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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

05/17/2023

RE: Your FOIA Request to Treasury, Case Number 2023-FOIA-00454

This is the Department of the Treasury's response to your Freedom of Information Act (FOIA) request dated May 4, 2023. You have requested copies of the following records:

As it relates to the Treasury Executive Office for Asset Forfeiture (TEOAF):

A copy of the following TEOAF Policy Directives: Number 5 (former version) Number 9 (the former version), Number 10, Number 17 (the former version), Number 18 (former version), Number 33 (former version), and Number 34 (former version). By former version, I mean the last approved version of the Directive. I understand that these Directives are in the process of revision, but I request the version that had last been approved and is now considered non-current.

Your request has been processed under the provisions of the FOIA, 5 U.S.C. § 552. A search conducted within the Treasury Departmental Offices located 49 pages of records that are responsive to your request. After review, I have determined that these records will be released to you in full. The following exemption was claimed (b)(7)(E).

There are no fees assessed since allowable charges fell below \$25.

You may reach me via telephone at 202-622-0930, extension 2; or via e-mail at FOIA@treasury.gov. Please reference FOIA case number 2022-FOIA-00657 when contacting our office about this request.

Sincerely,

Amy R. Watson
Program Analyst
Treasury Executive Office for Asset Forfeiture

Department of the Treasury
Executive Office for Asset Forfeiture

Directive Number: 5
(revised September 15, 2000)

DATE: October 1, 1993

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

Effective Date: August 23, 2000

BACKGROUND:

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

APPLICATION:

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

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

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

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

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

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

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

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

PART II – Notice in Administrative Cases Where CAFRA Applies

A. Time for Sending Notice:

1. Seizure by Federal Agency:

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

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

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

In cases adopted from state or local law enforcement, the federal agency must send notice no later than **90 days from the date the state or local agency made the**

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

seizure.

B. Sanctions for Not Giving Notice:

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

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

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

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

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

- b. terminate the administrative forfeiture, and take the steps necessary to preserve its right to maintain custody of the property pursuant to the applicable criminal forfeiture statute.

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

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

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

7. **Adoptive seizures**

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

See 18 U.S.C. § 983(a)(1)(A)(iv).

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

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

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

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

See 18 U.S.C. § 983(a)(1)(A)(v).

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

Only the newly identified party is entitled to the additional time to file a claim. Other parties who received notice within the 60-day period or received published

notice pursuant to 19 U.S.C. § 1607(a) do not get a new claim period because of the notice to a new party under 18 U.S.C. § 983(a)(1)(A)(v).

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

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

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

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

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

D. Extension of Notice

1. **By the agency**

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

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

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

2. **By the court:**

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

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

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

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

E. Notice Letters and the Claim Form

1. Include claim form with the notice letter

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

2. Review of Sufficiency of Claim

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

a. Insufficient Claim

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

b. Sufficient Claim

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

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

PART III - REPORTING REQUIREMENTS FOR EXTENSIONS OF NOTICE

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

A. Agency Notice Extension Report:

Each agency shall submit its report to the Director of EOAF. The reports will be due on September 15 of each year. The first report will be due on September 15,

2001, and should cover the period from August 23, 2000, to August 31, 2001. Each report thereafter will cover the period from September 1 to August 31 of the following year.

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

B. Court Notice Extension Report:

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

NOTICE POLICY

Model Notice Letter

ATTACHMENT A

MODEL NOTICE LETTER
BASED ON SECRET SERVICE NOTICE LETTER

(Date)

(Name)

(Name)

(Address)

(City/State/Zip)

RE: Seizure of Properties

Agency Case Number :

Seizure Number :

Asset Identification :

Asset Description :

Asset Value :

Dear (Name):

On **(DATE)** at **(CITY/STATE)** the property described above was seized by the [AGENCY NAME] for forfeiture from **(NAME of person property was seized from)**. *The seizure was adopted by [SEIZING AGENCY] on [adoption date].* The property was used in or acquired in a violation of **[VIOLATION STATUTE]** and is subject to forfeiture pursuant to **[PRIMARY FORFEITURE STATUTES]**.

