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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

January 8, 2020

Re: FOIA Case 2019-12-072

**VIA EMAIL**

This is the Department of the Treasury's (Treasury) final response to your Freedom of Information Act (FOIA) request dated December 14, 2019. You requested "A copy of each of the following numbered TEOAF directives, from the Treasury Executive Office for Asset Forfeiture: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20, 25, 27, 29, 30, 32, 34, 36, 37, 38, and 39."

Your request has been processed under the provisions of the FOIA, 5 U.S.C. § 552. The enclosed responsive documents are deemed fully releasable and no exemptions have been claimed. There are no fees assessed at this time since allowable charges fell below the threshold for search and duplication.

If you would like to discuss this response you may contact Paul Levitan, the FOIA Public Liaison, for assistance via email at [FOIAPL@treasury.gov](mailto:FOIAPL@treasury.gov), or via phone at (202) 622-8098.

A FOIA Public Liaison is a supervisory official to whom FOIA requesters can raise questions or concerns about the agency's FOIA process. FOIA Public Liaisons can explain agency records, suggest agency offices that may have responsive records, provide an estimated date of completion, and discuss how to reformulate and/or reduce the scope of requests in order to minimize fees and expedite processing time.

If additional questions arise concerning this action, please contact Samuel Giovannucci at (202) 622-1391; or via email at [FOIA@treasury.gov](mailto:FOIA@treasury.gov). Please reference 2019-12-072.

Sincerely

Paul

Levitan

Paul Levitan

Director, FOIA & Transparency

Digitally signed  
by Paul Levitan

Date: 2020.01.08  
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Enclosures:

Copy of the Original FOIA Request  
Responsive Documents (112 pages)

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

**DIRECTIVE NO. 1**

**DATE:** November 28, 2014

**SUBJECT:** Restrictions on Purchase of Forfeited Property

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 1 provides guidance concerning the purchase of forfeited property.

2. **SCOPE.** This Directive applies to employees of the Department of the Treasury (Treasury), and similar policies have been interpreted to apply to employees of the Department of Homeland Security (DHS) agencies participating in the Treasury Forfeiture Fund (TFF).

3. **POLICY.** Treasury employees are prohibited from purchasing property, directly or indirectly, that is owned by the Government and under control of the employee's bureau or sold under the direction or incident to the functions of the employee's bureau. Purchase of property forfeited by another federal agency or bureau is discouraged.

4. **GUIDANCE.**

A. The objective of this policy is to protect the integrity of the asset forfeiture program, and to ensure that there is no actual or apparent use of inside information by employees wishing to purchase such property. This policy is consistent with Treasury regulations, specifically, 5 C.F.R. § 3101.103.

B. DHS and its components have similar restrictions on the purchase of forfeited property. DHS employees should contact the Designated Agency Ethics Official, or the appropriate Office of Chief or Legal Counsel to discuss the applicable ethics rules, policies and regulations.<sup>1</sup>

C. Waiver. An employee may make a purchase that is otherwise prohibited when a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the Designated Agency Ethics Official, or the appropriate Office of Chief or Legal Counsel. Such waivers may be granted only upon a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. Please consult with the Designated Agency Ethics Official, or the appropriate Office of Chief or Legal Counsel for more information.

5. **AUTHORITY.** 31 U.S.C. § 9703; 5 C.F.R. § 3101.103; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19,

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<sup>1</sup> The DHS agencies that participate in the TFF are deemed to be Treasury law enforcement organizations for purposes of the Treasury forfeiture program. See 31 U.S.C. § 9703(o). Accordingly, in past circumstances, DHS bureau counsel in consultation with other relevant regulations and with TEOAF counsel, have determined that the prohibition applies to employees of DHS agencies participating in the TFF.

1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-1 4, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

6. **INFORMATION CONTACT.** All inquiries pertaining to this Directive should be directed to the Designated Agency Ethics Official, or the appropriate Office of Chief or Legal Counsel, or to TEOAF's Legal Counsel at (202) 622-9600.

7. **CANCELLATION.** TEOAF Directive No. 1, "Purchase or Personal Use of Forfeited Property by Treasury Employees," October 1, 1993, is hereby superseded.

8. **EFFECTIVE DATE.** November 28, 2014.

/S/

John M. Farley  
Acting Director  
TEOAF

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

**DIRECTIVE NO. 2**

**DATE:** February 5, 2015

**SUBJECT:** Seizures of Financial Instruments

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 2 describes procedures and responsibilities for handling financial instruments seized for forfeiture. The value of such monetary instruments can be lost or diminished, if proper procedures are not followed.

2. **SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF) and TEOAF.

3. **POLICY.** Seizing agencies shall accept custody of and maintain seized financial instruments until forfeiture and dispose of such financial instruments in accordance with the procedures established in this Directive. Once the seized financial instruments are liquidated, the policy and procedures in TEOAF Directive 4, "Seized Cash Management," are to be followed unless otherwise indicated herein.

4. **SEIZING AGENCY RESPONSIBILITIES.** The seizing agency is responsible for accepting custody of financial instruments seized for forfeiture, maintaining them until forfeiture, and disposing of them in accordance with the procedures established in this Directive. The seizing agency will be the property custodian of the seized financial instruments unless otherwise directed by the courts. If the financial instruments have evidentiary value, then their processing must be done in conjunction with the advice of the U.S. Attorney's Office (USAO) handling the legal proceeding.

5. **PROCEDURES.**

**A. Postal Money Orders**

(1) Immediately following seizure, the seizing agency shall send a letter containing: (a) a list of the serial numbers; (b) the amount of each money order; and (c) a statement that the Government has seized the money orders and they are subject to forfeiture, to the following address:

U.S. Postal Inspection Service  
Criminal Investigations Group  
National Money Order Coordinator  
475 L'Enfant Plaza SW, Room 3800  
Washington, DC 20260-3800

(2) Upon forfeiture of the money orders, the seizing agency shall: (a) complete a Money Order Inquiry, PS Form 6401, for each money order; (b) return the form, via registered mail, with the original money order to the National Money Order Coordinator, along with the appropriate legal documentation showing that the Government is entitled to receive the proceeds; and (c) upon receipt of the proceeds, deposit the funds to the TFF pursuant to TEOAF Directive 4.

## **B. Personal and Cashier's Checks**

(1) Immediately following seizure, the seizing agency, in conjunction with the USAO, should (a) obtain a restraining order or seizure warrant, under the applicable criminal or civil forfeiture statute, directing the financial institution upon which the check is drawn to either: (i) take necessary steps to maintain funds sufficient to cover the check, in the case of a restraining order; or (ii) release funds in the amount of the check, in the case of a seizure warrant; and (b) serve the restraining order or seizure warrant on the financial institution.

(2) If the funds are released prior to forfeiture in the case of a seizure warrant, the seizing agency shall (a) instruct the financial institution to directly deposit the funds to the Treasury Suspense Account, with a seizure number referenced, pursuant to TEOAF Directive 4; (b) provide a copy of the seizure warrant to TEOAF; and (c) void and return the check to the bank when it is no longer needed as evidence.

(3) In the case of a restraining order, retain the check until forfeiture. Upon forfeiture, the seizing agency shall: (a) negotiate the checks; and (b) deposit the funds to the TFF pursuant to TEOAF Directive 4.

## **C. Certificates of Deposit**

(1) Immediately following seizure or restraint, the seizing agency shall: (a) notify the bank that issued the certificate of deposit (CD) that it has been seized or restrained for forfeiture; and (b) instruct the bank officials to take whatever legal steps are necessary to freeze the funds covered by the certificate so the CD can be negotiable by the seizing agency after forfeiture.

(2) Upon forfeiture, the seizing agency shall: (a) take appropriate action to liquidate the CD; and (b) deposit the proceeds to the TFF pursuant to TEOAF Directive 4.

## **D. Traveler's Checks**

(1) Immediately following seizure, the seizing agency shall: (a) notify the company issuing the traveler's checks that they have been seized for forfeiture; and (b) determine what procedures will be required in order to redeem the checks.

(2) If the traveler's checks can be redeemed prior to forfeiture, the seizing agency shall: (a) take appropriate steps to liquidate the checks; and (b) have the issuing company directly deposit the funds into the Treasury Suspense Account, with a seizure number referenced, pursuant to TEOAF Directive 4. If the funds cannot be directly deposited, have the issuing company issue a cashier's check made payable to the seizing agency or the Department of the Treasury. Upon receipt, the seizing agency shall deliver the check to its agency's headquarters office which in turn will hand deliver the check to TEOAF at the address listed in section 7, "Information Contact."

(3) If liquidation cannot occur until after forfeiture, the seizing agency shall retain the checks until forfeiture. Upon forfeiture, the seizing agency shall liquidate the checks and deposit the proceeds to the TFF in accordance with section 5.D.2, above.

## **E. Stocks, Bonds and Brokerage Accounts**

(1) Securities that are held in a brokerage account will usually be seized or restrained in place. Immediately following seizure or restraint of publicly traded securities that are not held in a brokerage account, the seizing agency shall:

(a) Contact a certified stock broker (state and national) to establish the fair market value (FMV) of the asset and determine how the instrument is traded. If the instrument has an insignificant or minimal value, it should not be seized or retained.

(b) If the certificates are found to have material value, send them to the seizing agency's brokerage account at an established securities firm. If the seizing agency does not have an established brokerage account, the seizing agency may send the certificates to the brokerage account maintained by the Bureau of the Fiscal Service (BFS) as directed in section 5.E.(3) below.

(2) The stocks and bonds of closely held corporations can present unique issues caused by illiquidity and lack of information.

(a) To the extent possible, the seizing agency should establish the value of all closely held financial instruments prior to seizure. If that determination cannot be made prior to seizure, it should be made as expeditiously as possible subsequent to seizure.

(b) Closely held financial instruments that have been determined to have an insignificant or minimal value should not be seized or retained.

(c) TEOAF will not take custody of any closely held financial instrument that has insignificant or minimal value.

(d) In the event that closely held securities with material value are seized, the seizing agency must expeditiously seek a viable plan for their liquidation in consultation with the Assistant U.S. Attorney and TEOAF.

(3) Upon forfeiture, the seizing agency shall do the following:

(a) If a brokerage account was forfeited, instruct the broker to liquidate the account and deposit the net proceeds after commission to the TFF pursuant to TEOAF Directive 4. Pursuant to court order, brokerage accounts may be held in a different manner in order to preserve value of the account.

(b) If publicly traded securities that are not held in a brokerage account were forfeited, (i) submit the certificates to a transfer agent to change ownership to the seizing agency or the Department of the Treasury; and (ii) instruct the broker to liquidate the securities and deposit the net proceeds after commission to the TFF pursuant to TEOAF Directive 4.

(c) If closely held financial instruments were not liquidated prior to forfeiture, consult with TEOAF to ensure that liquidation is effected in an expeditious manner.

(4) Some seized and forfeited paper stock certificates or other paper securities are not easy to liquidate, such as ones not already associated with a brokerage firm. For example, for some paper stock certificates, regular brokerage firms may charge a significant fee to liquidate, and the discount online brokerage firms (e.g., TD Ameritrade) may require the United States to sign agreements with clauses that cannot be agreed to, such as those limiting choice of law and arbitration.

BFS maintains a brokerage account and liquidates such securities for the forfeiture program. It is not limited to gifts and may be used for forfeiture and any other purpose, including a writ of execution.

(a) To make use of the brokerage account, the seizing agency must send the physical securities by registered mail, UPS, or FedEx (or equivalent) to:

First Southwest Company  
325 North St. Paul Street, Suite 800  
Dallas, TX 75201  
Attn: Stephen Roney

(b) At the same time, the seizing agency must send a letter on its letterhead, to the BFS. Sample letters are available on the BFS's website: [http://www.treasurydirect.gov/govt/apps/slp/slp\\_litigation.htm](http://www.treasurydirect.gov/govt/apps/slp/slp_litigation.htm).

(c) BFS may also be able to liquidate electronic securities that are wired to its account. The process is similar, but the letter is somewhat different. There is a sample letter on the website.

(d) For more information, you may send an email to [securities.liquidation@fiscal.treasury.gov](mailto:securities.liquidation@fiscal.treasury.gov).

#### **F. U.S. Savings Bonds**

(1) Immediately following seizure, the seizing agency shall inform the BFS that the bonds have been seized. This notification must list: (a) serial numbers; (b) bond denominations; (c) to whom payable; and (d) reason for which they were seized. The seizing agency must send this information by certified mail to:

Treasury Retail Securities Site  
P.O. Box 214  
Minneapolis, MN 55480-0214  
Phone: 844-284-2676 (Toll Free)

Informing BFS of the seizure and pending forfeiture will prevent liquidation by the owner and ensure the bonds' availability for redemption once forfeiture occurs.

The seizing agency shall maintain the actual bonds until forfeiture.

(2) Upon forfeiture, the seizing agency shall deliver the savings bonds to its agency's headquarters office which in turn will hand deliver them to TEOAF at the address listed in section 7, "Information Contact." The following documentation shall accompany the bonds: (a) inventory of bonds (i.e. owner, issue date, serial number, and face amount); (b) copy of the final order or declaration of forfeiture; (c) name of the seizing agency, seizing agency contact person, telephone number, email address and office address; (d) agency seizure number; and (e) brief description of the circumstances under which the bond(s) were forfeited and the basis for forfeiture.

(3) Upon receipt of the savings bonds and the supporting documentation, TEOAF will process the request for payment for bond redemption to the BFS. Upon receipt of payment from the BFS, TEOAF will deposit the funds to the TFF. (Payments will be calculated to the date of forfeiture only.) TEOAF will provide notification to the seizing agency advising of the date and amount of payment received for the redeemed savings bonds per seizure.

**6. AUTHORITY.** 31 U.S.C. § 9705, Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."



7. **INFORMATION CONTACT.** If the seizing agency cannot deposit or transfer the seized funds to the Treasury Suspense Account as described in TEOAF Directive 4, the seized funds, in the form of a cashier's check or other negotiable instrument made payable to the Department of the Treasury or the seizing agency, can be delivered to the responsible personnel at the seizing agency's headquarters for hand delivery to TEOAF at the address below for deposit to the Treasury Suspense Account:

Revenue Team  
Treasury Executive Office for Asset Forfeiture  
Suite 900  
1341 G Street, NW  
Washington, DC 20220

A properly completed TEOAF Form 6, Deposit Information Form, for the respective seizing agency must be included with the check or other negotiable instrument.

All other inquiries should be directed to TEOAF's Revenue Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 2, "Seizures of Financial Instruments," October 1, 1993 (revised 1/22/2013) is hereby superseded.

9. **EFFECTIVE DATE.** February 5, 2015.

/s/  
John Farley  
Acting Director  
TEOAF

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 3

DATE: March 23, 2017

SUBJECT: Occupied Real Property Subject to Civil or Criminal Forfeiture, and Post-Forfeiture Occupancy

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 3 establishes Treasury policy for occupied real property subject to civil or criminal forfeiture, including: (a) when the general rule of occupancy applies; (b) when the seizure of real property prior to the entry of a final order of forfeiture is permissible; and (c) the limited circumstances in which the removal of occupants may be sought. This Directive also provides guidance to agencies seeking to obtain occupants post-forfeiture, and establishes preferred methods of eviction when removal is warranted.

2. **SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF) and TEOAF.

3. **POLICY.** Except in limited instances and with judicial approval, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) generally does not allow the seizure of real property prior to the entry of a final order of forfeiture. See 18 U.S.C. § 985(d)(1) and (2). CAFRA mandates that, as a general rule, the United States allow owners or occupants of real property subject to a pending forfeiture action to remain in the property. See 18 U.S.C. § 985(b)(1)(B).

4. **SEIZING AGENCY RESPONSIBILITIES.** The seizing agency is responsible for: arresting property subject to forfeiture; serving notice; filing complaints and *lis pendens* as needed; determining when it is necessary to enter into an occupancy agreement and entering into, and overseeing, such agreements; ensuring that occupants of real property comply with the terms of this Directive and any applicable occupancy agreement; determining non-compliance with any occupancy agreement, and seeking removal of occupants as necessary and/or seizing property upon proper coordination with the applicable United States Attorney's Office (USAO).

5. **GUIDANCE.**

A. **The General Rule of Occupancy in Civil Cases**

(1) **Arresting real property without taking actual possession**

Pursuant to CAFRA, the Government initiates a civil forfeiture of real property by filing a complaint for forfeiture and posting a notice of the complaint on the property. The seizing agency or other authorized officer must also serve the property owner with notice and a copy of the complaint.<sup>1</sup> See 18 U.S.C. § 985(c). This process establishes the jurisdiction of the Court. The simultaneous filing of a complaint and a *lis pendens* should also occur to prevent the transfer or encumbrance of the real property subject to forfeiture.

<sup>1</sup> Per CAFRA, 18 U.S.C. § 985(c)(3), the court does not need to issue an arrest warrant *in rem* if the post and walk process has been followed.

## **(2) Requirements for the general rule of occupancy in civil cases**

As a general rule, existing occupants of real property (occupants who existed prior to the Government's knowledge of, or interest in, the occupied property) subject to forfeiture shall be permitted to remain in the property prior to the entry of a final order of forfeiture. When this general rule applies, the seizing agency shall enter into an occupancy agreement with any existing tenant(s) or owner(s) upon taking custody of the occupied property, which shall be no later than 5 business days from the custody date. (See Attachment A for a sample occupancy agreement.) The terms of an occupancy agreement should specify that occupancy shall cease once the property is finally forfeited. In limited instances and subject to approval by TEOAF's Real Property Team, an occupancy agreement with an existing tenant may be extended beyond the date of entry of a final order of forfeiture if the interests of the Government will be served.

As a general matter, tenants will not be sought post-forfeiture since TEOAF's primary objective is to promptly sell, rather than rent, forfeited property. However, subject to the approval of TEOAF's Real Property Team and in limited instances, a seizing agency may permit post-forfeiture occupancy for new tenants. (See section 5.D. below.)

## **(3) General terms of occupancy agreements**

Whether occupants come into existence before or after real property becomes subject to forfeiture, or after real property has been finally forfeited, all occupants must comply with the following requirements:

- (a) Maintain the property, including but not limited to keeping the premises in a state of good repair or in the same condition as existed at the time of seizure, paying for all utilities or other expenses related to the property incurred while occupying said property, and continuing to make any monthly payments due to lienholders or timely rent payments to the property custodian if the occupants are tenants;
- (b) Refrain from engaging in illegal activity;
- (c) Ensure that continued occupancy does not pose a danger to the health or safety of the public or a danger to law enforcement;
- (d) Ensure that continued occupancy does not adversely affect the ability of the Government to manage the property;
- (e) Allow the Government to make reasonable periodic inspections of the property with adequate and reasonable notice to the occupants; and
- (f) Agree to vacate within a reasonable time, usually 30 to 60 sixty days, upon notice from the Government that the property is forfeited by a final order of forfeiture, or some other reasonable date or timeframe to be established by the Government.

## **B. Exception to the General Rule of Occupancy In Civil Cases: Seizure of Real Property Prior to Forfeiture**

Seizure of real property prior to the entry of a final order of forfeiture is permissible only when:

- (1) The Government notifies the court that it intends to seize the property prior to trial and the court conducts a hearing in which the property owner has a meaningful opportunity to be heard. See 18 U.S.C.

§ 985(d)(1)(B)(i). At such a hearing, the Government must establish probable cause to believe that the property is subject to forfeiture; or

(2) The Government can show that exigent circumstances warrant the seizure. See 18 U.S.C. § 985(d)(1)(ii). To establish exigent circumstances, the Government must prove that less restrictive measures such as a lis pendens or restraining order would not protect the Government's interests in preventing the sale, destruction or continued unlawful use of the real property. See 18 U.S.C. § 985(d)(2). If the property is seized under exigent circumstances without a hearing, there must be a prompt post-seizure hearing. See 18 U.S.C. § 985(e).

Agencies shall consult with the USAO prior to seeking seizure of real property. Generally, many of the factors that support seizure of real property prior to forfeiture would also support removal of occupants.

#### **C. Occupancy in Criminal Forfeiture Cases**

In most instances, a seizing agency shall enter into an occupancy agreement in accordance with this Directive upon entry of a preliminary order of forfeiture whenever real property is subject to criminal forfeiture. A separate occupancy agreement is not required, however, if a court has entered a protective order pursuant to 21 U.S.C. § 853(e), and the requirements set forth in the order include those set forth in the sample standard occupancy agreement. (See Attachment A.)

#### **D. Post-Forfeiture Occupancy**

As a general matter, tenants will not be sought post-forfeiture since TEOAF's primary objective is to promptly sell, rather than rent, forfeited property. However, subject to the approval of TEOAF's Real Property Team and in limited instances, a seizing agency may permit post-forfeiture occupancy prior to disposal of the forfeited property.

It is permissible to allow a tenant obtained post-forfeiture to enter into a privately drafted, standard lease agreement. However, if such an agreement is entered into, as opposed to the standard government-drafted occupancy agreement, it is the agency's responsibility to ensure that the interests of the U.S. will be adequately protected, and that any tenant agrees in writing, at a minimum, to comply with the requirements set forth in section 5.A(2)(a) through (f) of this Directive. The agreement may be drafted as an addendum to the privately drafted lease agreement, and should specify both the requirements of this Directive as well as potential penalties for any violation. Specifically, if these requirements are not complied with, a cause of action may arise pursuant to various federal statutes including 18 U.S.C. § 2232, the penalties for which are a \$250,000 fine for individuals and a \$500,000 fine for corporations, a five year term of imprisonment or both.

It is the seizing agency's responsibility to ensure that all tenants acquired post-forfeiture enter into an occupancy agreement prior to such tenants taking physical custody of a forfeited property.

#### **E. Removal of Occupants, Whether or Not the Property Is Seized or Forfeited**

Immediate removal of all occupants (regardless of whether the property is seized or forfeited) should be sought if there is reason to believe that failure to remove the occupants will result in one or more of the following: (1) danger to law enforcement officials or the public health and safety; (2) continuation of illegal activity on the premises; or (3) interference with the Government's ability to manage and preserve the property.

When seeking to remove occupants from seized or forfeited real property, removal should be based, whenever possible, upon Federal court orders or Federal laws such as 18 U.S.C. § 2232 or 18 U.S.C. § 2233. In the event that such orders or laws are either inapplicable or not supported by the USAO, state eviction processes must be instituted and the agencies must comply with all state and/or local laws.

**(1) Danger to the health and safety of the public or to law enforcement**

Reason to believe that leaving occupants in possession will result in danger to the health and safety of the public or to law enforcement may be based upon any of the following factors:

- (a) Nature of the illegal activity;
- (b) Presence of weapons, "booby traps," or barriers on the property;
- (c) Information that occupants will intimidate or retaliate against cooperating individuals, neighbors, or law enforcement personnel;
- (d) Presence of serious safety code violations; or
- (e) Contamination by, or presence of, dangerous chemicals.

**(2) Continued use of the property for illegal activities**

Reason to believe that leaving occupants in possession will result in continued use of the property for illegal activities may be based upon any of the following factors:

- (a) Nature of the illegal activity (e.g., repetitive drug sales; hide-out for persons at the property violating probation, parole, or bail pending trial on other criminal charges);
- (b) History of the property's and/or occupant's involvement in illegal activities;
- (c) Evidence that all occupants have been involved in the illegal activity;
- (d) Inability of non-participating occupants to prevent continued illegal activity; or
- (e) Failure of other sanctions to stop illegal activity.

**(3) Interference with the Government's ability to manage and preserve the property**

Reason to believe that leaving occupants in possession might undermine the Government's ability to manage or preserve the property may be based upon the factors set out above or information that the occupants intend to waste or destroy the property.

Note: The above list of circumstances is not intended to be exclusive. Investigative agencies, their counsel, or the USAO may find other circumstances justifying immediate removal of the occupants based upon demonstrable and articulable information provided by credible sources.

Where real property is not yet forfeited, and tenants are to be removed in accordance with this Directive, consideration should be given to executing an interlocutory sale of the property if it is in the best interest of the Government. Any outstanding liens and mortgages should be considered in this determination.

## **F. Rental Income**

If rental income is being generated prior to entry of a final order of forfeiture, such income shall be forwarded to the National Finance Center (NFC) through TEOAF's national seized real property contractor from the time the contractor takes custody of the property, absent any court order to the contrary. TFF participating agencies shall consult with the USAO to determine when a court order to the contrary has been entered, and should promptly notify TEOAF counsel and the contractor to ensure proper disposition of funds.

