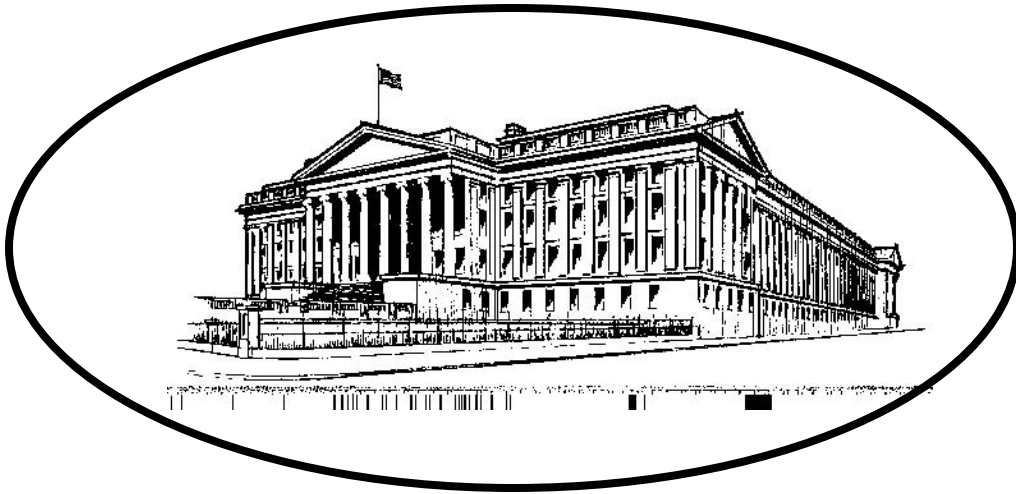


Department of the Treasury



*Guide to Equitable Sharing
for
Foreign Countries
and
Federal, State, and
Local Law Enforcement Agencies*

April 2004

Introduction

This is the second revision of the *Department of the Treasury Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Guide)*, which was first published on October 1, 1993. This revision has been updated to reflect any equitable sharing policy and statutory changes made necessary by the enactment of the Civil Asset Forfeiture Reform Act of 2001, P.L. 106-185, and supersedes the information provided in the October 1, 1996 *Guide*.

Asset forfeiture has been, and remains, a highly effective tool for taking the profit out of crime. State, local, and foreign law enforcement support of federal investigative and prosecutive initiatives is essential; and the sharing program has proved invaluable in fostering enhanced cooperation among the law enforcement agencies. As of this writing, the Department of the Treasury has shared over a half billion dollars in forfeited currency, proceeds, and property with numerous state and local law enforcement agencies and foreign countries.

It is the purpose of this *Guide* to enhance the integrity of the equitable sharing program so that it will continue to merit public confidence and support. Therefore, all seizing and prosecutorial agencies should take the appropriate steps to ensure that they comply with the provisions of this *Guide* and the *National Code of Professional Conduct for Asset Forfeiture*.

This Guide is applicable only to forfeitures conducted by the Department of the Treasury forfeiture fund participating investigative agencies. Any questions should be addressed to:

*Department of the Treasury
Executive Office for Asset Forfeiture
740 15th Street, N.W., Suite 700
Washington, D.C. 20220
E-mail: treas.aca@eoaf.treas.gov
Website: www.eoaf.treas.gov
Phone: (202) 622-9600
Fax: (202) 622-9610*

TREASURY GUIDE TO EQUITABLE SHARING

Contents

Introduction

<i>Sharing Authority</i>	1
<i>Mission and Goals of the Treasury Forfeiture Fund</i>	2
<i>Treasury Investigative Agencies</i>	3
<i>Agencies Eligible to Receive Treasury Equitable Sharing</i>	4
<i>Types of Federal Forfeiture Actions</i>	5
• <i>Judicial Forfeiture</i>	5
• <i>Administrative Forfeiture</i>	6
<i>Two Ways to Participate in the Equitable Sharing Program</i>	7
• <i>Joint Investigation</i>	7
• <i>Adoption of a Federal, State, Local, or Foreign Seizure</i>	7
<i>Minimum Monetary Thresholds for Adoptive Cases</i>	8
<i>How to Apply for an Equitable Share</i>	9
• <i>Federal, State or Local Agencies</i>	9
• <i>Foreign Countries</i>	10
• <i>Common Causes of Delay in Sharing</i>	11
<i>How an Equitable Share is Calculated</i>	12
• <i>Sharing is Always Based on Net Proceeds</i>	12
• <i>Sharing in Joint Operations</i>	13
• <i>Sharing in Task Force and Other Multi-Agency Cases</i>	14
• <i>Sharing in Adoptive Seizures</i>	17
• <i>Sharing with State and Local Prosecutorial Agencies</i>	17
• <i>Deciding Officials</i>	18

<i>Uses of Equitably Shared Funds and Property</i>	19
• <i>General Guidance Concerning Use</i>	19
• <i>Uses of Equitably Shared Funds</i>	20
• <i>Transfers to Other Law Enforcement Agencies</i>	25
• <i>Transfers to Non-Law Enforcement Governmental Agencies</i>	25
• <i>Transfer of Forfeited Tangible Personal Property</i>	26
• <i>Transfer of Forfeited Real Property</i>	27
• <i>Weed and Seed Initiative</i>	27
• <i>Reimbursement of Federal Costs</i>	29
 <i>Accounting for Cash, Proceeds and Tangible Property</i>	 30
• <i>General Accounting Procedures</i>	30
• <i>Compliance Requirements</i>	31
 <i>Reporting Requirements</i>	 31
• <i>Federal Equitable Sharing Agreements</i>	32
• <i>Annual Certification Report</i>	32
• <i>Annual Audit</i>	32
 <i>Non-Compliance</i>	 33
 <i>Mailing Address</i>	 34
 <i>Appendix:</i>	
• <i>Adoptive Seizure Policies and Procedures</i>	A.1
• <i>Federal Equitable Sharing Agreement and Instructions</i>	A.2
• <i>Federal Annual Certification Report and Instructions</i>	A.3
• <i>Form TD F 92-22.46 and Supplemental Instructions</i>	A.4
• <i>National Code of Professional Conduct for Asset Forfeiture</i>	A.5

Sharing Authority

The authority of the Secretary of the Treasury to share federally forfeited property with participating federal, state and local law enforcement agencies is established by federal law at 18 U.S.C. § 981(e), 19 U.S.C. § 1616a(c) and 31 U.S.C. §§ 9703 (a)(1)(G) and 9703(h). The exercise of this authority is **discretionary**. The Secretary of the Treasury is not required to share property in any case. Requests for equitable shares shall be filed in the form prescribed by the Director of the Executive Office for Asset Forfeiture (Director of EOAF).

The intent of Congress in the sharing of forfeited property is to ensure that any property shared with a law enforcement agency...

- ◆ has a value that bears a reasonable relationship to the degree of direct participation to the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which forfeiture is based; and
- ◆ will serve to encourage further cooperation between the recipient agency and federal law enforcement agencies.

Under the authority of 18 U.S.C. § 981 and 19 U.S.C. § 1616a, the Secretary of the Treasury may discontinue forfeiture proceedings under the Tariff Act of 1930, as amended (19 U.S.C. § 1202, et seq.) in favor of forfeiture under state or local law.

The policies and procedures set forth in this *Guide* are applicable only to forfeitures conducted by the Department of the Treasury forfeiture fund participating investigative agencies.

Mission and Goals of the Treasury Forfeiture Fund

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

Within the context of this mission, the Department of the Treasury asset forfeiture program has four primary goals:

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

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

Treasury Investigative Agencies

This *Guide* applies only to the sharing of assets that were seized by Treasury forfeiture fund participating investigative agencies. Since October 1, 2003 the revenue producers that can initiate an equitable sharing on behalf of the Department of the Treasury Forfeiture Fund are:

- ◆ U.S. Customs and Border Protection
- ◆ U.S. Immigration and Customs Enforcement
- ◆ Internal Revenue Service
- ◆ U.S. Secret Service

The U.S. Coast Guard, FinCEN, the Federal Law Enforcement Training Center and the Trade and Tax Bureau also participate in the Treasury Forfeiture Fund pursuant to 31 U.S.C. 9703.

Agencies Eligible to Receive Treasury Equitable Sharing

Any state or local law enforcement agency, or foreign country, that directly participates in an investigation or prosecution that results in a federal forfeiture by a Treasury fund participating agency may request an equitable share of the net proceeds of the forfeiture.

- ◆ If the forfeiture is completed by a Treasury forfeiture fund participating agency, then another Treasury fund participating investigative agency **cannot** apply for an equitable share of the proceeds **unless** the request is for tangible or real property. Monetary instruments cannot be shared between Treasury agencies. Nevertheless, the work of all Treasury or DHS participating agencies will be considered in the final sharing decision.
- ◆ U.S. Attorney offices are not eligible to receive Treasury forfeiture fund equitable sharing.
- ◆ No sharing request or recommendation is final until approved by the appropriate deciding official.

For purposes of equitable sharing, a “*law enforcement agency*” is a state or local government organization authorized to engage in as its primary function the investigation and apprehension, or the prosecution of individuals suspected or convicted of offenses against the criminal laws of the United States or of any state, county, municipality, or territory of the United States, and which is primarily composed of or employs individuals designated or qualified under state statute as peace officers or who are authorized by state statute to prosecute criminal violations or to exercise police powers such as making arrests, seizing property, executing warrants and court orders, and carrying firearms.

A “*primary function*” is one that (1) occupies a clear majority of the agency’s working time over a typical work cycle; and (2) is carried out on a regular and recurring basis by a majority of the agency’s officers, employees, and agents; and (3) is performed by the agency on a regular and recurring basis. Functions that are of an emergency, incidental or temporary nature are not considered “primary” even if they should amount to a majority of an agency’s working time.

- ◆ Typically, a *law enforcement agency* as defined above will include city, district, local, county, or state police, sheriff, or highway patrol departments, and state or local prosecutors’ offices.
- ◆ The definition of *law enforcement agency* provides general guidance. Determinations of agency eligibility are solely within the discretion of the Executive Office for Asset Forfeiture, Department of the Treasury.

