAXED to the ASD, Forfeiture Fund Team, with the Deposit Information Form, Attachment A.

3. OPAC Deposits/Transfers

OPAC is Online Payments and Collections. It is an electronic transfer program that utilizes the GOALS (Government On-line Accounting Link System) system to transfer monies inter-agency. It requires that monies be placed in an agency suspense account in order to be able to transfer the monies to the U.S. Customs Service Suspense Account.

GOALS is utilized by the Fiscal Management Offices within your agency. This office requires specific information to complete the GOALS form and transfer the monies. Agency representatives will need to furnish the following information to effect a transfer.

- a. Agency Locator Code - **20060094**
- b. Agency Class Codes - (**See 1.d. above.**)
- c. Remarks Section of the GOALS transaction form will require a statement regarding the transaction (e.g., "This transfer to the USCS Suspense Account is for monies seized under seizure number 1234567 by IRS, ACC 732, North Central Region.").

4. Delivery of Monies to Treasury - EOAF

If the methods noted in 1,2,3 above cannot be accomplished by the agency, the agency may deliver cash, in the form of a cashier's check or other negotiable instrument made payable to the Department of the Treasury or the U.S. Customs Service to the Executive Office for Asset Forfeiture for deposit into the U.S. Customs Suspense Account.

The monies can be delivered in person or mailed to the:

Executive Office for Asset Forfeiture
740-15th Street, N.W.
Suite 700
Washington, D.C. 20220
Attn: Revenue Desk

Specific documentation to identify the check or other negotiable instrument must accompany the submission. Such documentation must include a seizure number, Agency Class Code, an indication whether the cash represents a seizure or a cost bond, a contact person and phone number of submitting office. The Deposit Information form, Attachment A, should accompany the transmission of the monies.

IV. DEPOSIT REPORTING REQUIREMENTS

Except for the U.S. Customs Service, whenever a deposit is made to the Customs Suspense Account by the other Treasury law enforcement agencies, a report of the deposit along with a copy of the Deposit Information Form, attachment A, must be FAXED to the ASD within 48 hours of the deposit. The purpose of this form is to ensure timely notice to the Customs Accounting Services Division (ASD) of the transmission of monies into the Suspense Account.

This process will enhance the ability of the Treasury Forfeiture Fund to maintain more effective and timely control of deposits to the Suspense Account.

- A. The Treasury law enforcement agency shall FAX to the **Accounting Services Division** (formally the NFC) **Forfeiture Fund Team**, the *Deposit Information* form as provided in Attachment A to this Directive.
- B. This form is not to be used in reporting cash and net proceeds of forfeited property received by Treasury agencies as their share from non-Treasury agencies. These funds, also known as Reverse Asset Sharing, shall continue to be forwarded to the Executive Office

for Asset Forfeiture, Attn: Revenue Desk, in accordance with VIII. B., page 16, of the Secretary of the Treasury's Guidelines for Seized and Forfeited Property, 10/1/93.

V. DISPOSITION INSTRUCTIONS FOR SEIZED, FORFEITED CURRENCY AND COST BONDS IN THE CUSTOMS SUSPENSE ACCOUNT OR TREASURY FORFEITURE FUND

All Treasury law enforcement agencies will implement the following procedures to ensure the uniformity of procedures within the administration of the Treasury Forfeiture Fund. Three forms have been developed to implement these procedures in providing disposition instructions for monies held in the U.S. Customs Service Suspense Account and/or the Treasury Forfeiture Fund. These forms are generic in substance, but agency specific by name. Their purpose is to allow the Treasury Forfeiture Fund to more efficiently and effectively control the disposition of funds on deposit in the Customs Suspense Account and/or the Treasury Forfeiture Fund.

These forms are entitled:

"Disposition Instructions for Currency Held in Customs Suspense Accounts"

[Attachment B]

NOTE: USCS SHALL NOT PREPARE ATTACHMENT B UNLESS THERE ARE ASSET SHARING REQUESTS PENDING AND/OR THERE IS A DISTRIBUTION OF FUNDS IN WHOLE OR IN PART OTHER THAN TO THE FORFEITURE FUND.

"Cost Bond Disposition Instructions"

[Attachment C]

"Request for Post Forfeiture Refund"

[Attachment D]

PROCEDURES

These forms have been developed to serve as the standard documents to effect the Disposition of Currency Held in Customs Suspense Accounts; Cost Bond Disposition Instructions; and Requests for Post Forfeiture Refunds. These forms will serve as authorizing and control documents to effect the action required. No other documentation will generally be required by EOAF or the Accounting Services Division.

1. Except for those portions of the form notated for EOAF use, the submitting agency should ensure that all applicable portions of the form are legibly completed, and the form is signed by the authorizing officer.
2. Completed forms should be submitted to or FAXED to:

Disposition Desk
Executive Office for Asset Forfeiture
740 15th Street, N.W.
Suite 700
Washington, D.C. 20220
FAX: (202) 622-9610

3. Each agency is responsible to maintain the operative documents, as established by agency policy, that direct the required dispositions.

**DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE**

DIRECTIVE NUMBER: 9

DATE: October 1, 1993

SUBJECT: Weed and Seed Initiative; Transfers of Real Property

EXECUTIVE SUMMARY

This directive describes the Weed and Seed Initiative and explains how federally forfeited real properties may be transferred to State and local public agencies and private non-profit organizations for use in support of the Weed and Seed Initiative. Importantly, this directive sets forth additional guidance to permit the expanded use of federally forfeited real property to support Weed and Seed programs.