You may contest the seizure and forfeiture of the property in U.S. District Court by filing a Claim or you may agree to the forfeiture of the property and petition the [AGENCY NAME] for return of the property or your interest in the property through the administrative process by filing a Petition for Remission or Mitigation (petition).

TO CONTEST THE FORFEITURE

If you disagree with the [SEIZING AGENCY]'s claim that the property is subject to forfeiture and want the case tried in U.S. District Court, you must file a Claim of Ownership with the [SEIZING AGENCY] by **(35 DAYS FROM DATE OF LETTER)**. The Claim of Ownership must:

1. Identify specific property claimed;
2. State the claimant's interest in the property;
3. Be signed and made under oath subject to penalty of perjury.

As stated above, the person alleging an interest in the property must swear to the Claim of Ownership under penalty of perjury. For your ready reference, the acceptable language required by statute is as follows:

I declare, (or certify, or verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on Sworn Date
Party Signature

Unsupported submissions signed by attorneys are insufficient to satisfy the requirement that claims be personally executed. A Claim of Ownership form is enclosed for your convenience. Claims of Ownership must be submitted to the address indicated below.

TO REQUEST REMISSION OR MITIGATION OF FORFEITURE

If you agree with the [SEIZING AGENCY]'s claim that the property is subject to forfeiture but wish to have the [SEIZING AGENCY], through the administrative process, determine whether to remit (return the property or value thereof) or mitigate (return the property or value thereof upon imposition of a penalty) the forfeiture, you must submit a Petition for Remission or Mitigation of the Forfeiture to the address indicated below.

The petition must include proof of your interest in the property supported by copies of bills of sale, contracts, mortgages or other satisfactory documentary evidence and must include the facts and circumstances that you believe justify remission or mitigation of forfeiture.

In order to obtain remission or mitigation of the forfeiture, the petitioner must satisfactorily establish the following:

1. With respect to a property interest in existence at the time that the illegal conduct giving rise to forfeiture took place, a petitioner must establish:
 - a. a legally cognizable property interest in the seized property; and
 - b. no knowledge of the conduct giving rise to the forfeiture; or
 - c. upon learning of conduct giving rise to forfeiture, the petitioner did all that reasonably could be expected under the circumstances to terminate such use of the property.

2. With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, a petitioner must establish:
 - a. a legally cognizable property interest in the seized property;
 - b. at the time the property interest was acquired, that the petitioner was a bona fide purchaser or seller for value; and

- c. that the petitioner did not know and was reasonably without cause to believe that the property was subject to forfeiture.
3. A petitioner who cannot establish a property interest in the property, may obtain remission or mitigation of the forfeiture if the petitioner establishes that
 - a. the petitioner is a victim of the offense giving rise to the forfeiture action;
 - b. the petitioner had no knowledge of or was not willfully blind to the violation giving rise to the forfeiture action; and
 - c. the petitioner did all that reasonably could be expected under the circumstances to prevent the activity giving rise to the forfeiture or the illegal use of the property.

The petition should be filed within thirty-five (35) days of the date of this letter.

RELEASE OF PROPERTY TO AVOID SUBSTANTIAL HARDSHIP

If you chose to contest the forfeiture and file a Claim of Ownership as set forth above, you may be entitled to immediate release of the seized property if:

1. you have a possessory interest in the property;
2. you have sufficient ties to the community to provide assurance that the property will be available at the time of the trial;
3. you show that the continued possession by the Government pending the final disposition of forfeiture proceedings will cause you substantial hardship;
4. you show that your likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to you during the pendency of the proceedings;
5. the property is not contraband, evidence of a violation of law, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business that has been seized;
6. the property is not, by reason of design or other characteristic, particularly suited for use in illegal activities;
7. the property is not likely to be used to commit additional criminal acts if returned to you.

