



Guide to Equitable Sharing for State and Local Law Enforcement Agencies

April 2009

Foreword

In the nearly 25 years since the Comprehensive Crime Control Act of 1984 authorized federal officials to implement a national asset forfeiture program, asset forfeiture has become one of the most powerful tools for targeting criminals—including drug dealers and white collar criminals—who prey on the vulnerable for financial gain. Forfeiture statutes are now prevalent throughout the federal legal code and their use, along with other important anti-crime measures, has had a significant impact on crime.

One of the most important provisions of asset forfeiture is the authorization to share federal forfeiture proceeds with cooperating state and local law enforcement agencies. The Department of Justice Asset Forfeiture Program serves not only to deter crime but also to provide valuable additional resources to state and local law enforcement agencies. As this is written, the Department of Justice has shared over \$4.5 billion in forfeited assets with more than 8,000 state and local law enforcement agencies.

A Guide to Equitable Sharing for State and Local Law Enforcement Agencies serves to promote and maintain the integrity of the equitable sharing program so that it can continue to merit public confidence and support. For this reason it is supplemented with the National Code of Professional Conduct for Asset Forfeiture (see Appendix B). All seizing and prosecutorial agencies should ensure compliance with this Code.

Most importantly, this *Guide* seeks to assist state and local law enforcement agencies participating in the program by clarifying the directives they must follow to obtain and use equitably shared funds. The goal is to make the process as clear as possible so that local communities and the nation can thrive from reduced crime and from quality law enforcement.

Richard Weber, Chief
Asset Forfeiture and Money Laundering Section
Criminal Division
Department of Justice

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I. What Is the Department of Justice Asset Forfeiture Program?

The Department of Justice Asset Forfeiture Program (the Program) is a nationwide law enforcement initiative that removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime. The most important objective of the Program is law enforcement. Equitable sharing further enhances this law enforcement objective by fostering cooperation among federal, state, and local law enforcement agencies.

Federal law authorizes the Attorney General to share federally forfeited property with participating state and local law enforcement agencies.¹ The exercise of this authority is discretionary and limited by statute. The Attorney General is not required to share property in any case.

The Controlled Substances Act most fully states the intent of Congress in the sharing of forfeited property. Section 881(e)(3) of Title 21, United States Code, provides that:

The Attorney General shall assure that any property transferred to a State or local law enforcement agency...

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort as a whole; and with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.²

A Guide to Equitable Sharing for State and Local Law Enforcement Agencies applies only to the sharing of assets that were seized by Department of Justice investigative agencies and federal agencies participating in the Department of Justice Asset Forfeiture Program and that were forfeited judicially or administratively to the United States by the United States Attorney's Offices or Forfeiture Program participants. Participating agencies and components currently approved include:

U.S. Department of Justice agencies and components:

- Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS)
- Justice Management Division, Asset Forfeiture Management Staff (AFMS)
- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Drug Enforcement Administration (DEA)

¹ 21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a.

² 21 U.S.C. § 881(e)(3).

- Federal Bureau of Investigation (FBI)
- U.S. Attorney's Offices (USAO)
- U.S. Marshals Service (USMS)

Components outside of the U.S. Department of Justice:

- U.S. Department of Agriculture, Office of Inspector General (USDA-OIG)
- U.S. Department of Defense, Criminal Investigative Service (DCIS)
- U.S. Department of State, Bureau of Diplomatic Security (DSS)
- U.S. Food and Drug Administration, Office of Criminal Investigations (FDA-OCI)
- U.S. Postal Inspection Service (USPIS)

The FBI, DEA, ATF, and USPIS are the only agencies participating in the Department of Justice Program that directly adopt seizures by state or local law enforcement agencies. Under limited circumstances, the USAOs may directly adopt such seizures.³

As soon as assets are identified for seizure/forfeiture in a federal investigation or an adoptive forfeiture, the USAO or seizing agency handling the case should contact the USMS to discuss pre-seizure planning to determine the necessary resources for property management and disposal requirements.⁴ Pre-seizure planning is required to seize real property, businesses, or any unusual, complex, or unique assets (e.g., animals, property contaminated with hazardous material, leasehold agreements, partnership interests, valuable arts and antiques, or a large quantity of assets posing potential storage problems).