The directive reviews the legal authority for this change in the sharing program. It then describes the procedure by which Weed and Seed transfers are to be accomplished. In summary, the process parallels the current sharing procedure, including use of TD F 92-22.46, consultation among Federal, State, and local law enforcement authorities, and final approval of real property transfers by the Secretary of the Treasury. Where there is a legal impediment to a Weed and Seed transfer through the participating State or local law enforcement agency, the transfer can still be accomplished through the U.S. Department of Housing and Urban Development (HUD). HUD will also play a consultant role in transfers made through State and local law enforcement agencies.

Generally, recipients will be expected to pay, prior to transfer, any mortgages and qualified third party interests against the real property transferred. Other costs will be paid from the Treasury Forfeiture Fund. No transfer will be made over the objection of a State or local law enforcement agency which is entitled to an equitable share of the net proceeds from the sale of the property to be transferred.

BACKGROUND

Weed and Seed is an initiative designed to reclaim and rejuvenate embattled neighborhoods and communities. Weed and Seed uses a neighborhood focused, two-part strategy to control violent crime and to provide social and economic support to communities where high crime rates and social ills are prevalent. The initiative first removes or "weeds" violent criminals and drug dealers from the neighborhoods. Second, the initiative prevents a reinfestation of criminal activity by "seeding" the neighborhoods with public and private-services, community-based policing, and incentives for new businesses. Weed and Seed is founded on the premise that community organizations, social service providers, and criminal justice agencies must work together with community residents to regain control and revitalize crime-ridden and drug-plagued neighborhoods. Weed and Seed includes both specifically funded projects, as well as cooperative initiatives not receiving targeted federal funding.

This directive establishes guidelines and authorizes the transfer of seized and forfeited real property, in appropriate cases, to States, political subdivisions and private non-profit organizations in support of the Weed and Seed Initiative.

A. General Authorization

1. 18 U.S.C. § 981(e)(2) and 31 U.S.C. § 9703(n) authorize the Secretary of the Treasury to transfer forfeited property to any federal agency, or to any State or local law enforcement agency that participated in the seizure or forfeiture of property.
2. Transfers made pursuant to 18 U.S.C. § 981(e)(2) must serve to encourage cooperation between the recipient State or local agency and federal enforcement agencies. Limitations and conditions respecting permissible uses of transferred property are set forth in The Secretary of the Treasury Guidelines on Seized and Forfeited Property.

B. Identification and Use of Forfeited Real Property

1. Investigative agencies, in conjunction with local United States Attorneys, are authorized to identify

seized or forfeited properties for potential transfer in support of the Weed and Seed initiative. Where appropriate, they shall consult with the U.S. Department of Housing and Urban Development. As properties are forfeited, appropriate Weed and Seed transfers will be made pursuant to the policies and procedures set out herein.

2. The proposed uses of any property to be so transferred must be in accordance with the Weed and Seed initiative, focusing on support of community-based drug abuse treatment, prevention, education, housing, job skills and other activities that will substantially further Weed and Seed goals. United States Attorneys are encouraged to consult with the Executive Office for Asset Forfeiture for guidance in particular cases. The property must also be suited to the proposed use and the use must be consistent with all applicable Federal, State and local laws and ordinances.
3. Any proposed transfer must have the potential for significant benefits to a particular community and these benefits must outweigh any financial loss or adverse effects to the Treasury Forfeiture Fund.

C. Transfer of Forfeited Real Property Pursuant to Weed and Seed Initiative

1. Sharing Requests

All requests for sharing of real property pursuant to the Weed and Seed Initiative shall be on a TD F 92-22.46 and must follow the established sharing procedures as outlined in the Secretary of the Treasury's Guidelines on Seized and Forfeited Property. The appropriate official of the seizing investigative agency must recommend the transfer. Approval by the office of the Secretary of the Treasury is required for transfers of forfeited real property.

2. Transfers to State and Local Agencies

The participating State or local law enforcement agency, or other governmental entity permitted by applicable laws to hold property for the benefit of the law enforcement agency, will receive the initial transfer of the real property. The State or local agency will then, pursuant to prior agreement, transfer the property to the appropriate public or private non-profit organization for use in support of one of the programs described above.

The authority of the participating State or local investigative agency to transfer forfeited real property to other State or local public agencies may vary from jurisdiction to jurisdiction. In each case, the issue must be addressed in the submitted TD F 92-22.46 prior to the sharing transfer to the State or local agency. See section 3 below for cases where there is an impediment to a transfer under this section.

3. U.S. Department of Housing and Urban Development Transfers

Transfer of forfeited real property under the Weed and Seed Initiative may, alternatively, be accomplished through the U.S. Department of Housing and Urban Development (HUD). In this regard, the Department of Treasury has statutory authority to transfer forfeited property to another federal agency. Under this option, after a property is identified as a suitable Weed and Seed transfer and is forfeited, title to the property will be transferred to HUD.

After the initial transfer, HUD will then retransfer the property to the preselected recipient, consistent with understandings reached in consultation with Federal, State and local agencies and the pertinent United States Attorney's Office.

