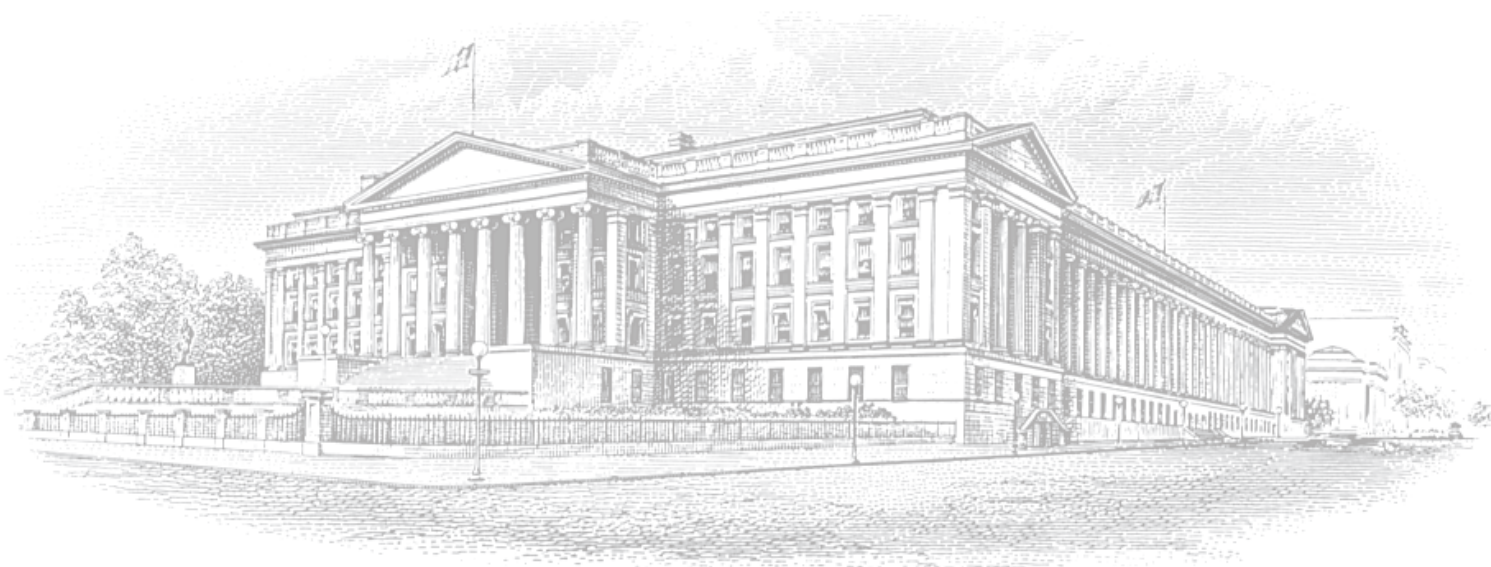


# DEPARTMENT OF THE TREASURY

Office of the Under Secretary for  
Terrorism and Financial Intelligence



*Guidelines for Treasury Forfeiture Fund Agencies on  
Refunds Pursuant to Court Orders, Petitions for  
Remission, or Restoration Requests and Payments to the  
Fund for United States  
Victims of State Sponsored Terrorism*

April 2020

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## Exhibits:

- A. TFF Agency Future Expenditure Form
- B. TFF Obligation Form
- C. Instructions for Forms
- D. Templates for USVSST Fund Cases
- E. Forms 2
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**GUIDELINES FOR TREASURY FORFEITURE FUND AGENCIES ON  
PROCESSING REFUNDS PURSUANT TO COURT ORDERS, PETITIONS FOR  
REMISSION, OR RESTORATION REQUESTS  
AS WELL AS FORFEITURES PAYABLE TO THE FUND  
FOR UNITED STATES VICTIMS OF STATE SPONSORED TERRORISM<sup>1</sup>**

**I. PURPOSE**

This directive is intended to provide guidance to the Treasury Forfeiture Fund (TFF) agencies when requesting that the Treasury Executive Office for Asset Forfeiture (TEOAF) account for future potential payments, and later, make such payments (“refunds”), pursuant to a court order, a petition for remission or mitigation, or a restoration request.

This directive also provides guidance to the TFF agencies for forfeiture cases in which forfeited proceeds are to be deposited to the United States Victims of State-Sponsored Terrorism Fund (USVSST Fund) instead of the TFF. The USVSST Fund was created by an act of Congress on December 18, 2015<sup>2</sup> to provide compensation to certain U.S. persons who were injured in acts of international state sponsored terrorism.

**II. SCOPE AND BACKGROUND**

This directive applies to all TFF agencies.<sup>3</sup> This directive sets forth the process for accounting for forfeited funds that may have victims or other refund liabilities associated with them, and the handling of refund requests. This directive explains the remission and restoration processes and includes the appropriate forms and instructions for the agencies to use when submitting requests to TEOAF.<sup>4</sup>

One of the missions of the forfeiture program is to compensate victims of crime where authorized, and to return property to innocent owners. Presently, each TFF agency handles such payment requests in accordance with its own agency procedures, with the request eventually reaching TEOAF. This directive aims to clarify the overall process for

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<sup>1</sup> This document is also referred to as TEOAF’s “Blue Book”. These 2020 updates address a 2016 accounting change that resulted in a new process for tracking and obligating refunds, primarily to victims. It also contains a new section to address the Fund for U.S. Victims of State Sponsored Terrorism.

<sup>2</sup> The USVSST Fund was created by the 2016 Consolidated Appropriations Act, Pub. L. 114-113, Div. O, Tit. IV, § 404(e) (codified at 34 U.S.C. § 20144).

