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The Attorney General's Guidelines on Seized and Forfeited Property

NCJRS

JUL 12 1988

ACQUISITIONS

ATTORNEY GENERAL'S
GUIDELINES ON SEIZED AND FORFEITED PROPERTY

I. STATEMENT OF POLICY

The following guidelines are designed to implement certain asset forfeiture provisions of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 pertaining to the disposition of forfeited property, the management and use of the Department of Justice Assets Forfeiture Fund, and the discontinuance of federal forfeiture actions to permit forfeiture by state or local procedures.

Title 21, United States Code (USC), Section 881(e), authorizes the Attorney General to dispose of criminally or civilly forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any federal, state, or local agency pursuant to the Tariff Act of 1930, Title 19, USC, Section 1616; or (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation called the Department of Justice Assets Forfeiture Fund (hereinafter "the Fund"). Subsection (c) of 19 U.S.C. 1616 authorizes the Attorney General to transfer forfeited property to any other Federal agency or to any state or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

This authority is consistent with the Department of Justice's purpose of promoting cooperative law enforcement efforts in drug trafficking and other investigations. The Department intends to manage its asset forfeiture program in a manner designed to enhance this federal, state, and local cooperation. Although Section 1992 of the Anti-Drug Abuse Act of 1986, P.L. 99-750 (October 27, 1986) amended 21 U.S.C. 881(e) by deleting the familiar equitable sharing language directing the Attorney General to ensure equitable transfer of forfeited property to the appropriate state or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to seizure or forfeiture of such property, this remains the policy of the Department of Justice.

The Law Enforcement Coordinating Committees will assist in informing federal, state, and local law enforcement agencies about the procedures for requesting an equitable transfer of forfeited property, help facilitate the application for transfer of such property, and promote the implementation of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 in each federal district.

II. DEFINITIONS AND OTHER GENERAL PROVISIONS

- A. "Department investigative bureau" refers not only to an investigative unit within the Department of Justice but to any other federal agency investigative unit which by law deposits the proceeds of forfeited assets into the Department of Justice Assets Forfeiture Fund.
- B. "Head of the Department investigative bureau" means the head of that bureau or his headquarters-level designee.
- C. "Placing property into official use" means use of forfeited property by a Department bureau for any official purpose.
- D. "Property" means tangible property and cash.
- E. "Cash" means currency, negotiable instruments, and securities.
- F. "State and local agencies" means state and local law enforcement agencies.
- G. "Appraised value" means fair market value.
- H. "Drug law enforcement function" means any official activity by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service which materially facilitates enforcement of the drug laws of the United States.
- I. Whenever the term "Deputy Attorney General" is used in these Guidelines, the power or responsibility referred to may be exercised by a duly authorized Acting Deputy Attorney General.
- J. Whenever the term "Associate Attorney General" is used in these guidelines, the power or responsibility referred to may be exercised by the Deputy Attorney General or by a duly authorized Acting Deputy or Acting Associate Attorney General.
- K. Whenever the term "Assistant Attorney General, Criminal Division" is used in these guidelines, the power or responsibility referred to may be exercised by the Deputy Attorney General, the Associate Attorney General, a duly authorized Acting Assistant Attorney General of the Criminal Division, or by any Deputy Assistant Attorney General of the Criminal Division.

- L. Whenever any reference is made in these Guidelines to "Criminal Division Section Chief" or the "Director, Asset Forfeiture Office", such reference shall also be deemed to include the Assistant Attorney General of the Criminal Division, any Deputy Assistant Attorney General in the Criminal Division, and any duly authorized Acting Section Chief or Acting Director.
- M. Whenever a statute, regulation, or official form cited in these Guidelines is replaced by a substantially identical statute, regulation, or official form designated by a new number, the citation will be deemed to refer to that new statute, regulation, or official form.

III. USE AND TRANSFER OF FORFEITED PROPERTY

A. Retention of Property for Official Use

1. The Attorney General has the authority to retain any civilly or criminally forfeited tangible property for official use by any Department investigative bureau.
2. No forfeited cash, nor any proceeds from sales of forfeited property, may be transferred to, or retained by, any federal agency under the provisions of 21 U.S.C. 881(e) governing disposition of forfeited property.
3. Payment of liens and mortgages pursuant to an authorization to place property into official use.
 - a. Liens and mortgages cumulatively amounting to less than one third of the appraised value of the asset and totaling less than \$50,000 will be paid from the Fund at the direction of the head of the Department investigative bureau.
 - b. Payments of liens or mortgages that, in the aggregate, total \$50,000 or greater or exceed one third of the appraised value of the asset, will be paid from the Fund at the request of the Department investigative bureau subject to the concurrence of the Associate Attorney General.