D. Mortgages and Ownership Interests in Weed and Seed Transferred Real Property

1. Mortgages

Mortgages on real property transferred pursuant to the Weed and Seed initiative are not payable from the Treasury Forfeiture Fund. Liens and mortgages shall be the responsibility of the recipient State or local community-based organization.

2. Qualified Third Party Interests

Any secured debts or other qualified interests owed to creditors are not payable from the Treasury Forfeiture Fund. The payments of these interests are the responsibility of the recipient State or local agency or non-profit organization.

E. Asset Seizure, Management and Case-Related Expenses

Expenses incurred in connection with the seizure, appraisal, or security of the property are payable from the Treasury Forfeiture Fund. Case-related expenses incurred in connection with normal proceedings undertaken to protect the United States' interest in seized property through forfeiture, are also payable from the Treasury Forfeiture Fund.

F. Law Enforcement Concurrence

Any State or local law enforcement agency that would otherwise receive an equitable share of proceeds from the sale of a forfeited property must voluntarily agree to forego its share before a Weed and Seed transfer will be authorized.

G. Contact Point

Questions regarding this policy and procedure may be directed to the Executive Office for Asset Forfeiture, (202) 622-9600.

**DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE**

DIRECTIVE NUMBER: 14

REVISED DATE: October 1, 1995

**SUBJECT: Expeditious Payment of Liens, Mortgages and Taxes by
The Department of the Treasury**

BACKGROUND

This Treasury policy governs the settlement and payment of perfected liens, taxes, and mortgages. The lien or mortgage is "perfected" when a security interest in property, as determined by the laws of the state where the property is located, is filed with and accepted by the court.

This revised policy, in effect, shall treat the payment of perfected liens, taxes, and mortgages in an expeditious manner for all property subject to a judicial "final judgement" or "final order of forfeiture"; or a "summary judgement" in an administrative forfeiture proceeding.

For the purposes of this policy "final judgement", "final order of forfeiture", and a "summary judgement" shall mean a judgement or order that vests all rights, title, and interest in the forfeited property in the United States, and as to which all appeals are exhausted and conclusive upon the matter.

This policy shall enhance the Department's ability to ensure a timely closing on property, particularly real property, and ensure a clear title for the transfer of the property.

PROCEDURES

1. For judicial forfeitures involving real property, it is the responsibility of the seizing agency to know that the final order of forfeiture is filed with the appropriate county or municipal officials prior to issuing instructions for the disposition of the property.

The recording of the final order and the lifting of the lis pendens is the responsibility of the Office of the U.S.

Attorney.² The seizing agency shall advise the U.S. Customs Service Seized Property Specialist/ Seized Property Custodian (SPC/SPS), in writing, of the date the documents were filed when disposition instructions are provided the SPC/SPS.

It is in the best interests of the Department to ensure that all final orders are timely filed or recorded. In those judicial districts where the AUSA is unable to timely provide this function of his/her office, the Treasury law enforcement agency may file and record documents as required.

2. Seizing agency personnel shall ensure that a copy of the judgement or order of forfeiture and disposition instructions are presented to the SPC/SPS for disposition within ten (10) days of their learning that the final order has been recorded with the appropriate county or municipal office(s).

In addition, if the forfeiture is a judicial forfeiture, the seizing agency shall forward a copy of the final judgement or the final order of forfeiture to their agency headquarters office as required.

3. The SPC/SPS shall ensure that the Disposition Order, copies of court documents, and the agency's instructions are provided to the national seized property contractor within three (3) business days of the receipt of the documents from the seizing agency.
4. The national seized property contractor will verify lien, mortgage, and tax information, conduct appropriate title and appraisal actions; and advise the seizing agency of any discrepancies that may require resolution by the seizing agency.
5. If the national seized property contractor does not find any discrepancy that could delay the sale and closing of the property, the contractor will send a letter to the

² See page 86, No. 2, Chapter 4, Department of Justice, Asset Forfeiture Manual, Volume 1, Law and Practice.

seizing agency requesting concurrence for payment of liabilities and the initiation of sale.

6. The seizing agency will return the letter of concurrence to the national seized property contractor within 10 calendar days. If objections or concerns about the letter occur, the seizing agency shall contact the national seized property contractor's district office to resolve the issues.
7. If the national seized property contractor receives no objections to the letter of concurrence the contractor shall send copies of the signed concurrence document, as well as final tax and lien payoff information to EOAF for review and funding approval.
8. EOAF affixes the appropriate accounting strip data to the paperwork, and approves the funding for these obligations. The EOAF provides the package to the Accounting Services Division, formerly the National Finance Center, within five working days of receipt.
9. The Accounting Services Division (ASD) shall ensure that approved payments are distributed within fourteen (14) calendar days from receipt of the payment approvals from EOAF. The ASD shall notify the national seized property contractor when tax and lien payments are made.
10. Upon sale and subsequent closing of real property, the national seized property contractor shall ensure that the gross proceeds of the sale are provided to the ASD within five days of the date the funds are received from the closing agent.

POLICY GOALS

1. Liens, mortgages, taxes and other liabilities are paid as soon after forfeiture as practical.
2. Property taxes shall be paid only to the date of forfeiture, unless statements to the contrary are contained in the court order.

3. Sales of real property should occur within three months of the date that all liens and taxes are satisfied.
4. Closing should occur within 45 days of the date of sale.
5. Gross revenues from the closing of the property should be provided the ASD within 5 days of the date the national seized property contractor receives the funds from the escrow agent.