Types of Federal Forfeiture Actions

◆ Judicial Forfeiture

- Criminal Forfeiture

Criminal forfeiture is an action brought as a part of the criminal prosecution of a defendant. It is an *in personam* (against the person) action and requires that the government indict (charge) the property used or derived from the crime along with the defendant. If the jury finds the property forfeitable, the court issues an order of forfeiture.

For forfeitures pursuant to the Controlled Substances Act, Racketeer Influenced and Corrupt Organizations (RICO), as well as money laundering and obscenity statutes, third parties assert their interest in the property at the ancillary hearing. Once the interests of third parties are resolved, the court issues a final forfeiture order.

- Civil Judicial Forfeiture

Civil judicial forfeiture is an *in rem* action brought in court against property. The property is the defendant and no criminal charge against the owner is necessary.

- Judicial forfeiture is required for any property other than monetary instruments and hauling conveyances if:
 - the value of the “other property” exceeds \$500,000,
 - a claim and, if required, a cost bond has been filed, or
 - the property is real estate.

◆ Administrative Forfeiture

Administrative forfeiture is an *in rem* action that permits a federal seizing agency to forfeit the property without judicial involvement. The authority for a seizing agency to start an administrative forfeiture action is found in the Tariff Act of 1930, 19 U.S.C. § 1607. Property that can be administratively forfeited is:

- merchandise that may not be imported into the United States;
- a conveyance used to import, transport, or store a controlled substance;
- a monetary instrument; or
- other property that is \$500,000 or less in value.

Federal law authorizes the seizing or adopting federal agency to administratively forfeit the following types of property:

- | | |
|---|-------------------|
| 1. Monetary Instruments
(e.g., cash, checks,
stocks, bonds) | Unlimited Value |
| 2. Hauling Conveyances
(e.g., vehicles, vessels,
and aircraft used to transport
illegal drugs) | Unlimited Value |
| 3. Other Property
(e.g., bank accounts,
jewelry, etc.) | \$500,000 or less |

Two Ways to Participate in the Equitable Sharing Program

◆ Joint Investigation

Joint investigations are those in which Treasury forfeiture fund participating agencies work with other federal, state or local law enforcement agencies or foreign countries to enforce federal criminal laws.

◆ Adoption of a Federal, State, Local or Foreign Seizure

Adoptive seizures are **only** those seizures where 100% of the pre-seizure activity was performed by the seizing agency. A state or local law enforcement agency or foreign country that has seized property may request that one of the Treasury investigative agencies adopt the seizure and proceed with federal forfeiture. The Treasury agency may adopt such seized property for federal forfeiture where the conduct giving rise to the seizure is in violation of federal law enforced by the Treasury agency. State and local agencies have **30 calendar days** from the date the property was seized to request a federal adoption. The adopting federal agency may waive the **30-day** rule where the state or local agency requesting adoption demonstrates that exceptional circumstances justified the delay.

For details on adoption, see Directive 34, "Adoptive Seizure Policies and Procedures," issued by Treasury Executive Office for Asset Forfeiture (EOAF) on January 17, 2001. See Appendix A.2 or contact EOAF to obtain a copy.

Minimum Monetary Thresholds for Adoptive Cases

Generally, the seizure will not be adopted unless the equity in the property meets the following minimum thresholds:

Conveyances

- Vehicles - \$2,500
- Vessels - \$5,000
- Aircraft - \$5,000

Real Property

- Land and any improvements -
\$10,000 or 20 percent of the appraised value, whichever is greater.

All Other Property

- Currency,
- Bank Accounts,
- Monetary Instruments
- Jewelry, etc. \$1,000

Note: *Firearms are forfeited without regard to value. Vehicles and other property fitted (e.g., hidden compartments) for illegal use should also be forfeited regardless of value.*

These thresholds may be waived where forfeiture will serve a compelling law enforcement interest; for example, the forfeiture of a “crack house,” or a vehicle, vessel, or aircraft outfitted for the smuggling of drugs. In determining whether to attempt to forfeit property that is near or below the minimum equity threshold, the local U.S. Attorney **must** be consulted to solicit support in the event the forfeiture should become a judicial forfeiture.

Example: A vehicle with a lien in the amount of \$5,000 is seized by a local law enforcement agency. If the value of the car is \$7,000, then the seizure would not normally be adopted by a federal agency, as the equity is only \$2,000. *The thresholds should be based on the equity and not the property itself.*

How to Apply for an Equitable Share

◆ Federal, State or Local Agencies

After a seizure in a joint investigation or an adoption, the participating federal, state, or local law enforcement agency may request a share of the forfeited assets by submitting a *Treasury Form TD F 92-22.46, Request for Transfer of Property Seized/Forfeited by a Treasury Agency*, to the Treasury investigative agency completing the forfeiture.

A separate TD F 92-22.46 must be completed for each seizure. However, when multiple assets are seized, one TD F 92-22.46 form may be filed with an attached listing of all the assets seized. (See Appendix A-1 for a copy of the form and supplemental instructions).

Sharing requests must be submitted within **60 days** after the seizure or within **60 days** after the federal adoption of a state or local seizure. The 60-day rule may be waived by the federal seizing agency in exceptional circumstances upon a written request stating the reasons for the late submission of the equitable sharing request, which would justify the waiver. The request for a waiver must accompany the equitable sharing request form TD F 92-22.46.

- In judicial forfeitures, an agency may amend its Form TD F 92-22.46 within **60 days** after forfeiture to reflect any continued participation in the case.

Note: *The Department of the Treasury equitable sharing form, the TD F 92-22.46, and the Department of Justice equitable sharing form, the DAG-71, are virtually identical. The requesting law enforcement agencies must make their requests to the Department whose seizing agency completed the forfeiture.*

◆ Foreign Countries

The Secretary of the Treasury, pursuant to statutory authority, may share forfeited currency or proceeds with countries that participated directly or indirectly in any acts that led to the seizure or forfeiture, if the sharing:

- has the concurrence of the Department of Justice;
- has the approval of the Department of State;
- is authorized in an international agreement (which may be a standing bilateral agreement, such as a mutual legal assistance treaty, or a case-specific agreement reached for the purpose of effecting the transfer) between the United States and the foreign country; and
- if applicable, has certification under 22 U.S.C. § 2291j(b) [section 481(h) of the Foreign Assistance Act of 1961] of the foreign country in question.

The Director of EOAF makes the ultimate decision of whether and how much to share after review and approval by the Department of State. Accordingly, no promises or assurances shall be made on international asset sharing prior to approval by EOAF and State. No United States representative has the statutory authority to commit to asset sharing in any given case until an international forfeiture sharing agreement has been approved at the delegated levels of the Departments of Treasury (or Justice) and State.

A foreign country may request a share of the forfeited assets by contacting the U.S. Embassy or country Attaché via a letter of request. The embassy should forward the letter of request to the appropriate Treasury investigative agency.

◆ Common Causes of Delay in Sharing

Forfeiture, like all legal proceedings, takes time. Equitable sharing may occur only after the federal forfeiture has been completed, the United States has taken clear title to the property, and the appropriate federal official has made a final sharing decision.

- If a claimant has filed a petition for remission or mitigation of the forfeiture, sharing may not occur until resolution of the petition.
- Where a crime victim petitions for restitution from forfeited assets, sharing will be delayed until the petition is ruled upon and net proceeds determined.
- If the forfeiture involves property that must be sold, sharing cannot occur until the sale is completed and the net proceeds of the sale are determined.
- The submission of an **incomplete** Form TD F 92-22.46 will cause a delay. For example, the form must have complete information about the contribution of the state or local law enforcement agency, such as the number of hours expended or any unique or indispensable contribution to the investigation.
- Equitable sharing cases that involve forfeited assets valued at or over \$1 million require the approval of the Director of EOAF. These sharing packages must include all assets that are part of the forfeiture order. For example, a forfeiture order that includes three assets with each asset valued at \$500,000, would require the approval of the Director of EOAF. Treasury investigative agencies should promptly forward the complete package to EOAF in order to ensure an expeditious determination.
- The omission of investigative work hours is a prime cause for delay. Work hours are always required in joint cases in order to determine the degree of direct participation by the federal, state, or local agency to the law enforcement effort resulting in the forfeiture. EOAF **cannot** evaluate the sharing request without this information.
- Foreign sharing often takes longer than the normal process. If assets are to be shared internationally, domestic sharing cannot occur until after the Department of State has approved the international sharing. International sharing requires the approval of the Departments of Justice, State, and the Director of EOAF; therefore, it often takes additional time to complete.

How an Equitable Share is Calculated

◆ Sharing is Always Based on Net Proceeds

Equitable sharing is based on the net proceeds of the forfeiture. Net proceeds are calculated as follows:

Gross receipts from forfeiture or the sale of forfeited property

Less: Qualified third party interests
(e.g., valid liens, mortgages)

Treasury case-related expenses
(e.g., advertising costs, investigative, or litigation expenses)

Restitution/remission to victims through the petition process

Any award paid to a federal informant

Treasury property management expenses
(e.g., appraisal, storage, security)

Any reimbursements from the Treasury Forfeiture Fund to the requesting agency that relate to the seizure (e.g., overtime reimbursement)

Equals: Net proceeds available for sharing.

In cases where only a single item of tangible property (e.g., a vehicle) is forfeited and a federal, state or local agency, or foreign country requests that item rather than proceeds from the sale of the property; the Treasury agency completing the forfeiture shall recover its costs.

- The requesting federal, state or local agency, or foreign country lacks funds or authority to make such payments.
- The forfeited item will fill a demonstrated need of the requesting agency or foreign country.

◆ Sharing in Joint Operations

Federal law mandates that sharing in joint investigations reflect the degree of direct participation of the agency in the law enforcement effort resulting in the forfeiture. Normally, this is determined by comparing the number of investigative hours expended by the foreign, federal, state or local officers and the seizing agency's officers. The hours worked include all hours worked by investigators or professional analysts and technicians through the completion of the forfeiture. ***Secretarial and support staff time may not be used in an agency's determination of investigative hours.*** The final determination of sharing percentages will not be done until after the property has been forfeited and all of the participating agencies' total contributions to the seizure/forfeiture have been determined.