B. Official Use by Department Investigative Bureau

1. The Attorney General's authority to place tangible property into official use is delegated to the head of the Department investigative bureau responsible for the processing of the forfeiture.
 - a. Each agency shall develop guidelines for determining the circumstances under which property is to be placed into official use. In no event is property to be placed into official use unless it is to be used for a significant law enforcement purpose as defined by agency guidelines. Such guidelines are to be reviewed and approved by the Associate Attorney General.
 - b. In making a decision concerning placing forfeited property into official use, the head of the Department investigative bureau must consider the financial status of the Department of Justice Assets Forfeiture Fund and the dollar value of the asset if sold.
 - c. Exercise of this delegation of authority is subject to concurrence by the Associate Attorney General for all property appraised at \$750,000 to \$2,000,000 and by the Deputy Attorney General for all property appraised at \$2,000,000 or more. For all property appraised at \$20,000 or more a special justification is to be prepared detailing the reasons why the property was placed into official use rather than having been sold. Such a justification is to be retained by the agency for a period of five years.

C. Official Use by Other Department Bureaus

1. If the Department investigative bureau does not choose to place the forfeited property into official use, and, if the property has not been equitably transferred, the Director, United States

Marshals Service, will determine appropriate disposal, including ascertaining whether any remaining property is suitable for official use by other Department bureaus.

- a. A decision to place such property into official use is subject to concurrence by the Associate Attorney General for all property appraised at \$750,000 to \$2,000,000 or by the Deputy Attorney General for all property appraised at \$2,000,000 or more.
 2. After the Department investigative bureau declines to place the forfeited property into official use, and if the property is not equitably transferred, and if more than one Department component wants to retain for official use the same forfeited property, the Associate Attorney General will determine which component may place such property into official use.
- D. Transfer of Property to Federal, State, or Local Law Enforcement Agencies
1. Attorney General's Authority for Equitable Transfer of Forfeited Property
 - a. Title 21, U.S.C. 881(e), and Title 19, U.S.C. 1616, as made applicable by 21 U.S.C. 881(d) and other statutes, authorize the Attorney General to transfer forfeited property to any federal agency or to any state or local law enforcement agency that directly participated in the acts which led to the seizure or forfeiture.
 - b. Property not retained for official use by the Department investigative bureau responsible for the processing of the forfeiture is eligible for equitable transfer.
 - c. Where a participating law enforcement agency petitions for a transfer of some or all of the forfeited property, the Attorney General shall determine an equitable share that generally

reflects the relative contribution of the participating agencies to the investigation leading to its seizure and forfeiture.

2. Procedure for Determining Equitable Transfer

- a. Any federal, state, or local law enforcement agency that participates in the acts leading to a seizure or forfeiture may file a request for an equitable transfer of the property.
- b. The criteria for determining the equitable transfer of the property will be the same for all requests.
- c. In all cases the final decision-making authority rests with the Attorney General or his designee.

3. Requests from Participating Law Enforcement Agencies

- a. Within thirty days following the seizure for forfeiture, a federal, state, or local agency should submit a written request for an equitable transfer of the property subject to forfeiture in order to be assured of consideration, but in any event no later than the date of forfeiture or the disposition of the property, whichever is later.
- b. This request must be filed with the local or regional office of the Department investigative bureau responsible for processing the forfeiture.
- c. The request must include the following information:
 - (1) Identification of the property against which the claim is made;
 - (2) Details regarding the requesting agency's participation, including the amount of money and manpower expended by the federal, state, or local agency in pursuing the case;
 - (3) A statement of the intended law enforcement use for the property;

- (4) A designation of the proper fiscal entity to which disbursements can be made (which disbursements will not be made in currency);
- (5) A designation of the proper official to whom transfer documents should be delivered by the United States;
- (6) A designation of the proper party to whom possession should be delivered;
- (7) A statement by an appropriate legal officer indicating that the transfer is not prohibited under the applicable federal, state, or local law;
- (8) In instances of a joint application by several federal, state, or local agencies, the relative share of each federal, state, or local agency;
- (9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer; and
- (10) An assurance that, if requested to do so, a report will be provided as to the actual use of any transferred property or proceeds.

d. The requesting agency must certify that the information contained in 3(c)(2-7) above is true and correct. ^{1/}

1/ Notwithstanding the additions in section (c) and (d), current DAG-71 forms may still be used until October 1, 1987, and the information provided may be sufficient to warrant an order of equitable transfer.