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NUMBER: 18

REVISED DATE: October 3, 1995

SUBJECT: Policy for Payment(s) to Local, County, and State
Police Officers Participating with Treasury Law
Enforcement Agencies

BACKGROUND

Money from the Treasury Forfeiture Fund (TFF) may be used to pay reimbursable costs incurred by local, county, and state police law enforcement agencies when their members participate in joint operations with Treasury law enforcement agencies. Overtime salaries, travel, fuel, training, equipment, and other similar costs of local, county and/or state law enforcement officers that are incurred in a joint law enforcement operation with a Treasury law enforcement agency participating in the TFF will be authorized for payment. The following general guidelines are applicable to this policy.

1. The costs to be funded must be costs of a local, county or state law enforcement officer. This authority does not include costs of federal personnel, private parties, administrative personnel, or other local, county or state officials who are not classified as "law enforcement officers." It will, however, include permissible costs incurred by local or state prosecutors.
2. The local, county or state law enforcement officer(s) must be involved in a joint law enforcement operation with the Federal Government. Not all joint activity is a "joint operation". A more detailed definition of "joint" operation is presented below. All costs to be funded must be directly related to the joint law enforcement operation.
3. The joint law enforcement operation must be with a Treasury law enforcement agency participating in the TFF. At this time, this policy covers joint operations, including OCDEF cases, where the Treasury law enforcement agency is the

lead or sole federal agency. The Treasury law enforcement agencies are:

- a. Bureau of Alcohol, Tobacco and Firearms;
- b. Internal Revenue Service, Criminal Investigation Division;
- c. United States Customs Service; and
- d. United States Secret Service.

The Department of Justice has similar authority with respect to joint operations with Department of Justice law enforcement agencies.

4. Payments can only be used for those expenses that are authorized by statute. It is clear that the statute does not authorize the payment of direct salaries of local, county or state officers, either directly or indirectly.
5. Joint Law Enforcement Operation

We interpret a "joint law enforcement operation" as meaning a law enforcement effort which:

- a. Is designed to disrupt crime through the arrest of criminal offenders and the seizure of tainted assets, using accepted methods of investigation such as intelligence gathering and sharing, evidence gathering, informant debriefing, witness interviews, crime scene and forensic analysis, electronic monitoring, data analysis, etc.;
- b. Is conducted using authorized methods of investigation in order that the arrests and seizures become effective prosecutions and forfeitures before the courts of the United States or of the state in which the operation exists; and
- c. Involves direct participation of a least one agent of a federal agency participating in the TFF in other than an oversight or coordination capacity; that is, in an operational capacity.
- d. The phrase "direct involvement" is defined as significant sustained participation in investigations, arrests, prosecutions, and related activities.

Federal agency resources need not be actively engaged in the operation at all times; nonetheless, they should be committed when the joint law enforcement operation is active. During periods when the joint operation is inactive, no local, county or state costs can qualify for funding. Agent participation is essential to, but not the only measure of, federal participation in a joint operation. The federal participation can be bolstered through the provision of intelligence data, informants, administrative support, and federally-owned equipment and/or space. The operational activities of the joint operation must represent a significant and official part of the duties of the agents assigned to the operation. This entails work beyond that of an advisory nature, and also beyond emergency or circumstantial operational assistance.

In situations where there is insufficient federal, state or local participation to stage a formal joint operation, the same analysis can be conducted on a case-by-case basis. Of course, the costs eligible for reimbursement are also limited to a case-by-case analysis. While this complicates record-keeping to pass audit, it will permit some local, county or state costs to be eligible for funding.

- e. Monies funded for a particular joint law enforcement operation may only be used for that operation. These funds are not a grant to the local, county or state law enforcement agency.
- f. It is the responsibility of the involved Treasury law enforcement agency to ensure that the local, county or state costs are permissible costs under the statute and are costs directly related to the joint law enforcement operation.

I. GENERAL POLICY

- A. Payments may be made to the extent they are included in the Treasury law enforcement agency's Fiscal Year Plan, and the monies are available within the fund to satisfy the request.

- B. As a general rule, the reimbursable payment of overtime costs incurred by local, county or state law enforcement agencies participating in a Treasury law enforcement agency investigation shall be limited to \$13,000.00 per fiscal year, per officer.
- C. Examples of Permissible Use of Reimbursement Costs
 - 1. Overtime for local, county state law enforcement personnel, travel, and training for the same, surveillance equipment to be used in the operation, cellular telephone costs, payments to confidential informant purchase of stolen property as evidence, and space/automobile rental.³
 - 2. Remote body-worn transceivers for undercover work, purchase or lease of unmarked vehicles, and training for officers assigned to the joint operation.
 - 3. Rental of off-site locations for electronic monitoring, rental of an off-site command post, and costs of translation of evidentiary tapes.
 - 4. Leasing of copying or facsimile machines only if the machines are used solely for the joint operation.

II. PROCEDURES

A. AGREEMENT

- 1. If Treasury law enforcement agencies desire to pay costs of overtime they shall enter into an agreement with local, county and state law enforcement agencies whose officers are assigned to investigative task forces where a Treasury law enforcement agency is serving as the lead investigative agency.

³ Monies may never be utilized to cover the costs of salaries or benefits. Investigative expenses do not cover public education, violent crime and rape assistance programs, and similar outreach efforts.