Example: Federal agents devote 1,000 hours and state officers devote 500 hours to a joint investigation that leads to a federal forfeiture. The net proceeds of the forfeited property is \$150,000. As the state provided one third of the total 1,500 hours of effort, the equitable share for the state law enforcement agency would be \$50,000.

The Treasury deciding official will consider the following additional factors where the hours devoted do not adequately reflect the degree of participation of the federal, state or local agencies, such as:

- **Did an agency originate all of the information leading to the seizure?**

Example: As part of its normal intelligence gathering activities, a local law enforcement agency has been monitoring the money laundering activities of Criminal Organization X. One day the agency learns specific information regarding the location of a forfeitable asset belonging to X. It shares this information with the Treasury agency and they both assign two agents to do a short-term joint investigation of one of X's money couriers before making the seizure. The local agency may merit a larger share of the net proceeds of the asset than the 50% it would get based strictly on the time devoted to the joint investigation. The fact that this seizure was the indirect result of long-term intelligence gathering activities should be made known in the request for equitable sharing.

- **Did an agency provide unique and indispensable assistance?**

Example: An agency is asked to provide assistance only it can provide, including: (1) seizing property in its jurisdiction that may be hundreds of miles away from the area where the investigation is being conducted; (2) providing an informant who has access to documents that are essential to securing a conviction; or (3) recovering relevant information from a target that only it can obtain without making the target suspicious that he/she is under investigation. Such an agency may merit a relatively larger share of the forfeiture proceeds even though its contribution to the overall investigation on a time and effort basis was relatively small. By contrast, the provision of services many agencies typically can provide, such as a drug detection dog, a laboratory analysis, an aerial surveillance, or an undercover operative, would not normally be considered unique.

- **Could the state agency have achieved forfeiture under state law, but joined forces with the United States to conduct a more effective investigation?**

Example: A local agency has conducted an investigation on its own, which has led to the identification of certain assets for seizure. Rather than effecting an immediate seizure, the agency joins forces with a Treasury agency to conduct a broader investigation that results in more arrests, but does not lead to the identification of significant additional assets. The local agency may be entitled to receive most of the proceeds of the forfeited assets regardless of the relative time and effort contributed by the Treasury agency to the overall investigation.

- ◆ **Sharing in Task Force and Other Multi-Agency Cases**

Many task forces involving federal, state, and local law enforcement have pre-agreed equitable sharing arrangements based upon relative numbers of personnel and other contributions to the task force operation. These pre-agreed percentages will be honored when:

- the agreement is consistent with Treasury sharing policy;
- the agreement is in writing;
- the deciding-official is satisfied that the percentages agreed upon continue to reflect the true overall agency contributions to the task force; and

- the task force has a well-defined subject area or organization target as its focus, and the specific seizures are part of the overall investigative function of the taskforce (e.g., an airport seizure by an airport interdiction task force is part of an investigation of airport drug smuggling, not simply an investigation of a particular smuggler.)

- **Formal Chartered Task Force**

The Department of the Treasury honors sharing arrangements when the task force itself is a legal entity entitled to receive and spend money. Single checks will be issued to the task force and/or its constituent member agencies, pursuant to their internal sharing percentages, when the agreed percentages fairly reflect overall agency contributions to the task force. The FBI-issued National Crime Information Center (NCIC)/ORI number of the task force must be indicated on the equitable sharing request Form TD F 92-22.46 in order for the task force to receive a sharing check.

- **Multi-Agency Cases**

A joint investigation of a specific target or organization does not constitute an informal task force simply because it is labeled as such. Informal task force agreements will only be honored where the task force is an entity established to conduct a long-term investigation of multiple targets committing similar violations in a single location. For example, a long-term interdiction operation at a local airport, or of a single target engaged in multiple criminal activities over a lengthy period of time, such that multiple forfeiture cases over the life of the task force are likely.

Another example would be a long-term investigation of a major drug trafficking organization where participating agencies work on different aspects of the investigation. In such instances, written sharing agreements will be honored to the extent that they accurately reflect the proportional contributions of the participating agencies to the entire task force investigation, since the entire task force project is considered to be a single investigation for equitable sharing purposes.

- **Task Force Agreements**

- Any agreement that is inconsistent with Treasury sharing policy should not be entered into. All such agreements should be in writing and signed by officials from the participating agencies. These agreements should be reviewed annually to ensure they are reflective of current situations and equitable in their treatment of all participants.
- The lead agency should normally conduct the seizure/forfeiture and any Treasury agency or DHS contributing to the seizure efforts of a given task force **must** be entitled to a share of the forfeitures that is reflective of the assistance rendered by that agency.
- Sharing percentages that are pre-determined are normally discouraged because those pre-determined percentages might not be consistent with the assistance rendered. For example, in the case of a local department agreeing to receive 7% of all shares yet does not participate in a given case and/or contributes less than 7% of the work involved. However, for ease and simplicity of operation, pre-determined percentages within a task force may be agreed to if those percentages generally reflect the overall contributions of the involved agencies (i.e., in a 20 person task force, IRS assigns two members and can agree to a pre-determined percentage of 10%). Lastly, it is acceptable if one of the federal agencies (whether Treasury or Justice) – again, for ease of operation – agrees to execute all the forfeitures and receives a fair and appropriate percentage to cover that administrative expense. When an investigation becomes protracted, and the moment of sharing occurs long after an initial agreement has been generated, said agreement should be revisited to ensure that the interests of all parties are fairly addressed.
- Agreements are to be reviewed annually to ensure that the provisions continue to be acceptable to ALL participating agencies. If any one of the participating agencies wishes to raise an issue, it should be able to do so without prejudice.

◆ Sharing in Adoptive Seizures

The federal share in adoptive cases is generally 20% of net proceeds and the state or local share is 80%. The requesting state or local agency must perform 100% of the pre-seizure activity and related investigative work in order for the case to be considered an adoption and merit an 80% share. ***Joint operations or task force cases are not adoptive seizures.*** (see EOAF Directive 34 dated January 17, 2000).

Note: The minimum federal share in a joint or adoptive case should not be less than 20 percent.

◆ Sharing with State and Local Prosecutorial Agencies

Prosecutors may qualify for an equitable share by:

- Providing assistance in the preparation of search and seizure warrants and other documents relating to the forfeiture. (Share will be based on attorney and paralegal hours expended.)
- Providing a key informant, or substantially assisting throughout the investigation that leads to a federal forfeiture. (Share will be based on attorney and paralegal hours expended.)
- Cross-designating state or local attorneys to handle the federal forfeiture or related criminal cases in federal court. (Share will be based on attorney and paralegal hours expended.)
- Prosecuting under state law criminal cases directly related to a federal forfeiture. (The sharing percentage will be made on a case-by-case basis.)

◆ Deciding Officials

- Decision-making authority shall be as follows:

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

In all forfeiture cases, either judicial or administrative, where the appraised value of the assets is less than \$1,000,000, the authority to approve equitable sharing has been delegated to the seizing federal investigative agency. Exceptions are those cases involving foreign sharing or the transferring of real property, which requires approval from the Director of EOAF.

- Forfeited Assets \$1,000,000 or More

Where the forfeited assets are valued at \$1,000,000 or more, and in all cases involving the transfer of real property, the Director of EOAF must approve the amount of the equitable share.

- The office of the U.S. Attorney shall provide input on all recommendations for equitable sharing from judicial forfeitures.
- The Director of EOAF will approve all forfeiture cases involving foreign sharing after receiving concurrence and approval by the Departments of Justice and State.

Note: *No requested or recommended share is guaranteed until approved by the deciding official. The deciding official should consider the investigative or prosecutorial efforts of all participating agencies in determining the appropriate equitable shares.*

Uses of Equitably Shared Funds and Property

◆ General Guidance Concerning Use

• Equitable Sharing Funds Should Not be Anticipated

Do not “spend it before you get it” or anticipate equitable shares. Receiving agencies should not commit in advance to spend shared monies in a certain way. For example, assume that a local law enforcement agency has filed a Treasury Form TD F 92-22.46 to request a 50% share of \$100,000. The \$50,000 should not be budgeted until a final sharing decision has been made for the following reasons:

- the completion of the forfeiture is uncertain;
- the amount of the sharing that will ultimately be approved is uncertain; and
- net proceeds have not been determined.

• Increase and Not Replace (Supplement vs. Supplant)

Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Shared resources shall not be used to replace or supplant the resources of the state or local law enforcement agency. In determining whether the sharing increased or supplemented the receiving agency, the **total law enforcement budget will be considered** as opposed to any particular item or items within the budget. In other words, the receiving law enforcement agency’s aggregate budget must benefit directly from the sharing.

Example: A police department receives \$100,000 in equitable sharing, only to have its budget cut \$100,000 by the city council; thus, the police department has received no benefit from the sharing. Rather, the city as a whole has received the benefit of the equitable sharing.

• Use of Interest Income

Interest on forfeited cash or proceeds must be used for law enforcement purposes and is subject to the same restrictions as the shared cash or proceeds.

- **Timely Use of Shared Monies**

Shared monies normally should be expended for their designated law enforcement purpose as they are received. However, these funds may be retained in a holding account for a reasonable period of time, generally no longer than two years, to satisfy a future need, such as a capital expenditure.

- **Use of Proceeds from the Sale of Shared Property**

Proceeds from the sale of shared property, facilities, equipment, or other items acquired with shared funds, must be deposited into the recipient's forfeiture account and are subject to the same restrictions as shared cash.

- **Prohibited Sharing**

Forfeited firearms may not be shared with foreign countries, state or local enforcement agencies.

- ◆ **Uses of Equitably Shared Funds**

- **Permissible Uses**

Equitably shared funds shall be used for **only law enforcement purposes** and are subject to the laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes. The following expenses are pre-approved as permissible uses of shared funds and property.