- e. Property will be transferred to state or local agencies only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific state or local agency.
- f. An information copy of any request will be forwarded by the Department investigative bureau to the United States Attorney in the district where the transfer request originated.

4. Procedure for Processing Requests for Equitable Transfer

- a. In all cases, the Department investigative bureau field unit receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying investigation. Such a report shall be prepared and forwarded to the Department investigative bureau headquarters within ten days of receiving the request absent unusual circumstances. Within five days of receipt the Department investigative bureau headquarters will forward a copy of the request to the Director of the United States Marshals Service.
- b. In determining the equitable share for a participating federal, state, or local agency, the governing factor to be considered is the time and effort contributed by each such agency participating directly in the investigation or other law enforcement activity which led directly or indirectly to the seizure or forfeiture of the property. If the federal investigative effort is ten percent or less, the determining official will allocate ten percent to the federal government to compensate for its administrative role and divide the participating agency shares from the remaining ninety percent. If the Department's investigative effort is more than ten percent, the sharing

percentages will be based strictly on the contribution by the agency or agencies. This "ten percent rule" will not alter the ability of the United States Marshals Service to recover costs directly from participating agencies or affect their ability to pay appropriate costs from the Assets Forfeiture Fund. For purposes of practicality, the "ten percent rule" does not apply to the transfer of forfeited assets that are not readily divisible, such as a single conveyance.

- c. The allocation based on time and effort may be adjusted based upon the following additional, but secondary, factors:
- (1) whether the agency originated the information that led to the ultimate seizure, and whether the agency obtained such information by use of its investigative assets, rather than fortuitously;
 - (2) whether the agency provided unique or indispensable assistance;
 - (3) whether the agency initially identified the asset for seizure;
 - (4) whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and
 - (5) whether or not the state or local agency could have achieved forfeiture under state law, with favorable consideration given to a state or local agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

Decision makers should seldom increase a time and effort allocation by more than 50% because of these additional factors, but, if they do so, must carefully and precisely explain and justify in the decision document their decisions based on unusual circumstances.

- d. Investigative work performed by district attorney or state attorney general personnel (including work done by police personnel detailed to prosecutors' offices) will be considered in calculating equitable shares. A state or local prosecutor's office is eligible for transfers of forfeited property based on such investigative effort in the case, to the extent such an office is allowed to receive money directly from the federal government or have such money credited to its budget under state or local law.
- e. The head of the Department investigative bureau may place tangible property forfeited administratively or judicially into official use in cases in which a federal, state, or local agency has filed a request for an equitable share of that property.

(1) In making this decision, the head of the Department investigative bureau must consider the following factors:

- (a) the relative needs of both the requesting law enforcement agency and the Department investigative bureau for the particular asset;
- (b) the uniqueness of the asset and the likely ability to secure such an asset by other seizures in the near future;
- (c) the relative significance of the requesting law enforcement agency's participation in the case, as well as all the other factors pertinent to the determination of equitable distribution as set forth in Part III.D.4.b. and c. above;
- (d) the potential of, or likelihood that, the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same

investigation or from other seizures in the near future;

- (e) the impact that a decision to place the property into official use might have on federal, state, and local relations in that District; and
- (f) the past history, volume, and value of previous equitable transfers to the federal, state, or local agency.

5. Decision-Making Authority for Determining Equitable Transfer

- a. The equitable distribution of assets forfeited in an administrative proceeding with an appraised value of \$200,000 or less will be determined by the head of the Department investigative bureau.
 - (1) The Department investigative bureau's field unit shall forward its report and recommendation to the bureau head for decision.
 - (2) In making this decision, the head of the Department investigative bureau will consider the report and recommendation forwarded by the field unit and issue to the requesting agency a written ruling on the request.
 - (3) A copy of the decision document will be forwarded to the United States Attorney, or to the Criminal Division Section Chief in a Department of Justice Criminal Division case, and to the Director, United States Marshals Service.
 - (4) A copy of the decision document will be made available upon request to the Director, Asset Forfeiture Office, Criminal Division.