A sample of the agreement is included as Attachment A. This agreement is provided as a guideline and may be modified to meet local requirements.

B. LOCAL/COUNTY/STATE REQUIREMENTS

1. Each participating local, county or state law enforcement agency shall maintain sufficient, accurate records to support any claims for reimbursement of expenses. These records may contain, but are not limited to:
 - a. Records required by federal, state and local taxing authorities,
 - b. Records required by the labor departments,
 - c. Records required by state/local law or policy.
 - d. Original invoices for services, equipment, travel, etc.
2. Each participating local, county or state law enforcement agency shall submit on agency letterhead "certified as accurate" copies of payroll records, or statements of overtime costs incurred, to support the request for reimbursement to the lead Treasury law enforcement agency for review and authorization for payment.

Each of these requests shall contain at a minimum:

- a. Name(s) of officer(s)
- b. Social Security Number
- c. Title of Officer

- d. Dates and Times Officer(s) was/were engaged in overtime activity in support of the task force investigation.
 - e. Cost per overtime hour for each officer
 - f. Total costs being requested for each officer
 - g. A statement that the documentation is "certified as accurate" by a principal officer of the local, county or state law enforcement agency.
3. Local, county and/or state law enforcement agencies shall submit requests for reimbursement of expenses, applicable to this policy, on official agency letterhead and include "certified as true" copies of original invoices, statements, bills, etc. to fully document and support the request.

C. PROGRAM AUDIT

This program is subject to audit by the Treasury Law Enforcement Agency, the Department of the Treasury Inspector General, the Government Accounting Office and any other government designated auditing organization.

These audits may include reviews of any and all records, documents, reports, accounts, invoices, receipts or expenditures relating to this program; as well as the interview of any and all personnel involved in this program.

Both the Treasury law enforcement agency and the local/county/state law enforcement agency shall maintain all records relating to these transactions for three years; and in the event of an on-going audit, until the audit is completed.

D. TREASURY LAW ENFORCEMENT AGENCIES

1. Treasury law enforcement agencies shall ensure that a completed agreement is on file for each

local, county or state law enforcement agency requesting reimbursement of overtime costs.

2. Treasury law enforcement agencies shall have the form entitled "REQUEST TO ESTABLISH REIMBURSEMENT FOR JOINT OPERATION" completed and forwarded to the address shown below to establish an obligation to pay these overtime costs. (The form is provided as Attachment B to this Directive)

Joint Operations Desk
Executive Office for Asset Forfeiture
Suite: 700
740 15th Street, N.W.
Washington, D.C. 20220
FAX: (202) 622-9610

3. Upon receipt of the document, the Fund will establish an obligation to pay subsequent claims for overtime reimbursement.
4. When the Treasury law enforcement agency receives the invoice for overtime costs, they shall review and verify the participation of the agency in the investigation, the number of officers and the number of hours being requested for reimbursement. The package shall then be forwarded to the address shown in "2" above.
5. This same form shall be used to obligate all fiscal requirements for joint operations with local, county or state law enforcement entities consistent with the appropriate provisions of 31 U.S.C. 9703, as provided for in The Secretary of the Treasury's Guidelines for Seized and Forfeited Property, October 1, 1993.

E. EXECUTIVE OFFICE FOR ASSET FORFEITURE

1. If the request cannot be processed for payment, the agency liaison will be requested to resolve outstanding issues.

2. If the request is processed for payment, the request will be forwarded to the National Finance Center (NFC) for payment to the appropriate local, county or state law enforcement agency.

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NUMBER: 27

DATE: October 1, 1995

SUBJECT: Processing Interlocutory Sales

BACKGROUND

The administrators of the Treasury Forfeiture Fund are responsible for the disposition of seized and forfeited property. The national seized property contractor routinely sells properties that have been forfeited. In some instances, the court orders that seized property be sold prior to forfeiture and that the net monies received from that sale be considered substitute res for the seized property. This is accomplished by an Interlocutory Sale order from the court.

This Directive provides policy guidance to Treasury law enforcement agencies, and the national seized property contractor.

PROCEDURES

A. Treasury Law Enforcement Agencies

1. The seizing agency shall ensure that all lien, mortgage, and 3rd party claims are presented to the Assistant United States Attorney (AUSA); and that the distribution(s) which are lawfully due from, or as a result of, the sale of the property are clearly spelled out in the court order.
2. Upon receipt of an Interlocutory Sale order from the AUSA, the seizing agency's representative will promptly arrange for a Disposition Order for the sale of the subject property(ies). The Disposition Order along with a copy of the Interlocutory Sale order will be provided to the national seized property contractor, through the United States Customs Service Seized Property Custodian/Seized Property Specialist. A copy of the Interlocutory Sale order and the

Disposition Order should also be sent to the Executive Office for Asset Forfeiture by the seizing agency..

3. After the completion of the interlocutory sale, the Treasury law enforcement agency shall update its internal property tracking system to reflect the amount of the substitute res as the amount representing the seized and/or forfeitable value of the seizure.