A claimant seeking release of property must file a Request for Possession of the Property with the **[TITLE, OFFICE, AND AGENCY OF APPROPRIATE OFFICIAL]** at the address indicated below. Use of registered mail, return receipt requested, is recommended. A Request for Possession of the Property must set forth the basis on which the requirements listed above are met. See 18 U.S.C. § 983(f).

The **[SEIZING AGENCY]** will send written notice to the claimant indicating the date the agency received the Request for Possession of the Property. If not later than fifteen days after the **[SEIZING AGENCY]** receives a Request for Possession of the Property, the property is not released, the claimant may file a petition for release of the property in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

Please ensure that any correspondence regarding this matter references the Seizure Number provided above.

All documents should be submitted to the following address:

[AGENCY OFFICE, ADDRESS, TITLE OF APPROPRIATE OFFICIAL]

If you have any questions regarding this matter, please contact **[AGENCY CONTACT 1 TITLE & NAME]** or **[AGENCY CONTACT 2 TITLE & NAME]** at **[PHONE NUMBER]** by **(35 DAYS FROM LETTER)**.

Sincerely,

[APPROVAL NAME]
[APPROVAL TITLE]

NOTICE POLICY

Claim Form

ATTACHMENT B

FOR GOVERNMENT AGENCY USE ONLY
DATE CLAIM RECEIVED: _____
CLAIM TIMELY FILED? Y <input type="checkbox"/> N <input type="checkbox"/>

SEIZED ASSET CLAIM FORM

NAME: _____
ADDRESS: _____

TELEPHONE NO. (____) _____

Seizure No.: _____
Case No.: _____
City & State of Seizure: _____

PART I

List the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, aircraft tail numbers, photographs, and so forth. Additional space is provided on the back of the form. You may attach additional sheets of paper if more space is needed.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

PART II

State your interest in each item of the property listed above. Please provide any documents that support your claim of interest in these items. Supporting documentation includes titles, registrations, bills of sale, receipts, etc. Additional space is provided on the back of the form. You may attach additional sheets of paper if more space is needed.

PART I (continued)

- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____
- 12. _____

PART II (continued)

PART III - ATTESTATION AND OATH

I attest and declare under penalty of perjury that the information provided in support of my claim is true and correct, to the best of my knowledge and belief.

Name (Print)

Date

Signature

***A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO PROSECUTION
UNDER 18 U.S.C. §§ 1001 AND/OR 1621 AND IS PUNISHABLE BY A FINE
AND UP TO FIVE YEARS IMPRISONMENT***

Department of the Treasury
Executive Office for Asset Forfeiture

Directive Number: 9

DATE: October 1, 1993

SUBJECT: **Weed and Seed Initiative; Transfers of Real Property**

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

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

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

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

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

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

A. General Authorization

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

B. Identification and Use of Forfeited Real Property

- 1) Investigative agencies, in conjunction with local United States Attorneys, are authorized to identify seized or forfeited properties for potential transfer in support of the Weed and Seed initiative. Where appropriate, they shall consult with the U.S. Department of Housing and Urban Development. As properties are forfeited, appropriate Weed and Seed transfers will be made pursuant to the policies and procedures set out herein.
- 2) The proposed uses of any property to be so transferred must be in accordance with the Weed and Seed initiative, focusing on support of community-based drug abuse treatment, prevention, education, housing, job skills and other activities that will substantially further Weed and Seed goals. United States Attorneys are encouraged to

consult with the Executive Office for Asset Forfeiture for guidance in particular cases. The property must also be suited to the proposed use and the use must be consistent with all applicable Federal, State and local laws and ordinances.

- 3) Any proposed transfer must have the potential for significant benefits to a particular community and these benefits must outweigh any financial loss or adverse effects to the Treasury Forfeiture Fund.