- b. In the case of assets forfeited in an administrative proceeding with an appraised value greater than \$200,000 and with all judicially forfeited assets, the evaluation and recommendation will be forwarded through the Asset Forfeiture Office to the appropriate United States Attorney or to the Criminal Division Section Chief in a Criminal Division case.
 - (1) The equitable distribution of assets forfeited in a judicial proceeding with an appraised value of \$200,000 or less will be determined by the United States Attorney or the Criminal Division Section Chief.
 - (2) In making this decision, the United States Attorney or Criminal Division Section Chief will consider the reports and recommendations forwarded by the head of the Department investigative bureau and will consult with the United States Marshals Service.
 - (3) The decision document shall be returned to the Director, Asset Forfeiture Office, who will forward the document to the Director, United States Marshals Service, and forward a copy to the Department investigative bureau.
- c. In the case of property forfeited in a single proceeding with an appraised value greater than \$200,000, the United States Attorney or Criminal Division Section Chief will forward the evaluation and recommendation of the Department investigative bureau, along with his own recommendation, to the Assistant Attorney General of the Criminal Division, through the Asset Forfeiture Office, who will determine the equitable distribution of those

assets if they aggregate less than \$750,000.

- (1) In making this decision, the Assistant Attorney General of the Criminal Division will consider the reports and recommendations forwarded by the head of the Department investigative bureau and the United States Attorney or Criminal Division Section Chief and will consult with the United States Marshals Service.
 - (2) The decision document will be forwarded by the Director, Asset Forfeiture Office, to the United States Marshals Service with copies to the Department investigative bureau, and the United States Attorney or Criminal Division Section Chief.
- d. The Associate Attorney General will make the final determination on the equitable sharing of assets forfeited in a single proceeding with an appraised value of \$750,000 to \$2,000,000. The Deputy Attorney General will make the final determination on the equitable sharing of assets forfeited in a single proceeding with an appraised value of \$2,000,000 or higher.
- (1) The request will be processed as in 5.c. above, except that the Assistant Attorney General, Criminal Division, will recommend, to the Deputy Attorney General through the Associate Attorney General, or to the Associate Attorney General, as the case may be, the appropriate equitable distribution of such assets.
 - (2) The decision document will be returned to the Director, Asset Forfeiture Office, who shall forward it to the Director, United States Marshals Service, and shall copy the United States Attorney or Criminal Division Section Chief, and the Department investigative bureau.

- e. In all cases in which judicially forfeited property is located in a judicial district other than where the judicial proceedings are taking place, the party determining the equitable distribution must consult with the respective United States Attorneys prior to determining equitable distribution.
 - f. Decision makers should consult each other in situations where inconsistent decisions are possible in factually related forfeiture proceedings that might jeopardize relations between federal agencies and state or local law enforcement agencies.
 - g. Once a forfeiture action is concluded and all necessary forms and evaluations have been received by the designated decision maker, the decision maker shall endeavor to make his decision within ten days absent unusual circumstances. If a necessary form or evaluation is incomplete as to a material item of information, it is to be returned directly and promptly to the appropriate party for correction and direct return within fifteen days to the decision maker.
6. Proceeds Placed in the Department of Justice Assets Forfeiture Fund
- a. If the federal forfeiture action is concluded successfully, and the property is not placed into official use or transferred to a federal, state, or local agency, it will be sold and the net proceeds of sale will be placed in the Assets Forfeiture Fund.
 - b. Forfeited cash will be placed in the Assets Forfeiture Fund.
 - c. All Department bureaus will promptly notify the United States Marshals Service of any relevant facts affecting seized property. Relevant facts

include outstanding bills, invoices, orders of mitigation and remission, orders of transfers to federal, state, or local agencies, orders of designation for official use by Department components, and appraisals. Based upon these and other relevant factors, the United States Marshals Service should appropriately dispose of the property.

7. Disposition of Forfeited Property

- a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash. Federal agencies may receive transfers of tangible property only.
- b. Any property that cannot be used for law enforcement purposes must be disposed of in accordance with law.
- c. Where tangible property is transferred to qualifying federal, state, or local agencies, monies from the Assets Forfeiture Fund will not be used to pay liens or mortgages on the property, or to equip the property for law enforcement purposes.
- d. The recipient federal, state, or local agency must pay the liens and mortgages on the forfeited tangible property pursuant to court order or an order of remission or mitigation prior to the transfer of such property.
- e. The recipient federal, state, or local agency may be required to pay direct expenses pertaining to the seizure and forfeiture prior to the transfer of tangible property.
- f. In the event of an interlocutory sale of property pending forfeiture, the Director, United States Marshals Service, first must consult with the United States Attorney, Criminal Division Section Chief, or the Director of the Asset Forfeiture Office in the case of judicial forfeitures, or the head of the pertinent Department investigative bureau in the case of

administrative forfeitures, to determine the status of any federal, state, or local law enforcement agency requests for equitable sharing.