Rental income generated after the entry of a final order of forfeiture shall also be forwarded to the NFC through TEOAF's national seized real property contractor. Except as noted in F(1) below, whether generated pre- or post-forfeiture, generally, any rental income received by the NFC will be treated as "forfeited miscellaneous property" for accounting purposes, absent a court order to the contrary. The proper accounting class codes to be used are IRS CC 881, USSS CC 882 and ICE CC 897.

### **(1) Exception for Rental Proceeds Cases Subject to Transfer to the Fund for U.S. Victims of State Sponsored Terrorism (USVSST Fund)**

Pursuant to 42 U.S.C. § 10609, forfeitures from certain offenses involving state sponsors of terrorism must be deposited into the USVSST Fund, not the TFF. Accordingly, rental income collected, whether pre- or post-forfeiture, for real properties that were forfeited pursuant to such a violation shall NOT be deposited into the TFF. Rather, such funds shall remain in the Treasury Suspense Account (TSA) until a determination is made concerning whether they must be deposited to the USVSST Fund.

- i. Rental income maintained in the TSA pursuant to this section will be held in class code 773. This is the same class code for interlocutory sales and the rental income can be separately identified within this class code.
- ii. Agencies should consult with their agency counsel and TEOAF as soon as possible if they are working on a case for which the forfeited proceeds or rental income may be required to be deposited to the USVSST Fund, i.e. any case involving a state-sponsor of terrorism.

6. **AUTHORITY.** 18 U.S.C. § 985; 31 U.S.C. § 9705; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund" (or their successor documents); 42 U.S.C. § 10609.

7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Real Property Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 3, "Seizure of Occupied Real Property," issued on May 30, 2014, is hereby superseded.

9. **EFFECTIVE DATE.** March 23, 2017.

/S/

John Farley

Director, TEOAF

ATTACHMENT A – Occupancy Agreement

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

**DIRECTIVE NO. 4**

**DATE:** January 22, 2013

**SUBJECT:** Seized Cash Management

**1. PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 4 establishes Treasury policy on the management of seized cash. The security, budgetary, and accounting problems caused by retention of large amounts of cash historically have caused great concern within the Department and the Congress. In the past, agencies participating in the Department's asset forfeiture program have held tens of thousands of dollars in office safes and other locations throughout the country. This raises both financial management and internal control issues. The Department must report annually to the Congress on the amount of seized cash not on deposit.

The timely deposit of cash assets is important to the effective management of the Treasury Forfeiture Fund (TFF). While this Directive will address the deposits as "cash", the term "cash" shall include currency, personal and commercial checks, cashier's checks, bank checks, traveler's checks, money orders, etc.

Currency seized for forfeiture under sections 7301 and 7302 of Title 26 shall not be deposited into the Treasury Suspense Account or the TFF.

**2. SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF) and TEOAF.

**3. POLICY.** Cash seized for forfeiture, except where it is to be used as evidence, is to be deposited into the Treasury Suspense Account pending forfeiture either within 60 days after seizure or 10 days after indictment, whichever occurs first. Transfer of cash to the Treasury Suspense Account shall be accomplished in accordance with the deposit instructions described in the procedures below. Where appropriate, photographs or videotapes of the seized cash should be taken for later use in court as evidence. If seized cash is required to be held for evidentiary purposes, the procedures below shall be followed.

**4. SEIZING AGENCY RESPONSIBILITIES.** The seizing agency is responsible for accepting custody of cash seized for forfeiture and disposing of the cash in a timely manner in accordance with established procedures as explained in this Directive. The seizing agency will be the property custodian of the seized cash unless otherwise directed by the courts. If the cash has evidentiary value, then its disposition must be done in conjunction with the advice of the U.S. Attorney's Office (USAO) handling the legal proceeding. Requests for an exemption should be filed by the USAO or Criminal Division section responsible for prosecuting, or reviewing for prosecution, a particular case. Seizing agency management and supervisory personnel are responsible for ensuring compliance with this policy.

**5. PROCEDURES.**

**A. Depositing Seized Cash to the Treasury Suspense Account**

## **(1) Handling of Seized Cash for Deposit**

Cash seizures shall be expeditiously counted, processed and prepared for transfer to the Treasury Suspense Account in accordance with each seizing agency's procedures and under the following two conditions:

- (a) The currency will be transported with appropriate security measures to ensure safe transportation to the physical site of the deposit. Seizing 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.
- (b) Discrepancies shall be immediately resolved at the financial facility by the seizing agency's representatives and the financial facility's representatives. Seizing 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 seizing agency representatives leave the facility.

## **(2) Methods for Depositing Seized Cash**

The Treasury Suspense Account is located at the Federal Reserve Bank of New York. There are several methods available to seizing agencies to deposit seized cash into the Treasury Suspense Account.

### **(a) Seizures Made by CBP and ICE**

Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) personnel will follow policies and procedures developed by CBP and ICE to make deposits into the Treasury Suspense Account, transfer seized cash to the TFF, or return seized cash. The exception is Border Protection Sector Offices within CBP, which are not co-located with CBP Fines, Penalties, and Forfeitures Offices, will make deposits using the instructions for other agencies.

### **(b) Seizures Made by Agencies Other Than CBP and ICE**

The agencies shall use one of the two methods<sup>1</sup> listed below when making deposits to the Treasury Suspense Account:

- i. Fedwire Funds Transfer; and
- ii. Intra-Governmental Payment and Collection (IPAC) Transfer.

*See Attachment A, Instructions for Agencies Other Than CBP and ICE for Depositing Seized Cash to the Treasury Suspense Account, for specific instructions and account information for each deposit method listed above.*

<sup>1</sup> A third option for delivering seized cash to TEOAF is also available; however, this method is the least acceptable. Therefore, seizing agency representatives will make every attempt to comply with one of the two deposit methods provided in this Directive before using the third option. For this third option, which is to be used only as a last resort, seizing agencies may send a cashier's check or other negotiable instrument along with a completed TEOAF Form 6, Deposit Information, to its agency's headquarters office which in turn will hand deliver the package to TEOAF for deposit to the Treasury Suspense Account.



### **(3) Reporting Requirements for Deposits of Seized Cash**

Timely reporting by agencies of deposits of seized cash will enhance the ability of TEOAF to maintain more effective and timely control of deposits to the Treasury Suspense Account.

(a) Deposits made by CBP field office cashiers must be entered into the Automated Commercial System (ACS) by the cashier and to the appropriate agency class code. *(See item 1.H(2) in Attachment A for agency class codes.)*

(b) Fedwire deposits made by agencies other than CBP must be reported to the National Finance Center (NFC) on the same day of the deposit.<sup>2</sup> A copy of the Fedwire receipt must be emailed to the NFC Forfeiture Fund Section at the following email address: [Judy.A.Morris@cbp.dhs.gov](mailto:Judy.A.Morris@cbp.dhs.gov). Also email a copy to the seizing agency's headquarters.

(c) For hand delivery to TEOAF for deposit, agencies shall express mail cashier's checks or other negotiable instruments along with a completed TEOAF Form 6, Deposit Information<sup>3</sup>, to the seizing agency's headquarters which in turn will hand deliver the package to TEOAF for deposit to the Treasury Suspense Account. The purpose of this form is to ensure that the NFC can deposit the monies to the Treasury Suspense Account or TFF in a timely manner. *(See Attachment B for a copy of TEOAF Form 6, Deposit Information.)*

### **B. Exceptions for When Seized Currency Is to Be Held for Evidentiary Purposes**

Retention of currency will be permitted when it serves a significant independent, tangible, evidentiary purpose due to, for example, the presence of fingerprints, packaging in an incriminating fashion, or the existence of a traceable amount of narcotic residue on the bills. 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 to:<sup>4</sup>

(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 USAO. Such approval must be presented to the seizing agency within 60 days of seizure or 10 days of indictment, whichever comes first.

(2) If the amount of seized cash to be retained for evidentiary purposes is \$5,000 or greater, the seizing agency shall obtain a copy of the required approval document issued by the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice (DOJ), who has authority to approve exceptions to the DOJ Seized Cash Management Policy. This required approval document is obtained by the Assistant U.S. Attorney. Seizing agency field offices shall promptly submit a copy of the required

<sup>2</sup> IPAC deposits do not have a reporting requirement since the NFC can download the IPAC transfer report directly from the IPAC System.

<sup>3</sup> TEOAF Form 6, Deposit Information, is not to be used in reporting cash and net proceeds of forfeited property received by agencies as their share from non-Treasury agencies. These funds, also known as Reverse Asset Sharing, shall continue to be forwarded to the Revenue Team at TEOAF in accordance with Chapter XI, Reverse Asset Sharing, of the Department of the Treasury Guidelines for Seized and Forfeited Property, July 2001.

<sup>4</sup> See generally Department of Justice 2008 Asset Forfeiture Policy Manual (p. 32) and the Attorney General's Guidelines on Seized and Forfeited Property (Revised Nov 2005) Paragraph VII (1), or the appropriate pages and sections of any updated versions of these documents. The manual is available at: <http://www.justice.gov/criminal/foia/docs/2008policy-manual.pdf>.

approval document to the Director, TEOAF, at the address listed below under section 7, "Information Contact."

(3) If an approval document is not provided to the seizing agency within 60 days of seizure or 10 days of indictment, whichever occurs first, the seizing agency should take those steps necessary to deposit the money into the Treasury Suspense Account immediately in accordance with the deposit instructions in this Directive.

**6. AUTHORITY.** 31 U.S.C. § 9703; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

**7. INFORMATION CONTACT.** If the seizing agency cannot deposit the seized funds to the Treasury Suspense Account by one of the two primary deposit methods described in this Directive, the seized funds, in the form of a cashier's check or other negotiable instrument made payable to the Department of the Treasury or the seizing agency, can be delivered to the responsible personnel at the seizing agency's headquarters for hand delivery to TEOAF at the address below for deposit to the Treasury Suspense Account:

Revenue Desk  
Treasury Executive Office for Asset Forfeiture  
Suite 900  
1341 G Street, NW  
Washington, DC 20220

A properly completed TEOAF Form 6, Deposit Information, for the respective seizing agency must be included with the check or other negotiable instrument.

All other inquiries should be directed to TEOAF's Revenue Team at (202) 622-9600.

**8. CANCELLATION.** TEOAF Directive No. 4, "Seized Cash Management Policy," October 1, 1993 (revised 6/19/1996), is hereby superseded.

**9. EFFECTIVE DATE.** January 22, 2013

/S/  
Eric Hampl  
Director  
TEOAF

ATTACHMENT A – Instructions for Agencies Other Than CBP and ICE for Depositing Seized Cash to the Treasury Suspense Account

ATTACHMENT B – TEOAF Form 6, Deposit Information

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: 5  
(revised September 15, 2000)

DATE: October 1, 1993

SUBJECT: **Sixty-Day Notice Period in All Administrative Forfeiture Cases;  
Sample Notice Letter and Claim Form;  
Reporting Requirements for Extensions of Time to Send Notice**

Effective Date: August 23, 2000

**BACKGROUND:**

The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Public Law 106-185, 114 Stat. 202, became law on April 25, 2000. Its provisions apply to forfeitures commenced on or after August 23, 2000, except for the fugitive disentitlement provision, which was effective on the date of enactment. To a great extent, CAFRA codifies Treasury's existing notice policy. In light of CAFRA's notice requirements in 18 U.S.C. § 983(a), the Executive Office for Asset Forfeiture (EOAF) is revising its policy concerning procedures for sending notice in administrative forfeiture cases. This policy directive is intended to provide basic guidance on the seizing agency's responsibilities for sending notice in pre-CAFRA and CAFRA cases, and creates no private right or cause of action.

**APPLICATION:**

*-- Part I is EOAF's previous notice policy. It applies to any forfeiture proceeding under any statute commenced **before August 23, 2000**. Part I also applies to forfeiture proceedings commenced **at any time** where the seizure was made pursuant to the following statutes:*

- Title 19 of the U.S. Code;
- the Internal Revenue Code of 1986;
- the Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);
- the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); **add 50 usc 1701**
- the Neutrality Act (22 U.S.C. § 401).

These statutes are collectively referred to as the "Customs Carve Out."  
"Commenced" means the date the notice letter was mailed.

-- Part 2 is new. It applies to all civil forfeitures **commenced on or after August 23, 2000**, EXCEPT where the seizure was pursuant to any of the statutes included in the Customs Carve Out.

## **PART I – Notice in Administrative Cases where “old” (Non-CAFRA) law applies:**

Through the many forfeiture statutes, Congress has made clear its intent that the government be expeditious in providing notice and initiating forfeiture actions against seized property. Further, a fundamental aspect of due process in any forfeiture proceeding is that notice be given as soon as practicable to apprise interested persons of the pendency of the action and afford them an opportunity to be heard.

Notice to owners and interested parties of the seizure and intent to forfeit in all administrative forfeiture cases is governed by 19 U.S.C. § 1607 which requires “written notice” to all interested parties.

It is the policy of the Department of Treasury that the “written notice” from the seizing agency of seizure and intent to forfeit required by 19 U.S.C. § 1607 shall be provided at the earliest practicable opportunity after determining ownership. In all administrative forfeitures, the “written notice” under 19 U.S.C. § 1607 to possessors, owners, and other interested parties, including lienholders, known at the time of seizure, shall occur not later than sixty (60) days from the date of seizure.<sup>1</sup> For interested parties determined after seizure, the “written notice” shall occur within 60 days after reasonably determining ownership or interest. Waivers of this notice may be obtained in writing in exceptional circumstances from a designated official within the seizing agency. If a waiver is granted, the reasons for the waiver must be set forth in the forfeiture case file. Where a reasonable effort of notice has not been made within the 60-day period and no waiver has been obtained, the seized property must be returned and the forfeiture proceeding terminated.

## **PART II – Notice in Administrative Cases Where CAFRA Applies**

### **A. Time for Sending Notice:**

#### **1. Seizure by Federal Agency:**

*“[I]n any nonjudicial civil forfeiture under a civil forfeiture statute, with respect to which the Government is required to send notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.” 18 U.S.C. 983(a)(1)(A)(i).*

Agencies must send written notice to interested parties as soon as practicable, and no later than 60 days after the date of seizure.

#### **2. Adoptions – Seizures by State or Local Law Enforcement Agency:**

In cases adopted from state or local law enforcement, the federal agency must send

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<sup>1</sup> The phrase “date of seizure” for adoptive seizures means at the time of federal seizure. This is not the case under CAFRA.

notice no later than **90 days** from the date the state or local agency made the seizure.

**B. Sanctions for Not Giving Notice:**

1. **Return Property:** If the government does not send notice to the person from whom the property was seized pursuant to 18 U.S.C. § 983(a)(1)(A), and no extension was granted, the government must return the property to the person from whom it was seized. The government may commence a forfeiture proceeding at a later time.
2. **Property the government shall NOT return:** The government shall not return contraband or other property that the person from whom the property was seized may not legally possess. Therefore, for example, the seizing agency shall not return:
  - a. drugs
  - b. stolen property, if the person from whom it was seized was a thief who had no right to possess the property
  - c. firearms to a convicted felon or any other disqualified individual who may not lawfully possess such a weapon

**C. Exceptions:** The 60-day notice requirement and sanctions in CAFRA do not apply to:

1. **Criminal forfeiture proceedings**
2. **Seizures made pursuant to the statutes in the "Customs Carve Out"**
3. **Cases where the property would never be forfeited administratively, such as**
  - a. Real property
  - b. Property valued at over \$500,000 (non-currency)
4. **Cases where a civil complaint is filed before there is a seizure**

When an AUSA files a civil judicial complaint and has the court issue an arrest warrant *in rem* pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims, the agency may take custody based on the arrest warrant *in rem*. Under new 18 U.S.C. 981(b)(2)(A), property arrested with an arrest warrant *in rem* is exempted from the seizure warrant requirement.
5. **Cases where a civil complaint is filed after seizure but before the 60-day period expires**

The government must provide notice of the civil judicial forfeiture proceeding as required by law.
6. **Cases where the government obtains a criminal indictment before the 60-day period expires.** The indictment must contain an allegation that the property is subject to forfeiture. In this case the government shall either:

- a. send notice within the 60 days and continue the administrative forfeiture, or
- b. terminate the administrative forfeiture, and take the steps necessary to preserve its right to maintain custody of the property pursuant to the applicable criminal forfeiture statute.

If the government chooses to terminate the administrative forfeiture, the government must either:

1. obtain a criminal seizure warrant under 21 U.S.C. § 853(f) for seizure of the property, or
2. obtain a criminal restraining order under 21 U.S.C. § 853(e).

The agencies shall coordinate these decisions with their local United States Attorney's Office.

#### **7. Adoptive seizures**

Where a State or local law enforcement agency seizes property and turns the property over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, the federal agency shall send notice not more than 90 days after the date of seizure by the State or local law enforcement agency.

See 18 U.S.C. § 983(a)(1)(A)(iv).

As explained above in Section II.A.2, in cases adopted from state and local law enforcement agencies, the time for sending notice begins to run when the property is seized by the state or local agency, NOT when the property is obtained by the federal agency. This timing is consistent with DOJ and Treasury policy requiring state and locals to turn cases over to the federal government for federal forfeiture within 30 days of seizure.

#### **8. Cases where the identity of the potential claimant is learned later**

Where the identity of a claimant is not known at time of seizure or turnover from a state and local agency, but such person is discovered before the declaration of forfeiture:

- a. the 60-day notice period begins to run from the date the government learns of the identity of the party; or
- b. the date the government learns of the interest of the party.

See 18 U.S.C. § 983(a)(1)(A)(v).

**Note:** The new 60-day period gives the new party an additional period to file a claim. The agency shall not enter a declaration of forfeiture until the time for filing a claim by the new party has expired.

Only the newly identified party is entitled to the additional time to file a claim.

Other parties who received notice within the 60-day period or received published notice pursuant to 19 U.S.C. § 1607(a) do not get a new claim period because of the notice to a new party under 18 U.S.C. § 983(a)(1)(A)(v).

The agency must reopen notice period only if it discovers the identity or interest of the party prior to the entry of the declaration of forfeiture.

If the agency learns of the identity of another interested party AFTER the entry of a declaration of forfeiture, the agency has no obligation to reopen the administrative forfeiture after declaration of forfeiture is entered.

However, the agency may choose to withdraw the declaration of forfeiture and reopen the administrative forfeiture for the newly discovered party.

If the agency does not reopen the administrative forfeiture, the newly discovered party's only recourse is to file a motion to set aside the forfeiture under 18 U.S.C. § 983(e), on the ground that the notice of the administrative forfeiture was inadequate.

#### **10. Extension of time for sending notice has been granted (see D, below)**

#### **D. Extension of Notice**

##### **1. By the agency**

18 U.S.C. § 983(a)(1)(B) provides that a "supervisory official in the headquarters office of the seizing agency" may extend the period for sending notice for 30 days, but only once, if there is reason to believe that sending notice may have adverse result, including but not limited to:

- a. endangering the life or physical safety of an individual; or
- b. causing flight from prosecution; or
- c. the destruction of or tampering with evidence or the intimidation of a potential witness; or
- d. otherwise seriously jeopardizing an investigation or unduly delaying a trial.

EOAF recommends that in cases where it is likely that further extensions will be required, the agency provide the AUSA with advance notice of the potential need for further extension, and prepare and provide the AUSA with a model motion to apply to the court for additional time.

##### **2. By the court:**

After the agency headquarters official has granted one 30-day extension, if the agency requires any further extension, it must request that the local AUSA apply to the court for further extension before the expiration of the initial 30-day extension. The headquarters official must provide the court and the AUSA with written certification that the conditions listed above in Section D.1 are met.

The court may extend the deadline for additional intervals of 60 days for as long as the court deems necessary.

Due to the nature of the showing before the court to obtain a waiver of the 60-day time period, the showing will usually be *ex parte*. The agency should request that the AUSA's motion for extension of time be sealed by the court.

Agency headquarters and field offices shall coordinate these procedures with their local U.S. Attorney's Offices.

#### **E. Notice Letters and the Claim Form**

##### **1. Include claim form with the notice letter**

CAFRA requires that the claim form be available upon request. EOAF recommends that the claim form be included with the notice letter. **See Model Notice Letter, Attachment A, and Claim Form, Attachment B.**

##### **2. Review of Sufficiency of Claim**

When the agency first receives a claim, the agency has the initial responsibility of making sure the claim is sufficient before forwarding it to the U.S. Attorney's Office.

###### **a. Insufficient Claim**

If the claim does not meet the requirements set forth in 18 U.S.C. § 983(a)(2), (for example, if the claim form is not entirely completed, or the claim does not meet the statutory requirements), the agency shall notify the claimant as soon as possible and allow a reasonable time to comply with the requirements of 18 U.S.C. § 983(a). If the requirements for a claim as set forth in 18 U.S.C. § 983(a)(2) are not met within the time allowed, the claim shall be void and the forfeiture proceeding shall proceed as though the claim was not submitted.

###### **b. Sufficient Claim**

When a sufficient claim is received by the agency, the agency shall terminate the administrative forfeiture proceedings and forward the claim, along with a description of the property and a complete statement of the facts and circumstances surrounding the seizure to the appropriate United States Attorney's Office.

- 1. Declination by USAO:** Such statement shall include a request that the United States Attorney, or designee, contact the appropriate official within the seizing agency prior to declining to file a complaint against the property referred to the USAO upon receiving a claim.

### **PART III - REPORTING REQUIREMENTS FOR EXTENSIONS OF NOTICE**

Pursuant to 18 U.S.C. § 983(a)(1)(E), the agencies must "report periodically" to the House and Senate Judiciary Committees on the number of occasions when an extension is granted by the agency under 18 U.S.C. § 983(a)(1)(B).

#### **A. Agency Notice Extension Report:**



Each agency shall submit its report to the Director of EOAF. The reports will be due on September 15 of each year. The first report will be due on September 15, 2001, and should cover the period from August 23, 2000, to August 31, 2001. Each report thereafter will cover the period from September 1 to August 31 of the following year.

The report shall indicate the number of extension requests the agency received, and the number of times an agency granted and denied a request to extend the period for sending notice. EOAF will compile the reports into one package and forward the package to the appropriate Congressional committees.

**B. Court Notice Extension Report:**

In addition to the agency notice extension report, each agency shall report to EOAF on the number of requests for extensions made to a court, and whether the court granted or denied the extension request. This information should be separated (or separable) from the report concerning agency-granted extension. The court notice extension report will be due on the same date and will cover the same time periods as the agency notice extension report.

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 6

DATE: July 18, 2016

SUBJECT: Transfer of Forfeited Property or Retention for Official Use

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 6 clarifies the requirements and processes for (a) the transfer of forfeited property to a law enforcement agency; and (b) the retention of forfeited property by a Treasury Forfeiture Fund (TFF) participating agency for official use.

2. **SCOPE.** This Directive applies to all TFF participating agencies.<sup>1</sup> Except where noted, the words "property" or "asset" as used in this directive do not refer to currency.

3. **POLICY.** TFF participating agencies are required to follow the guidance provided in this Directive whenever (a) the seizing agency wishes to retain forfeited property for official use; or (b) the seizing agency wishes to transfer forfeited property to another federal, state or local agency.<sup>2</sup>

4. **RESPONSIBILITIES.** All TFF participating agencies shall ensure that (a) approval for all official use property is received and documented; (b) assets placed into official use by the seizing agency are utilized and tracked in accordance with Treasury policy; and (c) recipients of transferred property are advised of Treasury policy related to the assets received.

5. **BACKGROUND.** Statutory authority to transfer or retain forfeited property for official use is contained in 31 U.S.C. § 9705(h). Pursuant to that authority, (a) a seizing agency may place forfeited property into official use; (b) forfeited property may be transferred to any federal agency, and need not be predicated upon the receiving agency's participation in the investigation that resulted in the forfeiture; and (c) forfeited property may be transferred to any state or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property.

6. **PROCEDURES.**

A. **Eligible Recipients of Forfeited Assets**

(1) TFF participating agencies are eligible to place forfeited assets into official use (that is, for their own use).

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<sup>1</sup> This Directive does not impact donation authorities of Customs and Border Protection (CBP) under 19 U.S.C. § 1491(e), 19 C.F.R. § 162.46(e), 19 C.F.R. § 133.52, or under any other similar laws or regulations.