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

1) Sharing Requests

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

2) Transfers to State and Local Agencies

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

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

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

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

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

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

1) Mortgages

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

2) Qualified Third Party Interests

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

E. Asset Seizure, Management and Case-Related Expenses

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

F. Law Enforcement Concurrence

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

G. Contact Point

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

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

DIRECTIVE NO. 10

DATE: August 17, 2016

SUBJECT: Management of Seized and Forfeited Bitcoin

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

5. RESPONSIBILITIES.

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

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

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

6. PROCEDURES.

A. Seizing Bitcoin

(1) (b) (7)(E)
(b) (7)(E)

(2) (b) (7)(E)
(b) (7)(E)
(b) (7)(E)

(3) (b) (7)(E)
(b) (7)(E)

(a) (b) (7)(E)
(b) (b) (7)(E)
(c) (b) (7)(E)
(d) (b) (7)(E)
(e) (b) (7)(E)

(4) (b) (7)(E)
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(5) (b) (7)(E)
(b) (7)(E)

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(6) (b) (7)(E)

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(7) (b) (7)(E)

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(8) (b) (7)(E)

(b) (7)(E)

(a)
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(f)

(b) (7)(E)

(9) (b) (7)(E)

(b) (7)(E)

(10) (b) (7)(E)

(b) (7)(E)

(a) (b) (7)(E)

(b) (7)(E)

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

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

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

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

C. Forfeiture

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

D. Auction

(1) (b) (7)(E)
(b) (7)(E)

(2) (b) (7)(E)
(b) (7)(E)

(3) (b) (7)(E)
(b) (7)(E)

(4) (b) (7)(E)
(b) (7)(E)

E. Returning Bitcoin to Defendant or Claimant

(1) (b) (7)(E)
(b) (7)(E)

(a) (b) (7)(E)
(b) (7)(E)
(c) (b) (7)(E)
(d) (b) (7)(E)
(e) (b) (7)(E)

(2) (b) (7)(E)
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7. **AUTHORITY.** The Treasury Forfeiture Fund Act of 1992, as amended, 31 U.S.C. § 9705.
8. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Property Team at (202) 622-9600.
9. **EFFECTIVE DATE.** August 17, 2016.

/s/
John Farley
Acting Director
TEOAF

Department of the Treasury
Executive Office for Asset Forfeiture

Directive Number: 17

DATE: November 30, 1994

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

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

I. **GENERAL POLICY**

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

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

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

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

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

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

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

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

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

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

II. MONETARY AMOUNTS

United States Attorneys may accept or reject offers in compromise (1) in all civil or criminal forfeiture cases in which the original claim did not exceed \$500,000, and (2) in all cases in which the original claim was between \$500,000 and \$5,000,000, so long as the difference between the original claim and the proposed settlement does not exceed 15 percent of the original claim. United States Attorneys also have authority to close (other than by compromise or entry of judgment) all civil or criminal forfeiture cases in which the gross amount of the original claim does not exceed \$500,000.⁶

III. ADMINISTRATIVE FORFEITURE BY AGREEMENT

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

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

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

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

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

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

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

B. Civil Judicial Forfeiture Without Prior Administrative Action

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

C. Criminal Forfeiture Action

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

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

IV. JUDICIAL FORFEITURE BY SETTLEMENT

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

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

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

A. Civil Forfeiture

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

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

B. Criminal Forfeiture

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

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

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

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

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

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

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

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

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

VIII. SETTLEMENTS WITH FUGITIVES IN CIVIL FORFEITURE CASES

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

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

²Settlements are contractual agreements to end legal disputes.

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

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

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

Directive No. 17
Pg. 9/ 10 - 1994

⁶See supra n.2.

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

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

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

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

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

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

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

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 18

DATE: May 29, 2014

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

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 18 establishes Treasury policy for reimbursements for authorized expenses to state and local law enforcement agencies (LEAs) involved in joint operations with the federal agencies participating in the Treasury Forfeiture Fund (TFF) (hereinafter referred to as "TFF Agencies").
2. **SCOPE.** This Directive applies to all TFF Agencies, state and local LEAs involved in joint operations with the TFF Agencies, and TEOAF.
3. **POLICY.** Funds from the TFF may be used to reimburse certain costs incurred by state and local LEAs when they are involved in joint operations with the TFF Agencies. These reimbursements do not constitute a federal grant to the state or local LEA. Overtime salaries, travel, fuel, training, equipment, and other similar costs of state and local law enforcement officers that are incurred in a joint law enforcement operation with a TFF Agency can be authorized for reimbursement. The following general guidelines are applicable to this policy.