<sup>3</sup> In practice, this will apply most directly to the TFF agencies with seizure and forfeiture authority and authority to process refunds. Currently, these agencies are Internal Revenue Service-Criminal Investigations (IRS-CI), U.S. Immigration and Customs Enforcement-Homeland Security Investigations (ICE-HSI), the United States Secret Service (USSS), and Customs and Border Protection (CBP).

<sup>4</sup> This directive does not create or confer any rights, privileges or benefits on prospective or actual claimants, defendants, petitioners, victims or other payees. Likewise, this directive is not intended to have force of law. See United States v. Caceres, 440 U.S. 471 (1979).

reserving the funds for these victims and other payees soon after forfeiture, and for requesting such payments promptly after the refund ruling document has been issued. Because petitions for remission or restoration requests, particularly in victim cases, take precedence over other uses for the funds, including equitable sharing and federal official use, it is important to ensure that the funds remain available pending resolution of the petition or restoration request.

To ensure that forfeited funds remain available for future payments to victims and others, **the TFF agencies must submit a TFF Agency Future Expenditure Form (Exhibit A) to TEOAF soon after forfeiture for appropriate cases as defined below. This treatment will allow TEOAF to reserve the funds until the decision on the petition or restoration request is granted.<sup>5</sup> Further, once a petition or restoration request is granted, an obligation must be recorded accordingly and timely.**

### **III. AGENCY REQUIREMENTS**

As always, agencies must actively remain aware of the status of their cases, particularly where victims or other types of potential payees are involved.<sup>6</sup> Agencies must familiarize themselves with these procedures and processes to ensure full compliance. Agency responsibilities are summarized as follows:

**Immediately after receiving the monthly Detailed Collection Report (DCR), the agencies must analyze each deposit to identify all the cases that have potential victims.<sup>7</sup>** Agencies must notify TEOAF at TEOAF\_Refund@treasury.gov of all anticipated victim payments or refunds by submitting a TFF Agency Future Expenditure Form in the following cases:

1. A petition for remission has been filed but not yet ruled upon.

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<sup>5</sup> The obligations for refund will be recorded when sufficient evidence (such as a ruling letter granting a petition for remission or restoration request) is available to support such recording. Until a granted ruling letter is issued, however, these procedures are intended to allow TEOAF to account for and track these future obligations to ensure funds are available to pay them when they are due. See GAO Red Book, Ch. 7 (stating that where funds are payable but recording is not required, the agency should “nevertheless administratively reserve sufficient funds to cover” the expense to, among other reasons, avoid a possible violation of the Antideficiency Act.) GAO-06-382SP Appropriations Law—Vol. II, at 7-44

<sup>6</sup> Agencies must develop and maintain procedures to ensure that case agents and forfeiture personnel remain in communication with the United States Attorney’s Offices so that the agency is up-to-date on the status of any cases in which seized or forfeited funds may be sought for victim or other third-party payments.

<sup>7</sup> **More specifically, the TFF Agency Future Expenditure Form should be submitted upon confirmation of deposit to the TFF. In practice, the agencies will only be able to declare a future expenditure after they receive and review the DCR.**

2. A restoration request has been submitted to the Department of Justice (DOJ), Money Laundering & Asset Recovery Section (MLARS)<sup>8</sup> but not yet ruled upon.
3. A restitution order has been entered, there is a corresponding forfeiture (civil judicial, criminal, or administrative) and the United States Attorney's Office (USAO) has indicated it will seek restoration.
4. No petition or restoration request has yet been filed but is anticipated.<sup>9</sup>
5. An agency learns a prior year forfeiture might be vacated.<sup>10</sup>

To request a reservation of funds, agencies must submit the TFF Agency Future Expenditure Form and other required supporting documentation to [TEOAF\\_Refund@treasury.gov](mailto:TEOAF_Refund@treasury.gov) as soon as practicable after forfeiture.<sup>11</sup>

To prevent reduction to your current year funding level, it is imperative to submit the TFF Agency Future Expenditure Form timely.

#### **IV. COURT ORDERS**

##### **A. Overview of Legal Authority**

Often, the court specifically directs the government to make a payment to a certain party. The court may direct that the payment be made either from seized funds in the suspense account or from forfeited funds.<sup>12</sup> Examples include, but are not limited to, payments to a lienholder or innocent owner; payments from the proceeds of a negotiated or interlocutory sale; certain attorney's fees; payments pursuant to a settlement agreement; or a return of seized and/or forfeited currency for various other reasons, to include a forfeiture that has been vacated. The court order should state the legal authority and/or reason for making such a payment, and the name of the payee.

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<sup>8</sup> Until January 2017, this section was formerly known as the Asset Forfeiture and Money Laundering Section (AFMLS).

<sup>9</sup> This category may warrant an administrative reservation of funds even if it does not yet rise to the level of a future expenditure. These cases may be reviewed further by TEOAF to determine the most appropriate treatment.

<sup>10</sup> Same as above. Please consult with TEOAF on the best way to handle a vacated forfeiture.

<sup>11</sup> This requirement may be in addition to any requirements imposed by your agency. Each agency must develop procedures for sending a TFF Agency Future Expenditure Form, with supporting documentation, to TEOAF in an efficient, timely manner. For example, IRS-CI and the U.S. Secret Service send their requests monthly through Headquarters. For HSI and CBP, it may be more efficient for the Fines, Penalties & Forfeitures Office to send the requests directly to TEOAF with a copy to Headquarters.

<sup>12</sup> The court has no authority to direct distribution of forfeited assets. However, courts occasionally enter orders instructing the government to take action as to the disposition of forfeited (as opposed to seized) funds. Please consult your agency counsel or TEOAF counsel on these matters.