<sup>2</sup> This Directive supersedes all previously issued policies relating to the transfer or retention of forfeited property, including the guidance contained in the Department of Treasury Guide to Equitable Sharing for Federal Governments and State and Local Law Enforcement Agencies (2004).

(2) Federal agencies (whether they are a member of the TFF or not) are eligible to request forfeited assets regardless of whether they participated in the investigation that led to the forfeiture.

(3) A state or local law enforcement agency that participated in an investigation is eligible to request an asset that was forfeited as a result of the same investigation.

#### **B. Restrictions**

(1) All restitution or remission issues must be resolved before any asset is placed into official use or transferred to another agency.

(2) No gift cards or any type of stored value card may be placed into official use or transferred to another agency.

(3) No firearms or ammunition may be transferred to a state or local agency.

(4) No property may be placed into official use or transferred to another agency prior to the entry of a final order/declaration of forfeiture.

(5) No real property may be placed into official use or transferred to another agency without TEOAF approval.

#### **C. Process and Approval**

(1) A TFF participating agency headquarters official or designee has authority to approve official use requests for its own agency's use for any eligible property (other than real property) with a fair market value of less than \$20,000. Requests to retain any property with a fair market value of \$20,000 or more must be submitted to TEOAF for approval. If a TFF participating agency wishes to retain for official use a vehicle or other conveyance subject to a lien, it must be submitted to TEOAF for approval, consistent with Directive 33, regardless of the property's value.

(2) All requests for transfer to state or local law enforcement agencies must be submitted to TEOAF for approval. These requests must be routed through, and receive the concurrence of, the TFF participating agency's headquarters. All requirements of Directive 33 must be satisfied.

(3) All requests for transfer to a non-TFF federal agency that participated in the investigation must be submitted to TEOAF for approval. These requests must be routed through, and receive the concurrence of, the seizing agency's headquarters.

(4) All requests for transfer to a federal agency that did not participate in the investigation that resulted in forfeiture of the asset must be approved by the Director of TEOAF, and may be routed through, and receive the concurrence of, the seizing agency's headquarters or submitted directly to TEOAF by the requesting agency.

(5) Prior to transfer of eligible property to a state and local law enforcement agency, the recipient agency must be in compliance for purposes of equitable sharing.

#### **D. Request Format**

(1) A request for official use pursuant to Section 6.C.(1) must include the following information:

- (a) Identity of the property, including the seizing agency's tracking number;
- (b) Date on which the property was forfeited;
- (c) Forfeiture Order;
- (d) Intended use of the property;
- (e) Fair market value of the property;
- (f) Costs associated with the property (e.g. storage, maintenance, liens); and
- (g) Whether there are anticipated victim or other third party payment liabilities, and the amount of any such liabilities, associated with the asset.

(2) A request for transfer to a state or local law enforcement agency or to a non-TFF federal agency that participated in the investigation pursuant to Sections 6.C.(2) and 6.C.(3) must include the items listed above in 6.D.(1), together with the following information:

- (a) Total value of all assets (to include currency) seized in the investigation; and
- (b) Equitable share of all assets (to include currency) forfeited in the investigation that are anticipated to be, and have been, shared with the requesting agency.
- (c) Where the recipient is a state and local law enforcement agency, confirmation that the recipient is in compliance for the purposes of equitable sharing.

(3) A request for transfer to a federal agency that did not participate in the investigation that resulted in forfeiture of the asset pursuant to Section 6.C.(4) must include the information in 6.D.(1) (to the extent available), together with the following information:

- (a) Identity of the asset, including the seizing agency's tracking number; and
- (b) Intended use of the property.

#### **E. Reimbursement of Expenses and Effect on Equitable Share in Forfeited Property**

(1) When property is transferred pursuant to Sections 6.C.(2) or 6.C.(3), the receiving agency's equitable share from any property forfeited in the investigation must be adjusted to ensure that their overall equitable share is commensurate with their level of participation in the investigation. Such adjustments may be in the form of:

- a) an offset of shares of other property (to include currency) in the same investigation;
- b) an offset of shares of other property (to include currency) from a different investigation;
- c) or reimbursement of the excess to the TFF

TFF participating agencies shall ensure that adjustment information is included in any equitable sharing packages submitted to the applicable decision-maker on that sharing package.(2) The following items must be considered when computing the excess share:

- (a) Fair market value of the property at the time of transfer;
- (b) Total of all related liens; and
- (c) Estimate of all costs associated with the storage or maintenance of the property.

#### **F. Use and Recordkeeping Requirements – State and Local Agencies**

(1) Property transferred to a state or local law enforcement agency must be used for a law enforcement purpose for at least two years. Once that time period has expired, the receiving agency may sell the property. However, proceeds from the sale must be deposited into the agency's forfeiture fund account to be used for law enforcement purposes (to the extent allowable under applicable state or local laws).

(2) A receiving state or local law enforcement agency must maintain a record of the possession and eventual disposition of all assets received. The records must be accessible and made available for inspection by TEOAF when requested.

#### **G. Reporting Requirement**

(1) TFF participating agencies must submit a quarterly report to TEOAF detailing all property that was transferred or retained for official use during the quarter.

(2) The report must contain the following information for each asset:

- (a) Seizure number;
- (b) Property description;
- (c) Forfeiture date;
- (d) Fair market value at time of transfer or placement into official use;
- (e) Date of transfer or placement into official use
- (f) Name of receiving agency, if the property was transferred;
- (g) Breakdown of associated costs and/or liens that were incurred by TEOAF;
- (h) Total amount of waived costs; and
- (i) Date of TEOAF approval, if applicable.

7. **AUTHORITY.** 31 U.S.C. § 9705; 18 U.S.C. § 981(e); 19 U.S.C. 1616a(c); 21 U.S.C. 881(e); Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)" or any successor Treasury Directive; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

8. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Property Team at (202) 622-9600.

9. **EFFECTIVE DATE.** July 18, 2016.

/S/

John Farley  
Acting Director  
TEOAF

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: 7

DATE: October 1, 1993

SUBJECT: **Seizure and Forfeiture of Real Property That is  
Potentially Contaminated, or is Contaminated, with  
Hazardous Substances**

Congress enacted the Superfund Amendment and Reauthorization Act of 1986 (SARA)<sup>1</sup> to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).<sup>2</sup> Section 120(a) of the Act<sup>3</sup> imposes the liability provisions of Section 107<sup>4</sup> upon the United States. Section 120(h)<sup>5</sup> of the Act sets forth notice and warranting requirements which apply whenever any agency, department or instrumentality of the United States enters into a contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance<sup>6</sup> either:

1. Has been stored<sup>7</sup> for more than one year.
2. Is known to have been released<sup>8</sup>, or
3. Is known to have been disposed of.

On April 16, 1990, EPA promulgated its final regulations interpreting section 120(h). The Department of Treasury policy on this subject is as follows:

**Departmental Policy**

It is the policy of the Department of Treasury that real property that is contaminated or potentially contaminated with hazardous substances may in the exercise of discretion be seized and forfeited upon a determination by the United States Attorney (USA), in the district where the property is located, in consultation with the seizing agency and the Property Custodian, that such action is appropriate. The USA may have delegated this authority to an Assistant United States Attorney, with a provision for review by a supervisor.

This policy is applicable regardless of the type or source of the hazardous substance(s).

This policy is applicable to all cases investigated by any agency of the Department.

This policy is based on the ability of the United States to invoke an "innocent owner" defense from liability for hazardous substance contamination found on real property,

if such contamination resulted from a prior owner's activities, when the real property is acquired through involuntary means (this includes seizures and forfeitures, which are involuntary to the owner) if that federal agency (1) exercises due care once it takes possession of the property, (2) secures the property from other third party actions, and (3) provides notice of those hazardous substance conditions about which the United States knows when it transfers or sells the property.

To insure that the United States can avail itself of the "innocent owner" defense in cases involving this class of real property, once the property is seized, federal law enforcement agencies will exercise due care in relation to the property and take precautions against foreseeable acts or omissions of possible third parties. Furthermore, such real property that is forfeited will only be transferred or sold with notice of the potential or actual contamination. Notice must be based on information that is available on the basis of a complete search of agency files. This notice will be included in the contract of sale and the deed.

In light of the "innocent owner" defense, real property that is contaminated or potentially contaminated with hazardous substances due to the activities of a prior owner, should be transferred or sold "as is" and an environmental assessment and/or remediation of the contamination need not be undertaken. Whenever possible, a commitment from the buyer to clean-up the property should be obtained as a part of the contract of sale.

However, if the real property becomes contaminated with a hazardous substance after the United States becomes the owner, then the "innocent owner" defense is inapplicable to that contamination. This situation normally will arise when the United States operates a business or activity on the property that results in the storage, release or disposal of hazardous substance (e.g., gasoline station, metal plating shops, dry cleaners, printers, etc.). In this circumstance, the United States is responsible for (1) all costs of hazardous substance removal and/or remedial action; (2) providing notice of the hazardous substance to a subsequent transferee or purchaser; and (3) a warranting covenant<sup>9</sup> to a subsequent transferee or purchaser. Because of the potential resulting liability and expense, the USA should approve the operation of such a business **or** activity only in unusual circumstances.

This policy envisions United States Attorneys exercising discretion in the seizure and forfeiture of real property that is contaminated or potentially contaminated with hazardous substances. Normally, such properties should not be forfeited unless there is at least \$30,000 in net equity belonging to the defendant. **Furthermore, such properties should not be forfeited when there is reason to believe that property is substantially contaminated with hazardous substances and that such contamination would render the property unmarketable.** Clean-up costs

can be considerable particularly when the water table is involved. In making this determination, the USA may order an environmental assessment which will be paid from the Treasury Forfeiture Fund.

If at any point the USA elects, in the exercise of his or her discretion, not to proceed because significant contamination renders the property unmarketable, the USA should consider the following alternatives.

1. The filing of a release of Lis Pendens (assuming a Lis Pendens had been filed) containing notice of the reason (significant contamination) for dismissal of the forfeiture suit;
2. The filing of some other document in the county deed records containing notice of the significant contamination, if such filing is permitted under state law;
3. Notification of a federal, state, or local environmental agency of the significant contamination for purposes of appropriate enforcement action;
4. Notification of any lien holders of the significant contamination for such action as they may want to take; and
5. Consideration of prosecution, civilly, or criminally, for violations of the environmental laws by the private owners. The U.S. Attorneys Office should contact the Environment Division (Environmental Crimes or Environmental Enforcement Sections).

None of these alternatives is mandatory. Ultimately, it is within the discretion of the USA to decide how best to proceed when an election not to proceed with forfeiture is made.

Questions concerning this policy should be directed to the Executive Office for Asset Forfeiture at 202-622-9600.

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<sup>1</sup> Public L. No. 99-499, 100 Stat. 1996.

<sup>2</sup> 42 U.S.C. 9601 et seq.

<sup>3</sup> 42 U.S.C. 9620 (a).

<sup>4</sup> 42 U.S.C. 9607.

<sup>5</sup> 42 U.S.C. 9620 (h).

<sup>6</sup> Hazardous substances means that group of substances defined as hazardous under CERCLA (42 U.S.C. 9601 (14) and 40 C.F.R. 300.6), and that appear at 40 C.F.R. 302.4. See also 40 C.F.R. 261 App. VII, App. VIII and 40 C.F.R. 373.4 (a)

<sup>7</sup> Storage means the holding of hazardous substances for a temporary period, at the end of which the



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hazardous substance is either used, neutralized, disposed of or stored elsewhere. 40 C.F.R. 373.4(b).

<sup>8</sup> The term "release" is broadly defined to include, inter alia, any spilling, leaking, pouring, emitting, escape, leaching, or dumping of hazardous substances into the environment. See, 42 U.S.C. 9601(22). The term encompasses both the intentional and unintentional (e.g. accidental) release of hazardous substances.

Specifically,

...whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and at which, during the time the property was owned by the United States, any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency file. 40 C.F.R. 373.1.

42 U.S.C. 9601(35) and 9607(b) (3).

The notice required:

...for the storage for one year or more of hazardous substances applies only when hazardous substances are or have been stored in quantities greater than or equal to 1000 kilograms or the hazardous substance's CERCLA reportable quantity found at 40 C.F.R. 302.4, whichever is greater. Hazardous substances that are also listed under 40 C.F.R. 261.30 as acutely hazardous wastes, and that are stored for one year or more, are subject to the notice requirement when stored in quantities greater than or equal to one kilogram.

40 C.F.R. 373.2. The notice required for the know release of hazardous substances applies only when hazardous substances are or have been released in quantities greater than or equal to the substance's CERCLA reportable quantity found at 40 C.F.R. 302.4.

42 U.S.C. 9620(h) (3); 40 C.F.R. 373.1. It is envisioned that this search will involve the seizing agency's casefile(s) relating to the real property. Additionally, the search must include any documentation generated from an environmental assessment or the removal of hazardous substances from the real property.

In cases involving illegal drugs laboratories, the laboratories should be dismantled and all chemicals and equipment should be seized and removed in accordance with the DEA Agents Manual, Section 6674.0 et seq.

For purposes of liability under CERCLA (42 U.S.C. 9607), the United States is considered an owner of real property after a final judgment of forfeiture is entered. Ownership is not construed as including the interest which vests in the United States pursuant to the "Relation Back" doctrine. (See e.g., 21 U.S.C. 881 (h)).

Normally, the costs of removal and/or remedial action must be borne from funds available to the agency conducting operations on the property. EPA's funds, to include the Superfund, are generally not available for remedial actions on federally owned property. See 42 U.S.C. 9611(e) (3). Short term or emergency responses, known as removal actions, may be undertaken by the Superfund at federally owned properties at the discretion of the EPA.

<sup>9</sup> The Covenant must warrant that:

(1) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and,

(2) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

42 U.S.C. 9620 (h) (3)(B).

The Chief, Environmental Quality Section, Tulsa District, U.S. Army Corps of Engineers (918-581-7877), has agreed to conduct environmental assessments for the Department on a cost basis.



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

**DIRECTIVE NO. 8**

**DATE:** January 7, 2016

**SUBJECT:** Use of Property Under Seizure

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 8 establishes Treasury policy for the use of property under seizure.
2. **SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF) and TEOAF.
3. **POLICY.** Absent the final decree or court order of forfeiture of property under seizure, the United States does not have title to the property.
4. **RESPONSIBILITIES.** TFF participating agencies shall ensure that seized assets are secured in a manner consistent with the fact that they are not property of the United States Government until forfeited.
5. **BACKGROUND.** Federal law generally requires a declaration or order of forfeiture before the Government may assert ownership rights with respect to seized property. Accordingly, any use of property under seizure and pending forfeiture raises issues of liability, impropriety, and denial of due process.
6. **PROCEDURES.**
  - A. **Use of Seized Property**
    - (1) Property under seizure shall not be utilized for any reason, until such time as the final decree or court order of forfeiture is issued. This prohibition applies to all Federal, State, and local government employees and to any private individual acting, under contract, as an authorized custodian.
    - (2) Seized property shall not be made available for use by any individual for any purpose prior to completion of the forfeiture.
    - (3) Exceptions may be granted by the Executive Office for Asset Forfeiture in unique situations where use of a seized asset is necessary to preserve the value or integrity of other related seized property; such as the seizure of a ranch or business where use of equipment under seizure is necessary to maintain the ranch or business.
    - (4) This prohibition may also be waived in situations involving national security.

## **B. Property Retained by State or Local Law Enforcement Agencies**

- (1) In order to minimize storage and management costs incurred by the Department of Treasury, State and local law enforcement agencies that participate in the seizure of a vehicle may be asked to serve as substitute custodians of the property pending forfeiture.
- (2) Any use of such vehicles is prohibited by Department of Treasury policy until such time as the forfeiture is completed and the equitable transfer is approved.
- (3) State and local law enforcement agencies shall not be utilized as substitute custodians for any asset other than a motor vehicle.
- (4) TFF participating agencies should ensure that any State or local law enforcement agency that serves as the substitute custodian of a seized asset understands the policy contained in this directive.

## **C. Use of Seized Real Property by Occupants**

Treasury policy states that as a general rule, occupants of real property seized for forfeiture should be permitted to remain in the property pursuant to an occupancy agreement pending the forfeiture. (See TEOAF Directive No. 3, "Seizure of Occupied Real Property," October 1, 1993 (revised May 30, 2014).)

6. **AUTHORITY.** 18 U.S.C. § 985; 31 U.S.C. § 9705; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Seized Property Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 8, "Use of Property under Seizure," October 1, 1993, is hereby superseded.

9. **EFFECTIVE DATE.** January 7, 2016.

/S/

John Farley  
Acting Director  
TEOAF

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 NO. 10**

**DATE:** August 17, 2016

**SUBJECT:** Management of Seized and Forfeited Bitcoin

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 10 establishes the roles and responsibilities related to the seizure, custody, and disposition of bitcoin.
2. **SCOPE.** This Directive applies to all Treasury Forfeiture Fund (TFF) participating agencies. This Directive solely pertains to bitcoin, and no other forms of virtual currency.
3. **POLICY.** TFF participating agencies are required to follow the guidance provided in this Directive in investigations that involve the seizure or forfeiture of bitcoin. The U.S. Marshals Service (USMS) will maintain, manage, and dispose of all seized or forfeited bitcoin.
4. **BACKGROUND.** Bitcoin seizures and forfeitures are increasingly common in TFF participating agency investigations. Therefore, it became evident a defined policy was needed to ensure that these actions are handled in a way that protects the Government's interest in the asset while minimizing liability. To facilitate the understanding of the policy contained in this Directive, it is helpful to understand the following bitcoin terminology:
  - A. *Bitcoin*: A decentralized, peer-to-peer network-based virtual currency that is traded online, used as a medium of exchange to purchase goods or services, and can be exchanged for US dollars or other currencies.
  - B. *Bitcoin Wallet*: A virtual account that provides a bitcoin owner with a mechanism to send, receive, and store bitcoin.
  - C. *Public Key* (or address/wallet ID): Essentially a bitcoin bank account number. A 26-35 character string that identifies a bitcoin wallet to receive or initiate transfers when paired with its corresponding private key.
  - D. *Private Key*: Essentially a bitcoin pin number or password. Most often a 64-character string that authorizes one to make transfers from a bitcoin wallet. Private Keys may also contain a 16 or 128 character string.
  - E. *Blockchain*: The public ledger that contains a historical record of every bitcoin transaction.

## **5. RESPONSIBILITIES.**

A. TFF Participating Agency - Each TFF participating agency is responsible for protecting the Government's interest in seized and forfeited bitcoin by adhering to the guidance contained in this Directive.

B. TEOAF – The TEOAF Property Management Team is responsible for handling all communications between the TFF participating agency and the USMS.

C. USMS – The USMS is responsible for the maintenance, management and disposition of all bitcoin seized by TFF participating agencies.

## **6. PROCEDURES.**

### **A. Seizing Bitcoin**

(1) Upon seizure of bitcoin, or prior to seizure if circumstances allow, the TFF participating agency's headquarters must request, through TEOAF, a bitcoin wallet from the USMS. A new bitcoin wallet will be obtained from the USMS for each seizure, and will be the only long-term storage used for bitcoin.

(2) The TFF participating agency will have no bitcoin-related communications with the USMS. Accordingly, the TFF participating agency will not request a bitcoin wallet directly from the USMS.

(3) TEOAF will act as the liaison between the TFF participating agency and the USMS for all bitcoin-related communications. The TFF participating agency will request a wallet from the USMS through TEOAF, by providing the TEOAF Property Management Team with the following information:

- (a) Authorizing document (such as seizure warrant);
- (b) Seizing agency's seizure number, if existing;
- (c) Public Key (address) of wallet from which bitcoin are to be transferred from, if known;
- (d) Exact quantity of bitcoin to be transferred, if known; and
- (e) Agency point of contact.

(4) The USMS will create a unique wallet pursuant to each request, and will provide the Public Key to TEOAF, which will then relay the information to the TFF participating agency. Separate bitcoin seizures shall not be combined when making transfers to a USMS wallet.

(5) Each TFF participating agency should implement policies governing the creation and maintenance of one or more interim bitcoin wallets for unexpected bitcoin seizures. These wallets will be used solely for temporary storage of seized bitcoin in

those situations where the TFF participating agency does not have the opportunity to request and obtain a USMS Public Key from TEOAF prior to the seizure of bitcoin. These wallets can either be set up temporarily for one-time use in a particular seizure or investigation, or as a standing holding account. In no case are these wallets to be used for long-term storage of bitcoin.

(6) If a TFF participating agency uses an Interim agency wallet, it shall contact TEOAF the next business day to request a USMS wallet. Once the agency receives the USMS Public Key from TEOAF, the agency must transfer the bitcoin to the USMS wallet within five business days.

(7) The TFF participating agency should verify its bitcoin transfers on the Block Chain.

(8) The TFF participating agency will notify TEOAF, via email, of every transfer of bitcoin to the USMS within one business day of transfer. In making this notification, the TFF participating agency will provide the TEOAF Property Management Team with the following information:

- (a) Seizing agency's seizure number;
- (b) Public Key of wallet provided by USMS;
- (c) Date of seizure;
- (d) Date of transfer;
- (e) The exact number of bitcoin transferred; and
- (f) Court order authorizing sale, if such order exists.

(9) The USMS will provide confirmation of receipt of the bitcoin to TEOAF, and TEOAF will relay this confirmation to the TFF participating agency.

(10) Upon transfer, the TFF participating agency must update its asset forfeiture tracking system to record the transfer of the bitcoin to the USMS. The update should include the date of transfer, the USMS Public Key, and the exact quantity of bitcoin transferred.

- (a) For a seizure number belonging to Internal Revenue Service – Criminal Investigation (IRS-CI) or U.S. Secret Service (USSS), TEOAF will provide a corresponding SEACATS inventory tracking number.

#### **B. Court Ordered Sales of Bitcoin Prior to Forfeiture (I-Sales)**

(1) If transferred bitcoin are not subject to a court order requiring their sale at the time of transfer, the TFF participating agency shall notify TEOAF within 5 business days of such an order being signed and provide a copy of the order. Upon receipt, TEOAF will provide USMS with a copy of the order to effect the sale.

(2) In the event of an Interlocutory Sale (I-Sale), seized bitcoin will be consolidated and sold via USMS auction in the same manner as forfeited bitcoin.

(3) The I-Sale proceeds will be deposited into the TFF Suspense Account, will be identified by the TFF participating agency's seizure number, and will be classified as proceeds of sale in the TFF Suspense Account until further action is required.

### **C. Forfeiture**

Within ten business days of forfeiture of bitcoin, the TFF participating agency shall provide TEOAF, via email, with the forfeiture order, disposition instructions, and information listed in Section 6.A.(8). TEOAF will then forward the information to USMS to effect the sale.

### **D. Auction**

(1) The USMS will conduct periodic auctions to sell bitcoin in its custody. The USMS has sole discretion to decide the logistics of the auctions, including, but not limited to, the timing of auctions; the number of bitcoin necessary to hold an auction; the consolidation of bitcoin into blocks for sale; and the auction process itself.

(2) Sale proceeds will be deposited to a USMS account, and then transferred, via IPAC (Intra-Governmental Payment and Collection) to NFC (National Finance Center) for deposit into the TFF or the TFF Suspense account. The USMS will identify sale proceeds by the TFF participating agency's seizure number based on previously provided information.

(3) Once USMS reports the results of the bitcoin auction, TEOAF will relay the outcome of the auction to the TFF participating agency.

(4) In the unlikely event that bitcoin are not successfully sold at auction, or if the USMS determines that it cannot otherwise proceed with efforts to dispose of the bitcoin, the USMS will notify TEOAF to arrange the transfer of the bitcoin back to the custody of the applicable TFF participating agency. TEOAF and TFF participating agency will then consider alternative forms of disposal.

### **E. Returning Bitcoin to Defendant or Claimant**

(1) In the event that bitcoin are to be returned to a defendant or claimant, the TFF participating agency will provide TEOAF with the following information:

- (a) Seizing agency's relevant seizure number;
- (b) Authorizing document (such as a court order, agreement, or petition decision);
- (c) Associated USMS Public Key (address);
- (d) Exact number of bitcoin to be returned; and
- (e) Public Key of agency wallet where bitcoin are to be transferred.

(2) TEOAF will relay the information to the USMS, and the USMS will transfer the bitcoin to the TFF participating agency's specified wallet.