A. Agencies Eligible to Receive Joint Operations Reimbursements

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

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

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

(3) A "joint law enforcement operation" (or "joint operation" for short) is a law enforcement effort which:

(a) Is designed to disrupt crime through the arrest of criminal offenders and the seizure of tainted assets, using accepted methods of investigation such as intelligence gathering and sharing, evidence gathering, informant debriefing, witness interviews, crime scene and forensic analysis, electronic monitoring, data analysis, etc.;

(b) Is conducted using authorized methods of investigation in order that the arrests and seizures become effective prosecutions and forfeitures before the courts of the United States or of the state in which the operation exists; and

(c) Involves direct participation of at least one agent of a TFF Agency in other than an oversight or coordination capacity; that is, in an operational capacity.

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

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

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

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

B. Criteria for Joint Operations Reimbursements

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

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

(3) TFF reimbursements can only be made for those expenses that are authorized by statute¹. Payment of salaries of state or local officers, either directly or indirectly is not authorized.

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

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

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

¹ 31 U.S.C. § 9703(a)(1)(I) authorizes reimbursement for "overtime, travel, fuel, training, equipment, and other similar costs of state or local law enforcement officers that are incurred in joint law enforcement operations" with a TFF Agency.

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

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

C. Subject to Audit

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

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

(3) The TFF Agencies and the state and local LEAs shall maintain all records relating to these transactions for three years; and in the event of an on-going audit, until the audit is completed.

4. RESPONSIBILITIES.

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

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

5. PROCEDURES

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

A. Designating Reimbursement Limits for Joint Operations

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

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

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

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

B. Establishing an Obligation for Reimbursement

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

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

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

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

C. Increasing/Decreasing an Obligation

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

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

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

D. Requesting a Reimbursement (aka Invoicing)

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

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

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

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

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

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

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

E. Correcting an Invoice Error

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

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

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

F. Reporting and Inquiries

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

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

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

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

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

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

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

G. Accessing the Joint Operations Automated System

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

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

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

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

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

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

/S/

Eric Hampl
Director
TEOAF

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

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

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

ATTACHMENT D – Procedures for the Joint Operations Automated System

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 33

DATE: June 3, 2014

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

1. PURPOSE. This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 33 establishes the policies and procedures for seizing and forfeiting motor vehicles, handling motor vehicle liens, and placing motor vehicles into official use.

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

3. POLICY. Generally, the value of a vehicle at the time of seizure should be a key consideration in the decision to seize for forfeiture in addition to a compelling law enforcement purpose to be served. The methodology for determining that value shall be consistent across all seizing agencies. Identification of any third-party interest(s) in the vehicle should be expeditious. Generally, no lien payment will exceed the lesser of the value of the vehicle at the time of seizure, the unpaid principal balance, or the net proceeds of sale. Where official use is contemplated, TEOAF reserves the right to decline any lien payment.

4. RESPONSIBILITIES.

A. The seizing agency shall ensure that requests for payment of liens are submitted to TEOAF immediately after forfeiture. Additionally, the seizing agency is responsible to ensure that lien payment requests are approved prior to retaining or transferring forfeited vehicles for official use, and that the amount of the requested payment does not exceed the lesser of the value of the vehicle at the time of seizure, the unpaid principal balance, or the net proceeds of sale.

B. TEOAF is responsible for expeditiously approving all properly documented lien payment requests, and ensuring that the approved requests are forwarded timely to the National Finance Center (NFC) for payment processing.

5. PROCEDURES.

A. Pre-seizure Evaluation

(1) Criteria for Seizure

Prior to the seizure of any vehicle for forfeiture, the seizing officer shall ensure that the vehicle meets either the criteria for seizure or one of the exceptions to those criteria outlined in TEOAF Directive 20, "Net Equity Requirements for Seized Property." To the greatest extent possible, seizing agencies should refrain from seizing leased vehicles for forfeiture. In the event that it is necessary to seize a leased vehicle, the seizing agency should remit the vehicle to the lessor as soon as practicable after seizure. TEOAF will not pay liens for leased vehicles.

