

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.



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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.