8. Transfers to Non-Participating Federal Agencies

- a. All requests by non-participating federal agencies shall be referred to the Director of the United States Marshals Service.
- b. In exceptional circumstances, the United States Marshals Service may transfer tangible property to any requesting federal agency which did not participate in the acts which led to a seizure or forfeiture.
- c. In all such cases, the United States Marshals Service shall consult with the Department investigative bureau responsible for the forfeiture. Where such request is from the United States Department of State for transfer to a foreign government by the Department of State under separate authority, and in any other case it deems appropriate, the United States Marshals Service shall consult also with the Asset Forfeiture Office.
- d. Careful consideration shall be given to the value of the property requested, its potential benefit to the United States for law enforcement purposes, and its potential benefit to the Department of Justice Assets Forfeiture Fund.
- e. A decision to grant such a request must be approved in writing by the Deputy or Associate Attorney General if the property in question is real property of any value or personal property of an aggregate value exceeding \$25,000. A decision to grant a request for property of lesser value must be approved in writing by the Director of the United States Marshals Service.
- f. A report on all such transfers shall be prepared by the United States

Marshals Service on a quarterly basis and submitted to the Associate Attorney General.

IV. DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND

A. Administration of the Fund

1. The Attorney General delegates the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service under the general supervision of the Associate Attorney General. It will operate under the following guidelines and in accordance with Department of Justice financial management policy. The Associate Attorney General shall establish an interagency committee to advise him or her on the general supervision of the Fund and administration of the asset forfeiture program. This committee shall be known as the Asset Forfeiture Policy Advisory Committee.
2. The United States Marshals Service shall prepare an annual report on the Fund in accordance with 28 U.S.C. 524(c)(6). Agencies reimbursed in accordance with the provisions of these guidelines shall provide information as may be requested by the Marshals Service.
3. The United States Marshals Service will also submit to the Associate Attorney General on a monthly basis a financial statement as to the current status of the fund. Copies of the monthly United States Marshals Service statement will be provided to those members of the Asset Forfeiture Policy Advisory Committee with whom the Marshals Service has entered into reimbursement agreements to assist the recipient in making decisions as to the use and transfer of forfeited property.

B. Allowable Reimbursements from the Assets Forfeiture Fund

Reimbursements are permitted in two broad categories: asset-specific expenses and program-

related expenses. The former take priority over the latter.

1. Asset-specific expenses. The following are allowable asset-specific expenses. Expenses identified in a. and b. below, which are termed "management expenses" for the purposes of administering the Assets Forfeiture Fund, have priority over expenses identified in c., d., e., and f., which are termed "contingent expenses" for the purposes of administering the Assets Forfeiture Fund. These, in turn, have priority over payments identified in g., h., and i. below, which are management expenses which have been assigned a lower priority.
 - a. Expenses incurred by the Department of Justice or other agencies authorized to be reimbursed from the Fund relative to the detention, inventory, safeguarding, maintenance, or disposal of seized or forfeited property, whether incurred on an asset specific or service contract basis;
 - b. Expenses relative to the detention, inventory, safeguarding, maintenance, or disposal of seized or forfeited property incurred by other federal, state, and local agencies which assist in the seizure and forfeiture of the property;
 - c. Payments of orders of mitigation or remission;
 - d. Payments of valid liens and mortgages pursuant to court order;
 - e. Expenses incurred for the normal and customary operations of seized or forfeited businesses;
 - f. Payments of orders of equitable transfer to state or local law enforcement agencies;
 - g. Payments for contract services directly related to the processing of and accounting for seizures and forfeitures;
 - h. Expenses related to the storage, protection, and destruction of controlled substances whether incurred on an asset specific or

service contract basis;