(2) Consideration of Expedited Dispositions of Vehicles Valued Less Than \$2,500

If a seizing agency decides to seize for forfeiture a vehicle with a value of less than \$2,500, the seizing agency should consider an expedited disposition, either sale or destruction, to avoid incurring unrecoverable property storage and management costs. Expedited dispositions for Customs and Border Patrol seizures are provided for in 19 U.S.C. § 1612 (otherwise known as the "Junker Provision"). The use of the expedited disposition provisions applies to administrative forfeitures pursued under the authority of 19 U.S.C. § 1607.

(3) Appraisal of Seizure

To establish a uniform appraisal methodology and a standard source for the valuation of a seized vehicle, the following appraisal procedures shall be used by the seizing agency and the national seized property contractor for assigning appraised value:

- (a) The low auction value reported by the NADA for comparable vehicles sold at recent wholesale auctions is to be assigned as the value of the vehicle;
- (b) For vehicles in very poor or damaged condition, agency seizure specialists should use good judgment in assigning a lower value than set forth in (a);
- (c) Unique or extremely rare or valuable vehicles are to be valued with the assistance of the national seized property contractor; and
- (d) If a considerable amount of time has passed between seizure and forfeiture, updated NADA valuations shall be obtained at the time of forfeiture.

B. Post-seizure Administrative Processing

(1) Written Notice of Intent to Forfeit to Lienholders

(a) The seizing agency shall send notice of intent to forfeit as required by law, including to all appropriate persons, institutions, and organizations that may have a financial interest in the seized property. The seizing agency shall encourage a lienholder to take custody of a vehicle at the earliest possible opportunity, thereby reducing the costs associated with a forfeiture action. Each notice of intent to forfeit related to seized vehicles shall include the following letter and agreement forms:

- (i) Information Letter;
- (ii) Agreement for Posting of Equity Bond; and
- (iii) Agreement for Declination of Transfer of Vehicle.

See Attachments A, B and C for samples of letter and agreements, respectively.

(b) All notices of intent to forfeit that are sent to lienholders shall state that Treasury is not authorized under federal law to make payments which exceed the value of the vehicle at the time of seizure, the unpaid principal balance, or the net proceeds of sale, whichever is the lower amount. Lienholders must provide documentation to support the amount of unpaid principal claimed in the petitions. However, TEOAF will apply the Rule of 78s to determine the unearned interest and the amount of the unpaid principal. Seizure notices shall inform lienholders of their right to petition for relief and advise them of the types of relief available. The types of relief available to lienholders are as follows:

(i) Pre-forfeiture release upon submission of an Agreement for Posting of an Equity Bond and deposit of an equity bond. If the interested party agrees to post an equity bond, the equity bond must take one of the following forms: actual surety bond; irrevocable letter of credit; cash; certified check; bank check; or cashier's check. If an actual surety bond or irrevocable letter of credit is received, it shall be maintained with the case file. If cash, certified check, bank check, or cashier's check is received, it shall be immediately deposited into the Treasury Suspense Account at the NFC and treated as seized currency in accordance with procedures established in TEOAF Directive No. 4, "Seized Cash Management."

(ii) Post-forfeiture release of a seized vehicle upon payment of the difference between the value of the vehicle at the time of seizure and the lienholder's net investment or equity in the vehicle (i.e., vehicle value at time of seizure less lienholder's equity), or payment of the total seizure costs, whichever is the higher amount (revised Treasury Rules for Remission of Vehicle Forfeitures dated December 13, 1971).

(iii) Post-forfeiture payment in settlement of the lienholder's claim. Such payment will be the lesser of the value of the vehicle at the time of seizure or the unpaid principal balance owed on an installment agreement. The lienholder should be advised that Treasury will not pay unearned interest and that the Rule of 78s will be applied by TEOAF to determine the amount of the unearned interest and the unpaid principal balance.