The U.S. Department of the Treasury administers its own Asset Forfeiture Program.⁵ For policies and participating agencies, please visit the Treasury Executive Office for Asset Forfeiture website at www.treas.gov/offices/enforcement/teoaf/.

³ In accordance with *Asset Forfeiture Policy Manual* (2008), Chap. 1, Sec. VIII.G.

⁴ See Pre-Seizure Planning Guide, USMS Pub. No. 106 (June 2000) for further information regarding pre-seizure planning.

⁵ Participating agencies in the Treasury Asset Forfeiture Program include the Internal Revenue Service (IRS), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), U.S. Secret Service (USSS), and U.S. Coast Guard.

II. Which Non-federal Agencies Are Eligible to Participate in the Justice Equitable Sharing Program?

A. State or local law enforcement agencies

Any state or local law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture.⁶

For purposes of equitable sharing, the Department of Justice defines *law enforcement agency* as a state or local government organization authorized to engage in as its primary function the investigation and apprehension, or the prosecution of individuals suspected or convicted of offenses against the criminal laws of the United States or of any state, county, municipality, or territory of the United States. Furthermore, a law enforcement agency is primarily composed of or employs individuals designated or qualified under state statutes as peace officers or those who are authorized to prosecute criminal violations or to exercise police powers such as making arrests, seizing property, executing warrants and court orders, and carrying firearms.

A *primary function* is one that: (1) occupies a clear majority of the agency's working time over a typical work cycle; and (2) is performed on a regular and recurring basis by the agency and a majority of its officers, employees, and agents. Functions that are of an emergency, incidental, or temporary nature are not considered primary even if they should amount to a majority of an agency's working time.

Typically, a law enforcement agency will include city, district, local, county, or state police, sheriff, or highway patrol departments, and state or local prosecutors' offices. Determinations of agency eligibility are solely within the discretion of the Department of Justice, Criminal Division.

Department of Justice policy requires shared monies and property to be used for law enforcement purposes. Sharing will be withheld from any state or local law enforcement agency where state or local law, regulation, or policy requires federal equitable sharing funds to be transferred to non-law enforcement agencies or expended for non-law enforcement purposes.

No sharing request or recommendation, including shares negotiated in a task force or other agreement, is final until approved by the federal deciding authority.

In accordance with the Crime Victims' Rights Act and the Attorney General's authority, the Department of Justice gives priority in the distribution of forfeited assets to valid owners, lienholders, federal financial regulatory agencies, and victims (in that order) through petitions for remission or mitigation or requests for restoration.⁷ After losses to the above parties have been satisfied, any remaining net proceeds can be shared with state and local law enforcement agencies.⁸

⁶ See part VII on how to calculate sharing percentages for participating agencies.

⁷ Remission or mitigation is the return of forfeited property to an owner or lienholder of the property or to a victim of the crime underlying the forfeiture. See 28 C.F.R. § 9.8 (2008). Restoration is the use of forfeited funds to pay restitution to the victim of a criminal offense in accordance with a restoration order entered as part of a criminal judgment.

⁸ Sharing is always based on net proceeds. See part III.E.

B. State National Guard agency or unit

A state National Guard generally does not meet the law enforcement agency criteria for participation in the Department of Justice Equitable Sharing Program because its primary mission serves a military or other non-law enforcement purpose. An individual National Guard unit, however, may qualify for sharing if:

- (1) It is a distinct unit of a state National Guard that has counterdrug activities as its primary mission and receives funding solely for this purpose; or
- (2) It is a military police or similar state National Guard unit that provides support to federal law enforcement agencies in counterdrug activities.

In determining whether a National Guard unit qualifies to participate in the sharing program, the Department of Justice will consider the following:

- (1) The unit directly performs or operationally supports law enforcement functions, e.g., marijuana eradication, surveillance, air transport, or field communications, as opposed to clerical assistance;
- (2) Direct or supporting law enforcement functions occupy a clear majority of the unit's working time over a typical work cycle and are performed on a regular and recurring basis;
- (3) State law vests the unit with peace officer authority, i.e., to investigate criminal activity and conduct searches, seizures, or arrests; and
- (4) State law permits the unit to receive equitably shared funds to finance law enforcement functions.