(3) The TFF participating agency shall then transfer the bitcoin to the defendant's and/or claimant's wallet.

7. **AUTHORITY.** The Treasury Forfeiture Fund Act of 1992, as amended, 31 U.S.C. § 9705.

8. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Property Team at (202) 622-9600.

9. **EFFECTIVE DATE.** August 17, 2016.

/s/

John Farley  
Acting Director  
TEOAF

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 11

DATE: January 22, 2013

SUBJECT: Processing Cost Bonds

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 11 establishes Treasury policy on the processing of cost bonds. The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) substantially eliminated the need for the posting of a cost bond for all civil forfeitures except those specifically exempted by 18 U.S.C. § 983(i). In practice, with respect to the Treasury forfeiture program, cost bonds likely will only be collected by CBP for forfeitures under the Tariff Act of 1930 or any provision in Title 19.

2. **SCOPE.** The policy and procedures included in this directive are limited to specific situations where cost bonds are received by the Customs and Border Protection (CBP) for Title 19 forfeitures conducted by the Immigration and Customs Enforcement (ICE) or CBP.

3. **POLICY.** If a cost bond is filed, CBP shall deposit the funds to the Treasury Suspense Account pending forfeiture. Upon conclusion of the forfeiture matter, CBP shall provide the National Finance Center (NFC) with cost bond disposition instructions pursuant to the court order or settlement agreement, in accordance with the procedures established in this Directive. Treasury will not honor claims for costs being charged against the cost bond that are not included in a court order. This includes costs incurred by the U.S. Marshals Service to the extent they were recoverable from the cost bond.

In instances where CBP (on its own, or on behalf of ICE) commences an administrative forfeiture action under Title 19, but the U.S. Attorney subsequently files a civil judicial forfeiture action under a non-Title 19 statute (e.g., 21 U.S.C. § 881, which is not CAFRA-exempt) the U.S. Attorney should comply with all CAFRA deadlines, including the 90-day filing deadline under section 983(a)(3), and CBP should return the cost bond.

4. **RESPONSIBILITIES.** CBP is responsible for depositing and disposing of cost bonds in accordance with the procedures established in this Directive. If a cost bond is filed, CBP shall deposit the funds to the Treasury Suspense Account. Upon court order or settlement agreement, CBP shall provide cost bond disposition instructions to the NFC.

5. **GUIDANCE.**

A. **Cost Bond Filed and Property Judicially Forfeited**

(1) If any of the property for which the cost bond was filed is judicially forfeited, the following shall occur:

(a) Judgment for allowed costs should be included in the judgment of forfeiture or sought by separate motion and order;

(b) Costs allowed should be recovered from the amount of the cost bond;

(c) Amount remaining, if any, after the deduction of allowed costs, should be returned to the claimant; and

(d) Monies due to seizing agencies, for costs incurred against the bond, shall be deposited into the General Fund of the Treasury.

(2) In the settlement of judicial forfeiture cases, the U.S. Attorney has the authority to waive the costs incurred in the case and return the bond.

(3) If none of the property for which the cost bond was filed is forfeited, the cost bond, or the entire amount deposited as the cost bond, should be returned to the claimant when the property is returned.

(4) In accordance with section 5.A.(3) above, CBP shall make every reasonable effort to locate the person/entity posting the cost bond. In the event that the person/entity cannot be located, the following actions should be taken:

(a) In accordance with agency policy, CBP shall initiate due process requirements to abandon the monies and vest title of the monies to the government; and

(b) Following the abandonment procedures, CBP shall notify TEOAF that the monies have been abandoned and direct the NFC to deposit the monies into the General Fund of the Treasury.

#### **B. Administrative Forfeiture by Settlement Agreement after the Cost Bond Is Filed**

When a cost bond has been filed and the claim is withdrawn pursuant to a settlement agreement, the cost bond shall be disposed as follows:

(1) If allowable costs have not been incurred, the settlement agreement should provide for return of the cost bond, or the entire amount deposited as the cost bond, to the claimant.

(2) If allowable costs have been incurred:

(a) The settlement agreement should provide for return of the amount of the cost bond remaining, if any, after deductions of an agreed upon sum specified as allowable costs; and

(b) The agreed allowable costs should be recovered from the cost bond, and the bond amount remaining, if any, after the deduction of agreed costs, should be returned to the claimant pursuant to the settlement agreement.

#### **C. Charges against a Cost Bond**

The costs most often charged by court order against the cost bond are set forth in 28 U.S.C. § 1920 and 1921. These costs are:

(1) Fees of the clerk;

(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for witnesses and any printing related to the case;

- (4) Docket fees under 28 U.S.C. § 1923;
- (5) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828; and
- (6) Fees of the U.S. Marshal as set forth in 28 U.S.C. § 1921, including:
  - (a) Service of the complaint, the warrant of arrest in rem, or any other writ, order, or process in the case;
  - (b) Service of witnesses;
  - (c) Preparation of public notices; and
  - (d) Keeping of attached property, including actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, required for special services, such as guarding, inventorying, and moving.

## **6. PROCEDURES.**

### **(1) Customs and Border Protection (CBP)**

#### **(a) Receipt of Monies for Cost Bonds**

(i) CBP will process cost bonds in accordance with established agency procedures. Checks presented in place of the bond should be made payable to the agency.

(ii) The CBP Fines, Penalties, and Forfeitures Officer (FPFO) shall deposit the cost bond monies into the Treasury Suspense Account, Agency Class Code: 735, which shall remain there until the FPFO receives disposition instructions from the Assistant U.S. Attorney.

#### **(b) Receipt of Court Order**

At the conclusion of judicial proceedings, a copy of the court order along with a completed TEOAF Form 3, Cost Bond Disposition Instructions, must be submitted to NFC according to the instructions on the form. The purpose of this form is to inform the NFC to initiate disposition of the cost bond held in the Treasury Suspense Account pursuant to the court order.

*For TEOAF Form 3, Cost Bond Disposition Instructions, see Disposition Instructions Guidelines in Exhibit B of the Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests (also referred to as the "Blue Book").*

### **(2) National Finance Center (NFC)**

#### **(a) Establishment of Data Records**

The NFC shall maintain data records of all cost bond monies deposited into the Treasury Suspense Account.

#### **(b) Receipt of Court Order**



Upon receipt of the court order, the NFC shall distribute the monies held in the Treasury Suspense Account in a timely manner as follows:

(i) If the court order does not address the cost bond, the full amount of the bond shall be refunded to the claimant. If the court order does not address allowable costs against the bond, the NFC will not process any bills claimed to be valid costs against the bond.

(ii) If the court order addresses allowable costs to the Justice Department or the seizing agency, the NFC will transfer the monies held in the Treasury Suspense Account or execute the bond and place the monies into the Refund and Drawback account and distribute the funds accordingly.

(iii) Funds due the seizing agency shall be deposited into the General Fund of the Treasury. Funds from cost bonds will not be deposited into the TFF, except to the extent of that portion of the bond that is forfeited, if any, in the court order.

7. **AUTHORITY.** 18 U.S.C. § 983; 31 U.S.C. § 9703; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

8. **OTHER RELEVANT REFERENCES.**

A. Rule 54(d) of the Federal Rules of Civil Procedure provides generally for costs to be awarded by the court to the prevailing party, including the United States.

B. Pursuant to 28 U.S.C. § 1920, "A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

C. Pursuant to 28 U.S.C. § 1918 (a), "Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for."

D. Tariff Act of 1930, to include 19 U.S.C. § 1608.

9. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Revenue Team at (202) 622-9600.

10. **CANCELLATION.** TEOAF Directive No. 11, "Processing Cost Bonds," April 4, 1994 (revised 3/14/1997), is hereby superseded.

11. **EFFECTIVE DATE.** January 22, 2013.

/S/  
Eric Hampf  
Director  
TEOAF

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

**DIRECTIVE NO. 12**

**DATE:** August 20, 2015

**SUBJECT:** Payment of Taxes, Liens and Mortgages on Forfeited Real Property

**1. PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 12 establishes the policies and procedures for making payments from the Treasury Forfeiture Fund (TFF) for tax liens, non-tax liens and mortgages associated with forfeited real property.

This policy is intended to ensure the expeditious payment of tax liens, non-tax liens and mortgages associated with forfeited property so that the Department of Treasury may timely obtain clear title, and promptly dispose of forfeited real property.

**2. SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF) and TEOAF and its contractors.

**3. POLICY.** In all forfeiture cases, it is the policy of the Department of Treasury that as a general matter, state and local real property tax liens, plus interest that accrues up to the date of the entry of a final order of forfeiture, should be timely paid. Generally, all other types of liens such as mortgage liens, plus interest that accrues on those liens up to the date payment is made, will also be paid. However, under no circumstance may any lien payment amount exceed the value of the property at the time of seizure.<sup>1</sup> Further, a lien that exceeds the net sales proceeds from the sale of such property may be paid only with TEOAF approval.

**4. RESPONSIBILITIES.**

A. It is the responsibility of the seizing agency to confirm that a final order of forfeiture is recorded with the appropriate county or municipal officials prior to issuing instructions to TEOAF's national seized real property contractor for the disposition of forfeited property. Disposition instructions sent to TEOAF's national seized real property contractor prompts the contractor to verify lien amounts and to seek payment from the TFF.

The filing or recording of the final order and the lifting of any associated lis pendens is normally the responsibility of the United States Attorney's Office (USAO). Nevertheless, it is in the best interests of the Department of Treasury to ensure that all final orders of forfeiture are timely filed or recorded at the county level. Thus, in those judicial districts where the USAO does not perform this function, the TFF participating agency or TEOAF's national seized real property contractor may file and record documents as needed.

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<sup>1</sup> See 31 U.S.C. § 9705(b)(1) (limiting payment of liens to the value of the property at the time of seizure).

B. The TFF participating agency shall ensure that the Disposition Order, copies of any court documents, and the agency's instructions are provided to the national seized real property contractor as soon as is practicable after learning that the final order has been recorded with the appropriate county or municipal office(s), but no later than 20 days from entry of a final order of forfeiture by the court.

C. Upon receipt of those items set forth in 4(B) above, the national seized property contractor will verify lien, mortgage, and tax information, conduct appropriate title and appraisal actions; and advise the TFF participating agency of any discrepancies that may require resolution by the TFF participating agency.

D. If the national seized real property contractor does not find any discrepancy that could delay the sale and closing of the property, it will send a letter to the TFF participating agency requesting its concurrence with the payment of taxes, liens and mortgages, and the initiation of sale. Under no circumstance may the amount of any lien request exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

E. The seizing agency shall return the letter of concurrence to the national seized real property contractor within 10 calendar days. If the TFF participating agency does not concur with the national seized real property contractor's proposed payment of taxes, liens and mortgages, it shall promptly contact the national seized real property contractor's district office to resolve any issues such that concurrence can be timely granted.

F. Upon receipt of the letter of concurrence from the TFF participating agency, the national seized real property contractor shall send copies of the signed concurrence document, as well as final tax and lien payoff information to TEOAF for review and funding approval. TEOAF will not approve any lien request that exceeds the value of the property at the time of seizure. See 31 U.S.C. §9705(b)(1).

G. Within seven days of granting a request to pay taxes, liens and mortgages from the TFF, TEOAF will submit a request to the National Finance Center (NFC) so that funds may be disbursed to the appropriate lien holders. TEOAF will also provide the national seized real property contractor with a copy of the request sent to NFC.

H. The NFC ensures that approved payments are distributed within fourteen (14) calendar days from receipt of a request from TEOAF. The NFC notifies the national seized real property contractor when any tax or lien payment is made.

I. Upon sale and subsequent closing of real property, the national seized real property contractor shall ensure that the gross proceeds of sale are provided to the NFC within five days of the date the funds are received from the closing agent.

## **5. GUIDANCE.**

### **A. Payment of Real Property Tax Liens**

- (1) As a general matter, state and local real property taxes that accrued up until the date of entry of a final order of forfeiture should be paid upon receipt of a valid tax bill by the national seized real property contractor or the USAO. Under no circumstance may the lien payment amount exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1). On rare occurrences, taxes may be paid at closing, with TEOAF approval.

- (2) In limited circumstances, TEOAF may approve the payment of taxes which accrued up until the date the forfeiture order was recorded (as opposed to entered by the court) if a state or local taxing authority has already assessed such taxes and is unwilling to waive them after being requested to do so by TEOAF's national seized real property contractor, provided such payment does not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).
- (3) In most instances, the Department of Treasury will only pay real property tax liens up to the amount realized from the sale of property. TFF participating agencies shall coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit the payment of real property tax liens that exceed net sales proceeds. Any payment of a real property tax lien that exceeds the net amount realized by the sale of the property will require a written waiver from TEOAF. A waiver may be granted, on rare occasions, provided the payment amount will not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

#### **B. Payment of Interest and Penalties on Real Property Tax Liens**

- (1) The Department of Treasury will pay interest but not penalties on taxes that accrued up until the date the final order of forfeiture was entered by the court, provided such interest on taxes does not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1). TFF participating agencies shall also coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit any payment of interest that exceeds net sales proceeds.
- (2) In limited circumstances, TEOAF may approve the payment of interest on taxes that accrued up until the date the forfeiture order was recorded (as opposed to entered by the court) if a state or local taxing authority has already assessed such interest and is unwilling to waive it after being requested to do so by TEOAF's national seized real property contractor, provided such payment does not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).
- (3) As a general rule, the Department of Treasury will pay interest at the rate set forth in 28 U.S.C. § 1961(a).
- (4) In rare circumstances, higher rates of interest may be paid where (a) the taxing authority can show it incurred out-of-pocket interest expenses in excess of the rate specified by 28 U.S.C. § 1961(a), such as where tax certificates have been sold to private investors; or (b) the United States Attorney's Office agrees to a higher rate of interest provided such higher rate is not punitive. TFF participating agencies should coordinate such action with TEOAF counsel prior to the filing of such a motion, or entry into such an agreement, by the AUSA.
- (5) In most instances, the Department of Treasury will only pay interest up to the net amount realized from the sale of property. TFF participating agencies shall coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit any payment of interest on real property taxes that exceeds net sales proceeds. Any payment of interest which exceeds the amount realized by the sale of the property will require a written waiver by TEOAF. A waiver may be granted, on rare occasions, provided the payment amount will not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

#### **C. Payment of Mortgages and Other Non-Tax Liens**

- (1) As a general matter, mortgages and other non-tax liens are paid prior to sale after an appraisal confirms sufficient net equity exists to satisfy such lien. TFF participating agencies shall coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit the payment of any non-tax lien or mortgage that exceeds net sales proceeds. Under no circumstance may the lien payment amount exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1). If a court order or stipulated agreement directs a lien payment that exceeds the value of the property at the time of seizure, TEOAF counsel should be promptly notified and requested to take any appropriate corrective action.
- (2) In limited circumstances, TEOAF may be required by either stipulated agreement or court order to pay mortgages and other non-tax liens absent sufficient net equity. TFF participating agencies should consult with USAOs to ensure that such agreements are made, or court orders granted, in only the rarest instance when it is in the public interest to do so. In the event that a written agreement or court order requires TEOAF to satisfy a lien absent sufficient net equity, such payment will generally be paid at the time of sale.
- (3) In the event that a written agreement or order is silent or ambiguous on the issue of whether a lien payment must be made absent sufficient net equity, the national seized real property contractor or the USAO (at the request of the TFF participating agency or national seized real property contractor) shall make every reasonable attempt to negotiate downward the amount of any lien payment such that the payment does not exceed net equity.
- (4) Any payment of a mortgage or other non-tax lien which exceeds the net amount realized by the sale of the property will require a written waiver by TEOAF. A waiver may be granted, on rare occasions, provided the payment amount will not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

#### D. Lien Subordination

- (1) The disposition of forfeited property is an executive branch decision and not a matter for the court. Consequently, preliminary and final orders of forfeiture should include language directing forfeiture of the property "for disposition in accordance with the law." In addition, orders of forfeiture should specifically address any third party claims against forfeited property that are recognized by the United States. If the interests of claimants (to include liens) are to be satisfied in whole or in part by payments from the proceeds of a sale of property by a TFF participating agency or its contractors, the proposed forfeiture order should provide specific guidance for Treasury or its contractors concerning such payments and, where possible, specify that such claims shall be paid only after the costs of the United States are recovered, and shall be paid only up to the amount realized from the proceeds of the forfeited property.
6. **AUTHORITY.** 31 U.S.C. § 9705; 21 U.S.C. § 881(h); 18 U.S.C. § 981(f); Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."
7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Real Property Team at (202) 622-9600.

8. CANCELLATION. The following TEOAF Directives are hereby superseded: Directive No. 12, "Liability of the United States for State and Local Taxes on Seized and Forfeited Property," (July 11, 1994); Directive No. 14, "Expeditious Payment of Liens, Mortgages and Taxes by the Department of Treasury," (October 1, 1995); and Directive No. 28, "Payment of Interest and Penalties on Taxes on Real Property Forfeitures," (December 23, 1994).

9. EFFECTIVE DATE. August 20, 2015.

/S/

John Farley  
Acting Director  
TEOAF

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

**DIRECTIVE NO. 15**

**DATE:** March 4, 2016

**SUBJECT:** Seizure of Livestock and Registered Animals

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 15 establishes Treasury policy for seizures involving livestock or registered animals. It is intended to provide uniformity in the application of these procedures by Treasury investigative agencies.
2. **SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF).
3. **POLICY.** The decision to seize livestock or animals is multidimensional and requires extraordinary analysis from both an operational and economic perspective. Thoughtful pre-seizure planning and active engagement in post-seizure asset management decisions are imperative. The seizing agency must therefore consult with TEOAF before undertaking any seizure that falls within the scope of this directive.
4. **RESPONSIBILITIES.** The seizing agency is required to a) engage the TEOAF property team at the earliest opportunity prior to executing any seizure that falls within the scope of this directive, b) ensure that the instructions in this directive are followed, c) remain engaged throughout the property management process, and d) promptly notify the TEOAF property team should any problems or potential problems arise
5. **PROCEDURES.**

**A. Pre-seizure Planning**

(1) Pre-Seizure planning in this type of seizure is of utmost importance and should result in an initial determination of the estimated value of the animals targeted for seizure. Where applicable, the animals should be identified by name, type, number, and/or unique identifier(s) (e.g., tag number, tattoo number, etc.). Determining the status of the animal's lineage and registration is of prime importance because obtaining that documentation could drastically affect their value. The value of non-registered animals could be very low or even difficult to establish, whereas, registered animals typically carry a much higher value.

(2) If the animals targeted for forfeiture are registered with appropriate associations (e.g., the American Quarter Horse Association, American Kennel Club), then every effort should be made to document the registration and obtain copies of the registration papers in advance of seizure.

(3) Estimated costs for the care and management of the animals should be developed to determine the cost effectiveness of seizing the targeted animals. It might be necessary to identify commercial sources for services required for the management, care, breeding, transportation and disposal of the animals. This should be accomplished in conjunction with the national seized property contractor and in consultation with TEOAF.

(4) Agents of the seizing investigative agency should carefully review seizure warrants or warrants of arrest in rem to ensure that animals are accurately identified and courtesy copies should be provided to TEOAF as soon as practicable.

(5) The seizure documents should specify that any possible offspring are also subject to forfeiture and that the TFF participating agency has the responsibility for taking the necessary actions to maintain the value of the animals.

## **B. Seizure and Management**

**Some of these tasks may be performed by the seizing agencies but most will be accomplished by disposition order to the national seized property contractor.**

(1) Appropriate animal registries should receive written notification of the seizure of specific animals to facilitate future sale of the animals.

(2) Registration paperwork, inoculation, pedigree, and other related documentation should be located and seized as early as possible.

(3) A veterinarian should examine animals that are seized as soon as practicable, and the results of the examination should be documented and maintained in the case file as well as the records of the national seized property contractor.

(4) An appraisal should be completed for each animal that is seized. A professional who is knowledgeable about the type of livestock being appraised and who is qualified to perform the appraisal should accomplish the appraisal. The appraiser should be independent of any service provider or potential service provider.

(5) Seized animals should be maintained in a cost-effective manner that will maintain or enhance their value consistent with normal industry practices. For example, maintenance for race horses includes recurring medical examinations and care, breeding, showing, and non-race training, all of which can be very expensive. Where circumstances warrant, the seizing agency should coordinate funding for these purposes with the national seized property contractor and the property team at TEOAF, especially if requesting race training. The seizing agency shall demonstrate the absolute need for this type of training.

## **C. Disposition**

1) Given the costs associated with the management of livestock, in judicial cases the TFF participating agency, in coordination with the U.S. Attorney's Office, shall dispose of the livestock through interlocutory sale, when appropriate.

2) Depending on the type and value of the seized animals, proposed disposal strategies should include the auction of animals through the appropriate animal associations and/or local auction houses. This should be coordinated by the national seized property contractor.

**6. AUTHORITY.** 31 U.S.C. § 9705; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."



7. **INFORMATION CONTACT.** All inquiries should be directed to TEOAF's Property Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 15, "Seizures of Livestock and Registered Animals," April 8, 1994 is hereby superseded.

9. **EFFECTIVE DATE.** March 4, 2016.

/S/

John Farley  
Acting Director  
TEOAF

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

**DIRECTIVE NO. 16**

**DATE:** January 12, 2016

**SUBJECT:** Acknowledgements and Advice on Equitable Sharing Requests

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive establishes Treasury policy pertaining to notices to state and local law enforcement agencies that apply for an equitable share of forfeited assets.

2. **SCOPE.** This Directive applies to all equitable sharing requests that are submitted to agencies participating in the Treasury Forfeiture Fund (TFF).

3. **POLICY.** TEOAF administers the federal equitable sharing program and requires that TFF member agencies provide accurate and timely updates on the equitable sharing process to all recipient state and local agencies.

4. **SEIZING AGENCY RESPONSIBILITIES.** The seizing agency (i.e. the TFF participating agency that is processing the equitable sharing request) must provide participating state and local agencies with point-of-contact information and notify the agencies of the status of their equitable sharing request at key points in the equitable sharing process.

5. **PROCEDURES.**

A. **Upon the Receipt of an Equitable Sharing Request** – Within 30 days of the receipt of an equitable sharing request, the receiving TFF participating agency shall provide the submitting state or local agency with a written notice of receipt and point-of-contact information for future updates.

B. **Upon Issuance of Payment** – Within 30 days of receiving TEOAF notification that a payment has been made, the involved TFF participating agency shall provide the recipient state or local agency with written notice that includes the payment amount, the asset identification number related to the payment, and the payment transmittal date.

C. **Communication Effort** – TFF participating agencies may create their own communications to meet the requirements contained in this Directive.

6. **AUTHORITY.** 31 U.S.C. § 9705; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Equitable Sharing Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 16, "Equitable Sharing – Acknowledgements and Advice on

Sharing Requests," September 16, 1994 (revised 6/28/1995), is hereby superseded.

9. EFFECTIVE DATE. January 12, 2016.

/S/  
John Farley  
Acting Director  
TEOAF

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: 17

DATE: November 30, 1994

SUBJECT: **Policy Regarding Plea Bargaining and  
Forfeiture by Settlement**

This Directive provides uniform policy for Treasury law enforcement agencies in this area of case adjudication. In addition to policy, this Directive provides an overview of the procedures of the Department of Justice in accomplishing this type of case adjudication.<sup>1</sup>

**I. GENERAL POLICY**

Settlements to forfeit property are encouraged to conserve the resources of both the United States and claimants in situations where justice will be served. The following principles must be observed when negotiating and structuring settlements.<sup>2</sup>

- A. There must be a statutory basis for the forfeiture of the property and sufficient facts to satisfy the elements of the statute.
- B. All settlements must be negotiated in consultation with the seizing agency. The agency's input is essential as a claimant may be merely seeking another opportunity to bargain while having no legitimate innocent ownership interest in the property.
- C. According to Department of Justice Policy, a United States Attorney may not settle a forfeiture action involving property that is subject to administrative forfeiture pursuant to 19 U.S.C. 1607, unless it falls within one of the exceptions in Department of Justice Directive No. 94-7. The three exceptions listed in DOJ Directive No. 94-7 are:
  - (1) Where several items of personalty are subject to civil forfeiture (a) under the same statutory authority, (b) on the same factual basis, (c) have a common owner, and (d) have a combined appraised value in excess of \$500,000, they shall all be forfeited judicially.