(iv) Post-forfeiture payment of a lien from the net proceeds of sale. The net proceeds are calculated by subtracting all seizure costs from the gross proceeds of sale. Such payment will be the lesser of the value of the vehicle at the time of seizure, the unpaid principal balance owed on an installment agreement or the net proceeds of sale. As with lienholder settlement prior to sale, Treasury will pay unearned interest and the Rule of 78s will be applied to determine the unpaid principal balance.

(2) Determining Suitability for Official Use

The seizing or requesting agency is responsible for determining whether a seized vehicle is suitable for retention for official use based on the internal guidelines for that agency. A request to pay a lien to retain a forfeited vehicle for official use shall include an approved agency retention request, signed by the responsible agency official (e.g., fleet manager), which certifies that the subject vehicle is suitable for official use. If approved and paid by TEOAF, the receiving agency shall immediately begin the process to transfer the vehicle's title to the receiving agency's fleet. This includes requesting a Standard Form 97, Certificate to Obtain Title to a Vehicle, from TEOAF as an initial step.

Petitions filed by innocent owners or victims always take priority over official use or sharing requests, and forfeited property generally should be liquidated and the net proceeds be made available to such parties. In the event that legitimate petitions for remission are received, but the vehicle is necessary for official use, the seizing or requesting agency must establish one of the following:

(a) There is substantial difficulty in calculating the pecuniary loss incurred by victim(s); or

(b) The anticipated net proceeds of sale would be so minimal as to make any remission payment *de minimis*; or

(c) The total number of victims in relation to the potential amount of remission creates the likelihood that any victim's remission payment would be *de minimis*.

C. Post-forfeiture Processing

(1) Net Equity Requirements to Retain Forfeited Vehicles for Official Use When Liens Exist

Prior to requesting payment of a lien to retain a forfeited vehicle for official use, the seizing agency should ensure that there is at least \$5,000 in net equity in the vehicle.

(2) Dollar Limits for Satisfying Liens to Retain Vehicles for Official Use

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

(3) Requesting TEOAF Approval of Lien Payoffs to Retain a Vehicle for Official Use

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

(4) Requesting Payment of a Vehicle Lien from the Net Proceeds of Sale

Once a forfeited vehicle is sold, the seizing agency must forward to TEOAF with its cover memorandum a copy of the validated, accomplished disposition form, and any other required information and documentation specified on the Lien Payment Checklist.

(5) Payment of Liens Related to "Task Force" Seizures

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

(6) TEOAF Review

The lien payment requests and supporting documentation shall be sent to the Director, TEOAF, Attention: TEOAF Seized Property Team, via email at teoafgp_liens@treasury.gov. Upon receipt of the request, TEOAF will review the information and decide whether or not to approve the request. TEOAF will apply the Rule of 78s to determine the unearned interest and the amount of the unpaid principal. Once the

requests are approved, TEOAF will forward them to the NFC for payment processing. The Director, TEOAF, reserves the right to decline any official use lien payment.

It is the responsibility of the seizing agency to notify TEOAF when expedited action is required to comply with the terms of a court order. The seizing agency must communicate to the involved Assistant U.S. Attorney the need to include reasonable time limits for the accomplishment of lien payments in court orders. A minimum 90-day time period from the date of issuance of a forfeiture order (where there will be no sale) or from the date of sale (in instances where the vehicle will be sold) is the recommended standard.

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

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

8. **CANCELLATION.** TEOAF Directive No. 33, "Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements," June 7, 1999, is hereby superseded, and TEOAF Directive No. 22, "Vehicle Lien Policy-Posting Equity Bonds," April 14, 1995, is cancelled.

9. **EFFECTIVE DATE.** June 3, 2014.