The Department of Justice will determine whether individual National Guard units are eligible to participate in the Equitable Sharing Program on a case-by-case basis. Once a state National Guard unit has been determined to be eligible, it will participate in the program in the same manner as any other state or local law enforcement agency, including adherence to reporting and compliance requirements, procedures to apply for shares of forfeiture properties, and all equitable sharing policies.

C. State and local prosecutorial agencies

State and local prosecutorial agencies are eligible to receive equitable sharing for assistance they provide in federal forfeiture cases. The following are examples of ways prosecutorial agencies may qualify for an equitable share:

- (1) Providing assistance in the preparation of search and seizure warrants and other documents relating to the seizure and forfeiture. (Sharing percentage will be based on the degree of participation in the investigation, usually calculated by the work hours expended.)
- (2) Providing a key informant or substantially assisting throughout the investigation that leads to a federal forfeiture. (Sharing percentage will be based on the degree of participation in the investigation, usually calculated by the work hours expended.)

- (3) Cross-designating state or local attorneys to handle the federal forfeiture or related criminal cases in federal court. (The Department will authorize sharing of up to five percent of the total net forfeiture proceeds with local prosecutors who cross-designate attorneys to handle adoptive and/or joint forfeiture cases in federal court as Special Assistant United States Attorneys. That sharing amount will be deducted from the Federal Government's share.)
- (4) Prosecuting criminal cases under state law directly related to a federal forfeiture. (Sharing percentage will be determined on a case-by-case basis.)

III. How Do Agencies Participate in the Equitable Sharing Program?

A. Joint investigation

Joint investigations are those in which federal agencies work with state or local law enforcement agencies or foreign countries to enforce federal criminal laws. Joint investigations may originate from participation on a federal task force or a formal task force comprised of state and local agencies or from state or local investigations that are developed into federal cases.

B. Adoption of a state or local seizure

An adoption occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies⁹ to adopt the seizure and proceed with federal forfeiture. Federal agencies may adopt such seized property for forfeiture where the conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.

A state or local law enforcement agency requesting federal adoption of a state or local seizure must comply with all applicable state laws and regulations pertaining to the transfer of seized property to a federal law enforcement agency, including any requirement for a state judicial order or prosecutorial consent (e.g., declination letter) for such transfer. When required by state law, a state transfer order should be obtained for assets seized pursuant to a state search warrant or a warrantless search to which state jurisdiction has attached. Federal officials should consult with appropriate state or local authorities in adoption situations.

State and local agencies have **30 calendar days** from the date the property is seized to request a federal adoption. The adopting federal agency may waive the 30-day deadline where the state or local law enforcement agency requests a waiver in writing, which must include a written explanation of exceptional circumstances that justify the delay. The lack of personnel to process paperwork will not be considered an exceptional circumstance that would justify an untimely request for federal adoption.

⁹ See part I for details on federal agencies that adopt state and local agency seizures.

IV. What Are the Minimum Monetary Thresholds for Adoptive Forfeitures?

Generally, seized property will not be adopted for federal forfeiture unless the equity in the property exceeds the following thresholds:

Minimum Adoption Thresholds

Conveyances	Vehicles	\$5,000
	Vessels	\$10,000
	Aircraft	\$10,000
Real Property	Land and Improvements	\$20,000 or 20 percent of the appraised value, whichever is greater
All Other Property	Currency Bank Accounts Monetary Instruments Jewelry, etc.	\$2,000
	Firearms	May be forfeited regardless of value

The United States Attorneys, in consultation with federal seizing agencies and state and local law enforcement, may institute higher or lower district-wide thresholds for judicial forfeiture cases as law enforcement or management needs require. Department of Justice Asset Forfeiture Program participating agencies and the Department of the Treasury may set their own thresholds.

Exceptions may be made in individual cases where an overriding law enforcement benefit requires the seizure of an asset that does not meet the thresholds. In such cases, the thresholds may be waived when forfeiture will serve a compelling law enforcement interest, such as the forfeiture of a crack house, a conveyance with hidden compartments, or a vehicle used in alien smuggling that is seized at an international border. Any downward departure from the monetary thresholds in individual cases must be approved in writing by a supervisory level official, and an explanation of the reason for the departure must be noted in the case file. For example, an appropriate basis for a downward departure is that the owner or person in possession of the property has been arrested or will be criminally prosecuted.