B. National Seized Property Contractor

1. The national seized property contractor shall arrange for the sale of the property in accordance with the Statement of Work and the Interlocutory Sale order.
2. If there is a deposit posted for the subject property, the national seized property contractor shall transmit the deposit to the U.S. Customs Accounting Services Division (ASD), formally the NFC, in accordance with established procedures. The transmittal will clearly identify the deposit as an amount from an Interlocutory Sale and instruct the ASD to deposit it in the suspense account.
3. At the closing, the closing agent will accept the full payment for the property, deducting any payments for approved liens, taxes, mortgages, costs and legal fees associated with the closing, in accordance with the Interlocutory Sale order, and provide the national seized property contractor with the *net* balance to be forwarded to the ASD.
4. The total dollar amount of the deposit plus the net amount derived from the sale shall be identified as the substitute res for the subject seizure.
5. The national seized property contractor, upon receipt of the total *net* balance of the sale, shall notify the appropriate seizing agency office of the total *net* amount, now identifiable as the substitute res, in order that the Treasury law enforcement agency can update their internal seized property tracking system.

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NUMBER: 33

DATE: June 7, 1999

SUBJECT: Seizure of Motor Vehicles, Payment of Liens and
Official Use Requirements

I. Summary of the Directive's Intent

The purpose of this directive is to update the policies for seizing, forfeiting and retaining motor vehicles for official use found in the Department's Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (dated October 1, 1996), and EOAF Directives 20 and 22. Highlights of the directive are as follows: 1.) establishment of a \$5,000 minimum net equity requirement for retention of motor vehicles for official use; 2.) elimination of the \$25,000 ceiling for payments of liens to retain vehicles for official use; 3.) establishment of a uniform motor vehicle appraisal methodology using the N.A.D.A. Blue Book "low retail value."

II. Pre-Seizure Evaluation

A. Criteria for Seizure

Prior to the seizure of any vehicle for forfeiture, the seizing officer should ensure that the subject vehicle meets either the criteria for seizure or one of the exceptions to those criteria outlined in EOAF Directive 20, dated September 23, 1994 (copy attached). To the greatest extent possible, Treasury agencies should refrain from seizing leased vehicles for forfeiture. In the event that it is necessary to seize a leased vehicle, the seizing agency should remit the vehicle to the lessor as soon as practicable after seizure. No liens will be paid for leased vehicles.

B. Consideration of Expedited Dispositions of Vehicles Valued Less Than \$2,500

If a Treasury agency decides to seize for forfeiture a vehicle with an appraised value of less than \$2,500.00, the seizing agency should consider an expedited disposition, either sale or destruction, to avoid incurring unrecoverable property storage and management costs. Expedited dispositions are provided for in 19 U.S.C. 1612 (otherwise known as the "Junker Provision"). The use of the expedited disposition provisions applies to Treasury agency administrative forfeitures pursued under the authority of 19 U.S.C. 1607.

To establish a uniform appraisal methodology and a standard source for the appraised value of seized vehicles, the N.A.D.A. Blue Book "low retail value" is to be used by the seizing agencies and the national seized property contractor for assigning "appraised" or "fair market" values.

III. Post-Seizure Administrative Processing

A. Written Notice of Seizure to Lienholders

All notices of seizure sent to lienholders must inform them of their right to petition for relief and advise them of the types of relief available. The types of relief available to lienholders are as follows:

1. Pre-forfeiture release upon submission of an Agreement for Posting of an Equity Bond and deposit of an equity bond as prescribed under EOAF Directive 22.
2. Post-forfeiture release of a seized vehicle upon payment of the difference between the appraised value and the lienholder's net investment or equity in the vehicle, or payment of the total seizure costs, whichever is the higher amount (revised Treasury Rules for Remission of Vehicle Forfeitures dated December 13, 1971).

3. Post-forfeiture payment of the lesser amount of the appraised value or unpaid principal balance owed on an installment agreement to retain a vehicle for official use. The lienholder should be advised that Treasury will not pay unearned interest and that the "Rule of 78's" will be applied by EOAF to determine the amount of the unearned interest and the unpaid principal balance.
4. Post-forfeiture payment of a lien from the "net" proceeds of sale. The net proceeds are calculated by subtracting all seizure costs from the gross proceeds of sale.

The seizure notices should state that Treasury will not make payments which exceed the unpaid principal balance, net proceeds of sale, or the appraised value at the time of seizure, whichever is the lower amount. Lienholders must provide documentation to support the amount of unpaid principal claimed in the petitions.

B. Determining Suitability for Official Use

The seizing or requesting Treasury agency is responsible for determining whether a seized vehicle is suitable for retention for official use based on the internal guidelines for that agency. A request to pay a lien to retain a forfeited vehicle for official use should include an approved agency retention request, signed by the responsible agency official (ex. fleet manager), which certifies that the subject vehicle is suitable for official use.

IV. Post-Forfeiture Processing

A. Net Equity Requirements to Retain Forfeited Vehicles for Official Use

Prior to requesting payment of a lien to retain a forfeited vehicle for official use, the seizing agency should ensure that there is at least \$5,000 in net equity in the vehicle. The Director, EOAF, will not authorize payment of liens to retain vehicles for

official use when there is less than \$5,000 in net equity. The Director, EOAF may approve limited exceptions to these dollar limits if the exceptions are determined to be in the best interests of the government.

B. Dollar Limits for Satisfying Liens to Retain Vehicles for Official Use

Requests to pay liens to retain forfeited vehicles for official use, regardless of the dollar amount, will be entertained by EOAF as long as the net equity requirements are satisfied. However, a detailed memorandum that articulates a justification for the request must accompany any request for payment of a lien in excess of \$25,000. The maximum amount to be paid will be the lesser of the appraised value or the unpaid loan principal.