## **B. Agency Requirements**

When submitting payments pursuant to a court order, the agency must use Form 2, Disposition Instructions for Currency Held in Treasury Suspense Account or Form 7, Request for Post Forfeiture Refund respectively, depending on whether the funds are coming from seized funds in the suspense account or from forfeited funds in the TFF. Pursuant to Exhibit C, along with the appropriate form, the agency shall include in the package:

1. The court order or other relevant legal document specifying the payment to be made.
2. A completed Automated Clearing House (ACH) form if the agency is seeking to make the payment electronically, which is the required payment method; checks may be issued on a case by case basis.<sup>13</sup>
3. Any other relevant or helpful documentation or identifying information.<sup>14</sup>
4. For refunds from the TFF, a request to obligate the funds<sup>15</sup> at the time of the payment, or proof of an existing obligation (this usually would be a signed TFF Agency Obligation Form (Exhibit B)).

TEOAF will then process the payment through the U. S. Customs & Border Protection (CBP) National Finance Center (NFC). TEOAF Legal Counsel may also review the package to ensure that the court order complies with all applicable legal standards. When needed, TEOAF may request additional information from the agency. TEOAF will not process a request without the required documentation.

## **V. PETITIONS FOR REMISSION OR MITIGATION OF FORFEITURE**

### **A. Overview of Legal Authority**

The remission or mitigation of forfeiture is a remedy designed to lessen the harshness of the forfeiture sanction. A remission or mitigation is the pardon of the property or an interest therein, based on either the good faith of the petitioner and his/her innocence or the lack of knowledge of the underlying unlawful conduct, or on the petitioner's status as a victim. In the case of the violator, it is a plea for leniency. The majority of petitions filed are from victims, although lien holders, innocent owners and other claimants or

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<sup>13</sup> If the payee is another federal agency, a completed Intra-Governmental Payment and Collection (IPAC) request input form is required in lieu of an ACH form.

<sup>14</sup> This may include sales costs sheets, expense reports, and proof of deposit to the Treasury Suspense Account (TSA) or TFF.

<sup>15</sup> Where used in this document, the phrase "request to obligate" means a request to TEOAF (using the TFF Agency Obligation Form) to review to ensure that a legal financial obligation exists and if so, to submit the info to the NFC to promptly record the obligation.



violators often file as well. Petitions for remission or mitigation take priority over other potential uses for forfeited funds, including official use requests and equitable sharing.<sup>16</sup> When an agency believes a meritorious petition will be filed or sought by the USAO, it must request that TEOAF reserve a specific amount of the forfeited funds by submitting the TFF Agency Future Expenditure Form along with supporting documentation. See Exhibit A.

In administrative forfeitures, the agencies have sole responsibility pursuant to their various authorities to remit and mitigate forfeitures.<sup>17</sup> However, the Attorney General has the sole responsibility for ruling on petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding, even in cases in which a TFF agency was the lead agency. See, e.g., 18 U.S.C. § 981(d); 21 U.S.C. § 853(i)(1). This responsibility has been delegated to the DOJ, specifically, to the Chief of MLARS. The regulations governing petitions for remission or mitigation of judicial forfeitures are found at 28 C.F.R. Part 9.

The next sections explain the procedures for agencies to follow for petitions in administrative and judicial forfeitures.

## **B. Process for Administrative Forfeitures**

In administrative forfeitures, the agency handles and is the ruling entity on any petitions for remission or mitigation. CBP processes its own refunds from the suspense account of seized but not-yet-forfeited funds.<sup>18</sup> **For all other agencies and for all forfeited funds** that have been moved into the TFF, the request must come from the agency to TEOAF to process the payment through the NFC. A few common scenarios shall be handled as follows:

1. **Funds are administratively forfeited, a petition is filed, and the agency intends to grant it during the same fiscal year in which the funds were deposited:** Once the agency has granted the petition, a financial obligation is legally established. Agency must submit a TFF Agency Obligation Form, the grant letter, a Form 7 and any other required supporting documentation (pursuant to Exhibit C) to TEOAF\_Refund@treasury.gov. **However, if it will take a while to assemble a Form 7 package (e.g., because there are multiple victims and the agency is awaiting ACH information; there are multiple assets that will require waiting on cost sheets; or the package will otherwise be delayed) the agency MUST submit the TFF Agency Obligation Form promptly after the ruling letter is issued to ensure that the obligation is recorded timely and removed from the future expenditure schedule. The Form 7 should be submitted when it is ready.**

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<sup>16</sup> Pending victim payments take priority over sharing even where the victim is a federal agency.

<sup>17</sup> See, e.g., 19 C.F.R. parts 171 and 172.2; 26 C.F.R. Part 403, Subpart D. The TFF's authority to make payments authorized by law with respect to remission and mitigation is in 31 U.S.C. § 9705(a) (1)(E).

<sup>18</sup> This directive does not intend to cover on-site mitigation or remission done by HSI or CBP.

2. **Funds are administratively forfeited, a petition is filed or expected, but the agency does not expect to grant it until a subsequent fiscal year:** The agency shall submit a completed TFF Agency Future Expenditure Form for the amount that the agency expects to be granted.
3. **A petition has been denied *in whole* by the agency, and the time for any appeal or reconsideration has expired:** If the agency had previously submitted a TFF Agency Future Expenditure Form for the assets at issue, the agency shall request that TEOAF remove them from the future expenditure schedule.
4. **IMPORTANT:** If a claim has been filed and the case becomes judicial, coordination and communication with the Assistant United States Attorney (AUSA) is important for determining the status of the petition. The AUSA may wish to settle with the petitioner or deal with their claim before the court and have the petitioner withdraw their petition. Or, the petition maybe ruled upon at a later date, post-forfeiture, by MLARS.
5. If a vehicle or other personal property is at issue, sometimes a decision will be made to sell the property pending resolution of the petition. This occurs sometimes in cases where the litigation is protracted and lengthy, and thus sale of the asset is sometimes necessary to preserve the value of the property or avoid wasting the value of perishable property. The petitioner would then receive the sale proceeds, after costs, if his or her petition is granted. Agencies must track the sale of property subject to a refund, and must submit a TFF Agency Future Expenditure Form for any funds being sought, up to the amount that was forfeited or received from sale of the property.
6. **Funds are administratively forfeited and become the subject of a restoration request to satisfy a restitution order in a related criminal case:** DOJ must seek approval from the agency before granting restoration of administratively forfeited funds. If an agency approves, or intends to approve, use of administratively forfeited funds or sales proceeds for a restoration request, the agency shall submit an Agency Future Expenditure Form to TEOAF. Please see Section VI for more information about restoration.