ATTACHMENT A – Information Letter

ATTACHMENT B – Agreement for Posting of Equity Bond

ATTACHMENT C – Agreement for Declination of Transfer of Vehicle

ATTACHMENT D – Lien Payment Checklist

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 34

DATE: July 26, 2017

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

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 34 contains policies and procedures pertaining to the federal adoption of seizures made by State and Local law enforcement agencies. The purpose of this Directive is to provide the circumstances under which adoptions may be accepted and the procedures to be followed when an adoptive seizure is contemplated by a Treasury Forfeiture Fund (TFF) participating agency.
2. **SCOPE.** This Directive applies to all TFF participating agencies.
3. **BACKGROUND.** As a result of an Order issued on July 19, 2017 by the Attorney General, and after review of the adoptions policy within both the Department of the Treasury and the Department of Justice (DOJ) forfeiture programs, it has been determined that modification of the adoption policy was appropriate. Under the July 19, 2017 Order, federal adoption of assets seized lawfully by state or local law enforcement under their respective state laws is authorized whenever the conduct giving rise to the seizure violates federal law. Certain enhanced legal review and expedited time requirements apply. The policy contained in this Directive is intended to be consistent with the new DOJ policy and AG Order.
4. **POLICY.** TFF participating agencies may adopt assets lawfully seized by state and local law enforcement agencies under their respective state laws whenever the conduct giving rise to the seizure violates federal law. The net equity and value thresholds found in TEOAF Directive Number 20 will continue to apply.¹ As part of the federal law enforcement community, agencies and components should prioritize the adoption of assets that will advance the missions of the Department of the Treasury and the Department of Homeland Security. TFF participating agency legal counsel review is required for all adoptive seizures, as is compliance with the time frames and procedures set forth herein.
5. **SEIZING AGENCY RESPONSIBILITIES.** All TFF participating agencies shall ensure that adoptive seizures are accepted only in the circumstances set forth in this Directive. TFF participating agencies shall ensure agency counsel review of any prospective adoption.
6. **GUIDANCE AND PROCEDURES.**
 - A. Time Limits: In order to give individual property owners an opportunity to challenge the seizure as soon as practicable, TFF participating agencies will expedite their decisions regarding adoptions and their provision of notice to interested parties.

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

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

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

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

- i. To ensure that adoptions involve property lawfully seized, legal counsel at the federal TFF participating agency adopting the seized property must review all adoption requests for compliance with law, especially seizures made pursuant to an exception to the Fourth Amendment's warrant requirement.
- ii. To assist federal legal counsel in this review process, the form used by state and local agencies seeking federal adoption of seized assets, *Request for Adoption of State and Local Seizure* ("Adoption Form"), will require that the state or local agency provide additional information about the probable cause determination justifying the seizure. This additional information in the Adoption Form will better document probable cause in the first instance, and provide federal legal counsel with the relevant information relating to probable cause for review. Additionally, state and local agencies must certify that the seizure and requested federal adoption comply with applicable state laws (including obtaining a turnover order if necessary).
 - a. Until the final joint DOJ-Treasury Adoption Form is available, which should be finalized shortly after issuance of this directive, the TFF participating agencies should contact their headquarters and TEOAF to discuss interim processes if they receive an adoption request.
- iii. Adoptions of cash² in amounts equal to or less than \$10,000 involve additional safeguards. Those adoptions will be permissible where the seizure was conducted: (1) pursuant to a state warrant, (2) incident to arrest for an offense relevant to the forfeiture, (3) at the same time as a seizure of contraband relevant to the forfeiture, or (4) where the owner or person from whom the property is seized makes admissions regarding the criminally derived nature of the property. If a TFF participating federal agency seeks to adopt cash equal to or less than \$10,000 and none of these safeguards is present, then the agency may proceed with the adoption only if the U.S. Attorney's Office first concurs.

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


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

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

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

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

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



John M. Farley
Director
TEOAF

³ This change in policy does not affect the ability of state and local agencies to pursue the forfeiture of assets pursuant to their respective state laws. Moreover, when a state or local agency has seized property as part of an ongoing state criminal investigation and the criminal defendants are being prosecuted in state court, any forfeiture action should generally be pursued in state court assuming that state law authorizes the forfeiture. See, e.g., *DOJ Asset Forfeiture Policy Manual* (2016), Chap. 14, Sec. I.