Lower thresholds may not necessarily result in increased sharing with state and local law enforcement agencies. Because sharing is always based on net proceeds, forfeiture of property with a lower value may result in no net proceeds to share.¹⁰

¹⁰ See part VII.E for a definition of *net proceeds*.

V. How Is Property Federally Forfeited?

Forfeiture is the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or harder to detect without compensating the owner.

A. Administrative forfeiture

Administrative forfeiture is the process by which federal seizing agencies may declare property forfeited to the United States without judicial involvement.¹¹ Seizures must be based on probable cause. Federal law authorizes the seizing or adopting federal agency to administratively forfeit:

Maximum Administrative Forfeiture Thresholds

Monetary Instruments	(e.g., cash, checks, stocks, bonds)	Unlimited Value
Hauling Conveyances	(e.g., vehicles, vessels, and aircraft used to transport illegal drugs)	Unlimited Value
Other Property	(e.g., bank accounts, jewelry, etc.)	\$500,000 or less

B. Judicial forfeiture

Judicial forfeiture, both civil and criminal, is the process by which property is declared forfeited to the United States by a court.¹² It is required for any property other than monetary instruments and hauling conveyances if:

- (1) the value of the other property exceeds \$500,000;
- (2) a valid, timely claim has been filed in an administrative forfeiture; or
- (3) the property is real estate.

¹¹ See Appendix A for additional information on the different types of federal forfeiture.

¹² *Id.*

VI. How Do Agencies Apply For An Equitable Share?

After the seizure in a joint investigation or adoption in an adoptive case, a state or local agency may request a share of the property by submitting a Form DAG-71, Application for Transfer of Federally Forfeited Property, to the federal seizing agency.¹³ A separate Form DAG-71 must be completed for each asset to be shared.¹⁴

A. Completing the Form DAG-71

1. In the upper right-hand corner of the Form DAG-71, enter the date, the name of the federal agency handling the seizure, and the federal agency case number.
2. Leave Part I of the Form DAG-71 blank. It is for federal use only.
3. In Part II, provide the state or local law enforcement agency's name, address, and the National Crime Information Center (NCIC) code or ORI tracking number. Enter the agency's name exactly as listed on the NCIC registration or the Equitable Sharing Agreement and Certification form.
4. The contact person is the person who has knowledge of the case and will be able to answer questions about the investigation.
5. In Part III under "Asset Requested" and "Property Requested," provide a complete description of the asset. If the asset is a vehicle, include the VIN, make, model, and type. If the asset is real property, include the full address and the block and lot number.
6. Place a check in the "Item" block if the agency requests an asset for official use, or place a check in the "Cash/Proceeds" block if requesting cash or proceeds and include the requested percentage.
7. In Part IV, state how the shared funds are intended to be used. Check all blocks that are appropriate and complete "Other" if the intended use is not listed.
8. In Part V, provide all pertinent information about the agency's contribution to the investigation. Include work hours spent by law enforcement officers on the seizure or subsequent hours expended in support of the forfeiture. For cases involving multiple assets, a separate Form DAG-71 needs to be submitted for each asset. Work hours must be stated for each seizure, not the total number of hours worked on the investigation.
9. Complete Part VI by providing a brief description of the case and a thorough explanation of the agency's contribution to the investigation. Never assume the deciding authority knows the details of the case or the agency's role.

¹³ See Appendix D for a copy of the Form DAG-71 and other supplemental instructions.

¹⁴ The Form DAG-71 (see Appendix D) and the Equitable Sharing Agreement and Certification (see Appendix E) are current as of the date of the printing of this *Guide*. The most current versions of these forms are available on the Department of Justice Web site at www.usdoj.gov/criminal/afmls/forms.

10. In Part VII.B, the county attorney, city attorney, district attorney, state attorney, or law enforcement agency counsel can sign as legal counsel.

Sharing requests must be submitted within 60 days after the seizure or within 60 days after the federal adoption of a state or local seizure. The 60-day rule may be waived by the federal seizing agency in exceptional circumstances upon a written request stating the reasons for the late submission of the equitable sharing request which would justify the waiver. The waiver request must accompany the Form DAG-71. In judicial forfeitures, an agency may amend its Form DAG-71 within 60 days after forfeiture to reflect any continued participation in the case.

