

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

**DIRECTIVE NO. 6**

**DATE:** July 18, 2016

**SUBJECT:** Transfer of Forfeited Property or Retention for Official Use

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 6 clarifies the requirements and processes for (a) the transfer of forfeited property to a law enforcement agency; and (b) the retention of forfeited property by a Treasury Forfeiture Fund (TFF) participating agency for official use.

2. **SCOPE.** This Directive applies to all TFF participating agencies.<sup>1</sup> Except where noted, the words "property" or "asset" as used in this directive do not refer to currency.

3. **POLICY.** TFF participating agencies are required to follow the guidance provided in this Directive whenever (a) the seizing agency wishes to retain forfeited property for official use; or (b) the seizing agency wishes to transfer forfeited property to another federal, state or local agency.<sup>2</sup>

4. **RESPONSIBILITIES.** All TFF participating agencies shall ensure that (a) approval for all official use property is received and documented; (b) assets placed into official use by the seizing agency are utilized and tracked in accordance with Treasury policy; and (c) recipients of transferred property are advised of Treasury policy related to the assets received.

5. **BACKGROUND.** Statutory authority to transfer or retain forfeited property for official use is contained in 31 U.S.C. § 9705(h). Pursuant to that authority, (a) a seizing agency may place forfeited property into official use; (b) forfeited property may be transferred to any federal agency, and need not be predicated upon the receiving agency's participation in the investigation that resulted in the forfeiture; and (c) forfeited property may be transferred to any state or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property.

6. **PROCEDURES.**

**A. Eligible Recipients of Forfeited Assets**

(1) TFF participating agencies are eligible to place forfeited assets into official use (that is, for their own use).

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<sup>1</sup> This Directive does not impact donation authorities of Customs and Border Protection (CBP) under 19 U.S.C. § 1491(e), 19 C.F.R. § 162.46(e), 19 C.F.R. § 133.52, or under any other similar laws or regulations.

<sup>2</sup> This Directive supersedes all previously issued policies relating to the transfer or retention of forfeited property, including the guidance contained in the Department of Treasury Guide to Equitable Sharing for Federal Governments and State and Local Law Enforcement Agencies (2004).

(2) Federal agencies (whether they are a member of the TFF or not) are eligible to request forfeited assets regardless of whether they participated in the investigation that led to the forfeiture.

(3) A state or local law enforcement agency that participated in an investigation is eligible to request an asset that was forfeited as a result of the same investigation.

#### **B. Restrictions**

(1) All restitution or remission issues must be resolved before any asset is placed into official use or transferred to another agency.

(2) No gift cards or any type of stored value card may be placed into official use or transferred to another agency.

(3) No firearms or ammunition may be transferred to a state or local agency.

(4) No property may be placed into official use or transferred to another agency prior to the entry of a final order/declaration of forfeiture.

(5) No real property may be placed into official use or transferred to another agency without TEOAF approval.

#### **C. Process and Approval**

(1) A TFF participating agency headquarters official or designee has authority to approve official use requests for its own agency's use for any eligible property (other than real property) with a fair market value of less than \$20,000. Requests to retain any property with a fair market value of \$20,000 or more must be submitted to TEOAF for approval. If a TFF participating agency wishes to retain for official use a vehicle or other conveyance subject to a lien, it must be submitted to TEOAF for approval, consistent with Directive 33, regardless of the property's value.

(2) All requests for transfer to state or local law enforcement agencies must be submitted to TEOAF for approval. These requests must be routed through, and receive the concurrence of, the TFF participating agency's headquarters. All requirements of Directive 33 must be satisfied.

(3) All requests for transfer to a non-TFF federal agency that participated in the investigation must be submitted to TEOAF for approval. These requests must be routed through, and receive the concurrence of, the seizing agency's headquarters.

(4) All requests for transfer to a federal agency that did not participate in the investigation that resulted in forfeiture of the asset must be approved by the Director of TEOAF, and may be routed through, and receive the concurrence of, the seizing agency's headquarters or submitted directly to TEOAF by the requesting agency.