- i. Other expenses incurred by Department investigative bureaus or other Department components in the seizure and forfeiture of the property, including such case-specific expenses as forfeiture case-related travel and subsistence; costs to obtain and transcribe depositions; filing fees; translation and court reporter fees; messenger services; expert witness costs; exhibit graphic services; and other types of such expenses as approved by the Associate Attorney General.
2. Program-related expenses. The following are allowable program-related expenses. Item a. is the highest priority type of expense; other items are not listed in any priority order.
- a. Expenses for the purchase or lease of ADP equipment, and related services, at least 90% of whose use will be dedicated to seizure or forfeiture-related record-keeping;
 - b. Payments by authorized Department investigative agents for the purchase of controlled substances (identified by 21 U.S.C. 812) as evidence in cases involving violations of the Controlled Substances Act or the Controlled Substances Import and Export Act; (See Part H, infra);
 - c. Expenses incurred to equip any conveyance (whether acquired by forfeiture, purchase, or lease) for drug law enforcement functions; (See Part I, infra);
 - d. Payment of awards in recognition of information or assistance given to a Department investigative bureau pursuant to 28 U.S.C. 524(c)(1)(B); 28 U.S.C. 524(c)(1)(C); or 21 U.S.C. 881(e)(2)(A)(ii); (See Part G, infra);
 - e. Expenses incurred for training related to the execution of seizure or forfeiture-related responsibilities;
 - f. Expenses incurred for printing program-related training material, such as

manuals or handbooks. (Costs for printing legal notices and other case or asset-specific printing costs are considered asset-specific expenses as described in subsection B.1.a. above.)

3. Reimbursement for expenses in categories 1.g., 1.h., and 2. shall not exceed the lesser of \$100 million or whatever amount is authorized by statute in any one fiscal year.

C. Limitations on Use of the Fund

1. The Department of Justice Assets Forfeiture Fund shall not be used to pay any of the following:
 - a. Salaries of federal government employees;
 - b. Expenses in connection with the seizure, detention, and forfeiture of property where the seizure was effected by a Customs officer or where custody was maintained by the Customs Service, in which case the Customs Assets Forfeiture Fund is available for payment of expenses; or
 - c. Where property is transferred to state or local law enforcement agencies:
 - (1) Liens or mortgages on the property; or
 - (2) Payments to equip the property for law enforcement purposes.
2. Liens and mortgages shall be paid from the Fund only pursuant to an order of remission or mitigation or an order of the court, and when the payment of the lien from the Fund is beneficial to the United States. Otherwise, such amounts shall be paid from the proceeds of the sale of forfeited property. Such payments are beneficial to the United States in two circumstances:
 - a. Where payment prior to sale will improve the Government's ability to convey title of the property;
 - b. Where the property is to be placed into official use by a Department investigative bureau or other agency.

3. The United States Marshals Service generally may not pay the claims of unsecured creditors from the Fund, particularly if such payment may jeopardize the legitimate claims of existing lienholders. However, if the United States Marshals Service determines that it is necessary to recognize and satisfy the legitimate claims of unsecured creditors for debts incurred within thirty days before seizure in order to preserve the continued operation of a seized business, it may do so for the following debts:

- a. Payment of reasonable salaries and benefits of employees not believed to have been involved in the unlawful activities giving rise to forfeiture and not having an ownership interest in the firm;
- b. Payments to third party contractors for goods or services essential to carry on the business of the firm and who continue to provide those goods or services as a regular matter; and
- c. Utilities.

All other claims of unsecured creditors shall be determined by the Asset Forfeiture Office under regulations governing the procedures for remission or mitigation of forfeiture contained in 28 C.F.R. 9.1-9.7 and/or by the court.

D. Payment of expenses

1. Expenses incurred by the United States Marshals Service will be paid by Marshals Service district offices from the Fund, in accordance with standard Marshals Service financial management and accounting policies and procedures.
2. Obligations incurred by other agencies will be reimbursed on a monthly basis (where practicable) from the Fund to the agency incurring the costs by means of an inter-agency fund transfer, using Standard Form 1081 (SF-1081), pursuant to a properly executed Reimbursement Agreement Between Agencies (Form DOJ-216,).

3. It is the responsibility of the agency incurring the obligation to prepare the DOJ-216 and SF-1081 forms and obtain proper authorization. Each DOJ-216 and SF-1081 form will identify the appropriation to be reimbursed from the Fund.
4. Approved DOJ-216's and SF-1081's will be registered upon receipt at the Marshals Service. Properly authorized requests (SF-1081's) will be processed for payment in order of registration. The Marshals Service will approve the transfer of funds to the appropriation identified if sufficient funds are available, as defined in E.2. below.
5. If an amount requested is in excess of an amount available, as defined in E.2. below, the Marshals Service will not process the request, but will advise the requesting agency of the reason. The Marshals Service and the requesting agency should attempt to agree on deferral or cancellation of the request, as appropriate.
6. If the Marshals Service and the requesting agency cannot agree on deferral or cancellation of the request, the Marshals Service shall inform the Associate Attorney General of such disagreement and provide its recommendation for delayed payment or other appropriate action. The Marshals Service shall provide notice of the action taken by the Associate Attorney General to the agency submitting the SF-1081.