Monetary instruments as defined by 31 U.S.C. 5312(a) (3) and Part 103 of Title 31, C.F.R., hauling conveyances or seizures of personalty that occur over a period of weeks are not subject to this aggregate policy;

- (2) Prosecutive considerations dictate the criminal forfeiture of the property as part of a criminal prosecution; and
- (3) The Department's Criminal Division has expressly authorized judicial forfeiture based upon exceptional circumstances.<sup>3</sup>

It is the obligation of both the AUSA's and the investigating agents, before settlement is discussed, to determine what property is presently being processed for administrative forfeiture.

- D. A United States Attorney has the authority to settle those judicial forfeiture actions involving property located in his or her judicial district. If property to be forfeited lies within another judicial district, the U.S. Attorney must comply with the requirements for forfeiture in the district where the property is located.
- E. When the seizing agency disagrees with the United States Attorney's recommended settlement proposal, it must follow the procedures that are set forth in the regulations cited herein in footnote "3".<sup>4</sup>
- F. The government may conclude a civil and criminal forfeiture action in conjunction with the criminal charges against the defendant which provided the cause of action against the property. However, the government *should not* agree to reduce charges in order to achieve civil forfeiture *nor* agree to release property that is part of a civil forfeiture action in order to obtain a plea. If a plea agreement is not to conclude the civil forfeiture case, language to that effect should also be stated in the plea agreement.
  - 1. In all cases, agreements must be based upon facts which support forfeiture. The government does not release property which is otherwise subject to forfeiture to encourage guilty pleas. Nor does it permit defendants to submit property which is otherwise not subject to forfeiture in order to lighten the potential incarceration component of the punishment.

2. To the maximum extent possible, the criminal plea and forfeiture should conclude the defendant's business with the government.
3. Where the claimant/defendant has negotiated a plea agreement and concurrently wishes to forfeit the property subject to a civil forfeiture action, the plea agreement should state that the defendant has waived all of his/her constitutional, substantive legal, and procedural rights to contest the civil forfeiture and that the civil forfeiture action will not be reopened. Any civil settlement should be documented independently of the plea agreement and should include the following information:

- (a) the claimant/defendant's interest in the property,
- (b) an admission of the facts supporting forfeiture,
- (c) the claimant/defendant gives up all rights to the property, and
- (d) he/she gives up any right to contest the forfeiture,

The settlement should be supported by a written agreement. The government, however, should not waive its right to reopen a civil forfeiture action where it is later determined that the settlement was based on false information or where there is some other factual or legal defect with the civil settlement. The defendant, in the plea agreement, must admit to facts sufficient to support the forfeiture.

- G. Settlements should not provide for unsecured partial payments except upon the approval of the Treasury Executive Office for Asset Forfeiture in consultation with the Treasury investigative agency and the AUSA.
- H. The settlement should state that the defendant/claimant may not re-acquire the forfeited property directly or indirectly through family members or others acting in concert with the defendant/claimant.
- I. The terms of the settlement, unless specified, do not affect the tax obligations, fines, penalties, or any other monetary obligations of the claimant/defendant owed to the government.<sup>5</sup> The civil settlement documents should state this clearly.

## II. MONETARY AMOUNTS

United States Attorneys may accept or reject offers in compromise (1) in all civil or criminal forfeiture cases in which the original claim did not exceed \$500,000, and (2) in all cases in which the original claim was between \$500,000 and \$5,000,000, so long as the difference between the original claim and the proposed settlement does not exceed 15 percent of the original claim. United States Attorneys also have authority to close (other than by compromise or entry of judgment) all civil or criminal forfeiture cases in which the gross amount of the original claim does not exceed \$500,000.<sup>6</sup>

## III. ADMINISTRATIVE FORFEITURE BY AGREEMENT

The following procedures apply to settlement agreements in civil judicial forfeiture cases and to criminal forfeiture plea agreements where an administrative forfeiture is necessary to effectuate the agreement. In such cases the headquarters of the seizing agency involved must be consulted by the United States Attorneys' Office to finalize an agreement in order to ensure the agency can accommodate the terms of the agreement.<sup>7</sup>

The Department of Treasury's policy is to pursue an agreed upon administrative forfeiture where it is possible and economically efficient to do so.

### A. Civil Judicial Forfeitures Stemming From the Filing of a Claim and a Cost Bond

The following requirements must be met where a claim and a cost bond have been filed and the case has been referred to the United States Attorney but a settlement is reached before a civil judicial complaint has been filed.

1. The settlement should be reduced to writing and include:
  - a. A provision whereby the claimant/defendant identifies his or her ownership interest in the property to be forfeited.
  - b. A provision whereby the claimant/defendant gives up all the right, title, and interest in the property;

- c. A provision whereby the claimant/defendant agrees to waive all constitutional, other substantive legal and procedural challenges to the Government's administrative forfeiture action;
  - d. A provision whereby the claimant/defendant agrees and states that the property to be forfeited administratively was connected to the illegal activity as proscribed by the applicable civil forfeiture statute (e.g., money to be forfeited is in fact proceeds from illegal drug trafficking);
  - e. The settlement document should include specific reference to the withdrawal of the claim and the return of the cost bond; and
  - f. A "hold-harmless" provision and a general waiver of Federal Tort Claims Act rights and Bivens actions, as well as other actions based on the Constitution (e.g., the Excessive Fines Clause). Finally, a Halper waiver should be included so that future civil or criminal cases are not hampered by the settlement agreement.
2. The case should be promptly referred back to the seizing agency to re-institute the administrative process. The seizing agency shall re-institute the administrative forfeiture to effectuate the agreement upon receipt of a referral in compliance with this policy, consistent with its lawful authority.
- a. Where the Claim to All the Property is Withdrawn  
Where the agreement provides for the claimant to withdraw the claim to all property covered by claim and cost bonds filed, the entire case will be referred back to the agency for administrative forfeiture. Re-publication of the notice of the administrative forfeiture action is not necessary, provided publication occurred prior to filing of the claim and cost bond. If publication did not occur prior to the filing of the claim and cost bond, then publication is required as are all normal administrative procedures.
  - b. Where the Claim to Only Part of the Property is Withdrawn  
Where the agreement provides for the claimant to withdraw only a part of a claim, the case will be referred back to the



agency for administrative forfeiture of that portion of the forfeitable property named in the agreement, and the agency may release the remainder to the claimant consistent with the settlement. Re-publication of the notice is not necessary, provided publication covering all of the property to be forfeited occurred prior to filing of the claim and cost bond. If publication did not occur prior to filing of the claim and cost bond, then publication is required as are all normal administrative procedures.

B. Civil Judicial Forfeiture Without Prior Administrative Action

In other cases where the judicial action was commenced without a prior administrative forfeiture action having begun and a settlement agreement has been reached involving a proposed administrative forfeiture of seized property, the headquarters of the seizing agency must be consulted, the complaint dismissed and jurisdiction of the district court relinquished before referral may be made to a seizing agency under this policy. The seizing agency shall initiate the administrative forfeiture process to effectuate such an agreement upon receipt of a referral in compliance with this policy, consistent with its lawful authority; and the return of any seized property to the seizing agency.

C. Criminal Forfeiture Action

In those cases where property has been seized or restrained for forfeiture under criminal statutes and an agreement reached between the United States Attorney and the claimant/defendant prior to an order of forfeiture relating to a proposed administrative forfeiture of the property, the headquarters of the seizing agency must be consulted, the seizure or restraining orders dismissed, and the jurisdiction of the district court over the property relinquished.

A. 1 and A. 2, above, must be met before referral may be made to a seizing agency under this policy. The seizing agency shall initiate the administrative forfeiture process to effectuate such an agreement upon receipt of a referral in compliance with this policy, consistent with its lawful authority. Any seized property within the jurisdiction of the court must be returned to the custody of the seizing agency.

IV. JUDICIAL FORFEITURE BY SETTLEMENT

No agreement, whether a settlement in civil judicial action or a plea agreement

resolving both criminal charges and the forfeiture of assets, may contain any provision binding a Department of Treasury agency to a particular decision on a petition for remission or mitigation, or otherwise contain terms whose effectiveness is contingent upon such a decision. The remission and mitigation process, like the pardon process in criminal cases is a matter of executive discretion and is completely independent of the litigation and case settlement process.

It is proper to include in a settlement agreement a provision that expressly leaves open or expressly forecloses the right of any party to file a petition for remission or mitigation.

A. Civil Forfeiture

Any settlement that purports to "forfeit" property binds only the parties to it and forfeits only that interest in the property that the claimant possesses. The following procedures must be followed to ensure that a valid and complete civil judicial forfeiture by settlement occurs:<sup>8</sup>

1. A civil verified complaint for forfeiture of the property must be filed in the U.S. District Court to establish the court's jurisdiction. Filing an action as a "Miscellaneous Docket" and other attempts to short-cut the process will not be recognized as a valid forfeiture.
2. A warrant of arrest in rem *must be executed* against the property.
3. All known parties in interest must be given written notice, and notice by publication must be made.
4. After ten (10) days, if no claim has been filed pursuant to Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a default judgement must be sought pursuant to Rule 55, Federal Rules of Civil Procedure.
5. Proposed orders of forfeiture must be filed with the settlement agreement and include the terms of the settlement agreement.

B. Criminal Forfeiture

In any plea settlement, a defendant claimant may only consent to the forfeiture of his or her interest in the property. Forfeiture of the defendant's interest in property held by nominees can proceed criminally but the potential for an ancillary claim by the nominee must be anticipated. A settlement that purports to "forfeit" the property may only bind the

parties to it and transfers only that interest which the defendant-claimant possesses.<sup>9</sup> However, the factual statements of the defendant in support of the forfeiture may severely circumscribe any nominee interest.<sup>10</sup>

**V. SETTLEMENT POLICY REGARDING CONDITIONAL OFFERS TO SURRENDER PROPERTY FOR FORFEITURE**

A person with control over assets that are potentially subject to forfeiture but that are not presently under a federal court's jurisdiction, may offer to surrender such assets for forfeiture, or, if located abroad, to repatriate such assets or proceeds thereof to the United States for forfeiture under United States law. If such an offer is conditioned upon the partial release of the assets to that person, it should generally be refused. Such a conditional offer may only be accepted: (1) in a manner consistent with the other provisions of this policy applicable to settlements; (2) where located abroad, after consultation with the Asset Forfeiture Office and the investigative agency; and (3) only after the following requirements have been satisfied:

- A. All relevant facts have been ascertained.
- B. The facts must give rise to some doubt concerning the successful United States forfeiture of the assets to be released even if jurisdiction for forfeiture is acquired as a result of their surrender.
- C. Where the assets are located abroad their repatriation must not conflict with a foreign investigation or freeze order.

**VI. ACCEPTANCE OF A MONETARY AMOUNT IN LIEU OF FORFEITURE**

A monetary amount instead of forfeiture of property in civil or criminal judicial forfeiture actions may be accepted pursuant to 19 U.S.C. 1613(c).<sup>11</sup>

**VII. AGREEMENTS TO EXEMPT ATTORNEY'S FEES FROM FORFEITURE**

Any agreement to exempt an asset from forfeiture so that it can be transferred to an attorney as fees must be approved by the Assistant Attorney General for the Criminal Division.<sup>12</sup>

## VIII. SETTLEMENTS WITH FUGITIVES IN CIVIL FORFEITURE CASES

Prosecutors should first consult with the Asset Forfeiture Office, Criminal Division before engaging in settlement negotiations in civil forfeiture cases where the claimants are fugitives in United States criminal proceedings.

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<sup>1</sup>DOJ Revised Policy Regarding Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions, November 9, 1994, Directive 94-7.

<sup>2</sup>Settlements are contractual agreements to end legal disputes.

<sup>3</sup>A number of courts have held that the commencement of an administrative forfeiture action divests district courts of jurisdiction over forfeiture proceedings unless a claim and cost bond are filed under the statutory scheme created by Congress in the customs laws. Administrative forfeitures commence upon notice by publication of the government's intent to forfeit.

<sup>4</sup>See paragraph (d) of Attorney General Order No. 1598-92, 57 Fed. Reg. 30395-96 (1992) (amendment to the Appendix to Subpart Y, Part O, Title 28, Code of Federal regulations (C.F.R.) establishing the settlement and compromise authority redelegated to the United States Attorneys from the Assistant Attorney General, Criminal Division, in accordance with the requirements of 28 C.F.R. 0.168(d)).

<sup>5</sup>U.S. Attorneys' Offices are obligated pursuant to 28 U.S.C. 547(4) to "institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings." Therefore, in order that appropriate actions may be taken when a proposed forfeiture settlement will release assets to a claimant/defendant who is known or likely to have other outstanding obligations to the United States (e.g. taxes), Assistant United States Attorneys should routinely notify the appropriate agency (e.g., IRS) of the proposed settlement.

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<sup>6</sup>See supra n.2.

<sup>7</sup>Revised Policy Regarding Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions, November 9, 1994, Directive 94-7.

<sup>8</sup>**NOTE:** There is no provision for substitution of assets in civil forfeiture cases, with the exception of accepting a monetary amount in lieu of forfeiture pursuant to 19 U.S.C. 1613(C).

<sup>9</sup>Substitute assets may only be forfeited when the applicable statute permits it and when all statutory requirements have been met, (e.g., 18 U.S.C. 982(b)(1)(A), 1963(m) and 21 U.S.C. 853(p)). It is recommended that there be a provision for substitute assets included in the Indictment.

<sup>10</sup>Close attention should be paid to the potential issue of "double jeopardy." Any plea or settlement agreement should include a waiver of any and all double jeopardy claims that might otherwise be asserted with respect to any subsequent government enforcement action. Therefore, a Halper waiver should be included so that future civil or criminal cases are not hampered by the settlement agreement. The settlement document should also include a "hold harmless" provision and a general waiver of Federal Tort Claims Act rights and Bivens actions, as well as other actions based on the Constitution. The court must

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issue a Final Order of Forfeiture that incorporates the settlement and, if applicable, addresses any third party claims.

<sup>11</sup>19 U.S.C. 1613(c) is one of the Customs laws (Tariff Act of 1930, 19 U.S.C. 1602-21) incorporated by reference into various federal forfeiture statutes. See e.g., 21 U.S.C. 881(d)

<sup>12</sup>The requirements of the U.S. Attorneys' Manual, 9-111.700 must be satisfied.

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

**DIRECTIVE NO. 18**

**DATE:** May 29, 2014

**SUBJECT:** Policy for Reimbursements to State and Local Law Enforcement Agencies Involved in Joint Operations with Federal Agencies Participating in the Treasury Forfeiture Fund

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 18 establishes Treasury policy for reimbursements for authorized expenses to state and local law enforcement agencies (LEAs) involved in joint operations with the federal agencies participating in the Treasury Forfeiture Fund (TFF) (hereinafter referred to as "TFF Agencies").

2. **SCOPE.** This Directive applies to all TFF Agencies, state and local LEAs involved in joint operations with the TFF Agencies, and TEOAF.

3. **POLICY.** Funds from the TFF may be used to reimburse certain costs incurred by state and local LEAs when they are involved in joint operations with the TFF Agencies. These reimbursements do not constitute a federal grant to the state or local LEA. Overtime salaries, travel, fuel, training, equipment, and other similar costs of state and local law enforcement officers that are incurred in a joint law enforcement operation with a TFF Agency can be authorized for reimbursement. The following general guidelines are applicable to this policy.

**A. Agencies Eligible to Receive Joint Operations Reimbursements**

(1) Reimbursable expenses must be expenses incurred by a state or local law enforcement officer or agency. These expenses do not include costs of federal personnel; private individuals or entities; administrative personnel; or other state or local officials who are not classified as "law enforcement officers." It will, however, include permissible costs incurred by state or local prosecutors.

(2) The state or local law enforcement officer(s) must be involved in a joint law enforcement operation with a TFF Agency. At this time this policy covers joint operations, including Organized Crime Drug Enforcement Task Force (OCDETF) cases, where the TFF Agency is the lead or sole federal agency.

The TFF Agencies are: (a) Internal Revenue Service, Criminal Investigations (IRS-CI); (b) U.S. Customs and Border Protection (CBP); (c) U.S. Immigration and Customs Enforcement, Homeland Security Investigations (ICE-HSI); and (d) U.S. Secret Service (USSS).

(3) A "joint law enforcement operation" (or "joint operation" for short) is 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 at least one agent of a TFF Agency in other than an oversight or coordination capacity; that is, in an operational capacity.

(4) "Direct participation" of a TFF Agency is defined as:

(a) Significant involvement sustained in investigations, arrests, prosecutions, and related activities.

(b) TFF Agency resources need not be actively engaged in the operation at all times; nonetheless, they should be committed when the joint operation is active.

(c) Agent participation is essential to, but not the only measure of, TFF Agency direct participation in a joint operation. The TFF Agency participation can be bolstered further through the provision of intelligence data, informants, administrative support, and TFF Agency-owned equipment and 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 by the TFF Agency. This entails work beyond that of an advisory nature, and also beyond emergency or circumstantial operational assistance.

#### **B. Criteria for Joint Operations Reimbursements**

(1) Reimbursements may be made to the extent they are included in the TFF Agency's Fiscal Year Plan, and to the extent that the funds are available within the TFF to satisfy the request.

(2) As a general rule, the reimbursable payment of overtime costs incurred by state or local LEAs participating in a TFF Agency investigation shall be limited to \$15,000 per officer per fiscal year. In exceptional circumstances, TFF Agencies may request from TEOAF that a certain officer be allowed to incur overtime charges exceeding the \$15,000 cap per fiscal year.

(3) TFF reimbursements can only be made for those expenses that are authorized by statute<sup>1</sup>. Payment of salaries of state or local officers, either directly or indirectly is not authorized.

(4) All costs to be reimbursed must be directly related to the joint law enforcement operation.

(5) Examples of permissible reimbursements include, but are not limited to: (a) overtime, travel and training for state and local law enforcement personnel involved in the joint operation; (b) surveillance equipment, cellular telephone costs, payments to a confidential informant, purchase of stolen property as evidence, translation costs of evidentiary tapes, and remote body-worn transceivers for undercover work used in the joint operation; (c) rental or lease of unmarked vehicles used in the joint operation; (d) rental of off-site locations for electronic monitoring or an off-site command post used in the joint operation; and (e) leasing of copying, scanning, or facsimile machines only if the machines are used solely for the joint operation.

(6) This authority does not include the reimbursement of costs for items not directly related to the joint law enforcement operation or for items of non-law enforcement purpose. Examples of ineligible expenses

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<sup>1</sup> 31 U.S.C. § 9703(a)(1)(I) authorizes reimbursement for "overtime, 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 TFF Agency.

include, but are not limited to: (a) electronic entertainment equipment (e.g., televisions, stereos, video game software and subscriptions, video game platforms, etc); (b) outdoor entertainment equipment and/or appliances (e.g., grills, patio furniture, sun decks, fire pits or places, waterfalls or features, etc.); (c) kitchen appliances (e.g., stoves, refrigerators, dishwashers, etc.); (d) exercise equipment; and (e) purchase of automobiles or other conveyances and vehicles.

Reimbursable investigative expenses also do not include public education, violent crime and rape assistance programs, and similar outreach efforts. Damage to private property resulting from the law enforcement operation (i.e., tort-based claims, settlements or awards the state or local LEA must pay as a result of actions during the operation, etc.) are also not reimbursable costs.

### **C. Subject to Audit**

(1) This program is subject to audit by TEOAF, the TFF Agency, the Department of the Treasury Office of Inspector General, the General Accounting Office, and any other government-designated auditing organization.

(2) 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.

(3) The TFF Agencies and the state and local LEAs 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.

### **4. RESPONSIBILITIES.**

A. The TFF Agency involved in the joint operation shall (1) ensure, by observation and review of documentation, that the state and local costs are permissible for reimbursement under the statute and this Directive and directly related to the joint operation; and (2) maintain sufficient, accurate records to support their verification and approval of any claims for reimbursement of expenses from the state and local LEAs for three years, and in the event of an on-going audit, until the audit is completed.

B. Each participating state or local LEA shall maintain sufficient, accurate records to support any claims for reimbursement of expenses for three years, and in the event of an on-going audit, until the audit is completed. These records may contain, but are not limited to: (1) records required by federal, state, and local taxing authorities; (2) records required by the labor departments; (3) records required by state and local law or policy; and (4) original invoices for services, equipment, travel, etc.

### **5. PROCEDURES**

Below is a summary of the procedures for reimbursements to state and local LEAs involved in joint operations with TFF Agencies, including: designating reimbursement limits for joint operations, establishing an obligation for reimbursement, increasing/decreasing an obligation, requesting a reimbursement (aka invoicing), correcting an invoice error, reporting and inquiries, and accessing the Joint Operations Automated System (JOAS).

#### **A. Designating Reimbursement Limits for Joint Operations**

The designation of reimbursement limits does not constitute an obligation for reimbursement, but only serves as a basis for notifying agencies of their reimbursement limits for that fiscal year.



(1) At the beginning of a new fiscal year (FY), TEOAF notifies each TFF Agency of the amount of funds it has designated for reimbursements for joint operations. A designated TEOAF official accesses the JOAS and inputs the respective amount for each TFF Agency.

(2) Each TFF Agency's designated headquarters (HQ) official accesses the system to view the dollar amount allocated to the agency, and further allocates these reimbursement limits to its field offices by entering the respective amounts into the system.

(3) At any point of time during the fiscal year, the TFF Agency's designated HQ official can re-allocate the reimbursement limits to its field offices, up to the dollar amount allocated to the agency by TEOAF.

#### **B. Establishing an Obligation for Reimbursement**

The establishment of the Obligation for Reimbursement includes the following steps:

(1) The *Agreement Between Federal Law Enforcement Agency Participating in the Treasury Forfeiture Fund and State or Local Law Enforcement Agency for the Reimbursement of Expenses in Joint Operations* (also commonly referred to as a "memorandum of understanding" or "MOU") must be signed and in effect. One agreement is required per state or local LEA, not per joint operation. The signed hard-copy original of the agreement is maintained by the TFF Agency for the life of the agreement plus three years. A copy should be provided to the state or local LEA for its records. (*See Attachment A.*)

As required by the agreement, within 10 days of the effective date and before submitting its first request for reimbursement of joint operations expenses, the state or local LEA must provide the TFF Agency with the required information for the officers assigned to the joint operation and its designated point(s) of contact.

(2) The *Request to Establish Reimbursement for State or Local Law Enforcement Agency Participating in Joint Operations* (also referred to as the "Obligation Form") must be generated in the JOAS by the TFF Agency's designated HQ official. (*See Attachment B.*)

#### **C. Increasing/Decreasing an Obligation**

(1) An obligation can be increased or decreased by the TFF Agency designated obligation official at any time, by accessing the original Obligation Form in the JOAS, editing this form to indicate a new obligation amount, and submitting it.

(2) Once TEOAF approves and the National Finance Center (NFC) acknowledges the amended obligation, the obligation amount has been formally changed. A copy of the revised obligation should be provided to the state or local LEA for its records as needed.

(3) The NFC makes any necessary entries/updates to the NFC accounting and finance system.

#### **D. Requesting a Reimbursement (aka Invoicing)**

(1) To request reimbursement for officers' overtime and other non-overtime expenses associated with a specific joint operation, the state or local LEA must complete and submit the TEOAF form, *State or Local*

*Law Enforcement Agency Request for Reimbursement of Joint Operations Expenses*<sup>2</sup> (also referred to as the "Request for Reimbursement Form" or "invoice"), along with copies of supporting documents (i.e., payroll records, receipts, invoices, etc.), to the TFF Agency's field office. (See Attachment C.)

(2) Upon receipt by the TFF Agency's field office, the Group Supervisor (or other designee in charge of that joint operation) reviews the request for accuracy and compliance. The reviewing official should be familiar with the specific joint operation and able to verify the overtime hours claimed and the validity of the non-overtime expenses incurred. Each Request for Reimbursement must be signed by the TFF Agency designated official to document and certify its verification.

(3) After the review and certification of the Request for Reimbursement, a designated person at the TFF Agency HQ or field office enters the information into the Invoice Form in the JOAS.

(4) Once an Invoice Form is submitted in the JOAS, the TFF Agency designated official reviews and approves the invoice.

(5) Following the approval of the invoice by the TFF Agency, the NFC acknowledges receipt of the invoice and makes the respective entries/updates in the NFC accounting and finance system.