### **C. Process for Judicial Forfeitures**

In judicial forfeiture cases, pursuant to 28 C.F.R. Part 9, the following generally occurs:

1. A third party with an interest files a petition. Petitioner may be a victim, lienholder, innocent owner, or even the violator. Petitioners may include individuals, corporations, businesses, non-profits or other organizations, or local, state, or federal agencies. The petition should be sent to the USAO, MLARS, and the seizing agency, though this does not always happen.



- a. Note that in victim cases, USAOs have access to a model victim petition developed by MLARS. Agencies should work with their AUSAs to get this model petition to their victims to fill out for ease. Petitioners should include any documentation they have available with their petitions. Further, in cases with multiple victims, sometimes a claims administrator is hired to assist in the collection and processing of petitions. If agencies anticipate a case will have a large number of victims, it should consult with the USAO and MLARS as soon as practicable to determine whether a claims administrator will be hired.
2. When the agency receives a copy or otherwise learns of the petition,<sup>19</sup> it should promptly submit to TEOAF a TFF Agency Future Expenditure Form for any funds being sought, up to the amount that was forfeited or that resulted from the forfeiture (such as sales proceeds). The agency shall track the disposition of all real and personal property that resulted from the forfeiture for possible return to a successful petitioner.
3. The remission regulations require a seizing agency report on the merits of the petition for remission or mitigation. The USAO asks the seizing agency to investigate the merits of the petition. The seizing agency's report is evaluated by the USAO and MLARS, so this is the agency's opportunity to be thorough and to clearly justify any conclusions it may reach about the merits of any particular petition.<sup>20</sup>
4. USAO makes a recommendation on the merits of the petition, as required by the applicable remission regulations. Some USAOs defer to the agency. Others are very proactive and will assist in determining the actual amounts (or percentages) each victim/petitioner should receive.
5. The seizing agency and USAO recommendations are forwarded to MLARS by the USAO. MLARS reviews all the documentation and recommendations in light of applicable federal laws and regulations and issues a ruling either granting or denying the petition. MLARS sends the ruling letter to the petitioner.

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<sup>19</sup> Additionally, as noted, in cases with a large number of victims, a claims administrator is often hired. The hiring of the administrator is another good trigger that the funds will be required for a future obligation for future payments to victim petitioners. TEOAF may request additional information from the agency, the USAO or MLARS concerning the timing and likelihood of the petitions being granted when determining whether to set aside funds.

<sup>20</sup> Conclusions in a petition investigation that are unsupported by documentation or explanation may not be given fullest deference. Agencies are should use the applicable guidelines or regulations, and to be as clear and as thorough as possible, particularly if they are recommending that a petition be denied. Additionally, agencies must include the agency case and seizure numbers on their investigation reports so that MLARS may include these numbers in its ruling letters. This facilitates faster identification of assets subject to a ruling letter.

- a. In cases involving Treasury agencies or assets, MLARS also sends a copy of the ruling letter to TEOAF Legal Counsel, the Seizing Agency Field Office and/or the appropriate asset forfeiture contact at agency headquarters.
- 6. If the Petition is Granted:** Upon the seizing agency's receipt of notification that a petition has been GRANTED, the agency shall use the TFF Agency Obligation Form to instruct TEOAF to post an obligation against forfeited funds and any sales proceeds from the sale of forfeited property. A Form 7 package must also be submitted to pay the petitioner. The TFF Agency Obligation Form and the Form 7 package may be submitted simultaneously. **However, if it will take a while to assemble a Form 7 package (i.e., because there are multiple victims and the agency is awaiting ACH information; there are multiple assets that will require waiting on cost sheets; or the package will otherwise be delayed) the agency MUST submit the TFF Agency Obligation Form promptly after the ruling letter is issued to ensure that the obligation is recorded timely. The Form 7 package should be submitted as soon as it is ready.**
- a. The general policy is that the obligation must be recorded in the same fiscal year in which the grant letter was issued.
  - b. For any granted petition, if needed, the agencies must provide the ACH information and Taxpayer ID Numbers to make electronic payments through the Treasury Offset Program System. This also applies to granted reconsideration requests.
- 7. If the Petition is DENIED:** Petitioners have ten days from the date they RECEIVE the ruling letter to file a reconsideration request. Under 28 C.F.R. 9.4(k), the reconsideration request must be sent to MLARS and the USAO.
- a. MLARS will email TEOAF Legal Counsel, and often the seizing agency, once it receives a reconsideration request. TEOAF Legal Counsel will then forward the email to the appropriate agency personnel (if not already on the MLARS email), with a copy to TEOAF Revenue Team, so that the agency can ensure that the anticipated future expenditure or set aside remains.
  - b. **The agency should maintain the future expenditure on ANY denial for 90 days from the date of the ruling letter to ensure that no reconsideration request has been filed.**<sup>21</sup>

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<sup>21</sup> Why 90 days when the petitioner has only 10 days to file a reconsideration request? Ninety days will allow enough time for: (1) the petitioner to receive the ruling; (2) the petitioner to file its reconsideration request; (3) the USAO to receive it and forward it to MLARS; (4) MLARS to notify TEOAF.