E. Priority Payments

1. Department policy is that reimbursement of asset-specific expenses has priority over reimbursement of program-related expenses. A minimum balance of ten million dollars (\$10 million) will be maintained in the Fund to ensure the reimbursement of asset-specific expenses.
2. Requests for reimbursement for program-related expenses submitted to the Marshals Service under the terms of a reimbursement agreement pursuant to subsection F. below will be processed if:
 - a. a sufficient amount remains under a

current year reimbursement agreement to cover the requested reimbursement; and

- b. the Fund balance exceeds by at least \$10 million the amount of the request.

F. Preparation of Reimbursement Agreements

1. The Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, the Immigration and Naturalization Service, the United States Postal Service, the Executive Office for United States Attorneys, the Criminal Division, and any other agency which anticipates requesting reimbursement for expenses from the Department of Justice Assets Forfeiture Fund will prepare estimates of anticipated expenditures and, after coordination with, and review by, their internal budget and finance staffs, submit them to the Asset Forfeiture Policy Advisory Committee at least three months prior to the fiscal year in which the expenses are anticipated.
2. Anticipated requests for reimbursements shall be divided into each of the separate categories set forth in Parts B.1. and 2. above.
3. The Asset Forfeiture Policy Advisory Committee will evaluate the estimates and recommend a budget for program-related expenses and estimates for asset-specific expenses to the Associate Attorney General.
4. Members of the Asset Forfeiture Policy Advisory Committee may submit to the Associate Attorney General, concurrent with the Committee's recommendations, minority recommendations.
5. The Associate Attorney General will approve a budget for program-related expenses and estimates for asset-specific expenses, if possible, prior to the new fiscal year, which will form the basis for authorizing the establishment of reimbursement agreements between the United States Marshals Service, as administrators of the Fund, and the appropriate agency head or his designee. The budget and the estimates may be for periods of time less than one year (e.g., six months). The Associate Attorney General, or the Committee, retains authority to approve specific types of reimbursement expenses on an individual basis.

6. It is not permissible for a recipient of reimbursement funds to receive funds for reimbursement of program-related expenses in excess of that authorized in the budget for a specific program-related category or in variance with any other limitations imposed by the budget or the Associate Attorney General for program-related expenses. Requests for augmentation or change must be approved by the Associate Attorney General.
7. Any agency seeking previously unanticipated reimbursement of asset-specific expenses in excess of the amount authorized in the approved estimates for a specific category or in variance with any other limitations imposed by the approved estimates or the Associate Attorney General for asset-specific expenses shall advise the Asset Forfeiture Policy Advisory Committee as soon as the need for such reimbursement is anticipated.
8. The Asset Forfeiture Policy Advisory Committee may recommend adjustments to the budget for program-related expenses and the approved estimates for asset-specific expenses during the fiscal year. The Associate Attorney General may order adjustments to the approved estimates and the budget during the fiscal year based either on appeals, recommendations of the Committee, or his or her own decision.

G. Payment of Awards

1. Applications for awards will be accepted on behalf of any individual. The term "individual" encompasses corporations and associations.
2. Awards will not be paid to state or local government entities, or to employees or agents thereof. Any information or assistance provided by a state or local entity will be compensated under rules governing "equitable transfers."
3. Awards pursuant to 28 U.S.C. 524(c) (1) (B) or (C) will be paid only after disposition of forfeited property.

4. Awards pursuant to 28 U.S.C. 524(c)(1)(B) or (C) may not exceed \$150 thousand or one-fourth the "amount realized by the United States from the property forfeited," whichever is less.
 - a. If forfeited property is sold, then the "amount realized by the United States from the property forfeited" is the gross sale proceeds minus management expenses paid from the Fund.
 - b. If forfeited property is retained for official use, the "amount realized by the United States from the property forfeited" is the value of the property at the time of seizure minus management expenses paid from the Fund.
5. All applications for awards will be directed to the field office of the Department investigative bureau responsible for processing the forfeiture. Non-DOJ agencies (e.g., task force members such as IRS) should be instructed to direct any inquiries concerning these awards to the Department investigative bureau responsible for processing the forfeiture.
6. The investigative bureau field unit receiving or initiating an application for an award will prepare a written report that will evaluate the value of the information or assistance provided by the applicant and recommend an amount to be paid.
7. If more than one application for an award pursuant to 28 U.S.C. 524(c)(1)(B) or (C) is received in a single action for forfeiture, the applications should be handled in a consolidated manner. Decisions on all applications should be made at the same time, and should consider the comparative value of information or assistance provided by each applicant and the aggregate amount of award(s) to be made.
8. Requests for reimbursement for awards pursuant to 28 U.S.C. 524(c)(1)(B) shall:
 - a. identify the property or properties,

including agency and/or federal district court case numbers; and

- b. identify the recommended dollar amount of the award.