(6) Once the Invoice Form is approved by all required TFF Agency designated officials and receipt is acknowledged by the NFC, the NFC pays the invoice. The NFC periodically emails to the TEOAF Joint Operations Program Manager a spreadsheet with the payment information, including payment date and wire transfer number, for all payments made within a specified time period, and this information is uploaded into the JOAS.

#### **E. Correcting an Invoice Error**

(1) Under-invoicing error: If an under-invoicing error was made, and was only discovered after the Invoice Form reached the NFC, this error can be corrected by either adding the missing expenses to the next month's invoice, or submitting a Supplemental Invoice for the same month. Only one Supplemental Invoice per month is allowed. If another under-invoicing mistake is discovered in the same invoice, the additional expense should be incorporated into the next month's invoice.

The submission of overtime expenses in excess of the currently established cap of \$15,000 per fiscal year, or the amount established through an exemption from TEOAF, does not constitute an under-invoicing error. Invoicing of overtime expenses in excess of the maximum allowable amount will not be reimbursed.

(2) Over-invoicing error: If an over-invoicing error occurs and is only discovered after the invoice has reached the NFC (and there is no easy way to subtract the extra amount from the next month's invoice), the NFC makes the correction in the JOAS after receiving a reimbursement check from the person or organization that was overpaid.

#### **F. Reporting and Inquiries**

(1) Authorized TFF Agency officials at the field office can query the JOAS to check the status of actions for their respective field office, including: (a) Requests for Reimbursement submitted; (b) payments made to any officers assigned to its joint operations; (c) currently existing obligations, funds expended and

<sup>2</sup> Current version of form is available at <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/joint-ops-obligation.pdf>.

obligation balances; (d) currently existing agreements (aka MOUs) with state and local LEAs; and (e) other pertinent information (e.g., contact information and names and types of joint operations for the respective field office).

(2) Authorized TFF Agency officials at HQ can query the JOAS for the actions listed above for any field office and the total for their respective agency. In addition, they can query the system and receive other information, such as standard reports on the current allocation/obligation of the joint operations funds, for any field office or the entire agency.

TFF Agencies cannot access information pertaining to another TFF Agency's joint operations. Similarly, TFF Agency field offices cannot access information pertaining to another field office.

(3) Authorized TEOAF officials can query the JOAS for the actions listed above for all of the TFF Agencies and their field offices.

(4) Standard reports are available in the JOAS. (*See Attachment D for examples of reports.*)

#### **G. Accessing the Joint Operations Automated System**

Each TFF Agency's (HQ or Field Office) System Administrator controls a list of authorized users of the JOAS at the agency, and their access rights. The TFF Agency HQ System Administrator designates Field Office System Administrators, and activates their access rights. TEOAF grants access rights for each TFF Agency HQ System Administrator and for the NFC System Administrator. The system automatically ensures that only authorized users can submit joint operation forms or view the data.

Additional details on how to use the JOAS to implement the above procedures are provided in the process documentation, *Procedures for the Joint Operations Automated System*. (*See Attachment D.*)

**6. AUTHORITY.** 31 U.S.C. § 9703; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

**7. INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Joint Operations Program at (202) 622-9600.

**8. CANCELLATION.** TEOAF Directive No. 18, "Policy for Payment(s) to Local, County, and State Police Officers Involved in Joint Operations with Federal Agencies Participating in TFF," October 7, 1994 (revised December 2006), is hereby superseded.

**9. EFFECTIVE DATE.** May 29, 2014.

/S/  
Eric Hampl  
Director  
TEOAF

ATTACHMENT A – Agreement Between Federal Law Enforcement Agency Participating in the Treasury Forfeiture Fund and State or Local Law Enforcement Agency for the Reimbursement of Expenses in Joint Operations

ATTACHMENT B – Request to Establish Reimbursement for State or Local Law Enforcement Agency Participating in Joint Operations

ATTACHMENT C – State or Local Law Enforcement Agency Request for Reimbursement of Joint Operations Expenses

ATTACHMENT D – Procedures for the Joint Operations Automated System

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 20

DATE: July 9, 2015

SUBJECT: Net Equity Requirements for Seized Property

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 20 establishes Treasury policy for the net equity requirements of seized property.

2. **SCOPE.** This Directive applies to seizures initiated by seizing agencies participating in the Treasury Forfeiture Fund (TFF) as well as state and local seizures adopted by these agencies.

3. **POLICY.** The minimum net equity levels established in this Directive generally shall be met before property is seized unless it would compromise a law enforcement investigation, in which case it shall be established as soon as practicable after seizure. The net equity values are intended to decrease the number of federal seizures, thereby enhancing case quality and expediting processing of the cases initiated. The thresholds are also intended to encourage state and local law enforcement agencies to use state forfeiture laws for their seizures.

4. **SEIZING AGENCY RESPONSIBILITIES.** The seizing agency is responsible for ensuring that the net equity requirements are met as established in this Directive. The seizing agency is also responsible for ensuring that current and accurate information on the ownership of, and any encumbrances against, property targeted for forfeiture is compiled prior to seizure whenever practicable, or as soon as possible following the seizure.

In deciding whether to proceed with the seizure or forfeiture of property that is near the minimum equity threshold, the seizing agency must evaluate and consider the forfeitable net equity and the law enforcement purposes to be served in light of the potential liability issues and estimated costs of post-seizure management and disposition. Depending on the circumstances, this evaluation may require consultation with the national seized property contractor and the U.S. Attorney.

5. **PROCEDURES.**

A. **Asset-specific Net Equity Thresholds**

In general, the minimum net equity requirements are:

(1) Residential/Commercial real property and vacant land—minimum net equity must be at least 20 percent of the appraised value or \$30,000, whichever is greater.<sup>1</sup> No property with a net equity of less than \$30,000 should be federally forfeited.

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<sup>1</sup> As a general rule, the TFF law enforcement agencies do not seize or adopt contaminated real property. See TEOAF Directive 7, Seizure and Forfeiture of Real Property That Is Potentially Contaminated or Is Contaminated with Hazardous Substances.

(2) Vehicles—minimum net equity must be at least \$5,000 (based on National Automobile Dealers Association (NADA) "Trade-In Value"). The value of multiple vehicles seized at the same time cannot be aggregated for the purpose of meeting this minimum.

(3) Currency, financial accounts, and financial instruments—minimum amount must be at least \$5,000, unless the person from whom the item was seized either was, or is, being criminally prosecuted by state or federal authorities for criminal activities related to the property, in which case the amount must be at least \$1,000.

(4) Aircraft—minimum net equity must be at least \$30,000. Note that failure to obtain the log books for the aircraft will reduce the aircraft's value significantly.

(5) Vessels—minimum net equity must be at least \$15,000.

(6) All other personal property—minimum net equity must be at least \$1,000, or \$5,000 in the aggregate.

A United States Attorney may institute higher district-wide thresholds for judicial forfeiture cases. Investigative personnel at the seizing agency should be familiar with their judicial district's thresholds.

#### **B. Deviation from Net Equity Requirements**

(1) While deviation from the net equity requirements is generally prohibited, in some circumstances law, regulation, or an overriding law enforcement interest may require or compel the seizure/forfeiture of an asset that does not meet these criteria (e.g., instrumentalities of the crime, forfeiture of a "crack house," a conveyance with hidden compartments, a computer or Internet domain name seized to disrupt a major fraud scheme, assets connected to a child pornography ring or a terrorist organization, or real property used to harbor illegal aliens). Treasury policy does not preclude seizure in such circumstances.

(2) Deviation may also be acceptable in circumstances where the collective value of a group of related assets meets the threshold and seizure of the group does not materially increase the Government's costs, risk, or property management burden (e.g. 20 items of jewelry, each valued at \$500, might be seized, as the total value of the items is \$10,000 and the cost, risk, and property management burden of storing 20 small items of jewelry is not materially higher than for a single piece of jewelry. However the seizure of two \$4,000 vehicles cannot be justified solely by their collective value, because the Government's risk, cost, and property management burden increases materially with each additional vehicle seized).

(3) All deviations from the net equity requirements must be approved by the seizing agency's supervisory-level official. Both the name of the approving official and the reason for the deviation must be noted in the case file.

#### **C. Ownership and Encumbrances**

The identification of owners and those with a financial interest in property is a critical component of the agency's and the U.S. Attorney's decision to seize property.

(1) The investigative agency is responsible for ensuring that current and accurate information on the ownership of, and any encumbrances against, personal property and conveyances targeted for forfeiture is compiled prior to seizure whenever practicable.

(2) In cases where information relating to titles and liens cannot be acquired without compromising an investigation, the investigating agency shall obtain the data as soon as possible following the seizure.

These post-seizure inquiries shall also apply to seizures of personal/general property and conveyances at border situations as appropriate.

(3) In instances where real property and businesses are targeted for seizure, the investigating agency will have primary responsibility for ensuring that a title search, a fair market appraisal, and an environmental study are performed prior to seizure, as appropriate in individual cases.

See TEOAF Directive No. 29, "Seizure and Disposition of Properties Subject to Title Restrictions," for additional details on ownership and encumbrances.

6. **AUTHORITY.** 31 U.S.C. § 9703; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Seized Property Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 20, "Net Equity Requirements for Seized Property," September 23, 1994 (revised 3/21/1997, and 6/3/2014), is hereby superseded. This Directive also supersedes our previous guidance on Minimum Monetary Thresholds for Adoptive Cases specified on page 8 of The Department of the Treasury Guide to Equitable Sharing for Foreign Countries and Federal, State, Local Law Enforcement Agencies, April 2004.

9. **EFFECTIVE DATE.**, August 1, 2015.

/S/

John Farley  
Acting Director  
TEOAF

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: 25  
(Revised September 24, 1998)

DATE: November 10, 1994

SUBJECT: Departmental Policy Regarding the Seizure and Forfeiture  
Of Real Property that is included in or eligible for the  
National Register of Historic Places

**BACKGROUND**

In 1966, Congress passed the National Historic Preservation Act (NHPA).<sup>1</sup> The purpose of NHPA is to preserve irreplaceable parts of the American heritage to allow future generations of Americans to benefit from the cultural, educational, and aesthetic qualities of these historic places.

NHPA applies to federal buildings and land managed by federal agencies. It also applies to all other historic properties which may be seized and subject to forfeiture. Treasury law enforcement agencies seizing and forfeiting these properties must protect national interests by ensuring that these properties are managed in such a way that prevents a loss of their historic integrity.

Under Section 106 of NHPA, every federal agency must take into account the effect its undertakings could have on any district, site, building, structure, or object that is included in, or eligible for the National Register of Historic Places (National Register).<sup>2</sup> [See Attachment "A"]

It is the policy of the Department of the Treasury that real property which is seized and subject to forfeiture by the United States, and is historic property within NHPA, will undergo a review process by the Advisory Council on Historic Preservation (Advisory Counsel).<sup>3</sup> [See Attachment "A"] Further, real properties, subject to forfeiture, shall be properly preserved if it is listed in the National Register or if it is determined eligible to be included therein.

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<sup>1</sup>Section 470, Title 16, United States Code.

<sup>2</sup>16 U.S.C. 470f; See Executive Order No. 11593 of May 13, 1971, 36 F.R. 8921; United States v. 25,149.48 Acres of Land, 455 F. Supp. 192 (E.D. N.C. 1978).

<sup>3</sup>Cf. 36 C.F.R. 800, Protection of Historic and Cultural Properties.



The following criteria are indications of historical or cultural properties that may fall under 36 C.F.R. 800:

1. The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and
2. that are associated with events that have made a significant contribution to the broad patterns of our history; or
3. that are associated with the lives of persons significant in our past; or
4. that embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
5. that have yielded, or may be likely to yield, information important in prehistory or history.

Under the terms of NHPA, the State Historic Preservation Officer (SHPO) has a responsibility to assist in the identification of historic properties by administering state preservation efforts, maintaining a state review board, and ensuring adequate public participation in the state program. To facilitate the requirements under NHPA, we have included, as Attachment "B", a national listing of State Historical Preservation Offices.

#### PROCEDURES

- A. Treasury law enforcement agencies shall consider the requirements of NHPA in their pre-seizure analysis whenever it appears that a real property may be subject to the conditions of the act. If it appears that a real property is subject to the conditions of the act, the Treasury law enforcement agency may verify the property's significance by consulting with the SHPO and ascertaining whether or not the property is listed in the National Register or has been nominated to the National Register. The placement of the property, targeted for seizure and forfeiture, on the National Register should be one aspect of the overall consideration in seizing a real property for forfeiture during pre-seizure analysis.

If there is reason to believe that the integrity of the investigation will be compromised by ascertaining the information, as outlined in the paragraph above, the required action may be delayed until after the seizure has occurred.

- B. It is the policy of the Department of Justice<sup>4</sup> that after seizure of a real property that is believed to be of historical value, the U.S. Marshal in the district where the property was seized will consult with the SHPO to decide whether the property is historic or is eligible to be considered historic. Except for seizures by the U.S. Customs Service, the U.S. Marshal shall determine if the seized property is of historic value. The U.S. Customs Service shall perform this task for seizures resulting from U.S. Customs Service investigations. If the property is *not* found to be historically important, the SHPO need only be furnished documentation of this finding.
- C. If the property is determined to be historic, then the policy will be to assess the effects that the seizure will have in accordance with 36 C.F.R. 800.5, *Assessing effects*.

In order to provide you with the requirements of this section, we have provided a copy of Part 800, 36 CFR for your reference as Attachment "C".

- D. If, by following the guidelines, it is decided that there are no potential effects, then no changes in the normal procedures for disposing of property will be made and only the SHPO, and other parties of interest, need be notified.
- E. If, however, there is an effect, but it is *not* considered adverse, the U.S. Marshal<sup>5</sup> or the U.S. Customs Service officer, in concurrence with the SHPO, will provide documentation to the Advisory Council explaining the reasoning why the effect will not violate the NHPA.

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<sup>4</sup>To Be Included

<sup>5</sup>bid

- F. If the effect *is found* to be adverse, the policy will be to first notify the Advisory Council and then consult with the SHPO on ways to reduce and avoid the adverse effects on the historic property. Methods to reduce adverse effects in dealing with the disposal of the historic property include, but are not limited to, the following:
1. Use preservation covenants or restrictions in the deed of the property in order to govern what can be done with the property. If it is not possible to sell the property after a reasonable amount of time with these covenants included, then they may be removed. For purposes of this policy, a reasonable amount of time will be considered to be no longer than one year.
  2. Market the property to be sold as a historic property. This will attract a potential buyer who is interested in preserving the property and will reduce the possibility of adverse effects on the property.
  3. Follow suggestions made by the Advisory Council on ways to maintain the property's historic integrity.
- G. Finally, after an appropriate method is determined to reduce the potential effect, the Treasury law enforcement agency will submit a Memorandum of Agreement outlining these methods to the Advisory Council. Prior to the disposition of the property, the agency shall consider the Advisory Council's recommendations when making a final policy decision and also obtain the concurrence of the United States Attorney and the agency's Office of Chief Counsel.
- H. Treasury law enforcement agencies shall carefully detail any covenants, restrictions, or conditions of sale or transfer of properties subject to NHPA when preparing disposition instructions. Copies of any related documents should be provided the national seized property contractor at the time of the issuance of the disposition instructions.

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 27

DATE: February 18, 2015

SUBJECT: Processing Interlocutory Sales

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 27 provides policy and procedures for processing interlocutory sales (I-sales) by seizing agencies. The administrators of the Treasury Forfeiture Fund (TFF) 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 seized property to be sold prior to forfeiture and the net monies received from that sale to be considered substitute res for the seized property. This is accomplished by an I-sale order from the court.

2. **SCOPE.** This Directive applies to both personal and real property seizures and to all TFF participating agencies.

3. **POLICY.** An I-sale is useful for avoiding waste or a decline in property value, and reduces TFF costs associated with storing and maintaining seized property. Agencies should recommend this option to the Assistant United States Attorney (AUSA) when appropriate. This method of reducing seizure costs makes more funds available for other forfeiture programs and forfeiture expenses, while preserving the value of the property until the court has resolved the forfeiture action.

4. **RESPONSIBILITIES AND PROCEDURES.**

A. **Seizing Agencies**

(1) When an I-sale is contemplated for seized property, the seizing agency shall ensure that all lien, mortgage, and third party claims are presented to the AUSA.

(2) Agencies shall coordinate with the AUSA to ensure that distribution(s) which are lawfully due from, or as a result of, the sale of the property are clearly spelled out in the I-sale order. In each case involving an I-sale, agencies shall coordinate with the AUSA to ensure the AUSA includes terms in the I-sale order indicating that the lienholder will accept the net proceeds as full satisfaction of the lien or mortgage.

(3) As with all sales, a minimum bid may be set. However, regardless of whether a minimum bid is set, the Government always reserves the right to reject any bid that does not cover the related expenses. Agencies shall monitor all aspects of the I-sale process to ensure that the interests of the government are protected and that the sale does not result in a shortfall. Agencies and the AUSA shall coordinate and evaluate whether the I-sale should be cancelled or the order amended at appropriate points.

(4) Upon receipt of an I-sale order from the AUSA, the seizing agency's representative shall promptly process a disposition order for the sale of the subject property. The disposition order shall include a copy of the I-sale order, and shall be provided to the national seized property contractor. A copy of the I-sale order and the disposition order shall also be sent to TEOAF by the seizing agency.

(5) After the completion of the I-sale, the seizing 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 federal contract's statement of work and the I-sale order.

(2) If there is a deposit posted for the subject property, the national seized property contractor shall deposit and maintain such deposit in its custody until closing.

(3) For real property, the contractor shall use the held deposit funds to satisfy payment of any valid lien for which adequate sales proceeds do not exist. Under no circumstances shall liens be paid from the TFF without prior approval by TEOAF counsel. In rare instances, on a case by case basis, such approval may be granted.

(4) At the closing of the sale, the closing agent shall accept 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 I-sale order, and provide the national seized property contractor with the net balance to be forwarded to the National Finance Center (NFC).

(5) The net amount derived from the sale becomes the substitute res for the subject seizure and is identified as such.

(6) The national seized property contractor shall transmit the net amount derived from the sale to the NFC with instructions to deposit it in the suspense account.

(7) The national seized property contractor, upon receipt of the total net balance of the sale, is required to notify the appropriate seizing agency of the sale price, all related expenses and the total net amount, now identified as the substitute res, in order that the seizing agency can update its internal seized property tracking system.

5. **AUTHORITY.** 31 U.S.C. § 9703; 28 U.S.C. §§ 2001, 2002, 2004; Supplemental Rule G(7), Federal Rules of Civil Procedure; Federal Rule of Criminal Procedure 32.2(b)(7).

6. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Seized Property Team at (202) 622-9600.

7. **CANCELLATION.** TEOAF Directive No. 27, "Processing Interlocutory Sales," October 1, 1995, is hereby superseded.

8. **EFFECTIVE DATE.** February 18, 2015.

/S/

John M. Farley  
Acting Director  
TEOAF

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

**DIRECTIVE NO. 29**

**DATE:** November 28, 2014

**SUBJECT:** Seizure and Disposition of Assets Subject to Title Restrictions

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 29 contains procedures that are intended to prevent the complications that arise when property is sold, transferred, or placed into official use without clear title. It is the policy of the Department of the Treasury to sell all titled properties with a "clean" title, or if that is not possible, to fully disclose at the time of auction any encumbrances or "clouds" to potential purchasers. Failure to adequately identify title encumbrances may result in considerable difficulties for the purchaser/transferee and a financial liability for the Treasury Forfeiture Fund (TFF). It will also open the Department's forfeited property program to criticism and negative publicity.

2. **SCOPE.** This Directive applies to all seizing agencies participating in the TFF and TEOAF.

3. **POLICY.** This policy pertains to all titled property (e.g., real property, vehicles, vessels, aircraft and conveyances). Whenever such property is seized (e.g., vehicles, vessels, aircraft and conveyances) or restricted (e.g., real property), all issues that may impede the transfer of clear title must be identified, communicated, and appropriately resolved prior to final disposition.

4. **SEIZING AGENCY RESPONSIBILITIES.** The seizing agency is responsible for ensuring that the requirements of this Directive are met.

5. **PROCEDURES.**

A. At the time of seizure, or earlier if practicable, the seizing agency shall:

**(1) Ensure that action is taken to determine all potential interested parties.**

(a) In the case of real property, aircraft and vessels, the seizing agency shall task the National Seized Property Contractor to conduct a pre-seizure analysis as soon as the item has been identified for seizure.

(b) In the case of vehicles, the seizing agency shall contact the department of motor vehicles in the state that issued the license plate to obtain copies of the current title and to review any other available documentation that may indicate that there is a claimant with a potential interest in the vehicle.

**(2) Determine whether the property has been reported as "stolen."**

(a) Any property with an identifiable serial or identification number should be checked through the National Crime Information Center (NCIC) or National Law Enforcement Tracking System (NLETS).

(b) With regard to vehicles, the seizing agency shall contact the department of motor vehicles in the state that issued the license plate attached to the vehicle at time of seizure to determine if the vehicle is "stolen" and not yet recorded in NCIC or NLETS.

(c) If there is any indication that the property is registered or titled in a foreign country, the seizing agency shall contact the appropriate law enforcement office within the foreign country to identify any issues that may impede transfer of clear title.

(d) The status of property reported as "stolen" shall be verified. If the report proves true, arrangements shall be made timely to return the stolen property to its rightful owner or claimant.

**(3) Determine whether the property is registered or titled as "salvaged."**

(a) To determine if a vehicle has a "salvage" title, the department of motor vehicles in the state that issued the license plate and the National Insurance Crime Bureau (NICB) shall be contacted.

(b) To determine if a vessel has a "salvage" title, the appropriate state vessel registration office shall be contacted. In addition, vessels larger than 5 net tons and holding an official number documented with the U.S. Coast Guard shall be queried through the National Vessel Documentation Center, Falling Waters, WV at 1-800-799-8362.

(c) To determine if an aircraft has a salvage title, the Federal Aviation Administration shall be queried through the Department of Transportation, Federal Aviation Administration Aircraft Registration Branch at 866-762-9434.

(d) Any property identified as having a "salvage" title shall be carefully examined to determine whether it should be held until forfeiture, and to determine what type(s) of disposition would be acceptable upon forfeiture. If dispositioned for sale, the property must be fully identified as "salvage" at time of auction.

B. Any property identified as "stolen" or "salvage" shall not be dispositioned for sale, retained for official use, transferred to another federal agency, or asset shared, without written authorization of the Director, TEOAF.

C. The seizing agency shall again check the status of any titled property at the time of forfeiture to ensure that no reports identifying the property as "stolen" or "salvage" were reported to law enforcement, licensing or titling agencies since the time of seizure.

D. All seizing agencies shall establish internal policies to ensure the removal of license plates and/or registrations from forfeited vehicles prior to disposition. Upon removal, the seizing agency should contact the state agency or foreign country that issued the plates and/or registration to notify them of the forfeiture of the vehicle by the U.S. Government and to obtain disposition instructions regarding the license plates and/or registration. In addition, no vehicles may be offered for sale at a Department of the Treasury auction with license plates attached. The sale of vehicles with license plates and/or registration attached is a violation of state law and may be a potential violation of a violator's right to privacy.

**6. AUTHORITY.** 31 U.S.C. § 9703; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Seized Property Team at (202) 622-9600.

8. **CANCELLATION.** TEOAF Directive No. 29, "Seizure and Disposition of Properties Subject to Title Restrictions," October 1, 1995 (revised March 10, 2000), is hereby superseded.

9. **EFFECTIVE DATE.** November 28, 2014.

/S/

John M. Farley  
Acting Director  
TEOAF



Department of the Treasury  
Executive Office for Asset Forfeiture

Directive No: 30  
(Revised 11/25/96)

DATE: November 25, 1996

SUBJECT: **Interim Guidelines re: Lead-Based Paint in Residential Property Built Prior to 1978**

BACKGROUND

The Department of Housing and Urban Development (HUD) first promulgated regulations in 1978 regarding the use and disposal of residential property that may have lead based paints. The regulations require federal agencies to:

1. Inspect for lead-based paint
2. Eliminate the hazards of any lead-based paint present  
and
3. Notify prospective purchasers of the hazard

HUD is currently revising the regulation. This office and the U. S. Marshals Service have prepared coordinated responses on behalf of the Departments of Justice and Treasury on these regulations. These regulations coupled with the potential liabilities for leasing or selling residential properties with lead-based paint present considerable concerns for federal law enforcement agencies and their respective Departments. Litigation has already been filed in the millions of dollars for the lease and/or sale of residential properties subject to these regulations. Pending discussions and possible changes to the regulations, this office is issuing the following interim policy on this matter.