8. If no reconsideration request is received after the 90 days, or if a reconsideration request is received and denied, the agency shall request that TEOAF remove the seizure numbers at issue from its future expenditure schedule. The funds then may be disposed of pursuant to 31 U.S.C. § 9705.
9. If a reconsideration request is filed and granted, the steps in section V.C.6 above must be followed.
10. TEOAF will forward the paperwork to the NFC for refund.

## **VI. REQUESTS FOR RESTORATION OF FORFEITED ASSETS TO VICTIMS TO SATISFY A RESTITUTION ORDER**<sup>22</sup>

### **A. Overview of Legal Authority and Policy for Restoration**

The Attorney General has the authority to restore forfeited property to the victims of crimes underlying the forfeiture or of related criminal offenses, in satisfaction of a restitution order in a criminal case related to the forfeiture.<sup>23</sup> The property at issue may be forfeited judicially (criminally or civilly) or administratively. The purpose of this authority is to be able to use forfeited assets to compensate victims for whom there is a restitution order without requiring these victims to file petitions for remission.<sup>24</sup>

Restoration is appropriate only in cases where there has been a criminal conviction and a restitution order has been entered, and there is a related civil judicial, administrative, or criminal forfeiture.<sup>25</sup> Restoration is generally appropriate only where:

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<sup>22</sup> The DOJ's policy on remission and restoration is included in its Forfeiture Policy Manual (2016), Chapter 12, available at <http://www.justice.gov/criminal-MLARS/publications>.

<sup>23</sup> See, e.g., 21 U.S.C. § 853(I) (1); 18 U.S.C. § 981(e)(6). The Secretary of the Treasury has its own restoration authority in civil forfeiture under 18 U.S.C. § 981(e)(6). However, by agreement, the TFF agencies are subject to MLARS's currently established procedures for restoration in TFF agency cases.

<sup>24</sup> Victims may still file petitions. Owners, lien holders and owner-victims, whether in the remission or the restoration process, have priority over non-owner victims. A restoration request may be granted *subject to* pending decisions on the petitions filed by owners and lien holders. Assuming remaining funds, restoration payments would be made after costs and after recognizing the interests of owners and lien holders.

<sup>25</sup> The following items are examples of common situations that are NOT a complete restoration case. Cases in which there is:

- A restitution order only with no associated forfeiture. (*A related forfeiture is required, along with USAO intent to seek restoration or have the victims file petitions. If a related forfeiture exists – it could be civil forfeiture – and the USAO confirms that restoration or petitions will be forthcoming, the agency must submit a TFF Agency Future Expenditure Form.*)
- A civil forfeiture only (whether it is administrative or judicial) with no restitution order in the related criminal case. (*Restoration requires a restitution order in a criminal case. If you have a civil forfeiture only, the TFF agency must ask if the USAO will solicit petitions. If yes, the agency must submit a TFF Agency Future Expenditure Form.*)

- ALL (not just some) of the victims have been included in the restitution order.
- The USAO has consulted with the seizing agency and determined that:
  - The restitution order reflects the victim’s remaining loss after considering any other sources of compensation (such as insurance) the victim may have received;
  - no other assets are available; and
  - the victims were not complicit in or willfully blind to the offenses underlying the forfeiture or to related offenses.
- The property to be restored was forfeited pursuant to a statute that expressly authorizes restoration or remission.<sup>26</sup>

## **B. Process for Restoration Requests**

1. The USAO must make a formal request to MLARS to apply the forfeited proceeds to a restitution order. In making a restoration request, the USAO must provide a copy of the request to the TFF seizing agency and consult with the agency to validate victims’ losses as incorporated in the restitution order.
  - a. In DOJ cases, the USAO may place a hold on the use of assets in the Consolidated Asset Tracking System (CATS) pending the resolution of the restoration request. This includes assets that may not be part of the criminal case.
    - i. CATS is not the Treasury inventory system of record and therefore the agency must remain aware of the status of their victim cases through other communication with the USAO. Once a TFF agency

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*-A Judgment & Conviction (J & C) that states that restitution will be made from forfeited assets. (This situation would still require a restitution order AND a formal restoration request granted by MLARS that forfeited assets be used to satisfy the restitution order. The TFF agency must submit a TFF Agency Future Expenditure Form when the restoration request is made by the USAO, and must request obligation and payment once the request is granted by MLARS.)*

**Should a TFF agency receive an inappropriate or incomplete request to use forfeited assets to pay restitution, the agency shall not process the request but shall refer it back to the USAO with a reference to this policy. The TFF will set aside funds for a future obligation only upon written confirmation from the USAO, MLARS, or other appropriate agency headquarters official, that the proceeds will be needed to compensate victims pursuant to a proper restoration request or petition process. As with all cases discussed in this *Guide*, TEOAF may request additional information from the agency, the USAO or MLARS about the case and likelihood that the restoration or petitions will be granted before determining the best accounting treatment for those funds.**

<sup>26</sup> For example, such statutes include 18 U.S.C. §981(e)(6), 982(b)(1)(by cross-reference to 21 U.S.C. § 853), and 21 U.S.C. § 853(i) authorizes remission and restoration. Other federal laws may also authorize remission and restoration.

receives information that a USAO is considering making a restoration request, the agency shall submit a TFF Agency Future Expenditure Form for the forfeited funds or the proceeds from the sale of the forfeited property in that case.

- b. In cases involving **administratively forfeited assets by a TFF agency**, the USAO must obtain written concurrence of the TFF seizing agency Special Agent in Charge or other appropriate TFF agency official.
  - i. When the TFF agency receives a request from a USAO for written concurrence to use administratively forfeited assets for restoration, the TFF agency, assuming it concurs, must submit a completed **TFF Agency Future Expenditure Form** to request reservation of funds.<sup>27</sup>
  - ii. If this written concurrence was not obtained in the year in which the funds were forfeited or soon thereafter, and funds are no longer available for this purpose, TEOAF may not honor the restoration ruling.<sup>28</sup>
2. MLARS reviews all the documentation and recommendations in light of applicable federal laws and regulations and issues a ruling either granting or denying the restoration request. MLARS sends the ruling letter to the seizing agency with a copy to the USAO.
  - a. If the restoration request is granted, the ruling will also include sample language for the seizing agency to include in a cover letter<sup>29</sup> to the clerk of the court when forwarding the payment.<sup>30</sup> Any restitution payment made the TFF must not exceed the amount of restitution ordered and owed by the defendant.