- a) Activities Calculated to Enhance Future Investigations.** The support of investigations and operations that may result in further seizures and forfeitures, e.g., payment of overtime for officers and investigators; purchase of information; "buy," "flash," or reward money; and the purchase of evidence.
- b) Law Enforcement Training.** The training of investigators, prosecutors, and law enforcement support personnel in any area that is necessary to perform official law enforcement duties. Some examples of such training are: (1) asset forfeiture in general (statutory requirements, policies, procedures, case law); (2) the Fourth Amendment (search and seizure, probable cause, drafting affidavits, confidential informant reliability); (3) ethics and the National Code

of Professional Conduct for Asset Forfeiture; (4) due process rights; and (5) protecting the rights of innocent third-parties (individuals and lien holders); (6) this *Guide*; and (7) use of computers or other equipment used in or in support of law enforcement duties. ***Payments for college tuition, hospitality suites at conferences, and other indirect training expenses are not allowed.***

- c) **Law Enforcement Equipment and Operations.** The purchase or lease of body armor, firearms, radios, cellular telephones, computer equipment, software to be used in support of law enforcement purposes, vehicles (e.g., patrol vehicles, surveillance vehicles), electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing of office and other space for task force and undercover operations, and leasing or purchase of other types of equipment that support law enforcement activities. Forensic labs and equipment and related training and certification expenses are also permissible.
- d) **Detention Facilities.** The costs associated with construction, expansion, improvement, or operation of detention facilities managed by the recipient agency.
- e) **Law Enforcement Facilities and Equipment.** The costs associated with basic and necessary facilities, their construction, updating, remodeling, furniture, safes, file cabinets, telecommunications equipment, etc., that are necessary to perform official law enforcement duties.
- f) **Awards and Memorials.** The cost of plaques and certificates for law enforcement personnel to recognize a law enforcement achievement, activity, or the completion of law enforcement training. Shared funds may also be used to pay for modest commemorative plaques, displays, or memorials to honor officers killed in the line of duty. The cost of these awards or commemorations shall not create the appearance of extravagance or impropriety. **Shared funds may not be used to pay cash awards.**
- g) **Drug Education and Awareness Programs.** The costs associated with conducting drug education and awareness programs by law enforcement agencies. Such costs include meeting and entertainment costs, costs of anti-drug abuse literature, travel expenses, and salaries for officers working in a drug education program.

- h)* **Matching Funds.** To pay a state or local law enforcement agency's matching contribution or share in a federal grant program, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide*.
- i)* **Pro Rata Funding.** The costs associated with supporting multi-agency items or facilities. For example: a town purchases a new computerized payroll system; the police department payroll represents twenty percent of the total use of the payroll system. The police department may use shared money to fund its pro rata share (twenty percent) of the operating and maintenance expenses of the system.
- j)* **Asset Accounting and Tracking.** The costs associated with the accounting, auditing, and tracking of revenues and expenditures of equitable shared cash, proceeds, and tangible property. For example, the use of shared funds to pay an outside accounting firm to perform an audit is permissible.
- k)* **Salaries.** Many of the costs of the activities described above could entail the payment of salaries of the personnel involved. **However, equitable sharing monies generally may not be used to pay the salaries and benefits of current, permanent law enforcement personnel, except as permitted under this section.** Due to the extreme sensitivity of asset forfeiture work, **the payment of salaries of sworn law enforcement officers** is limited to the following categories:

 - Overtime for officers and investigators.
 - The first year's salaries for new law enforcement positions that supplement the current workforce.
 - Salaries or contractual appointments that do not exceed one year.
 - Salaries of officers assigned to specific approved specialized programs, which do not generally involve traditional law enforcement functions. An example is the DARE program.

- When authorized by law, federal grant programs such as the Community Oriented Policing Services (COPS) program established by the Violent Crime Control and Law Enforcement Act of 1994, expressly permit state and local law enforcement agencies to use equitably shared asset forfeiture funds to meet the local match requirements of that program.
- When a law enforcement agency assigns an officer to a task force for a period of at least one year, or the life of the task force, and hires a new law enforcement officer to replace the officer so assigned, the agency may use equitably shared funds to pay the salary and benefits of the replacement officers for the life of the task force and up to six months after the task force has disbanded. The principal duty of the replacement officer should not involve the seizure of assets or narcotics law enforcement.

The above expenses are not meant to be all-inclusive and other expenses may be permissible. Guidance from the Treasury Executive Office for Asset Forfeiture should be sought for any proposed use of shared cash or proceeds that could be questioned as to its law enforcement purpose.

Note: The fact that the shared property was forfeited as a result of a particular federal violation does not limit its use. For example, when an agency receives a share of property that was forfeited for a federal drug violation, the shared property does not have to be used in a department's drug program. Priority consideration should be given, however, to completely equipping units that generate forfeitures in order to foster future forfeiture investigations.

- **Impermissible Uses:**

- a) **Payment of Salaries for Existing Positions.** The payment of salaries for current permanent law enforcement personnel is not permitted, except as indicated in item "k" in the section under Permissible Uses.
- b) **Uses of Forfeited Property by Non-Law Enforcement Personnel.** Use of a shared vehicle or other forfeited tangible property by non-law enforcement personnel for non-law enforcement business.

- c) **Payment of Non-Law Enforcement Expenses.** Shared funds may be used to pay the expenses for drug testing of law enforcement personnel, but may not be used for the testing of all municipal employees. Shared funds may not be used for scholarships or financial aid, except for law enforcement personnel pursuing training that is necessary to the performance of their official duties.
- d) **Uses Not Specified in the TD F 92-22.46.** Requesting state and local agencies must specify on the TD F 92-22.46 what uses will be made of the shared assets. Any major departure from such stated uses shall be approved in writing by the Treasury investigative deciding official or the Executive Office for Asset Forfeiture unless the use is already specified in this section under Permissible Uses.
- e) **Uses Contrary to the Laws of the State or Local Jurisdiction.** Shared funds and property may not be used for any purpose that would constitute an improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
- f) **Non-Official Government Use of Shared Assets.** Any use that creates the appearance that shared funds are being used for political or personal purposes is not permitted. For example, the use of shared funds for a sheriff's campaign paraphernalia is impermissible. The use of shared funds to settle a lawsuit is not a permissible use.
- g) **Purchase of Food and Beverages.** Shared funds generally may not be used to pay for food and beverages (alcoholic or non-alcoholic) for consumption by law enforcement personnel or their guests, except for the limited circumstances noted herein. Shared funds may be used to purchase food and beverages when such food and beverages are provided as part of a "conference package," e.g., a hotel provides complimentary coffee and danish with the rental of its conference room for an authorized training event. Shared funds may also be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses, e.g., meals purchased while an officer is on official travel, attending a training conference, or engaged in a disaster operation, such as an earthquake or hurricane.

h) **Extravagant Expenditures.** Receiving agencies should use federal sharing monies prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. The payment of personal credit card bills, the purchase of meals (except personal meals incurred during official law enforcement travel), alcoholic beverages and other such expenditures are impermissible.

◆ **Transfers to Other Law Enforcement Agencies**

A State or local law enforcement agency may transfer a portion of its sharing receipts to another state or local law enforcement agency to be spent by that agency for a law enforcement purpose. The uses of such expenditures by the recipient agency are subject to the permissible use provisions of this *Guide*. Such transfers must be expressly provided for in the Form TD F 92-22.46 and the general purpose indicated.

Before the receiving law enforcement agency transfers cash, property, or proceeds to other law enforcement agencies, it must first verify that the other agency has a current and valid federal equitable sharing agreement on file. If there is no agreement on file, the law enforcement agency must obtain one from the receiving agency and forward it to the Executive Office for Asset Forfeiture.

◆ **Transfers to Non-Law Enforcement Governmental Agencies**

- **Windfall Situations**

Shared cash may not be transferred to non-law enforcement governmental agencies or to community groups except in “**windfall**” situations. Some state and local agencies will experience a “windfall” situation as a result of receiving federal equitable sharing. A windfall occurs when the amount of equitable sharing (cash and property value combined) represents over 25% of the agency’s annual budget. In such a situation, the receiving agency may transfer any amount above the 25% **upon written approval from the Director of EOAF.**

Example: An agency with an annual budget of \$1 million receives \$260,000 in equitable sharing. A windfall of \$10,000 (the amount exceeding 25% or \$250,000) is available for a partial or total transfer.

- **Non-Windfall Situations**

- **Tangible Personal Property.** A recipient law enforcement agency may transfer tangible personal property to non-law enforcement agencies or private, non-profit community organizations to be used for purposes, such as drug abuse treatment, drug and crime prevention and education, housing and job skills programs, or other community-based programs.
- **Real Property.** The Secretary of the Treasury may transfer forfeited real property through state or local law enforcement agencies to public agencies or private non-profit organizations to support the “Seed” component of the “Weed and Seed” initiative. **Written approval from the Director of EOAF must be obtained prior to the transfer.**

- ◆ **Transfer of Forfeited Tangible Personal Property**

Any forfeited tangible property shared with a federal, state, or local agency and placed into official use must be used for law enforcement purposes only. Moreover, such shared property is subject to the rules applicable to similar property purchased with appropriated funds. Finally, **no forfeited “luxury motor vehicles”** (an automobile that would cost \$40,000 or more, if new) may be shared unless it is used for undercover law enforcement purposes.

Vehicles and other tangible property that are shared and placed into official law enforcement use must be used for at least **one year** unless they become unsuitable before the end of the one-year period. The property may then be sold and the proceeds from the sale must be used for law enforcement purposes.

◆ **Transfer of Forfeited Real Property**

- The transfer of federally forfeited real property is discouraged. However, a transfer may be permitted in the following limited situations:
 - Under the Weed and Seed Program, real property may be transferred where a requesting law enforcement agency substantially participated in the acts that led to the seizure or forfeiture, and there is a compelling law enforcement need for the property.
 - Under the Controlled Substances Act, real property may be transferred to a state for recreational or historic purposes or for the preservation of natural conditions.

Note: The Director of EOAF must approve all real property transfers.