C. Requesting EOAF Approval of Lien Payoffs to Retain a Vehicle for Official Use

Once a vehicle desired for official use is forfeited, the seizing agency must obtain a written agreement from the lienholder to accept payment of the lesser amount of the unpaid principal balance or the appraised value prior to submitting a request for payment of the lien to EOAF. If the lienholder refuses to provide such an agreement, they should be notified that the vehicle will be sold at auction and that the lien will be satisfied from the net proceeds of sale. If the lienholder agrees to accept payment of the lesser of the unpaid principal balance or appraised value to satisfy the lien, then, the seizing agency should forward that agreement along with the required documentation and information specified on the attached **Lien Payment Checklist** to EOAF for review. The request should specify to whom to make the check or Electronic Funds Transfer (EFT) payable, and to what address or account the payment is to be sent. ACH Vendor/Miscellaneous Payment Enrollment Forms should be provided to any lienholder to facilitate EFT payments. All lien payment requests should be routed through a designated Treasury agency headquarters office prior to being forwarded to EOAF for approval.

D. Requesting Payment of a Vehicle Lien from the Net Proceeds of Sale

Once a forfeited vehicle is sold, the seizing agency must forward to EOAF with its cover memorandum a copy of the validated, accomplished disposition form, which states the gross sales proceeds, a statement indicating the appraised value at the time of seizure, and any other required information and documentation specified on the **Lien Payment Checklist**.

E. Payment of Liens Related to "Task Force" Seizures

Payment of liens related to "task force" seizures from the TFF may only occur when a Treasury agency is the affiant on a seizure warrant, is identified as the seizing agency, or maintains a vehicle pending forfeiture.

F. EOAF Review

The lien payment requests and supporting documentation should be sent to the Director, EOAF, Attention: Seized Property Team, 740 15th Street, NW, Suite 700, Washington, DC 20220. Upon receipt of the request, EOAF will review the information and decide whether or not to approve the request. EOAF will apply the Rule of 78's to determine the unearned interest and the amount of the unpaid principal. If additional information or documentation is needed to complete the review, EOAF will contact the requesting agency liaison to obtain the necessary information or documentation. Once the requests are approved, EOAF will forward them to the Customs Accounting Services Division (ASD) for payment processing.

It is the responsibility of the requesting office to notify EOAF when expedited action is required to comply with the terms of a court order. The seizing agency must communicate to the involved AUSA the need to include reasonable time limits for the accomplishment of lien payments in court orders. A 90 day time period from the date of issuance of a forfeiture order or from the date of sale is the recommended standard.

V. Treasury Agency and EOAF Responsibilities

It is the responsibility of the seizing Treasury agency to ensure that lien payment requests are approved prior to retaining or transferring forfeited vehicles for official use. Additionally, the seizing Treasury agency must ensure that requests for payment of liens do not occur until the subject vehicles are forfeited, and that the amounts of the payment requests do not exceed the lesser of the appraised value, net proceeds of sale or the unpaid loan principal balance. EOAF will be responsible for expeditiously approving all properly documented lien payment requests, and ensuring that the approved requests are forwarded timely to the ASD for payment processing. EOAF will convene quarterly meetings of the Treasury agency liaison officers to discuss available forfeited vehicles not desired for official use by the forfeiting agency.

Attachment

Lien Payment Checklist

Necessary Information

Seizing Agency: _____ Seizure Number: _____

Seizure Date: _____ Forfeiture Date: _____

Vehicle Year/Make/Model: _____

N.A.D.A. Low Retail Value: _____ Vehicle Mileage: _____

Gross Sale Proceeds (if applicable): _____

Total Contractor Costs: _____

Total Agency Costs (advertising, awards, etc.): _____

Lien Payment Amount Requested by Lienholder: _____

Name of Lienholder/Payee: _____

Address of Lienholder/Payee: _____

EFT Nine Digit Routing Transit Number: _____

Account Number: _____

Required Supporting Documentation

A. Documents required in every case

- Cover memorandum addressed to the Director, EOAF requesting payment of a lien
- Legible copy of the original loan installment agreement
- Lien Payoff Statement indicating the number of payments made and those remaining
- Administrative Declaration or Judicial Decree of Forfeiture
- Contractor costs statement

B. Additional documents required for vehicles desired for official use

- Lienholder agreement to accept payment of the lesser of the unpaid principal or the appraised value
- Approved retention request
- Vehicle Condition and Inventory Form

C. Additional documents required for payment from proceeds of sale

- Copy of the validated, accomplished disposition form which verifies that the vehicle was sold and indicates the gross proceeds of sale

**DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE**

DIRECTIVE NUMBER: 34

DATE: January 17, 2000

SUBJECT: Adoptive Seizure Policies and Procedures

BACKGROUND

The Department of the Treasury approach to adoptions was established in 1992, at a time when the majority of states did not have statutory authority to seize and forfeit. That process was created to provide a mechanism allowing Treasury law enforcement bureaus to assist: (1) states not possessing the requisite authority to forfeit criminally obtained property, and (2) in cases where the scope of the investigation (multi-state violators or international) warranted federal investigation.