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<sup>27</sup> Agencies must educate and instruct their field offices and agents to inform the forfeiture personnel at HQ of restoration requests. It is incumbent upon the agencies to be aware of every case in which the USAO is filing a restoration request and to inform agency HQ. The agency HQ must then inform TEOAF so that TEOAF can reserve the funds pending resolution of the claims. Agencies must use their sound discretion, in keeping with the mission of the forfeiture program, in determining whether to concur with a request from a USAO to use administratively forfeited assets for restoration.

<sup>28</sup> Further, MLARS generally will not accept or approve restoration requests for assets that have been disposed of for over five years unless there are unique circumstances surrounding the delay, nor will TEOAF honor such requests.

<sup>29</sup> TEOAF does not require the TFF agency to send letters to the clerk of the court. Rather, NFC includes all pertinent case identification information in the electronic payment (via IPAC) transfer that is received by the clerk of the court.

<sup>30</sup> Payments are not made directly to the victim in a restoration case; rather, payments are made to the clerk of the court. This is because the court will need to keep track of the defendant's restitution liability. Additionally, consistent with Treasury's policy, TEOAF does not issue checks to any federal court. Most federal courts are capable of receiving payments electronically via IPAC, and TEOAF and NFC will assist if a particular court does not have their IPAC account set up.

- b. Additionally, before granting restoration of an **asset administratively forfeited by a TFF agency**, MLARS must ensure that the timely concurrence of the TFF seizing agency was obtained.
3. In cases involving Treasury agencies or assets, MLARS also sends a copy of the ruling letter to TEOAF Legal Counsel.
4. **If Restoration Is Granted:** The seizing agency must submit a TFF Obligation Form and a Form 7 package containing the appropriate paperwork pursuant to Exhibit C to TEOAF\_Refund@treasury.gov for processing. TEOAF will forward it to the NFC for payment. Any restoration payment made by the TFF must not exceed the amount of restitution ordered and owed by the defendant.
5. **If Restoration Is Denied:** It is rare that restoration is denied; however, if it is, please note there is no appeal or reconsideration period for such denial. Thus, if the agency had previously submitted a TFF Agency Future Expenditure Form for the assets at issue, the agency shall request that TEOAF remove them from the future expenditure schedule.

## **VII. MLARS COURTESIES AND OBLIGATIONS**

MLARS currently copies the TFF agency and TEOAF Legal Counsel on all ruling letters on petitions for remission, reconsiderations requests, and restoration requests involving TFF agencies. This practice will continue. MLARS has agreed to assist the TFF agencies and TEOAF in tracking petitions, reconsideration requests, and restoration requests by undertaking the following additional activities:

6. MLARS will email TEOAF Legal Counsel when a reconsideration request has been filed on any particular case.
  - a. TEOAF will then forward the email to the TFF agency with a copy to TEOAF Revenue Team or other appropriate TEOAF officials. The agency must work with TEOAF to ensure that any future expenditure remain on the funds pending MLARS's decision on the reconsideration request. Because no law or regulation currently mandates that TEOAF or the TFF agency be notified of a reconsideration request, this courtesy is extremely helpful to TEOAF in ensuring that the funds are accounted for.
7. On all decision letters (restoration, remission, or reconsideration), to the extent available, MLARS will include the TFF agency seizure number and any other identifying case or asset numbers available. (The CATS numbers provided are for DOJ use only.)



8. DOJ provides TEOAF with a monthly CATS-generated report of pending petitions for remission, which TEOAF will share with the TFF agencies. This list, however, excludes pending restoration requests.
9. Upon request from TEOAF, MLARS will provide TEOAF with a list of pending TFF petitions for remission, restoration requests, and reconsideration requests under review at MLARS.

These courtesies provided by MLARS do not negate or alleviate the duty of the TFF agencies to remain current on the nature and status of their victim cases (or other cases in which a future obligation exists) and to be diligent in their communication efforts with the USAOs; and to request the posting of future expenditures or obligations on funds where appropriate.

#### **VIII. TIME LIMITS**

For refunds pursuant to a petition for remission or restoration ruling, in order to ensure availability of funds, TEOAF must be notified of the future expenditure as soon as practicable after forfeiture as explained in this directive (**i.e. within the same fiscal year as when the funds were forfeited**). If no such notification was provided within **the same** fiscal years of the date of deposit to the TFF, funds may not be available from the TFF for the payment. Such determination is within the sole discretion of the Director of TEOAF. Further, MLARS will not accept or approve restoration requests for assets that have been disposed of for over five years unless there are unique circumstances surrounding the delay, nor will TEOAF honor such requests.

#### **IX. COSTS AND EXPENSES IN REMISSION AND RESTORATION CASES**

Generally, costs incident to the forfeiture, sale or other disposition of the forfeited property are deducted from the total forfeiture proceeds prior to payment of remission or restoration. The remaining balance, or net proceeds, is distributed to the payee (either the petitioner or the court, depending on whether the TFF is paying a petition or a restoration.) Expenses that may be deducted include but are not limited to storage fees, liens, taxes, sales commissions and other related costs. See, e.g., 28 C.F.R. §9.9; 19 C.F.R. §§162.51, 162.96, 171.24.

Note that costs related to the disposition of the asset may include a sequestration deduction where deemed required, and costs incurred incident to the processing of the petition(s) for remission or mitigation, or the restoration request, to include contractor expenses.