◆ **Weed and Seed Initiative**

- The purpose of the Weed and Seed Initiative is to root out criminal activity from distressed or disadvantaged neighborhoods and then to ensure their viability through the provision of community services and the cultivation of legitimate economic opportunity.
- 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, it prevents a re-infestation of criminal activity by “seeding” the neighborhoods with public and private-services, community-based policing, and incentives for new businesses.

- The Treasury Forfeiture Fund supports the Weed and Seed Initiative by allowing for the eventual transfer of forfeited real property to public or private non-profit groups that work toward realizing the “Seed” goals of the initiative. This real property transfer option is not limited to designated Weed and Seed targeted cities, but may be pursued wherever it might serve the beneficial purposes envisioned by the initiative.
- The requirements to transfer forfeited real property as a Weed and Seed are as follows:
 - A state or local law enforcement agency that contributed to an investigation that resulted in the forfeiture of real property may only request the property as a Weed and Seed asset sharing. The intent should be to use such property for Seed purposes or to transfer it to a public or private non-profit recipient for the same Seed purposes.
 - The ultimate non-profit recipient must be an appropriate non-profit organization, which agrees to use the property in compliance with the Weed and Seed initiative. If the property ceases to be used for its intended purposes for a specified time period, the non-profit recipient agrees that title may revert to the United States.
 - Any state or local agency with a claim to an equitable share of the property must agree to waive any claims to sharing in the property or its proceeds in deference to the Weed and Seed request.
 - A Form TD F 92-22.46 must be submitted by the requesting state or local agency to the Treasury investigative agency or DHS agency identifying the property to be transferred to a non-profit organization pursuant to the Weed and Seed initiative. Input from the U.S. Attorney is recommended.
 - The recipient or other agency must pay all outstanding and future liens, taxes, repairs, maintenance, etc. The Treasury Forfeiture Fund may not pay these costs.

The Weed and Seed request package must be submitted to EOAF after it has been approved by the Treasury investigative agency. This package should include, at a minimum, a letter from the requesting agency explaining the use for the property, waiver agreements from the other participants, an Equitable Sharing Decision Form (TD F 90-22.51), and a letter or memorandum from

the Treasury agency requesting approval from the Director of EOAF. The letter or memo should describe the request in detail and indicate whether the office of the U.S. Attorney concurs with the request.

- EOAF staff will review the request and submit the completed package to the Director for approval of the transfer.

Note: *Generally, title to real property will be transferred to the state or local law enforcement agency. If the initial recipient state or local agency is not authorized to take title to the real property, then either the state or local government agency authorized to accept title on behalf of the law enforcement agency would receive title. Under certain circumstances, the Department of Housing and Urban Development may be able to take title to the property for re-transfer to the Weed and Seed recipient.*

Questions on transfers pursuant to the Weed and Seed Initiative should be directed to EOAF.

◆ Reimbursement of Federal Costs

- Where real or tangible personal property is transferred to a state or local law enforcement agency, the value of that property shall be charged against that agency's equitable share or other assets in the case. Where there are insufficient other assets against which to charge that share, the recipient state or local law enforcement agency must compensate the Treasury Forfeiture Fund for the federal share and costs.
- If the requesting agency is unable to pay the costs and the federal share, the property shall be sold and the proceeds equitably distributed. The decision-makers may grant exceptions to this requirements if:
 - The property will be transferred to a state or local unit of government, or through such agency, to a private non-profit organization to support drug abuse treatment, drug and crime prevention and education, housing and job skills programs, or other community-based programs.

- The requesting state or local agency lacks funds or authority to make such payments, and the forfeited property will fill a demonstrable need of the requesting agency.

In no event, however, may such property be transferred until the recipient agency reimburses the Treasury Forfeiture Fund for the amount of any liens paid off on the property.

Accounting For Shared Cash, Proceeds And Tangible Property

All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls (e.g., tracking share requests and receipts, depositing shares into a separate revenue account or accounting code, restrictively endorsing checks upon receipt, etc.) to track equitably shared monies and tangible property.

◆ General Accounting Procedures

- Establish a separate revenue account or accounting code through your Department of Finance for funds received from the Department of the Treasury equitable sharing program. This account or accounting code should also include any interest income generated by the funds and must be used in accordance with the provisions of this *Guide*. This account or accounting code will be used solely for Treasury sharing funds.
- Maintain a log and copies of all TD F 92-22.46 forms forwarded to the Department of the Treasury. A consecutive numbering system should be used for control purposes. The log should contain seizure type (property and currency), amount, share amount requested, amount received, and date received.
- Update the log when funds are received from the Department of the Treasury. The amount received may differ from the amount requested.
- Deposit checks on the date received or place them in a safe and secure place until deposited.
- For equitable sharing payments transmitted by Electronic Funds Transfer (EFT), the deposits should be reconciled with the log that is used to record sharing payments.

- Establish internal procedures for recommending expenditures from the revenue account. The agency head, or designee, must authorize all expenditures from the federal sharing revenue account.
- Upon final approval, contracts or purchase orders may be issued to formally disburse deposited funds for goods or services. Purchase orders and contracts are deducted from the revenue account balance.
- Maintain a record of all expenditures from the revenue account or accounting code. The expenditures must be in accordance with this *Guide*.

◆ Compliance Requirements

- Shared funds must be deposited into a separate account, or under a separate accounting code that is used solely for Treasury shared assets, and the law enforcement purposes stated on the Form TD F 92-22.46.
- Any interest income generated by the funds must also be deposited into this account and used for law enforcement purposes.
- Shared funds must supplement (increase) and not supplant (replace) the resources of the law enforcement agency.
- Property placed into official use must be used for a law enforcement purpose for at least one year following the transfer. After one year, the property may be sold for the benefit of the law enforcement agency. Proceeds from the sale must be deposited into the forfeiture fund account.
- Luxury vehicles may only be used for undercover assignments.
- Real property placed into official use must be used for approved purposes.

Reporting Requirements

◆ Federal Equitable Sharing Agreement

- As a prerequisite to participating in the Department of the Treasury Equitable Sharing Program, a state or local law enforcement agency must submit a signed Federal Equitable Sharing Agreement. The agreement, which is submitted **every 3 years** on or before **October 1**, must be signed by the head of the law enforcement agency and a designated official of the governing body.

- By signing the Agreement, the signatories agree to be bound by the statutes, policies, and guidelines that regulate the federal equitable sharing program and certify that the law enforcement agency will comply with these guidelines and statutes.
- If there is a change in administration for the head of the law enforcement agency or the governing body within the three-year period, a new Agreement must be submitted to reflect the signatures of the new head of the agency and/or official of the governing body.

◆ Annual Certification Report

- This report must be submitted 60 days following the close of the law enforcement agency's fiscal year, and must be signed by the head of the law enforcement agency and a designated official of the governing body. **A new participant is not required to submit a certification report until shared cash, proceeds, or property is received.**
- By signing the Certification Report, the signatories certify that the accounting of funds received and spent by the law enforcement agency is accurate and in compliance with the guidelines and statutes that govern the equitable sharing program.

◆ Annual Audit

- State and local law enforcement agencies that receive federally shared cash, proceeds, or tangible property shall perform an annual audit consistent with the Single Audit Act Amendments of 1996 and OMB Circular A-133. Send a copy of the report to the Department of the Treasury Executive Office for Asset Forfeiture upon completion of the audit.

Non-Compliance

This *Guide* describes the sharing process and is binding upon all state and local agencies seeking federal sharing transfers.

At the time agencies receive shared funds, they will be asked to certify that the cash or property shared will be used consistent with the Form TD F 92-22.46 or as otherwise authorized and consistent with the policies set forth in this *Guide*. Noncompliance with the policies of this *Guide*, including the failure to timely submit **Sharing Agreements and Annual Certification Reports**, may subject recipient agencies to one or more of the following sanctions:

- Denial of an agency's sharing request.
- Temporary or permanent disbarment from further participation in the sharing program.
- Offsets from future sharing in amounts equal to impermissible uses.
- Civil enforcement actions in U.S. District Court for breach of contract.
- Where warranted, federal criminal prosecution for false statements under 18 U.S.C. § 1001 or fraud involving theft of federal program funds under 18 U.S.C. § 666 or other sections of the criminal code, as applicable.

Mailing Address

The triennial Federal Equitable Sharing Agreement, the Annual Certification Report, and the Audits shall be sent to the Executive Office for Asset Forfeiture at the following address:

**Department of the Treasury
Executive Office for Asset Forfeiture
740 15th Street, NW, Suite 700
Washington, DC, 20220**

Fax: (202) 622-9610

This Guide, and the agreement and certification forms are available on the EOAF website: www.eoaf.treas.gov.

APPENDIX

DEPARTMENT OF THE TREASURY

Executive Office for Asset Forfeiture

Directive Number: 34

January 17, 2000

Adoptive Seizure Policies and Procedures

Treasury Policy Statement

Background

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

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

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

General Adoption Policies

Basis for an Adoption

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

1. Deterring illegal activity by forfeiting assets acquired through or involved in illegal activity.
2. Ensuring and protecting the due process rights of affected persons.

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

Definition of an Adoption

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

Circumstances for Considering Adopting a Seizure

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

Treasury personnel in the field should consider adopting a state or local seizure only in circumstances that may make a federal forfeiture appropriate. This does not preclude standard

pre-seizure consideration of the asset presented for adoption, nor does it relieve adopting officials of the duty to verify that seized property presented for adoption is forfeitable under federal law and that its seizure was based upon probable cause.