No sharing request will be considered after the forfeited property has been distributed, deposited into the Assets Forfeiture Fund, or otherwise disposed of according to law.

B. Common causes of delay

Forfeiture, like all legal proceedings, takes time. Equitable sharing may occur only after the federal forfeiture has been completed, the United States has taken clear title to the property, the property has been sold or otherwise disposed of as provided by law, and a final sharing decision has been made by the appropriate federal official. Listed below are some factors that may delay sharing:

1. If the forfeiture involves victims of crime who may be entitled to remission or restitution, sharing cannot occur until the victims' claims are resolved. All available funds must be used to compensate victims before any sharing payments are made.
2. If the forfeiture involves property that must be sold, the sale must be completed and the net proceeds determined before sharing may occur.
3. If the agency submits an incomplete Form DAG-71, the missing information must be provided before sharing can occur. For example, if the form does not contain complete or specific information about the contribution of the local law enforcement agency, such as the number of hours expended and any unique or indispensable contribution by the local law enforcement agency, then that information must be provided before sharing will be authorized. Federal agencies submitting equitable sharing packets must also include federal agency work hours. Federal investigative work hours are always required in joint cases so that the relative degree of participation of the agencies can be determined. The equitable sharing deciding authority cannot evaluate the sharing request without this information.
4. Distribution in equitable sharing cases involving forfeited assets with a total value of \$1 million or more requires the approval of the Deputy Attorney General. Equitable sharing packages forwarded to AFMLS must include all assets listed in the forfeiture order. For example, where a forfeiture order includes cash in the amount of \$1.5 million, a bank account containing \$500,000, and six other assets such as automobiles and pieces of jewelry worth \$30,000, the Deputy Attorney General is the equitable sharing decision-maker for all eight assets.
5. The USMS electronically transfers equitable sharing payments to a participating state or local law enforcement agency's bank account. If the USMS does not have an agency's

banking information, the funds cannot be transferred. To facilitate wire transfers, all participating agencies must complete and submit an Automated Clearing House (ACH) Vendor form to the USMS. If an agency's banking information changes, an updated ACH Vendor form must be submitted. The ACH Vendor form may be downloaded from www.usdoj.gov/criminal/afmls/forms or www.usmarshals.gov/assets/eshare.

6. In cases involving both domestic and international sharing, international sharing must be completed before domestic sharing can occur. International sharing, which requires both Department of Justice and Department of State approval and concurrence by the Department of the Treasury, often takes additional time to complete.

VII. How Is an Agency's Equitable Share Determined?

A. Adoptive seizures

The federal share in adoptive cases where 100 percent of pre-seizure activity was performed by a state or local agency will generally be 20 percent of the net proceeds.

B. Joint investigations with federal agencies

Equitable shares allocated to a law enforcement agency must bear a reasonable relationship to the agency's direct participation in the investigation or law enforcement effort resulting in the forfeiture. The deciding authority ordinarily determines equitable shares by comparing the number of work hours expended by each agency participating in the seizure. Where the work hours alone do not reflect the contribution of a law enforcement agency, the deciding authority considers qualitative factors in making a sharing allocation. In determining the amount of an adjustment based on qualitative factors, the deciding authority will consider such factors as:

- the inherent importance of the activity;
- the length of the investigation;
- whether the agency otherwise entitled to an adjustment would already receive a comparatively large share based on reported work hours;
- whether an agency originated the information leading to the seizure;
- whether an agency provided unique and indispensable assistance;
- whether an agency initially identified the assets for seizure;
- whether an agency seized one or more assets that were forfeited in non-federal proceedings during the same investigation; or
- whether the agency could have achieved forfeiture under state law but instead joined forces with the United States to conduct a more effective investigation or prosecution.

The presence of any of the above qualitative factors may warrant an adjustment in the percentage awarded to an agency. If, and to what extent, an adjustment is warranted is within the discretion of the deciding authority and will be done on a case-by-case basis.

If certain criteria are satisfied, state and local law enforcement agencies that are members of a task force may receive equitable sharing based upon the task force written sharing agreement. In no case will the federal share be less than 20 percent.