Where appropriate, the seizing agency may request waiver of some costs in certain limited situations. Please consult with your HQ officials for further information.

#### **X. UNITED STATES VICTIMS OF STATE SPONSORED TERRORISM FUND (USVSST Fund)**

## **A. Background**

In December 2015, Congress created the Fund for United States Victims of State Sponsored Terrorism (“USVSST Fund”), when it enacted the Justice for United States Victims of State Sponsored Terrorism Act (the “Act”), 34 U.S.C. § 20144 (2015) (and later amended it with section 1701 of Public Law 116-69 on Nov. 21, 2019). The DOJ, Criminal Division, MLARS, is responsible for administering this fund. The Act establishes a program, overseen by a Special Master, to provide compensation to certain victims of state sponsored terrorism.

The USVSST Fund will last until at least January 2, 2030, under current law and is replenishing; the Act directs that certain funds and property forfeited or paid to the United States as criminal or civil penalties or fines after the enactment of the Act on December 18, 2015 be transferred to the USVSST Fund, for eventual disbursement to eligible victims. These amounts should be transferred from the Treasury Suspense Account to the USVSST Fund at the time of forfeiture and should not be deposited into the TFF first.

The Act provides that the following funds shall be transferred to the USVSST Fund:

All funds, and the net proceeds from the sale of property, *forfeited* or paid to the United States after December 18, 2015, as *a criminal penalty or fine* arising from a violation of any license, order, regulation, or prohibition issued under the International Emergency Economic Powers Act (IEEPA) or the Trading with the Enemy Act (TWEA), or any related criminal conspiracy, scheme, or other Federal offense arising from the actions of, or doing business with or acting on behalf of, a state sponsor of terrorism.

34 U.S.C. § 20144(e)(2)(A)(i) (emphasis added, internal citations omitted).

The Act initially provided for the transfer of one-half of such funds and net sale proceeds forfeited or paid as *a civil penalty or fine* from violations of the same provisions. 34 U.S.C. § 20144(e)(2)(A)(ii) (emphasis added.) This includes civil judicial and civil administrative forfeitures. This amount was increased by law to seventy-five percent for all forfeitures completed on or after November 21, 2019.

In enforcement actions in which the United States obtains funds or property described in these provisions, *i.e.*, either as criminal or civil forfeitures, penalties, or fines that meet these criteria, TEOAF must ensure those amounts are deposited in the USVSST Fund as mandated by the Act.

## **B. Qualifying Cases for the USVSST Fund**

TEOAF and the TFF agencies headquarters have issued guidance on determining which cases are eligible for deposit to the USVSST Fund. You should follow this guidance. Generally, if your agency is working on a case involving a state sponsor of terrorism,

please consult with your agency counsel to coordinate proper review of the matter. Your agency HQ must notify TEOAF of any potentially eligible case. TEOAF is available to consult with the agencies as needed. Further, TEOAF's Director has mandated that agencies report monthly to TEOAF as to whether they have any cases that might be eligible for the USVSST Fund.

While DOJ is the agency with ultimate authority to confirm the eligibility of a forfeiture case for the USVSST Fund, TFF agencies, their counsel and TEOAF counsel have a role in helping to identify such cases. To identify qualifying cases, agencies should perform a threshold examination of each case to determine:

- Step 1: Does the case include any violation “arising from the actions of, or doing business with or acting on behalf of, a state sponsor of terrorism”? If no state sponsor of terrorism is involved, then any resulting forfeiture, penalty, or fine shall be processed in the usual manner to into the Treasury Forfeiture Fund at the time of forfeiture. If a state sponsor of terrorism is involved, go to the next step below.
- Step 2: Does the case include “a violation of any license, order, regulation, or prohibition issued under IEEPA or TWEA? If yes, these IEEPA and TWEA violations qualify to have penalties or fines deposited in the USVSST Fund. If the case does not include a direct IEEPA or TWEA violation, go to the next step below.
- Step 3: Does the case include “any ... conspiracy, scheme, or other Federal offense” related to an IEEPA or TWEA violation? If yes, these offenses qualify to have penalties or fines deposited in the USVSST Fund.

Some cases may include qualifying violations as well as violations unrelated to state sponsors of terrorism, IEEPA, or TWEA. In such cases, agencies, in coordination with agency counsel and any applicable DOJ attorneys, must track how much of the forfeiture, penalty, or fine is attributable to qualifying violations. Working with applicable counsel, MLARS and TEOAF, agencies will direct the correct amount into the USVSST Fund, while handling the balance of the forfeiture, penalty, or fine in accordance with usual agency practice.

The chart below indicates countries designated by the Secretary of State as state sponsors of terrorism. As of April 2020, only Iran, North Korea, Sudan, and Syria are designated. It is important to note that even after a country is no longer designated as a state sponsor of terrorism, country-based sanctions under IEEPA or TWEA may remain in place. For example, while Cuba was removed from the list of state sponsors of terrorism in 2015, certain sanctions remain in place. The designation must have been in place at the time the violations occurred in order for the case to qualify to have funds deposited in the USVSST Fund.