(5) Prior to transfer of eligible property to a state and local law enforcement agency, the recipient agency must be in compliance for purposes of equitable sharing.

#### **D. Request Format**

(1) A request for official use pursuant to Section 6.C.(1) must include the following information:

- (a) Identity of the property, including the seizing agency's tracking number;
- (b) Date on which the property was forfeited;
- (c) Forfeiture Order;
- (d) Intended use of the property;
- (e) Fair market value of the property;
- (f) Costs associated with the property (e.g. storage, maintenance, liens); and
- (g) Whether there are anticipated victim or other third party payment liabilities, and the amount of any such liabilities, associated with the asset.

(2) A request for transfer to a state or local law enforcement agency or to a non-TFF federal agency that participated in the investigation pursuant to Sections 6.C.(2) and 6.C.(3) must include the items listed above in 6.D.(1), together with the following information:

- (a) Total value of all assets (to include currency) seized in the investigation; and
- (b) Equitable share of all assets (to include currency) forfeited in the investigation that are anticipated to be, and have been, shared with the requesting agency.
- (c) Where the recipient is a state and local law enforcement agency, confirmation that the recipient is in compliance for the purposes of equitable sharing.

(3) A request for transfer to a federal agency that did not participate in the investigation that resulted in forfeiture of the asset pursuant to Section 6.C.(4) must include the information in 6.D.(1) (to the extent available), together with the following information:

- (a) Identity of the asset, including the seizing agency's tracking number; and
- (b) Intended use of the property.

#### **E. Reimbursement of Expenses and Effect on Equitable Share in Forfeited Property**

(1) When property is transferred pursuant to Sections 6.C.(2) or 6.C.(3), the receiving agency's equitable share from any property forfeited in the investigation must be adjusted to ensure that their overall equitable share is commensurate with their level of participation in the investigation. Such adjustments may be in the form of:

- a) an offset of shares of other property (to include currency) in the same investigation;
- b) an offset of shares of other property (to include currency) from a different investigation;
- c) or reimbursement of the excess to the TFF

TFF participating agencies shall ensure that adjustment information is included in any equitable sharing packages submitted to the applicable decision-maker on that sharing package.(2) The following items must be considered when computing the excess share:

- (a) Fair market value of the property at the time of transfer;
- (b) Total of all related liens; and
- (c) Estimate of all costs associated with the storage or maintenance of the property.

#### **F. Use and Recordkeeping Requirements – State and Local Agencies**

(1) Property transferred to a state or local law enforcement agency must be used for a law enforcement purpose for at least two years. Once that time period has expired, the receiving agency may sell the property. However, proceeds from the sale must be deposited into the agency's forfeiture fund account to be used for law enforcement purposes (to the extent allowable under applicable state or local laws).

(2) A receiving state or local law enforcement agency must maintain a record of the possession and eventual disposition of all assets received. The records must be accessible and made available for inspection by TEOAF when requested.

#### **G. Reporting Requirement**

(1) TFF participating agencies must submit a quarterly report to TEOAF detailing all property that was transferred or retained for official use during the quarter.

(2) The report must contain the following information for each asset:

- (a) Seizure number;
- (b) Property description;
- (c) Forfeiture date;
- (d) Fair market value at time of transfer or placement into official use;
- (e) Date of transfer or placement into official use
- (f) Name of receiving agency, if the property was transferred;
- (g) Breakdown of associated costs and/or liens that were incurred by TEOAF;
- (h) Total amount of waived costs; and
- (i) Date of TEOAF approval, if applicable.

7. **AUTHORITY.** 31 U.S.C. § 9705; 18 U.S.C. § 981(e); 19 U.S.C. 1616a(c); 21 U.S.C. 881(e); Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)" or any successor Treasury Directive; 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."

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

9. **EFFECTIVE DATE.** July 18, 2016.

/S/  
John Farley  
Acting Director  
TEOAF