1. Spin-off investigations

In a case where assets are seized in an investigation that is a spin-off of a larger multi-agency investigation, the deciding authority may approve sharing with an agency that contributed work hours to both the initial investigation and the spin-off seizure. In limited instances, the deciding authority may

determine that an agency which did not participate in the subsequent seizure but provided indispensable assistance in the initial investigation that aided investigators in the spin-off investigation is eligible for a share of the asset from that spin-off case. The determination of an agency's eligibility to share in assets seized in spin-off investigations will be made on a case-by-case basis.

C. Sharing in task force cases

Many task forces involving federal, state, and local law enforcement agencies have pre-arranged, written equitable sharing agreements based upon relative numbers of personnel and other contributions to the task force operation. The following criteria apply to both formal and informal task forces and these pre-arranged percentages will be honored only when:

- the agreement is in writing, signed, and dated by all participating agencies, and reviewed and updated annually;
- the pre-arranged sharing percentages fairly reflect overall agency contributions to the task force, including accounting for any participation by a federal agency;
- the deciding authority is satisfied that the pre-arranged percentages continue to reflect the true overall agency contributions to the task force, including accounting for any participation by a federal agency;
- the task force has a well-defined subject area or organization target as its focus, and the specific seizures are part of the overall investigative function of the task force (e.g., an airport seizure by an airport interdiction task force is part of an investigation of airport drug smuggling, not simply an investigation of a particular smuggler); and
- the agreement is made before or at the onset of an investigation; the deciding authority will not honor informal sharing agreements agreed upon following the conclusion of an investigation.

If the total appraised value of all assets in a single administrative or judicial forfeiture order is \$1 million or greater, a copy of the task force agreement must be submitted along with the completed Form DAG-71.

1. Formally chartered task forces

The Department of Justice will generally honor written sharing agreements by formal task forces that are legal entities entitled to receive and spend money. A formal task force may receive a sharing disbursement by indicating its NCIC/ORI tracking number or equitable sharing tracking number assigned by AFMLS on the Form DAG-71. Alternatively, separate disbursements may be made to the members of a formally chartered task force based on its agreed sharing percentages.

2. Informal task forces

The Department of Justice will generally honor written sharing agreements by informal task forces when the informal task force itself is a permanent or semi-permanent entity established to conduct a long-term investigation of multiple targets committing similar violations in a particular location or of a single target engaged in multiple criminal activities over a lengthy period of time such that multiple forfeiture cases over the life of the task force are likely. If the informal task force and its pre-arranged percentages are acceptable, separate sharing amounts will be disbursed to each individual law enforcement agency in the task force. No funds will be disbursed to the informal task force itself. A joint investigation of a specific target or organization does not constitute an informal task force simply because it is labeled as such. So-called task force agreements based merely on jurisdictional boundaries will not be honored.

For example, an acceptable investigation of multiple targets includes a long-term interdiction operation at a local airport. An acceptable investigation of a single-target might be a long-term investigation of a major drug trafficking organization where participating agencies work on different aspects of the investigation.

D. Equitable sharing deciding authorities

1. Investigative agency

If the total appraised value of all the assets forfeited in a single *administrative* forfeiture order is less than \$1 million, the investigative agency determines the appropriate equitable share for each asset and requesting agency.

2. United States Attorney

If the total appraised value of all the assets forfeited in a single *judicial* forfeiture order is less than \$1 million, the United States Attorney determines the appropriate equitable share for each asset and requesting agency.

3. Deputy Attorney General¹⁵

In either multi-district cases, cases involving the equitable transfer of real property, or cases where the total appraised value of all the assets forfeited in a single administrative or judicial forfeiture order is \$1 million or more, the Deputy Attorney General determines the appropriate equitable share of each asset. In determining whether the \$1 million threshold has been reached, the federal seizing agency and the United States Attorney processing a sharing request must combine the current “Asset Value” listed in the Consolidated Asset Tracking System (CATS) of each of the assets included in the forfeiture order or declaration of forfeiture. If the total value for all of the assets is \$ 1 million or greater, the Deputy Attorney General is the equitable sharing decision-maker for all of the assets. Property forfeited under a single judicial order cannot be split up or separated so that only those individual

¹⁵ By order dated June 5, 1995, the Deputy Attorney General delegated his authority to make final equitable sharing decisions to the Assistant Attorney General for the Criminal Division in cases where the seizing agency, the United States Attorney, and AFMLS agree on the allocation of forfeited property.

pieces of property with values greater than \$1 million are sent to the Deputy Attorney General for sharing decisions.