<b>Periods of Designation for State Sponsors of Terrorism State</b>	<i>Designation Date</i>	<i>Removal from List</i>
Cuba	March 1, 1982	May 29, 2015
Iran	January 19, 1984	Still listed
Iraq (1)	December 29, 1979	1982
Iraq (2)	September 13, 1990	September 24, 2004
Libya	December 29, 1979	May 12, 2006
North Korea (1)	January 20, 1988	June 26, 2008
North Korea (2)	November 20, 2017	Still listed
South Yemen	December 29, 1979	1990
Sudan	August 12, 1993	Still listed
Syria	December 29, 1979	Still listed

### **C. Important Considerations**

1. The government can retain its costs where an asset was sold by the government. In a civil case where an asset was sold, 75% of the net proceeds shall be transferred. If any asset is eligible for deposit to the USVSST Fund and has costs associated with it, please consult with your agency HQ as well as TEOAF counsel.
2. Rental income, whether collected pre- or post-forfeiture, for real properties that were forfeited pursuant to an eligible violation shall NOT be deposited into the TFF.<sup>31</sup> Rather, such funds shall remain in the TSA until a final accounting and determination are made concerning the amount that must be deposited to the USVSST Fund. Rental income maintained in the TSA pursuant to this section will be held in class code 773. This is the same class code for interlocutory sales and the rental income can be separately identified within this class code.
3. Any transfer to the USVSST Fund should come from the TSA. Funds intended to go to the USVSST Fund, even when forfeited, should NOT be moved into the TFF. **This point is particularly important for CBP, which has the ability to move money from the suspense account to the TFF without going through TEOAF. Any erroneous movement of funds into the TFF must be immediately reported to TEOAF for corrective action.**
4. Communication between the agencies and TEOAF is important in any administrative cases that might be eligible. TEOAF can facilitate discussions with DOJ to determine whether a case is eligible for transfer to the USVSST Fund.

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<sup>31</sup> See also TEOAF Directive 3, "Occupancy Agreements" (March 23, 2017), Section F, discussing rental income.

5. In any case that is judicial, or in which a Deferred or Non-Prosecution Agreement (DPA or NPA) is being considered, the seizing agency shall communicate first with the AUSA and then consult with and advise TEOAF. DOJ has provided guidance to the U.S. Attorney's Offices on this matter.
6. Use the Templates (Exhibit D) when funds are to be transferred to the USVSST Fund, or are anticipated to be transferred. The Form 2 and Form 7 must be clearly labeled with the term "USVSST Fund." You can do this by stamping or handwriting in block letters, "USVSST FUND" in the top right corner.
7. Seizing agencies should separately track all cases that may go to the USVSST Fund so that they can ensure all deposits are properly made into the USVSST Fund and not into the TFF.
8. For each individual case, the agencies will need to be able to distinguish funds being forfeited that have the requisite nexus to state sponsors of terrorism and IEEPA and TWEA violations, versus funds forfeited in the same case that do not have a nexus to state sponsors of terrorism and IEEPA and TWEA, and thus will not go into the USVSST Fund.
9. For purposes of the USVSST, an entity is considered a state sponsor of terrorism if it was so designated at the time the violation that is the basis for the forfeiture was committed. At the time of this writing, there are four countries designated as state sponsors of terrorism (Iran, North Korea, Sudan, and Syria). The list has changed over time – most recently with the de-listing of Cuba in May 2015 and the re-listing of North Korea in November 2017.
10. The USVSST Fund currently has a sunset date of January 2, 2030, (subject to change by legislation) so these reviews for relevant forfeitures must become part of a regular process for each agency until that date. Unobligated amounts in the USVSST Fund after that date shall be transferred, as appropriate, to the TFF or to the DOJ AFF.
11. If forfeited funds are mistakenly deposited into the TFF that should go to the USVSST Fund, the agencies should immediately notify TEOAF. Such funds mistakenly placed into the TFF cannot be spent for any purpose.

#### **D. Template Memos and Disposition Instructions**

1. When the forfeiture is final and the eligible case proceeds are ready to be deposited, the agency must provide to TEOAF a disposition package, **clearly marked USVSST FUND**, which includes the following:
  - a. A memorandum from the agency explaining which portion of the forfeiture stays in the suspense account and the amount that will be transferred to the USVSST Fund. (See Exhibit D for Templates)

In a civil case, a Form 2 must be submitted which instructs that 25% of the eligible portion of the forfeiture be moved to the TFF. Generally, in a civil case 75% will stay in suspense, and the remaining 25% will be moved to the TFF. If the proceeds are forfeited criminally, usually all the funds attributed to state sponsored terrorism will stay in the suspense account. A Form 2 is required only if a portion of the criminal forfeiture does not qualify for transfer to the USVSST Fund.

- b. A copy of the Final Order of Forfeiture, or Declaration of Forfeiture, and Settlement Agreement, if applicable.
  - c. Copy of the designation memorandum from TEOAF or DOJ.
2. Once it is time to transfer the money to the USVSST Fund from the suspense account, the package must be **clearly marked “USVSST FUND”** and include:
- a. Form 2 moving the funds from the suspense account to the USVSST Fund.
  - b. Under “Third Party,” insert “Victims of State Sponsored Terrorism Fund.”
  - c. Please complete the IPAC Input Form accurately.  
For the USVSST Fund, please include the following:
    - Treasury Account Symbol - 15 X 5608001
    - Customer Agency Location Code (ALC) – 15010005
    - Receiver BETC – COLAVRCT
- Tips to avoid delays:
- Double check the dollar value of case proceeds
  - Input the proper Treasury Account Symbol
  - Provide the case number and title in the description of the IPAC
  - Provide the name and phone number to reach a “real” person responsible for the IPAC
  - Transaction Description – Case Number and Title
- d. Copy of the memorandum from the TFF seizing agency from when the funds were initially forfeited which explains why the funds are to go to the USVSST Fund.
  - e. Copy of the TEOAF or DOJ designation memorandum

Questions regarding the **USVSST Fund** may be directed to Melissa Nasrah, TEOAF Legal Counsel at (202) 622-2566; Jeffrey Warner, Attorney-Advisor, at (202) 622-8351; Irina Dline, Assistant Director, at (202) 622-2028; or Toni Davis, Program Analyst, at (202) 622-5891.



Any questions about this **Guide** (the “blue book”) should be directed to your agency headquarters personnel, or to TEOAF’s Legal Counsel or the TEOAF Refund Team at (202) 622-9600.