Since that time, the majority of states have obtained statutory seizure/forfeiture authority, thereby significantly decreasing the need for adoptions. The purpose of this directive is to clarify the circumstances under which adoptions are appropriate.

The policies and procedures set forth by this directive are intended to ensure consistent review and handling of state and local seizures presented to a Treasury law enforcement agency for adoption. In all cases, state and local law enforcement agencies should be encouraged to pursue forfeiture under state laws whenever possible. However, a Treasury law enforcement agency may offer assistance through adoption consistent with these policies and procedures.

GENERAL ADOPTION POLICIES

Basis for an Adoption

The acceptance of state and local seizures for adoption by Treasury agencies must be made in a manner consistent with the Treasury Forfeiture Fund program goals of:

1. Deterring illegal activity by forfeiting assets acquired through or involved in illegal activity.

2. Ensuring and protecting the due process rights of affected persons.

This must be carried out in a standardized manner that ensures a review process by Treasury bureaus prior to the adoption. The purpose of the review is to ensure that the adoptive seizures are requested timely, and that they are not being requested as a means of circumventing a state forfeiture. At a minimum, there must be a state violation and probable cause to forfeit under a federal statute.

Definition of an Adoption

Adoptive seizures are **only** those seizures where 100% of the pre-seizure activity and related investigation are performed by the state or local seizing agency before a request is made for a Treasury adoption. There must be a state violation and a federal basis for forfeiture in order for the seizure to be a true adoption. The federal share in adoptive cases is generally 20% of net proceeds and the state or local share is 80%. **Joint operations or task force cases are not adoptive seizures.**

Circumstances for Considering Adopting a Seizure

As a general rule, if a state or local agency has seized property as part of an ongoing state criminal investigation and the criminal defendants are being prosecuted in state court, the forfeiture action should also be pursued in state court.

Treasury personnel in the field should consider adopting a state or local seizure only in circumstances that may make a federal forfeiture appropriate. This does not preclude standard pre-seizure consideration of the asset presented for adoption, nor does it relieve adopting officials of the duty to verify that seized property presented for adoption is forfeitable under federal law and that its seizure was based upon probable cause.

Circumstances that may make federal forfeiture appropriate include, but are not limited to the following:

1. The pertinent state or local prosecuting official has reviewed the case and has declined to initiate forfeiture proceedings.

2. State and local law enforcement officials request federal assistance and state a belief that:
 - A forfeiture action could not be maintained under state law.
 - The seized asset poses unique management or disposition problems.
 - State laws or procedures will delay the forfeiture and adversely affect the rights of the parties that have an interest in the property, or cause significant diminution in the value of the asset.
 - Federal adoption will enhance the scope and objective of the overall criminal investigation.

Requirements for an Adoption

The following requirements should be met before a Treasury agency agrees to adopt a state or local seizure:

1. The state or local agency must conduct all of the pre-seizure and underlying investigative activity before requesting a Treasury adoption of the seizure.
2. There must be a violation of state law and a basis for forfeiture under federal law.
3. The state prosecutor must have declined to take the seizure to forfeiture.
4. A turnover order must be obtained if required by state law.

Federal Judicial Review/Pre-Seizure Analysis

Prior to presentation for federal judicial review, a full pre-seizure analysis should be performed by the Treasury agency.

GENERAL ADOPTION PROCEDURES

Federal Adoption Form

All requests for adoption must be reported on a form entitled "Request for Adoption of State or Local Seizure." The requesting state or local agency should complete the form, but

federal personnel may at their discretion complete the form for the requesting state or local agency.

The state or local agency must also complete the Treasury Equitable Sharing Request Form (TDF-92.22.46) within 60 days of the federal adoption of a state or local seizure. All information provided must be complete and accurate. An estimate of fair market value must be provided for each item of seized property presented for adoption and any liens and lienholders must be identified. Copies of any investigative reports and of any affidavits in support of warrants pertinent to the seizure should be attached.

Federal Investigative Agency Review and Approval

The adopting federal agency must review and accept or decline adoption requests promptly. Absent exceptional circumstances, the request for adoption must be accepted prior to the transfer of the property to federal custody.

The adoption must be approved by the principal Treasury field officer (e.g., SAIC [Special Agent in Charge] or District Chief [Criminal Investigation]). The principal Treasury field officer shall ensure that the basis for said approval is consistent with the requirements of this Directive.

Time Period to Request an Adoption

State and local agencies have 30 calendar days from the date of seizure to request a federal adoption. The 30-day rule can be waived based upon written request to the adopting Treasury agency stating the reason for the late submission and describing the circumstances that caused the delay. The adopting Treasury agency should support a waiver request only when unique circumstances are presented as the basis for non-compliance with the 30-day requirement.

Notice Requirements

Prior to approval of an adoption, the state or local agency must not state or imply that a federal agency is the seizing agency or has any law enforcement interest in the property. Once adoption is approved, then notice to all interested parties will be executed by the adopting federal investigative agency pursuant to federal law and policy.

Retention of Custody by State or Local Agency

A state or local agency that presents conveyances for a Treasury adoption may be asked to serve as substitute custodians of the property pending forfeiture if it appears that the conveyances will be requested through equitable sharing. Any use of such conveyances, including official use, by state or local law enforcement officials or others is prohibited until such time as the forfeiture is completed and the equitable transfer is made. Adopted cash and real property must, however, be turned over to the custody of the Treasury agency adopting the seizure.