POLICY

- A. Unoccupied Pre-1978 Constructed Residential Properties Targeted for Seizure.

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1. It is the interim policy of the Department that Treasury law enforcement agencies shall not take custody of any residential property constructed prior to 1978 absent a compelling law enforcement purpose and careful pre-seizure planning that includes both an inspection for lead-based paint and an abatement cost estimate.

In the event an ongoing investigation does not permit the inspection and estimate of the targeted residential real property, the investigating agency shall assume the property is contaminated and include that critical element in the resulting net-equity evaluation and pre-seizure decision making.

2. Pre-seizure planning decisions on pre-1978 properties currently under indictment or subject to a civil forfeiture complaint, but not yet forfeited, should be re-examined to determine if it continues to be in the best interest of the government to forfeit the property.
3. Alternative methods to achieve the law enforcement purpose of removing the criminal activity and taking the property away from the criminal should be considered. (e.g., foreclosure, condemnation by public health and safety agencies, etc.)

B. Seized Unoccupied Residential Properties Leasing the Property

1. Do not lease the property. Assume the property is contaminated. Have an inspection conducted for lead-based paint as soon as practical.
2. Disposition of Residential Properties Notify potential purchasers or transferees that:
  - a. The property was built prior to 1978;
  - b. Based on an inspection, the property contains lead-based paint;
  - c. There are hazards, symptoms, and a treatment for lead-based paint poisoning;
  - d. Precautions should be taken to avoid lead-based paint poisoning.

*(Information regarding 3 a-d above is contained in the Environmental Protection Agency (EPA) fact sheet, booklet and sample disclosure forms. Copies are attached). Additional booklets will be provided the national seized property contractor for distribution to potential purchasers. The national seized property contractor will be tasked with identifying and securing qualified local inspectors and abatement services, if abatement of a lead-based hazard is considered in the best interests of the government)*

- e. Contracts for sale of potentially contaminated properties shall include language that advises the potential buyer of the hazard. If the government does not abate the hazard prior to the sale, the purchaser acknowledges that the transaction requires that he/she abate the hazard.
- f. The title transfer document should also include language that ensures that the purchaser of a residential property that is contaminated by lead-based paints is responsible for abating the hazard.
- g. A copy of the lead-based paint inspection report should be made available during pre-sale and provided to the successful purchaser of residential real property.

C. Seized and Occupied Pre-1978 Residential Property

- 1. The occupant(s) must be given immediate written notice of the potential hazard by the seizing agency or its agent. A copy of such notice and the receipt for same by the occupant(s) shall be maintained in the agency case file and the property custody file. This notice may be done in person or by certified, return receipt mail.
- 2. An inspection by a qualified lead-based paint inspector shall be conducted as soon as possible.
- 3. If lead-based paint is discovered, the occupant(s) should be asked to vacate the property. If they decline, the occupant(s) must execute a written waiver acknowledging that:
  - a. They were notified in writing of the hazard

- b. They were provided with a copy of the inspection report showing that lead-based paint was found in the property;
  - c. They elect to stay in the property; and,
  - d. They release the seizing agency, the Department, its employees, and the national seized property contractor and its employees and agents from any liability for illness arising from the presence of the lead-based paint.
4. If occupant(s) refuse to sign such a waiver, the seizing agency should move to have the occupant(s) vacated from the premises at the earliest possible opportunity.

D. Disposition of Seized Occupied Residential Property  
See "B. 2." Above

E. Continued Case Processing to Seizure/Forfeiture

Treasury law enforcement agencies who have decided to progress to seizure/forfeiture of a residential real property, found to be contaminated with lead-based paints, or who assume that a residential real property is contaminated with lead-based paints based solely on the fact that the property was constructed prior to 1978 shall:

- 1. Provide a written request, at least sixty days prior to a seizure/forfeiture action, to the Director, Executive Office for Asset Forfeiture, for concurrence. The request will be jointly submitted by the Treasury law enforcement seizing agency and the Assistant United States Attorney. The request shall include a detailed description of the property, including whether or not it is occupied, a detailed statement of the law enforcement purpose to be served and the reasons why it can not be accomplished by alternative means, and a net-equity analysis of the property that includes the estimated costs of inspection and abatement.
- 2. Further action to accomplish seizure and/or forfeiture, including taking custody of the property, should not be accomplished pending the written response of concurrence by the Director, Executive Office for Asset Forfeiture.

The national seized property contractor has been instructed not to take real property, subject to this Directive, into custody without the required written concurrence of the Director, Executive Office for Asset Forfeiture.

(Note: Part D is substantially similar to the Department of Justice policy in this matter.)

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Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: **32**  
(Revised February 18, 1999)

DATE: MAY 20, 1998

SUBJECT: **Use of *Special Warranty Deed* and *Indemnification Agreement* for the Sale of Real Property**

**I. BACKGROUND**

It is the policy of the Department of the Treasury to sell forfeited real properties with title insurance to maximize the revenue from the sale. On occasion, some real properties have not been offered for sale for long periods of time while the seizing agency and the national seized property contractor endeavor to clear a "clouded" title to the property as interpreted by the Title Company. This results in increased property management costs and the inherent liabilities of maintaining vacant real properties in inventory for long periods of time.

Real property forfeited to the government in a judicial proceeding vests title in the United States. On occasion, Title Companies challenge the government's title for title insurance purposes because of perceived defects in notice, in the satisfaction of lienholder interests, or in the forfeiture process. As a result, these companies will not issue title insurance for the property.

In order to expedite the disposition of properties with "clouded" titles, it is the policy of the Department of the Treasury to dispose of the property utilizing a *Special Warranty Deed* and, if necessary, an *Indemnification Agreement* as prescribed below. This procedure should expedite the sale of such properties, but may not encourage a Title Company to issue title insurance.

**II. PROCEDURES**

- A. Upon receipt of disposition instructions to sell real property, the national seized property contractor shall make all reasonable good faith efforts to secure a clear title and title insurance for real property, as prescribed by the contract.

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B. When it becomes evident that the Title Company *will not* issue a policy for an identified property, the seizing agency and the national seized property contractor will take the following steps to expedite the sale of the property.

1. The seizing agency and the national seized property contractor will submit a recommendation to the Counsel for the Executive Office for Asset Forfeiture (EOAF) to sell a particular real property using the *Special Warranty Deed* (See Attachment A) and the *Indemnification Agreement-Buyer Only* (See Attachment B) and/or the *Indemnification Agreement-Buyer and Title Company* (See Attachment C). This recommendation shall include detail as to the reason for the reluctance of the Title Company to issue a policy and what efforts have been taken to date by the national seized property contractor to obtain title insurance. The use of the *Indemnification Agreement-Buyer and Title Company* (Attachment C) should be used only as a last resort and upon a written refusal from the Title Company to write title insurance unless they are indemnified along with the buyer.
2. The EOAF Director will notify in writing the concerned agency office and the national seized property contractor of the decision on the recommendation within thirty (30) days. If approved, the national seized property contractor will coordinate necessary action with the seizing agency.
3. The *Special Warranty Deed* and *Indemnification Agreement* will be prepared by the national seized property contractor after receipt of the approval by the EOAF Director to dispose of the property in this manner.

### III. COMMENT

This policy is provided to address situations that may have resulted in the holding of real properties in the seized property inventory for long periods of time.

While these procedures should expedite the disposal of real property, they do not take the place of conscientious handling of real property seizure cases, including appropriate pre-seizure planning, by all involved. Every effort should be made to ensure that pre-seizure analysis, case processing as well as seizure and forfeiture processing are accomplished in the most responsible manner to avoid incidents that may give rise to "clouded" titles.

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 34

DATE: July 26, 2017

SUBJECT: Policy Regarding the Federal Adoption of Seizures by State and Local Law  
Enforcement Agencies

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 34 contains policies and procedures pertaining to the federal adoption of seizures made by State and Local law enforcement agencies. The purpose of this Directive is to provide the circumstances under which adoptions may be accepted and the procedures to be followed when an adoptive seizure is contemplated by a Treasury Forfeiture Fund (TFF) participating agency.

2. **SCOPE.** This Directive applies to all TFF participating agencies.

3. **BACKGROUND.** As a result of an Order issued on July 19, 2017 by the Attorney General, and after review of the adoptions policy within both the Department of the Treasury and the Department of Justice (DOJ) forfeiture programs, it has been determined that modification of the adoption policy was appropriate. Under the July 19, 2017 Order, federal adoption of assets seized lawfully by state or local law enforcement under their respective state laws is authorized whenever the conduct giving rise to the seizure violates federal law. Certain enhanced legal review and expedited time requirements apply. The policy contained in this Directive is intended to be consistent with the new DOJ policy and AG Order.

4. **POLICY.** TFF participating agencies may adopt assets lawfully seized by state and local law enforcement agencies under their respective state laws whenever the conduct giving rise to the seizure violates federal law. The net equity and value thresholds found in TEOAF Directive Number 20 will continue to apply.<sup>1</sup> As part of the federal law enforcement community, agencies and components should prioritize the adoption of assets that will advance the missions of the Department of the Treasury and the Department of Homeland Security. TFF participating agency legal counsel review is required for all adoptive seizures, as is compliance with the time frames and procedures set forth herein.

5. **SEIZING AGENCY RESPONSIBILITIES.** All TFF participating agencies shall ensure that adoptive seizures are accepted only in the circumstances set forth in this Directive. TFF participating agencies shall ensure agency counsel review of any prospective adoption.

6. **GUIDANCE AND PROCEDURES.**

- A. Time Limits: In order to give individual property owners an opportunity to challenge the seizure as soon as practicable, TFF participating agencies will expedite their decisions regarding adoptions and their provision of notice to interested parties.

<sup>1</sup> See TEOAF Directive 20 for current net equity requirements. U.S. Attorneys' Offices, in consultation with local federal law enforcement agencies, may continue to establish higher thresholds for judicial forfeiture cases in order to best address the crime threat in individual judicial districts.



- i. State and local law enforcement agencies must request federal adoption within 15 calendar days following the date of seizure.
- ii. The adopting federal agency must send notice to interested parties within 45 days of the date of seizure.

These time limitations may be extended for good cause by agency counsel or other designated official of the adopting federal TFF participating agency, provided that such extensions are documented in writing and include a description of the circumstances justifying the extension. Any such extensions remain subject to statutory time limits pursuant to 18 U.S.C. § 983(a)(1)(A)(iv).

B. Legal Review Required By Agency Counsel: To ensure that adoptions are conducted in compliance with federal and state law, and Treasury and Homeland Security policies, at a minimum, the following safeguards, among others, shall be maintained and implemented to ensure that there is sufficient evidence of criminal activity and that the evidence is well documented:

- i. To ensure that adoptions involve property lawfully seized, legal counsel at the federal TFF participating agency adopting the seized property must review all adoption requests for compliance with law, especially seizures made pursuant to an exception to the Fourth Amendment's warrant requirement.
- ii. To assist federal legal counsel in this review process, the form used by state and local agencies seeking federal adoption of seized assets, *Request for Adoption of State and Local Seizure* ("Adoption Form"), will require that the state or local agency provide additional information about the probable cause determination justifying the seizure. This additional information in the Adoption Form will better document probable cause in the first instance, and provide federal legal counsel with the relevant information relating to probable cause for review. Additionally, state and local agencies must certify that the seizure and requested federal adoption comply with applicable state laws (including obtaining a turnover order if necessary).
  - a. Until the final joint DOJ-Treasury Adoption Form is available, which should be finalized shortly after issuance of this directive, the TFF participating agencies should contact their headquarters and TEOAF to discuss interim processes if they receive an adoption request.
- iii. Adoptions of cash<sup>2</sup> in amounts equal to or less than \$10,000 involve additional safeguards. Those adoptions will be permissible where the seizure was conducted: (1) pursuant to a state warrant, (2) incident to arrest for an offense relevant to the forfeiture, (3) at the same time as a seizure of contraband relevant to the forfeiture, or (4) where the owner or person from whom the property is seized makes admissions regarding the criminally derived nature of the property. If a TFF participating federal agency seeks to adopt cash equal to or less than \$10,000 and none of these safeguards is present, then the agency may proceed with the adoption only if the U.S. Attorney's Office first concurs.

<sup>2</sup> For purposes of this Directive, the term "cash" included currency and currency equivalents, such as postal money orders, personal and cashier's checks, stored value cards, certificates of deposit, traveler's check, and U.S. Savings Bonds.

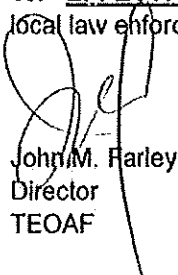
- C. **Additional Training:** To facilitate implementation of these safeguards and help ensure that federal adoptions advance federal law enforcement objectives,<sup>3</sup> DOJ agencies are being required to provide annual training on state and federal laws related to asset forfeiture to its law enforcement officers. State and local agencies will also be required to take annual training on asset forfeiture. TEOAF will work with DOJ to coordinate such training with the TFF participating agencies and develop a similar training program.
- D. **Definition of Adoption:** Consistent with current policy, state and local agencies are required to complete the adoption form only when seeking federal adoptions. An adoption occurs when a state or local law enforcement agency seizes an asset, pursuant to their own authorities and without federal involvement (for example, without federal intelligence sharing, federal coordination, or federal oversight), and requests that a federal agency "adopt" the asset and forfeit it under federal law. This definition supersedes all prior definitions of adoption. Seizures made as part of joint federal-state investigations or pursuant to federal seizure warrants are not considered adoptions. TFF participating agencies must review the circumstances of a seizure by state and local law enforcement to determine whether it is a federal adoption.
- E. The TFF participating agencies shall track adoption requests and acceptances to ensure compliance with this policy. This shall include tracking of all requests for extensions of time limitations in 6.A above and whether the request was approved or denied.

7. **AUTHORITY.** 31 U.S.C. § 9705; Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund" (or successor documents).

8. **CANCELLATION.** TEOAF Directive No. 34, "Policy Limiting the Federal Adoption of Seizures by State and Local Law Enforcement Agencies," January 16, 2015, is hereby cancelled and replaced with this Directive. Any other documents that reference adoptions (i.e., prior Treasury publications or policy documents) are hereby superseded to the extent they conflict with this Directive.

9. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Equitable Sharing Team or to TEOAF Legal Counsel at (202) 622-9600.

10. **EFFECTIVE DATE.** This policy is effective immediately and applies to seizures made by state or local law enforcement agencies on or after July 26, 2017.

  
John M. Farley  
Director  
TEOAF

<sup>3</sup> This change in policy does not affect the ability of state and local agencies to pursue the forfeiture of assets pursuant to their respective state laws. Moreover, when 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, any forfeiture action should generally be pursued in state court assuming that state law authorizes the forfeiture. See, e.g., DOJ Asset Forfeiture Policy Manual (2016), Chap. 14, Sec. I.

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 36

DATE: January 22, 2013

SUBJECT: Payment of Attorney's Fees

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 36 provides guidance on TEOAF's and the agency's responsibilities for the payment of attorney's fees under the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Public Law 106-185, 114 Stat. 202 and other authorities. This Directive does not create any private right or cause of action.

2. **SCOPE.** This Directive applies to all seizure and forfeiture cases conducted by agencies participating in the Treasury Forfeiture Fund (TFF).

3. **POLICY.** Generally, attorney's fees are not payable from the TFF. However, the TFF may pay an award of attorney's fees under the Equal Access to Justice Act (EAJA) in an ancillary proceeding to a criminal forfeiture. In a civil forfeiture case, however, attorney's fees awarded by the court under CAFRA are to be paid from the Judgment Fund, not the TFF. In an administrative forfeiture case, there is no authority to pay an award of attorney's fees from the TFF.

4. **GUIDANCE.**

A. **Payment of Attorney's Fees in Civil Forfeiture Cases**

CAFRA amended 28 U.S.C. § 2465(b) to provide for an award of attorney's fees and other litigation costs to any claimant in a civil forfeiture case who "substantially prevails." Such awards will be paid out of the Judgment Fund. The courts have generally held that a claimant "substantially prevails" if he obtains a dismissal with prejudice, summary judgment, or judgment on the merits after trial. The following are generally not considered to be substantially prevailing: declination, settlement, or dismissal without prejudice. The United States is not required to make any payments to the claimant not specifically authorized by law. See 28 U.S.C. § 2465(b)(2)(A).

This amendment to 28 U.S.C. § 2465 merely provides parties with a right to make a claim for attorney's fees. The party must pursue the claim with the court and obtain a judgment that the United States is liable for attorney's fees under 28 U.S.C. § 2465. A judgment for attorney's fees against the United States under this statute should be submitted to the Financial Management Service (FMS), U.S. Department of the Treasury, for payment pursuant to the provisions of 31 U.S.C. § 1304 just as any other judgment against the United States, (commonly referred to as the Judgment Fund).<sup>1</sup>

TEOAF is not authorized to pay attorney's fees awarded under 28 U.S.C. § 2465 from the TFF. See 31 U.S.C. § 9703.

<sup>1</sup> The legislative history of CAFRA specifies that Congress intended that awards under section 2465 be paid not from the forfeiture funds, but from the Judgment Fund. Congressional Budget Office Cost Estimate: H.R. 1658 – The Civil Asset Forfeiture Reform Act of 2000, reprinted in 146 Cong. Rec. H2040, H2047-2049 (daily ed. Apr. 11, 2000).

**(1) Persons who may pursue attorney's fees**

In order to pursue attorney's fees under the law a party must be a claimant that has substantially prevailed in a civil forfeiture proceeding with the United States. The claimant must demonstrate to the court the following:

- (a) Claimant substantially prevailed in a proceeding contested by the United States;
- (b) Attorney's fees and costs being sought are reasonable;
- (c) Claimant has not been convicted of a crime for which the property interest was subject to forfeiture under a Federal criminal forfeiture law; and
- (d) Claimant is not one of multiple claimants to property under the circumstances where the United States is not liable for costs and attorney's fees, as described in section 4.A.2, below.

**(2) Circumstances where the United States is not liable**

**(a) Convicted claimant with a forfeitable property interest**

The United States is not liable for costs and attorney's fees if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law. See 28 U.S.C. § 2465 (b)(2)(B). The claimant's property interest need not have actually been forfeited in the criminal case; the property interest need only be subject to forfeiture as a result of the conviction.

**(b) Multiple claims**

The United States is not liable for costs and attorney's fees associated with any claim if there are multiple claims to the same property and the United States:

- (i) Promptly recognizes such claim;
- (ii) Promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty, and there are no other claims to that portion of the property;
- (iii) Does not cause the claimant to incur additional, reasonable costs or fees; and
- (iv) Prevails in obtaining forfeiture with respect to one or more of the other claims.

See 28 U.S.C. § 2465(b)(2)(C).

**(3) Procedures for requesting payment of attorney's fees, awarded under CAFRA, from the Judgment Fund**

When there is a judgment awarding attorney's fees and costs in a civil forfeiture case, the United States Attorney's Office (USAO) should submit a request for payment of the award to the FMS, Department of the Treasury, which manages the Judgment Fund. FMS's website (<http://www.fms.treas.gov/judgefund>) has links to procedures for submitting a request for an award of costs and fees and the appropriate forms.

In addition to the forms and instructions, FMS's website also contains general information about the fund. The USAO will be required to complete and submit the appropriate forms to the Judgment Fund. TEOAF Counsel is available to provide assistance or guidance as needed.

#### **B. Payment of Third Party Attorney's Fees in Criminal Forfeiture Cases**

Since CAFRA strictly applies to civil forfeiture proceedings, the third party petitioner in an ancillary proceeding to a criminal forfeiture, pursuant to 21 U.S.C. § 853(n), must assert payment for attorney's fees under EAJA, 28 U.S.C. § 2412. EAJA provides for the award of attorney's fees to prevailing parties in any civil action against the United States in which the Government's position was not substantially justified.<sup>2</sup> A third party claimant's ancillary proceeding to a criminal forfeiture is considered a "civil action" under EAJA. Payment of attorney's fees awarded under EAJA may be made from the TFF. The USAO must obtain the approval of the chief of DOJ AFMLS for any settlement of an EAJA claim.

EAJA requires the court to award fees upon finding (1) the applicants were the prevailing parties, (2) the Government's position was not substantially justified, and (3) no circumstances exist that would make an award unjust.

Agencies should consult with TEOAF counsel if there is a possibility that EAJA attorney fees may be awarded in any case. Once the EAJA amount is approved by the court, the agencies should submit the settlement agreement, along with other appropriate documentation for issuing a refund, to TEOAF for payment. TEOAF counsel and financial operations staff will assist the agency in processing the payment from the TFF.

#### **C. Administrative Forfeiture Cases**

##### **(1) Agency declinations**

There is no authority to pay an award of attorney's fees under the statute governing the expenditure of the funds from the TFF. In administrative forfeiture cases where the agency decides not to pursue the forfeiture and returns property, neither TEOAF nor the agencies shall pay a demand for costs and attorney's fees. Also, as there is no judgment against the United States, such cases are inappropriate for consideration for payment under 31 U.S.C. § 1304.

##### **(2) Settlements**

Attorney's fees are likely to be a topic for consideration in the settlement or other appropriate disposition (e.g., remission or mitigation) of administrative forfeiture cases. Agencies negotiating a settlement that includes an agreement to pay attorney's fees should be mindful that as payment is not authorized under 31 U.S.C. § 9703 or 31 U.S.C. § 1304, the agency appropriation may be the only funds available to satisfy the terms of the agreement. Accordingly, agencies should not include an agreement to pay attorney's fees in any settlement of an administrative forfeiture.

**5. AUTHORITY.** 28 U.S.C. § 2412; 28 U.S.C. § 2465; 31 U.S.C. § 3104; 31 U.S.C. § 9703.

<sup>2</sup> "Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

6. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Legal Counsel at (202) 622-9600.

7. **CANCELLATION.** TEOAF Directive No. 36, "Payment of Attorneys Fees," September 15, 2000, is hereby superseded.

8. **EFFECTIVE DATE.** January 22, 2013.

/S/

Eric Hampl

Director

TEOAF

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 37

DATE: November 23, 2015

SUBJECT: Payment of Interest on Cash Deposits to the TFF or Suspense Account

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 37 provides guidance on TEOAF's and the agency's responsibilities regarding for the payment of interest on cash deposits to the TFF or suspense account.
2. **SCOPE.** This Directive applies to all seizure and forfeiture cases conducted by agencies participating in the Treasury Forfeiture Fund (TFF).
3. **POLICY.** Generally, the TFF enabling legislation, 31 U.S.C. § 9705, does not specifically authorize the payment of interest. However, where there is a written settlement agreement or a court order requiring that interest be paid, TEOAF will pay interest pursuant to that settlement agreement or court order. Further, pursuant to case law in the Sixth and Ninth Circuits, interest shall be paid, even without a court order or written agreement, when returning seized currency to a claimant in administrative or judicial cases.<sup>1</sup> This includes all "declination cases."<sup>2</sup> All requests for payments of interest must be submitted by the seizing agency to TEOAF for processing.

4. **GUIDANCE.**

A. **Situations Where Interest is Payable**

i. **Court Order or Written Agreement, Any Circuit, Mandating the Interest Be Paid**

TEOAF will honor a written agreement relating to interest provided such agreement is memorialized appropriately, either by court order or other reliable documentation, such as a signed stipulation between the parties with an executed release and hold harmless agreement in favor of the government. Unless otherwise indicated by such court order or agreement, TEOAF will refund interest only on the portion of the currency that is being returned. The TFF does not have legal authority to pay interest at a rate that is greater than the rate earned on funds invested by the TFF during the relevant period.

Should an agreement or order require the United States to pay interest at a rate that is greater than what the TFF earned, TEOAF will tender interest to the claimant at the earned rate and will submit the excess to the Judgment Fund for payment in accordance with 31 U.S.C. § 1304. The Judgment Fund is managed independently of TEOAF, and TEOAF is not in any way responsible for any approval or denial of any request made to the Judgment Fund.

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<sup>1</sup> The Sixth Circuit encompasses Kentucky, Michigan, Ohio, and Tennessee. The Ninth Circuit encompasses Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii.