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

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

Requirements for an Adoption

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

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

Federal Judicial Review/Pre-Seizure Analysis

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

General Adoption Procedures

Federal Adoption Form

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

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

Federal Investigative Agency Review and Approval

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

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

Time Period to Request an Adoption

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

Notice Requirements

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

Retention of Custody by State or Local Agency

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

**DEPARTMENT OF THE TREASURY
REQUEST FOR ADOPTION OF STATE OR LOCAL SEIZURE**

Federal Use Only

TREASURY SEIZURE NUMBER: _____

TREASURY CASE NUMBER: _____

DATE OF REQUEST: _____ ADOPTION DATE: _____

RECEIVING TREASURY REPRESENTATIVE: _____

RECEIVING OFFICE: _____

ADOPTING TREASURY BUREAU

- USCS
- IRS/CID
- USSS
- ATF

- **THIS FORM MUST BE SUBMITTED TO THE TREASURY INVESTIGATIVE AGENCY WITHIN 30 CALENDAR DAYS OF THE STATE OR LOCAL SEIZURE DATE UNLESS CIRCUMSTANCES MERIT A WAIVER, WHICH SHOULD BE ATTACHED.**

To be Completed by State or Local Agency

NAME OF REQUESTING STATE OR LOCAL AGENCY: _____

CONTACT PERSON: _____ TELEPHONE NUMBER: () _____

DATE OF SEIZURE: _____ DATE OF REQUEST : _____

STATE CASE # _____ DISTRICT ATTORNEY ASSIGNED: _____

STATE STATUTE VIOLATED: _____

NATURE OF VIOLATION: _____

◆ WAS PROPERTY SEIZED PURSUANT TO STATE WARRANT: YES () ATTACH COPY NO ()

◆ STATE FORFEITURE ACTION INITIATED: YES () NO ()

Decision

DECLINE ADOPTION **REASON FOR DECLINATION:** _____

RECOMMEND ADOPTION IN ACCORDANCE WITH TREASURY POLICY

INVESTIGATIVE AGENCY APPROVING OFFICIAL:

SIGNATURE

TITLE

DATE

Federal Equitable Sharing Agreement Instructions

(Please retain these instructions for your records.)

Law Enforcement Agency: Enter the complete name of your state or local law enforcement agency (e.g., Anytown Police Department). This must be consistent with the DAG-71. Check the appropriate box to indicate type of agency. Acronyms should be spelled out. If a task force, provide a list of member agencies, addresses, and lead agency, if designated.

New Participant: Check this box if your agency has never received any cash, proceeds, or property from the equitable sharing program.

Contact Person: Enter the name of the person who can provide additional information on the sharing agreement form.

E-mail Address: Enter the e-mail address of the contact person or the e-mail address of the agency.

Mailing Address: Enter your agency's complete mailing address (number, street, city/town, state, and zip code).

Telephone Number: Enter the phone number of the contact person, including area code and extension.

Fax Number: Enter your agency's fax number including area code.

Agency Fiscal Year Ends on: Enter the ending date (month/day) of your agency's fiscal year; e.g., 6/30.

NCIC/ORI/Tracking No.: Enter your valid FBI-issued National Crime Information Center (NCIC)/ORI code—e.g., CA0000000—or tracking number assigned by AFMLS.

Civil Rights Provision: Police departments, sheriffs' departments, prosecutors' offices, and other law enforcement agencies that receive federal financial assistance from the Department of Justice (DOJ) are subject to the provisions of: (1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; (2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in training and educational programs; (3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and (4) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. Federal financial assistance includes funds, training and technical assistance, logistical support, and property transfers from DOJ including equitable sharing. Agencies receiving assistance are required to permit DOJ investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights laws. **If the "yes" box is checked in 8a and/or 8b, provide the following information: the name of the case; a summary of the complaint; and the status of the case. For example: Jones v. Anytown Police Department; sex discrimination; settled. Please do not send a copy of the complaint.**

Law Enforcement Agency Head or Authorized Representative: The head of your law enforcement agency (or the authorized representative) must sign and date the form. (Examples of law enforcement agency head or authorized representative include the following: police chief, district attorney, sheriff, undersheriff, deputy chief.) Name and title of the signatory must be printed or typed. By signing the agreement, the head of the law enforcement agency (or the authorized representative) certifies that the receiving state or local law enforcement agency is in compliance with the *Justice and Treasury Guides*, and agrees to be bound by the statutes and guidelines which regulate the equitable sharing program.

Governing Body Head or Representative: The head of your governing body (or the authorized representative) must sign and date the form. (Examples of governing body head or authorized representative include the following: city manager, county executive, mayor, county judge.) Name and title of the signatory must be printed or typed. By signing the agreement, the head of the governing body (or the authorized representative) certifies that the receiving state or local law enforcement agency is in compliance with the *Justice and Treasury Guides*, and agrees to be bound by the statutes and guidelines which regulate the equitable sharing program. For purposes of this form, a governing body is an institution or organization that has appropriations authority—that is, the agency that gives your agency its budget—over the state or local law enforcement agency. **A law enforcement official should not sign for the governing body unless he/she has appropriations authority.**



"VALID THRU SEPTEMBER 30, 2005"

Federal Equitable Sharing Agreement



Law Enforcement Agency: _____ Check if New Participant

- Police Department
- Sheriff's Office/Department
- Task Force ¹
- Prosecutor's Office
- Other

Contact Person: _____ E-mail Address: _____

Mailing Address: _____
(Street) (City) (State) (Zip Code)

Telephone Number: (_____) _____ Fax Number: (_____) _____

Agency Fiscal Year Ends on: _____ NCIC/ORI/Tracking No.: _____
(Month/Day)

This Federal Equitable Sharing Agreement entered into among (1) the Federal Government, (2) the above-stated law enforcement agency, and (3) the governing body sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably-shared with participating law enforcement agencies. By their signatures, the parties agree that they will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program.

1. Submission. The Federal Equitable Sharing Agreement and the Federal Annual Certification Report must be submitted to **both** the Department of Justice and the Department of the Treasury with a copy provided to the U.S. Attorney in the district in which the recipient law enforcement agency is located, in accordance with the instructions received from the respective departments or as outlined in their equitable sharing guidelines.

U.S. Department of Justice/ACA Program
10th and Constitution Avenue, NW
Criminal Division/AFMLS
Bond Building, Tenth Floor
Washington, DC 20530
E-mail address: afmls.aca@usdoj.gov
Fax: (202) 616-1344

Executive Office for Asset Forfeiture
U.S. Department of the Treasury
740 15th Street, NW, Suite 700
Washington, DC 20220
E-mail address: treas.aca@eoaf.treas.gov
Fax: (202) 622-9610

2. Signatories. This agreement must be signed by the head (or authorized representative) of the law enforcement agency *and* the head (or authorized representative) of the governing body. ***Receipt of the signed agreement is a prerequisite to receiving any equitably-shared cash, property, or proceeds.***

3. Uses. Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern equitable sharing, and as specified in the equitable sharing request (either a DAG-71 or a TDF 92-22.46) submitted by the requesting agency.

4. Transfers. Before the undersigned law enforcement agency transfers cash, property, or proceeds to other law enforcement agencies, it must verify first that the receiving agency has a current and valid Federal Equitable Sharing Agreement on file with both the Department of Justice and the Department of the Treasury. If there is no agreement on file, the undersigned law enforcement agency **must** obtain one from the receiving agency, and forward it to the Department of Justice and the Department of the Treasury as in item 1. A list of recipients, their addresses, and the amount transferred must be attached to the Federal Annual Certification Report.

¹ Attach list of member agencies with their addresses and indicate lead agency.

5. Internal Controls. The parties agree to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The recipient agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and the Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The parties agree that such accounting will be subject to the standard accounting requirements and practices employed for other such public monies as supplemented by requirements set forth in the current edition of the Department of Justice's *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (Justice Guide)*, and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide)*. The accounting of shared funds must be submitted in the format shown on the Annual Certification Report contained in both the *Justice* and *Treasury Guides*.

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice* or *Treasury Guides*, depending on the source of the funds or property.

6. Federal Annual Certification Report. The recipient agency shall submit an Annual Certification Report to the Department of Justice and the Department of the Treasury (at the addresses shown in item 1) and a copy to the U.S. Attorney in the district in which the recipient agency is located. The certification must be submitted in accordance with the instructions received from the respective departments or as outlined in the *Justice* or *Treasury Guides*. ***Receipt of the certification report is a prerequisite to receiving any equitably-shared cash, property, or proceeds.***

7. Audit Report. Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and the Department of the Treasury reserve the right to conduct periodic random audits.

8a. During the past 3 years, has your agency been found in violation of, or entered into a settlement agreement pursuant to, any nondiscrimination law in federal or state court, or before an administrative agency?

Yes No (If you answered yes, attach relevant information. See instructions.)

8b. Are there pending in a federal or state court, or before any federal or state administrative agency, proceedings against your agency alleging discrimination?

Yes No (If you answered yes, attach relevant information. See instructions.)

The undersigned certify that the recipient agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity.

Under penalty of perjury, the undersigned officials certify that the recipient state or local law enforcement agency is in compliance with the provisions of the *Justice* and/or *Treasury Guides* and the National Code of Professional Conduct for Asset Forfeiture.

Name (Print or Type) Date
Law Enforcement Agency Head or Authorized Representative

Name (Print or Type) Date
Governing Body Head or Authorized Representative

(Signature)

(Signature)

Title (Print or Type)

Title (Print or Type)

Federal Equitable Sharing Agreement Instructions

(Please retain these instructions for your records)

Law Enforcement Agency: Enter the complete name of your state or local law enforcement agency (e.g., Anytown Police Department). This must be consistent with the DAG-71. Check the appropriate box to indicate type of agency. Acronyms should be spelled out. If a task force, provide a list of member agencies, addresses, and lead agency, if designated.

New Participant: Check this box if your agency has never received any cash, proceeds, or property from the equitable sharing program.

Contact Person: Enter the name of the person who can provide additional information on the sharing agreement form.

E-mail Address: Enter the e-mail address of the contact person or the e-mail address of the agency.

Mailing Address: Enter your agency's complete mailing address (number, street, city/town, state, and zip code).

Telephone Number: Enter the phone number of the contact person, including area code and extension.

Fax Number: Enter your agency's fax number including area code.

Agency Fiscal Year Ends on: Enter the ending date (month/day) of your agency's fiscal year; e.g., 6/30.

NCIC/ORI/Tracking No.: Enter your valid FBI-issued National Crime Information Center (NCIC)/ORI code -- e.g., CA0000000 -- or tracking number assigned by AFMLS.