9. Approval of awards will be in accordance with 28 U.S.C. 524(c)(2) and any subsequent delegations of authority.

H. Purchase of Evidence

1. Only DEA and FBI may request amounts to be reimbursed for the purchase of evidence.
2. Approval of amounts for the purchase of evidence will be in accordance with 28 U.S.C. 524(c)(3) and any subsequent delegations of authority.
3. The investigating agency is responsible for control over the release of cash to agents and for informing agents of the responsibility to account for the use and recovery of the cash.
4. If a participating agency recovers part or all of the monies that are used to purchase evidence for which it has obtained reimbursement from the Fund, the recovered monies will be credited to the Fund.

I. Payments to Equip Forfeited Conveyances for Drug Law Enforcement Functions

1. Decisions to retrofit a conveyance for drug law enforcement functions shall be made by the organizational component within the agency which is responsible for management of the conveyance to be retained.
2. Unreasonable amounts shall not be spent on equipping (retrofitting) forfeited, leased, or owned conveyances for drug law enforcement purposes. Extensive work to convert a conveyance to heavy duty use should be limited by considering the estimated useful life of the conveyance and the availability of similarly equipped conveyances.

V. DISCONTINUANCE OF FEDERAL FORFEITURE ACTIONS

A. Deferral of Federal Judicial Forfeiture Proceedings

1. A decision to forego a federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the concerned Department investigative bureau.
2. In making this decision, the United States Attorney must consider the financial status of the Department of Justice Assets Forfeiture Fund.
3. Judicial forfeitures foregone in favor of state or local proceedings are to be reported by the United States Attorney in writing, within five days, to the Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, D.C. 20530.

B. Deferral of Federal Administrative Forfeiture Proceedings

1. A decision to forego a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the Department investigative bureau.
2. In making this decision, the head of the Department investigative bureau must consider the financial status of the Assets Forfeiture Fund and, where appropriate, consult with the United States Marshals Service in that regard.
3. Department investigative bureaus must develop procedures for recording these decisions and providing reports as required.

VI. UNITED STATES CUSTOMS SERVICE FORFEITURES

- A. Pursuant to Title 28 United States Code, Section 524(c), all proceeds from the forfeiture of property under any law enforced or administered by the Department are to be deposited in the Department of Justice Assets

Forfeiture Fund, except as specified in 28 U.S.C. 524(c)(4) and except to the extent that the seizure was effected by a United States Customs Service officer or that custody was maintained by the Customs Service, in which case the provisions of 19 U.S.C. 1613a (Customs Forfeiture Fund) shall apply.

- B. To the extent that the United States Marshals Service may have the authority and the capacity to do so, and pursuant to agreement between them and the United States Marshals Service and the Customs Service, the United States Marshals Service may store and maintain seized property for the Customs Service.
 - 1. Where the United States Marshals Service maintains custody of property seized by a Customs officer, the Marshals Service shall seek reimbursement from the Customs Service for the expenses of such custody prior to the deposit of the net proceeds into the Customs Forfeiture Fund.
 - 2. In instances where proceeds are to be deposited in the Department of Justice Assets Forfeiture Fund and the Customs Service, as a substitute custodian, has maintained custody of property seized by the Department, the Department will reimburse the Customs Service for the expenses of such custody.
- C. Requests for transfers of forfeited property by federal agencies, or by participating state and local law enforcement agencies, in forfeitures where the seizure was effected by a Customs officer or custody was maintained by the Customs Service should be directed pursuant to 19 U.S.C. 1616 to the Customs Service for evaluation and forwarding to the Assistant Secretary of Treasury for Enforcement with an information copy to the United States Attorney in the district of seizure.
- D. In the event of an unresolved dispute concerning whether a given forfeiture constitutes a Customs or Department forfeiture for purposes of cash or proceeds disposition, or for federal, state, and local transfers, the Associate Attorney General and the Assistant Secretary of Treasury for Enforcement shall resolve the issue. Where

appropriate, they may submit the issue to the
Organized Crime Drug Enforcement Task
Force Working Group for recommendation.

9 APR. 1987

DATE

Edwin Meece III

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Attorney General