<sup>2</sup> Declination cases are those instances whereby a seizure has occurred and a claim has been subsequently filed and referred by the seizing agency to the USAO, but the USAO declines to file any action or seek a pre-complaint settlement. The assets that were seized must then be returned without further action. See *Carvajal v. United States*, 521 F.3d 1242 (9<sup>th</sup> Cir. 2008).

## ii. Case-Law Mandated Interest Payments in the Sixth and Ninth Circuits

In cases arising out of the Sixth and Ninth Circuits, including declinations, unless interest is expressly *waived* in writing, interest shall be paid for all refunds. Accordingly, TFF participating agencies must request that TEOAF pay interest when processing refunds of seized currency to claimants in the Sixth and Ninth Circuits.<sup>3</sup> This is especially important for declinations in those circuits where the seized funds are refunded directly from the Treasury Suspense Account by Fines, Penalties & Forfeiture (FP&F) Officers of Customs and Border Protection (CBP). See section C.2. Special Procedures for FP&F, are described more fully below in Section 4.C.ii.

### a. Legal Basis for the Policy in the Sixth and Ninth Circuit

In 1998, to reflect case law in the Sixth and Ninth Circuits, TEOAF advised that it would pay interest to claimants on refunds issued in those circuits without requiring a court order. The relevant cases are United States v. \$277,000 in U.S. Currency, 69 F.3d 1491 (9th Cir. 1995) and United States v. \$515,060 in U.S. Currency, 152 F.3d 491 (6th Cir. 1998). In essence, those cases held that when returning seized funds to a claimant, the government must also disgorge the benefit the government earned from holding the funds. Practically speaking, that benefit is interest. However, in order to avoid invoking the well-settled legal doctrine that "interest cannot be recovered...against the government in the absence of an express waiver of sovereign immunity" espoused in Library of Congress v. Shaw, 478 U.S. 310,311 (1986), the Ninth and Sixth Circuits relied upon a disgorgement theory, which classified interest as part of the seized res itself.

### b. Declinations

On April 11, 2008, the Ninth Circuit held in Carvajal that when a United States Attorney's Office (USAO) declines to file a forfeiture proceeding and returns seized currency to a claimant, the interest must also be returned. The court in Carvajal relied upon the disgorgement theory espoused in the \$277,000 decision. Further, with respect to the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), specifically 28 U.S.C. § 2465, which is deemed a waiver of sovereign immunity and sets forth a uniform rule for paying interest to substantially prevailing parties in civil forfeiture cases, the Carvajal court ruled that CAFRA's interest provision did not apply because there was no judicial proceeding in which there could have been a prevailing party; indeed, the USAO in Carvajal's case had declined to file a judicial proceeding. Thus, the Carvajal court held that in the absence of a forfeiture proceeding (administrative or judicial), CAFRA's interest provision does not apply, and the disgorgement theory espoused in \$277,000 does. The Carvajal court reaffirmed that \$277,000 remains good law. 521 F.3d at 1249.

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<sup>3</sup> AUSAs often include in their declination letters a request that interest be returned, but even if such request is absent, interest must be returned in a declination in the Sixth or Ninth Circuit.



## **B. Situations Where Interest is Not Payable**

### **i. Generally**

Interest is not payable in any circuit, other than the Sixth or Ninth, where interest is not expressly included in the written agreement or court order.

### **ii. Petitions for Remission**

Interest is not payable to a party whose petition for remission in a judicial forfeiture case was granted by the Department of Justice's Asset Forfeiture and Money Laundering Section. See 31 U.S.C. §§ 9705(a)(1)(E) and (b)(1) (amounts paid for remission must not exceed the value of the property at the time of the seizure). Because petitioners for remission of judicially forfeited property are generally not considered claimants or prevailing parties, the TFF is not authorized to pay interest to such parties under case law or statute.

### **iii. Jurisdictional Bar**

Further, generally, the United States is not liable for interest if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law. See 28 U.S.C. § 2465(b)(2)(B). Thus, for example, in a declination case in which the claimant was convicted of a crime for which federal forfeiture was available, even where no forfeiture was actually attained, interest is not payable to that claimant/convicted defendant. See United States v. Khan, 497 F.3d 204, 209 n.6 (2d Cir. 2007).

## **C. PROCEDURES TO REQUEST THAT TEOAF PAY INTEREST**

### **i. Generally**

To request payment of interest on a refund, the seizing agency must complete Form 7a (Request for Payment of Interest) and Form 7 (Request for Refund From Forfeiture Fund) or Form 2 (Disposition Instructions for Currency Held in Suspense Account). The forms must be submitted to TEOAF together with the necessary supporting documentation (i.e., settlement agreements, court orders, declination letters, or, if applicable, simply indicate that interest is due pursuant to case law). The payee must also complete a W9 form. TEOAF will calculate the amount of interest to be paid, and transmit the requests to the National Finance Center (NFC) for payment. Depending upon the specific circumstance, principal and interest may be paid in a single check or separately.

### **ii. Special Procedures for FP&F Officers of CBP**

FP&F officers, on behalf of CBP and Immigration and Customs Enforcement (ICE), may directly instruct the NFC to issue refunds of seized currency from the Treasury Suspense Account. However, FP&F officers do not have the capability to issue interest payments. For refunds from the suspense account for which interest is payable under this policy (particularly for declinations in the Ninth or Sixth Circuit), request to pay interest must be forwarded to TEOAF using TEOAF Form 7a, Request for Payment of Interest, as directed in Section C.1 above.

5. **AUTHORITY.** 31 U.S.C. § 9705; 28 U.S.C. § 2465; various case law.

6. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to TEOAF's Refund Team at (202) 622-9600.

7. **CANCELLATION.** None. This directive incorporates the guidance provided in TEOAF Memorandum, "U.S. v. \$515,060.42 (Hurst), No. 95-6579, etc., (6th Cir. May 26, 1998)," July 17, 1998, TEOAF Memorandum, "The Payment of Interest," May 12, 2000, and TEOAF Memorandum, "Payment of Interest required in the Sixth and Ninth Circuits on all Returns of Seized Currency; Interest Policy Generally," December 2, 2009.

8. **EFFECTIVE DATE.** November 23, 2015

/S/

John Farley  
Acting Director  
TEOAF

Attachment A – TEOAF Form 7a, Request for Payment of Interest – CBP

Attachment B – TEOAF Form 7a, Request for Payment of Interest – IRS-CI

Attachment C – TEOAF Form 7a, Request for Payment of Interest – U.S. Secret Service

Attachment D – TEOAF Form 7a, Request for Payment of interest - ICE

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: 38

DATE: November 7, 2003

**SUBJECT:** Disposition Procedures for Non-Forfeited Personal Property<sup>1</sup>

This directive establishes policies and procedures for the disposition of personal property items that are held with items seized for forfeiture by law enforcement bureaus participating in the Treasury Forfeiture Fund. Generally, the governing regulations for the disposition of such articles are the Federal Property Management Regulations maintained by the General Services Administration (GSA). See 41 CFR Ch. 101 Subparts 101-48.1, 101-48.2, and 101-48.3. The procedures for handling property governed by this directive are explained below.

**I GENERAL POLICY**

To ensure that personal property is handled in such a manner that the rights of individuals who have a legitimate claim for such property are protected in accordance with the law. To ensure that such property does not delay the disposition of property seized for forfeiture and that the handling and storage of such property does not create an economic burden for the Treasury Department and the bureaus participating in the Treasury Forfeiture Fund.

**II DEFINITIONS**

**A. Voluntarily Abandoned Property** – Personal property abandoned to a Federal agency in such a manner as to vest title thereto in the United States. In general, when an individual signs a document stating that they relinquish all title to a designated piece of property, that property is considered to be voluntarily abandoned. 41 CFR 101-48.001-8.

**B. Abandoned or Unclaimed Personal Property** – Property that has not been seized as evidence or for forfeiture but is in the possession of the seizing agency. Examples are furniture, appliances, and other household items inside a seized residence; suitcases left at an airport by an arrestee; clothing, suitcases or other personal objects left in vehicle, etc. 41 CFR 101-48.001-1.<sup>2</sup>

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<sup>1</sup> This Directive applies to a type of property often possessed by law enforcement agencies and most accurately identified as "non-forfeited personal property." The abbreviated term "personal property" is used throughout this Directive to track the language of and to ensure compliance with the appropriate GSA regulations governing the disposition of such property. "Personal effects," a term used by some agencies when referring to non-forfeited personal property, are personal property covered by this Directive.

<sup>2</sup> The definition in the GSA regulations states that abandoned or unclaimed personal property is personal property found on premises owned or leased by the government. Law enforcement

### **III     RESPONSIBILITIES**

**A.** Agencies that participate in the Treasury Forfeiture Fund (TFF) will develop internal procedures for carrying out the policies and procedures outlined in this directive.

**B.** The Treasury Forfeiture Fund will provide funds for the National Seized Property Contractors to manipulate and otherwise assist in the disposition of personal property, which is directly impeding the disposition of a forfeited asset or which is in the possession of the seizing agency due to the seizure of an asset(s) for forfeiture.

**C.** A special identifier will be used at the Bureau of Customs and Border Patrol for the deposit of proceeds from any sale of voluntarily abandoned property, or of abandoned or unclaimed property. The National Finance Center (NFC) and other appropriate personnel will develop a plan for ultimately transferring these proceeds to the general fund of the U.S. Treasury.

### **IV     PROCEDURE**

#### **A. Voluntarily Abandoned Property**

The bureaus are encouraged to use the voluntary abandonment procedure to the greatest extent possible. In general, property that has been voluntarily abandoned to the United States may be disposed of immediately in the same manner as excess property is handled. Regulations governing disposition of excess property are 41 CFR 102-36.245 to 102-6.280. Bureaus will enact procedures and maintain adequate records to show that the property has been voluntarily abandoned by the rightful owner(s). Normally, such property will remain in the custody of and be the responsibility of the holding agency.

#### **B. Abandoned or Unclaimed Personal Property**

Bureaus are encouraged to minimize the amount of such property in their custody. Whenever possible, personal property should be removed from residences, autos, vessels, etc, as soon as possible by the rightful owner(s) or their representatives.

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actions often involve the seizure of assets not on government property. Normally those assets are brought to a government facility for storage. For example, a vehicle containing personal property is seized and brought to the national seized property contractor's holding facility. In this situation, it is the position of the Treasury Department that the asset is considered found on property owned or leased by the government, and the procedures outlined in this directive should be employed to dispose of the personal property.

Before disposal can occur, title to the property must become vested in the United States. Title vests in the United States after the property has been held for a period of thirty days. However, even after the thirty-day time period has passed, title reverts to an owner when a proper claim is filed. 41 CFR 101-48.102-1. A claim can be filed up to three years after the thirty-day period. 41 CFR 101-48.306-1.

In the event that a claim is filed and the personal property is no longer available to be remitted to its rightful owner, the claim will be satisfied in accordance with the procedures defined in the GSA's regulations in 41 CFR 101-48.306-1. Specifically, the proceeds from any sale of abandoned or other unclaimed property shall be kept in a suspense fund by the National Finance Center for deposits of such proceeds. Reimbursement of a proper claim will come from this fund, and shall not exceed the proceeds realized from the disposal of the property, minus disposal costs and costs of the care and handling of such property.

**Notice prior to disposal of abandoned or other unclaimed property.**

Bureaus will develop procedures to ensure that every reasonable attempt has been made to notify the rightful owner(s) of abandoned or unclaimed property in their custody. Adequate records will be maintained to properly document these attempts. At a minimum, at least one written notification will be provided to the rightful owner(s) and any known representatives (e.g., counsel) of the pending action. The notification will advise all parties that unless a proper claim is filed within 30 days of the receipt of the notification, that title will vest in the United States and appropriate disposition actions will commence. The notification should clearly state what types of disposition may occur (e.g., sale, destruction, donation, etc.). The notification should also advise the parties how to make a proper claim and where such claim must be filed. Once the thirty-day time frame for claim filing has passed, bureaus will immediately commence an appropriate disposition action. Sample notice letters are attached to this directive [Attachments A and B].

**C. Note on Personal Property Located Inside or Related to Real Property Subject to Forfeiture**

In general, when real property is seized for forfeiture, no action should be taken with regard to any personal property until the forfeiture has been perfected. Bureaus are encouraged to include all personal property located in or related to the real property in the Final Order of Forfeiture, if they are subject to forfeiture. Such property shall be disposed of using the normal forfeited property disposition procedures.

If the personal property is not included in the Final Order of Forfeiture, then once the real property is forfeited, the procedures outlined in this directive should be employed to dispose of the personal property. That is, first seek voluntary

abandonment of such property. If that does not occur, then send notice, and treat the property as abandoned or other unclaimed property pursuant to this policy directive.

#### **D. Disposition**

**Voluntarily abandoned property, and abandoned and other unclaimed personal property:** Bureaus should use existing excess property procedures for disposition of voluntarily abandoned and abandoned and other unclaimed property.<sup>3</sup> There are generally three options for disposal of the property: (1) destruction; (2) sale; (3) donation.

**Importance of Value:** Each bureau will develop procedures to ensure that all personal property taken into their custody has been evaluated with a fair market value. The value in relation to the cost of care and handling of, including storing, the personal property is a large factor in determining the procedures for destruction of voluntarily abandoned or abandoned or unclaimed personal property. For additional guidance, see GSA's abandonment/destruction regulations at 41 CFR 102-36.305 through 102-36.330.

1. **Destruction:** It is recommended that bureaus destroy all property that is deemed appropriate for destruction. When considering destruction of property, bureaus should follow these recommended guidelines, which are based on GSA regulations. To determine if the property is appropriate for destruction, the agency must make a written determination that the property has no commercial value<sup>4</sup> or that the estimated cost of its continued care and handling<sup>5</sup> would exceed the estimated proceeds from its sale. 41 CFR 102-36.305; 40 USC 527. This written determination must be made by an authorized official of your agency, and must be approved by a reviewing official who is not directly accountable for the property. 41 CFR 102-36.310. Once this determination has been made and approved, the agency may destroy or dispose of the property in accordance with the excess property regulations pursuant to 41 CFR 102-36.245 through 102-36.280. Property deemed suitable for destruction need not be reported to GSA. 31 CFR 102-36.220.

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<sup>3</sup> GSA regulations allow voluntarily abandoned property to be handled as excess property. Further, 40 USC 102(3) defines excess property as "property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities." Therefore, abandoned or other unclaimed property may also be disposed of in the same manner as excess property.

<sup>4</sup> An item has no commercial value when it has neither utility nor monetary value (either as an item or as scrap). 41 CFR 102-36.305.

<sup>5</sup> "Care and handling" includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting such property, and destroying or rendering innocuous property which is dangerous to public health or safety. 41 CFR 102-36.45(d)(3).

If abandoned and other unclaimed personal property is not deemed appropriate for destruction (i.e., because the value of the property exceeds the cost of its continued care and handling, or because it has commercial value), then the property may be considered for sale or donation. GSA reporting requirements would apply to such property.

2. **Sale:** It is important to note that if property is sold, then the proceeds from that sale must remain available in a special fund for possible future claims. 41 CFR 101-48.306-1. Those proceeds will not be deposited into the Treasury Forfeiture Fund, but rather into a suspense account at the National Finance Center. See Section IV.B above. Bureaus are encouraged to minimize disposition expenses to the greatest extent possible by destroying low valued property and considering donation whenever possible.

Sale of personal effects pursuant to this directive may be handled in the same manner as sale of forfeited property, including posting notice of such sale and the preferred use of public auctions. Because of the costs associated with advertising and sale of property, sale should be considered only when the value of the property is significantly higher than the cost of care and handling of the property.

3. **Donation:** Donation of such property is encouraged where appropriate. Procedures for donation are governed by 41 CFR 102-36.320, and 41 CFR part 102-37.

4. **Use of National Seized Property Contractor:** The National Seized Property contractors may be tasked (at the expense of the Treasury Forfeiture Fund) to provide services to assist in disposition activities, provided the property is directly impeding the disposition of associated assets seized for forfeiture. Any expenses incurred by the contractor should be applied against the asset seized for forfeiture.

5. **Reporting and Record Keeping:** Bureaus must file reports as required by GSA. We anticipate that most property covered by this directive will be considered appropriate for destruction and therefore will not be required to be reported. For those items of property that are not appropriate for destruction, i.e., because the value of the property exceeds the cost of care and handling, GSA reporting requirements must be met. As always, bureaus must keep accurate records of all property in its custody, its value, the costs incurred in the care and handling of the property, the disposition of such property, and the proceeds received as a result of any sale of the property. Bureaus may task the National Seized Property Contractor to keep such records.

DEPARTMENT OF THE TREASURY  
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 39

DATE: May 29, 2014

SUBJECT: Tax Refund Fraud Cases

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 39 establishes policies and procedures that govern fraudulently obtained tax refunds that become the subject of a seizure or forfeiture investigation. Coordination of tax refund fraud investigations, particularly those involving identity theft,<sup>1</sup> is paramount in ensuring that victimized taxpayers are expeditiously remedied and losses to the Government are minimized.

2. **SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF).

3. **POLICY.** TFF participating agencies are required to follow the guidance provided in this Directive. In cases where assets are seized or forfeited in connection with a fraudulent tax refund scheme, TFF participating agencies shall ensure that proper notice is provided to the Internal Revenue Service (IRS) so that they may be afforded the opportunity to file a petition for remission. Funds forfeited in connection with a fraudulent tax refund scheme generally shall not be available for purposes of equitable sharing unless: (i) the IRS has affirmatively stated it will not file a petition for remission for such funds, or the time to do so has elapsed after issuance of timely notice by the TFF participating agency; or (ii) the amount forfeited exceeds the loss incurred by the U.S. Treasury General Fund as a result of the fraudulent activity.

4. **RESPONSIBILITIES.** All TFF participating agencies shall take reasonable steps to facilitate the prompt return of funds forfeited pursuant to a fraudulent tax refund scheme to the U.S. Treasury General Fund. TFF participating agencies are permitted to equitably share such funds only when all victim petitions have been handled and all obligations under this Directive have been fulfilled. TFF participating agencies are required to track all investigations covered by this Directive. Such tracking shall enable the agency to identify every seizure that falls within the purview of this Directive and to provide TEOAF with documentation that verifies that the instructions in this Directive have been followed, if such a request is made.

IRS Criminal Investigation (CI) is required to coordinate these efforts with the civil components of the IRS.

5. **PROCEDURES.**

A. **Generally**

(1) **In Lieu of Seizure or Forfeiture in Appropriate Cases, TFF Participating Agencies Shall Support IRS Civil Processes to Return Proceeds from Refund Fraud Schemes to the Treasury**

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<sup>1</sup> Tax refund fraud is often perpetrated by identity theft. The filing of a fraudulent Federal tax return causes a loss to the Government and affects the victim taxpayer both financially and emotionally.



**General Fund.** The IRS External Leads<sup>2</sup> process is an administrative, expedited process which allows IRS to return erroneously issued refunds to the general fund and take corrective actions to protect taxpayers and prevent future losses to the Government. Using this process in lieu of, or in conjunction with, a criminal investigation also allows for law enforcement agencies to eliminate the time and resources required to execute seizure warrants, complete forfeiture proceedings and satisfy the requirements of the petition for remission process.

The TFF participating agency shall utilize the External Leads process in lieu of seizure when the process would not unduly halt or compromise an investigation or forfeiture that is already underway. External Leads should be utilized only when proceeds are not at imminent risk of loss, such as when bank accounts have been frozen by the financial institution.

**(2) TFF Participating Agencies Shall Ensure that the IRS is Treated as a Potential Victim in All Forfeiture Actions Involving Fraudulent Income Tax Refunds.** In some instances, the IRS may be unable to take unilateral action to recover a fraudulently obtained refund utilizing its External Leads process, or the External Leads process may not have been sought because of its potential to unduly halt or compromise an investigation or forfeiture that was already underway. In such instances, the TFF participating agencies shall ensure that IRS receives prompt and timely notice of IRS's opportunity to file a petition for remission for the forfeited funds consistent with this Directive. No undocumented costs or fees shall be deducted from amounts to be remitted to the IRS in these cases. However, reasonable, proper and documented costs may be deducted, as would be from any other victim remission payment.

**(3) TFF Participating Agencies Shall Ensure IRS Inclusion in Restitution and Restoration Requests Granted by the Department of Justice, Asset Forfeiture & Money Laundering Section (AFMLS).** In instances where the IRS is unable to recover funds as discussed in 5.A(1) and (2), TFF participating agencies shall work with the United States Attorney's Office (USAO) to ensure that IRS is included in restitution orders in cases where fraudulent refunds have been issued and the funds lost. Investigations that reveal refund crimes often result in losses to the Government which will not be recovered by other IRS methods. Restitution allows for the possibility to recover the lost funds. In some cases where a forfeiture occurred, a defendant may be ordered to pay restitution to IRS in a refund fraud case, and AFMLS may grant a USAO request to use the forfeited funds to satisfy the restitution order. In such cases, the seizing agency shall coordinate with IRS to ensure that TEOAF and the National Finance Center (NFC) are instructed to electronically transfer the funds via IPAC to the clerk of the court<sup>3</sup> with any appropriate case identification markings. Per Treasury payment policy, checks will not be issued to IRS.

## **B. Required Notices**

**(1) Upon Initiation of an Investigation Involving Fraudulently Obtained Federal Income Tax Refunds.** As soon as practicable, the TFF participating agency shall notify their local IRS-CI Identity Theft Coordinator. The agency shall provide the Coordinator with any information that may assist the IRS in recovering any fraudulently disbursed funds and prevent additional fraudulent refunds from being released.

<sup>2</sup> The External Leads process includes canceling Treasury checks through Treasury Financial Management Services (FMS) and adjusting taxpayers' accounts at IRS. IRS will activate identity theft indicators to prevent future "bad" or fraudulent refunds from being issued. As part of this process, the IRS-External Leads team will determine if suspicious funds in a bank account are from erroneously issued Federal tax refunds. Based on that determination, the IRS-External Leads team will provide the bank a "letter of indemnification." This letter essentially shifts any legal liabilities to the IRS, protecting the bank from any legal actions that may be taken by the account holder.

<sup>3</sup> In a restoration, the court then forwards the payment to the victim listed in the restitution order.

**(2) Upon Seizure of U.S. Treasury Tax Refund Checks or Funds That are Believed to be Traceable to a Fraudulent Federal Income Tax Refund.** As soon as practicable, upon seizure of U.S. Treasury Tax Refund checks, prepaid access devices, bank accounts, or virtual currency associated with tax fraud investigations, TFF participating agencies shall notify their local IRS-CI Identity Theft Coordinator. The agency shall provide the Coordinator with any information that may assist the IRS in recovering the funds.

**(3) Upon Initiation of Forfeiture Action Against Funds Traceable to a Fraudulently Obtained Federal Income Tax Refund.** Regardless of whether the forfeiture is being conducted judicially or administratively, TFF participating agencies shall send written notices of IRS's right to file a petition for remission to:

Internal Revenue Service  
Petition for Remission  
Attn: Advisory  
801 N Broadway, MDP 53  
Nashville, TN 37203

Notices shall include as much information as possible, including taxpayer names, SSNs, dates of birth and addresses, refund method, as well as any applicable financial institution information such as bank routing and account numbers, check numbers, debit card numbers and the associated account numbers, and dates of deposit. The TFF participating agencies shall also provide the IRS with background information, such as the seizure warrant affidavit, or any other documentation that may facilitate the filing of a petition and enable the IRS to correct the taxpayers' accounts who have been victims of ID theft.

The TFF participating agency is encouraged to honor all reasonable requests by the IRS for additional time to submit a petition for remission. If the IRS a) fails to respond to the notice, b) fails to respond to the notice in a timely manner, or c) declines to file a petition, the TFF participating agency shall document the relevant facts and place that documentation in the file pertaining to the seizure at issue. A copy of the documentation shall also be included with any related equitable sharing package, and the package shall be flagged in a way that clearly alerts TEOAF personnel that the forfeiture involves funds derived from a fraudulently obtained Federal income tax refund.

#### **C. Report to TEOAF**

Upon request, TFF participating agencies shall provide TEOAF with a report listing all equitable sharing requests that involve assets related to fraudulently-obtained Federal income tax refunds.

**6. AUTHORITY.** 31 U.S.C. § 9703; 18 U.S.C. § 981(d); Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

**7. INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Legal Counsel at (202) 622-9600.

**8. EFFECTIVE DATE.** May 29, 2014.