Civil Rights Provision: Police departments, sheriffs' departments, prosecutors' offices, and other law enforcement agencies that receive federal financial assistance from the Department of Justice (DOJ) are subject to the provisions of: (1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; (2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in training and educational programs; (3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and (4) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. Federal financial assistance includes funds, training and technical assistance, logistical support, and property transfers from DOJ including equitable sharing. Agencies receiving assistance are required to permit DOJ investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights laws. **If the "yes" box is checked in 8a and/or 8b, provide the following information: the name of the case; a summary of the complaint; and the status of the case. For example: Jones v. Anytown Police Department; sex discrimination; settled. Please do not send a copy of the complaint.**

Law Enforcement Agency Head or Authorized Representative: The head of your law enforcement agency (or the authorized representative) must sign and date the form. (Examples of law enforcement agency head or authorized representative include the following: police chief, district attorney, sheriff, undersheriff, deputy chief.) Name and title of the signatory must be printed or typed. By signing the agreement, the head of the law enforcement agency (or the authorized representative) certifies that the receiving state or local law enforcement agency is in compliance with the *Justice and Treasury Guides*, and agrees to be bound by the statutes and guidelines which regulate the equitable sharing program.

Governing Body Head or Representative: The head of your governing body (or the authorized representative) must sign and date the form. (Examples of governing body head or authorized representative include the following: city manager, county executive, mayor, county judge.) Name and title of the signatory must be printed or typed. By signing the agreement, the head of the governing body (or the authorized representative) certifies that the receiving state or local law enforcement agency is in compliance with the *Justice and Treasury Guides*, and agrees to be bound by the statutes and guidelines which regulate the equitable sharing program. For purposes of this form, a governing body is an institution or organization that has appropriations authority -- that is, the agency that gives your agency its budget -- over the state or local law enforcement agency. **A law enforcement official should not sign for the governing body unless he/she has appropriations authority.**

Federal Annual Certification Report

Instructions

(Please retain these instructions for your records)

Law Enforcement Agency: Enter the complete name of your state or local law enforcement agency. Check the appropriate box to indicate type of agency. Acronyms should be spelled out. If a task force, provide a list of member agencies, addresses, and amounts transferred.

Contact Person: Enter the name of the person who can provide additional information on the certification report.

E-mail Address: Enter the e-mail address of the contact person or the e-mail address of the agency.

Mailing Address: Enter your agency's complete mailing address (number, street, city/town, state, and zip code).

Telephone Number: Enter the phone number of the contact person, including area code and extension, if any.

Fax Number: Enter your agency's fax number including area code.

Agency Fiscal Year Ends on: Enter the ending date (month/day/year) of your agency's fiscal year, *e.g.*, 6/30/02.

NCIC/ORI/Tracking No.: Enter your valid FBI-issued National Crime Information Center (NCIC)/ORI code—*e.g.*, CA0000000—or tracking number assigned by AFMLS.

Beginning Equitable Sharing Fund Balance: Enter on line 1 the amount in *your* federal forfeiture fund account at the beginning of *your* fiscal year. Separate Justice from Treasury fund balances. *Include under Justice funds:* shared cash and/or proceeds received from: DEA, FBI, INS, U.S. Attorney's Office, U.S. Postal Inspection Service, FDA, and USDA. *Include under Treasury funds:* shared cash and/or proceeds received from: the IRS, ATF, U.S. Secret Service, and U.S. Customs Service.

Federal Sharing Funds Received: Enter on line 2 the total amount of shared cash and/or proceeds received from the federal equitable sharing program. For example, if your fiscal year ends 6/30/02, include all sharing funds received from 7/1/01 through 6/30/02. Separate Justice funds from Treasury funds.

Transfers From Other Law Enforcement Agencies: Enter on line 3 amounts received from other law enforcement agencies. If your agency received \$10,000 from a task force, enter this amount on line 3. Attach a list of law enforcement agencies.

Other Income: Enter on line 4 the proceeds from the sale of shared property or any amounts returned to your forfeiture fund account, *e.g.*, received \$10,000 for the sale of a car placed in official use.

Interest Income Accrued: Enter on line 5 the interest earned on *your* federal forfeiture fund account during *your* fiscal year. Account for Justice and Treasury interest income separately. Check box if the funds are in a non-interest-bearing account.

Total Equitable Sharing Funds: Add the beginning sharing fund balance (line 1), the sharing funds received (line 2), sharing funds received from other law enforcement agencies (line 3), other income (line 4), and interest income (line 5). Enter on line 6 the total amount.

Federal Sharing Funds Spent: Add items a through n. Enter the total amount on line 7.

Equitable Sharing Fund Balance: Subtract the sharing funds spent (line 7) from equitable sharing funds received (line 6). Enter on line 8 the ending balance.

Appraised Value of Other Assets: Enter on line 8 the fair market value of any property received, *e.g.*, if the fair market value of a car is \$10,000, then enter \$10,000 on line 8. *Note:* When the car is sold, the proceeds of the sale must be recorded as other income (line 4) in the year sold.

Summary of Shared Monies Spent: Enter on lines a-n the total amount spent for each item listed.

Total Spent on Drug Education and Awareness Programs: Enter on line j the total amount your agency spent conducting drug education and awareness programs.

Total Spent on Other Law Enforcement Expenses: Enter on line k the total amount of expenses not listed in items a through j. Attach list of expenditures.

Total Transfers to Law Enforcement Agencies: Enter on line l the amounts transferred to other state and local law enforcement agencies. Attach list of recipients with their addresses and include amount of cash, property, and proceeds transferred. Verify that the recipients have submitted a Federal Equitable Sharing Agreement to both the Departments of Justice and the Treasury.

Total Permissible Use Transfers: State and local law enforcement agencies may use up to 15 percent of shared funds to support drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities, which are formally approved by the chief law enforcement officer (*i.e.*, chief, sheriff, or prosecutor) as being supportive of and consistent with a law enforcement effort, policy, and/or initiative. This provision requires that all expenditures be made by the law enforcement agency and does not allow for the transfer of cash. Enter on line m the total of the amounts transferred to eligible non-law enforcement agencies and private groups. Attach list of recipients with their addresses, and direct expenditures made on behalf of the eligible agencies and groups.

Amount Transferred to and Used for Drug Abuse and Prevention Programs: Enter the total amount of line m that was transferred to eligible non-law enforcement agencies and private groups for drug abuse treatment and prevention programs.

Total Spent on Matching Grants: Enter on line n amounts your agency spent to match grants.

Total Annual Law Enforcement Budget for your Jurisdiction for Current Fiscal Year: On line o, enter your agency's budget for the current fiscal year. If completing the certification for FY 2002, enter your agency's budget for FY 2003.

Total Annual Budget for Non-Law Enforcement Agencies for Current Fiscal Year: Enter on line p your state/county/city's budget for the current fiscal year minus all funds budgeted for local law enforcement agencies. For example, if Main City's total budget for FY 2002 is \$100 million and \$20 million is budgeted for the Main City Police Department, enter \$80 million on line p.

Total Annual Law Enforcement Budget for your Jurisdiction for the Prior Fiscal Year: On line q, enter your agency's budget for the prior fiscal year. If completing the certification for FY 2002, enter your agency's budget for FY 2002.

Total Annual Budget for Non-Law Enforcement Agencies for Prior Fiscal Year: Enter on line r your state/county/city's budget for the prior fiscal year minus all funds budgeted for local law enforcement agencies. If completing the certification for FY 2002, enter your agency's budget for FY 2002.

Law Enforcement Agency Head or Authorized Representative: The head of your law enforcement agency (or the authorized representative) must sign and date the form. (Examples of law enforcement agency head or authorized representative include the following: police chief, district attorney, sheriff, undersheriff, deputy chief, etc.). Name and title of the signatory must be printed or typed. By signing the agreement, the head of the law enforcement agency (or the authorized representative) certifies that this report is an accurate accounting of funds received and spent by the law enforcement agency under the federal equitable sharing program during this reporting period.

Governing Body Head or Representative: The head of your governing body (or the authorized representative) must sign and date the form. (Examples of governing body head or authorized representative include the following: city manager, county executive, mayor, county judge, etc.) Name and title of the signatory must be printed or typed. By signing the certification, the head of the governing body (or the authorized representative) certifies that this report is an accurate accounting of funds received and spent by the law enforcement agency under the federal equitable sharing program during this reporting period. For purposes of this form, a governing body is an institution or organization that has

appropriations authority—that is, the agency that gives your agency its budget—over the state or local law enforcement agency. A law enforcement official should not sign for the governing body unless he/she has appropriations authority.

Mail the Federal Annual Certification Report to:

U.S. Department of Justice/ACA Program
10th and Constitution Avenue, NW
Criminal Division/AFMLS
Bond Building, Tenth Floor
Washington, DC 20530
Fax: (202) 616-1344

Executive Office for Asset Forfeiture
U.S. Department of the Treasury
740 15th Street, NW, Suite 700
Washington, DC 20220
E-mail address: treas.aca@teoaf.treas.gov
Fax: (202) 622-9610

A copy of the report must also be sent to the U.S. Attorney in the district in which the recipient agency is located.



Federal Annual Certification Report



This Annual Certification Report must be submitted within 60 days after the close of your fiscal year to both agencies:

U.S. Department of Justice/ACA Program
10th and Constitution Avenue, NW
Criminal Division/AFMLS
Bond Building, Tenth Floor
Washington, DC 20530
Fax: (202) 616-1344

U.S. Department of the Treasury
Executive Office for Asset Forfeiture
740 15th Street, NW, Suite 700
Washington, D.C. 20220
E-mail address: treas.aca@teoaf.treas.gov
Fax: (202) 622-9610

Law Enforcement Agency: _____

Police Department Sheriff's Office/Department Task Force (attach list of members) Prosecutor's Office Other _____

Contact Person: _____ **E-mail Address:** _____

Mailing Address: (Street) _____ (City) _____ (State) _____ (Zip Code) _____

Telephone Number: (____) _____ **Fax Number:** (____) _____

Agency Fiscal Year Ends on: (Month/Day/Year) _____ **NCIC/ORI/Tracking No.:** _____

Summary of Equitable Sharing Activity (Fiscal Year Ending _____)

	Justice Funds	Treasury Funds
1. Beginning Equitable Sharing Fund Balance	\$ _____	\$ _____
2. Federal Sharing Funds Received	\$ _____	\$ _____
3. Transfers From Other Law Enforcement Agencies (attach list)	\$ _____	\$ _____
4. Other Income	\$ _____	\$ _____
5. Interest Income Accrued (<input type="checkbox"/> check if non-interest-bearing account)	\$ _____	\$ _____
6. Total Equitable Sharing Funds (total of lines 1 - 5)	\$ _____	\$ _____
7. Federal Sharing Funds Spent (total of lines a - n)	\$ (_____)	\$ (_____)
8. Equitable Sharing Fund Balance (subtract line 7 from line 6)	\$ _____	\$ _____
9. Appraised Value of Other Assets Received	\$ _____	\$ _____

Summary of Shared Monies Spent

a. Total spent on salaries for new, temporary, not to exceed 1-year employees	\$ _____	\$ _____
b. Total spent on overtime	\$ _____	\$ _____
c. Total spent on informant and "buy money"	\$ _____	\$ _____
d. Total spent on travel and training	\$ _____	\$ _____
e. Total spent on communications and computers	\$ _____	\$ _____
f. Total spent on firearms and weapons	\$ _____	\$ _____
g. Total spent on body armor and protective gear	\$ _____	\$ _____
h. Total spent on electronic surveillance equipment	\$ _____	\$ _____
i. Total spent on building and improvements	\$ _____	\$ _____
j. Total spent on drug education and awareness programs	\$ _____	\$ _____
k. Total spent on other law enforcement expenses (attach list)	\$ _____	\$ _____
l. Total transfers to other law enforcement agencies (attach list of recipients)	\$ _____	\$ _____
m. Total permissible use transfers (up to 15 percent) (attach list of recipients)	\$ _____	\$ _____
Amount of line (m) transferred to and used for drug abuse treatment and prevention programs	\$ _____	
n. Total spent on matching grants (attach list)	\$ _____	\$ _____
o. Total annual law enforcement budget for your jurisdiction for current fiscal year	\$ _____	
p. Total annual budget for non-law enforcement agencies for current fiscal year	\$ _____	
q. Total annual law enforcement budget for your jurisdiction for prior fiscal year	\$ _____	
r. Total annual budget for non-law enforcement agencies for prior fiscal year	\$ _____	

Under the penalty of perjury, the undersigned hereby certify that the information in this report is an accurate accounting of funds received and spent by the law enforcement agency under the federal equitable sharing program during this reporting period.

Name (Print or Type) _____ Date _____
Law Enforcement Agency Head or Authorized Representative

Name (Print or Type) _____ Date _____
Governing Body Head or Authorized Representative

Signature: _____

Signature: _____

Title: _____

Title: _____

Request for Property Seized/Forfeited by a Treasury Agency

Instructions for Completing Treasury Form **92-22.46** General Instructions

- Transfer of property seized/forfeited by a Treasury agency is governed by the Secretary of the Treasury's Guidelines on Seized and Forfeited Property and the Department of the Treasury, Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies.
- The requesting federal, State or local law enforcement agency (Agency) head or designee must complete the TD F **92-22.46**. (Note: Incomplete or inaccurate information is the most common cause of delay in processing.)
- For the international transfer of property forfeited by a Treasury agency, contact the Asset Sharing Coordinator, Executive Office for Asset Forfeiture, Department of Treasury, Washington, D.C.
- A separate TD F **92-22.46** must be completed for each seizure, unless the investigation or enforcement action resulted in multiple seizures, then one TD F **92-22.46** may be filed with a listing of the seizures.
- The deadline for submitting the TD F **92-22.46** to the Treasury investigative agency processing the seizure/forfeiture is **60** days from the date of seizure. Only in extraordinary circumstances will a TD F **92-22.46** be considered if submitted after the deadline.
- In some instances the Agency must return costs and the appropriate Treasury agency equitable share to the Treasury Forfeiture Fund. If the Agency is unable to return the costs and Treasury share, the property will be liquidated and the proceeds distributed proportionally. (Upon adequate justification exceptions may be granted by the deciding official.)

Instructions

Part I: For Treasury use only.

Part II: Provide the agency's name, address and NCIC code. If the NCIC code is not known, contact the Treasury investigative agency responsible for processing this forfeiture. The contact person is the person who has authority to accept property and transfer documents, **and/or** money.

Part III: Provide as complete a property description as possible. Include serial or vehicle identification number. You must check either "**Item**" (if requesting an asset) or "**Cash/Proceeds**" (if requesting a percentage of the asset). Attach a list of any other **asset(s)** seized in this case.

If "Cash/Proceeds" is requested, provide the percentage of the net proceeds requested by the agency. The percentage requested must be based on the degree of direct or indirect law enforcement effort by the federal, State or local agency resulting in the seizure forfeiture, taking into account the total value of all property forfeited and total law enforcement effort, including any related criminal prosecution with respect to the violation of law on which the forfeiture is based.

Part IV: Indicate the specific intended law enforcement **purpose(s)** for the requested cash, proceeds or tangible property. Pursuant to the Guidelines, all property, including cash and proceeds, must be used for the specific law enforcement **purpose(s)** approved.

Part V: Answer all items A - F. If an answer to A through E is yes, provide details in Block **VI**.

Part VI: Space for additional information.

Part VII: Agency head or his designee and appropriate legal officer must certify that information provided in Blocks **I – VI** is true and accurate.

A. Completing the Form TD F 92-22.46

1. In the upper right-hand corner of the Form TD F 92-22.46, enter the date, the acronym of the federal agency handling the seizure, and the federal agency case number. This information can be obtained from the federal seizing agency.
2. Leave Part I of the Form TD F 92-22.46 blank. It is for federal use only.
3. In Part II, provide the state or local law enforcement agency's name, address, and the National Crime Information Center (NCIC) code. Enter the agency's name exactly as listed on the NCIC registration.
4. The "Contact Person" is the person who has knowledge of the case and who will be able to answer questions about the investigation.
5. In Part III under "Asset Requested" and "Property Description," provide a complete description of the asset. If the asset is a vehicle, include the Vehicle Identification Number (VIN), make, model, and type of vehicle. If the asset is real property, include the full address and the block and lot number from zoning or land records in the jurisdiction.
6. Place a check in the "Item" block if the agency requests an asset for official use, and place a check in the "Cash/Proceeds" block if requesting cash or proceeds and include the requested percentage.
7. In Part IV, state how the shared funds are intended to be used. Check all blocks that are appropriate and complete "Other" if the intended use is not listed.
8. In Part V, provide all pertinent information about the agency's contribution to the investigation. Include work hours spent by law enforcement officers on the investigation.
9. Complete VI by providing a narrative description of the case, emphasizing the agency's contribution to the investigation. Never assume the decision-maker knows the details of the case or the agency's contribution.

Date: ____ / ____ / ____

Treasury Agency: _____

Case Number: _____

DEPARTMENT OF THE TREASURY

**Request for Transfer of Property Seized/Forfeited by a Treasury Agency
(For Use By Domestic Law Enforcement Agencies Only)**

For Treasury Agency Use Only

(For Additional Information - See Instructions).

I.

Seizure Number: _____
Seizure Date: ____ / ____ / ____
SAC Office: _____
Case Type: Adoption ____ Joint ____
Discontinuance ____
<i>(Check One)</i>

- All assets transferred must be used for the law enforcement purpose stated in the request.
- Deadline for submission of this request is sixty (60) days following the seizure.
- The requesting agency will be responsible for reimbursing the Treasury Agency its costs and may be responsible for reimbursing the Treasury Agency share.

II. Requesting Agency Name: _____

Address: _____

NCIC Code: | | | | | | | | | |

Contact Person: _____ **Telephone Number:** () _____

III. Asset Requested _____ Other assets in this case. *(Attach list).*

Property Description :

Request Type

Item Cash/Proceeds _____

IV. Specific Intended Law Enforcement Uses:

Salaries Purchase of Equipment Other (Please Explain): _____

Purchase of Vehicles Place Into Official Use _____
(If other than Cash)

V. Contribution (If any answer to A thru E is yes, provide details in Part VI) **Yes** **No**

A. Did your agency originate the information leading to the seizure?

B. Were any other assets seized under state law?

C. Were extraordinary expenses incurred?

D. Did your agency supply any unique or indispensable assistance?

E. Are there any assets located in foreign countries associated with this case?

F. How many hours were expended? _____ hours

VI. Additional space for detailed answers *(Indicate Part to which answer(s) apply)*

(If more space is required, use a separate sheet of paper and attach.) Attachment: Yes No

VII. Certifications:

A. The requester certifies that the above information is true and accurate, that the property transferred will be used for the law enforcement purpose stated, and that all monies received pursuant to this request will be deposited and accounted for consistent with applicable Federal, State, and local law, regulations and orders. The requester agrees to report on the actual use of equitably transferred property upon request. The requester understands that if it is unable to pay the necessary fees and expenses at the time of transfer, the asset will be sold and the maximum percent of net sale proceeds will be awarded in lieu of the asset.

Signature / Title

Date

B. As legal counsel, I have reviewed this Request for Transfer of Property Seized/Forfeited by a Treasury Agency and I certify that the contact person identified in Part II has the authority to accept seized/forfeited property and is the official to whom transfer documents and/or money should be delivered. *(Legal counsel certification is not required for Federal law enforcement agencies)*

Signature / Title

Date

Address: _____

Telephone Number:() _____

NATIONAL CODE OF PROFESSIONAL CONDUCT FOR ASSET FORFEITURE

Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

Whenever practicable (excluding border searches, exigent circumstances, etc.) and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.

If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.

Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.

The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate and the prompt resolution of claims of innocent ownership.

Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations process of that entity.

Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

Seizing agencies shall strive to ensure that seized property is protected and its value preserved.

Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.