E. Sharing always based on net proceeds

Equitable sharing is based on the net proceeds of the forfeiture, which is calculated as follows:

Gross receipts	From forfeiture or the sale of forfeited property
Less	Qualified third-party interests (e.g., valid liens or mortgages) Money paid to victims (persons who incurred a monetary loss of a specific amount as a direct result of the offense underlying the forfeiture, or a related offense) Federal case-related expenses (e.g., advertising costs, out-of-pocket investigative or litigation expenses) Federal property management and disposition expenses (e.g., appraisal, storage, security, sale) Any award paid to a federal informant Payments for the services of experts and consultants with whom the Department of Justice has contracted to assist in asset identification, seizure, management, forfeiture, or disposition, wherever it is feasible and economically practicable to directly trace such costs and allocate them on a reasonable and consistent basis among the assets subject to forfeiture International sharing Any reimbursements relating to the seizure from the Assets Forfeiture Fund to the requesting agency (e.g., overtime, leased space)
Equals	Net Proceeds of the Forfeiture

Federal law mandates that sharing is discretionary. Therefore, any equitable sharing payments to be disbursed to state and local law enforcement agencies that amount to less than \$50.00 after all expenses are paid will be extinguished and the funds will remain in the Assets Forfeiture Fund.

Department of Justice Equitable Sharing Program

Interim policy guidance regarding the use of equitable sharing funds

Effective immediately, the policies outlined below replace the existing policies included in the Department of Justice *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (2009) (*Guide*) Section VIII.A.1 and 2. These policies will be incorporated into the next edition of the *Guide*.

V. What Are the Uses of Equitably Shared Property?

Asset forfeiture is a powerful tool that provides valuable resources to state and local law enforcement that may not have otherwise been available. Equitably shared funds must be used in accordance with this *Guide* for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency. Sharing will be withheld from any state or local law enforcement agency where the governing body, state or local law, regulation, or policy requires or directs 1) specific expenditures of shared funds, 2) the transfer of federal equitable sharing funds to non-law enforcement agencies, or 3) expenditures for non-law enforcement purposes.

To avoid a conflict of interest or the appearance of a conflict of interest, any person or members of his or her immediate family who was involved in an investigation which led to the forfeiture of property to be sold is prohibited from purchasing, either directly or indirectly, that forfeited property.

A. General guidance on Supplantation and Budgeting

1. Supplantation—Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Shared funds **shall not be used** to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice will examine the law enforcement agency's budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice may terminate sharing with law enforcement agencies that are not permitted by their governing body to benefit directly from equitable sharing.

Example of Improper Supplantation: A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

2. **Anticipated shared property should not be budgeted**—Agencies should not “spend it before you get it” or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing funds for a certain purpose in advance. For example, if a local law enforcement agency files a Form DAG-71 and anticipates a 50 percent share of \$100,000, the anticipated \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain. However, agencies may earmark or budget sharing funds already received.

B. Use of shared funds

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. The uses outlined below are examples of permissible and impermissible expenditures. If an agency is unsure whether a proposed expenditure is permissible, it should email afmls.aca@usdoj.gov.

Shared funds may be used for any permissible agency expenditure and may be used by both sworn and non-sworn law enforcement personnel, except as noted in salaries. The fact that shared property was forfeited by a particular unit or as a result of a particular federal violation does not limit its use to purchases only for that unit or to further investigations only for that particular federal violation. If an agency wishes to support a multi-agency expenditure, such as a new payroll system or city municipal building, with a non-law enforcement agency, the law enforcement agency’s costs based on its use may be calculated on a pro-rata basis.

1. Permissible uses

- a. **Law enforcement operations and investigations**—the support of investigations and operations that further the law enforcement goals or missions. For example, payments to informants, purchase of evidence, buy-back programs, “buy” money, reward money (annual dues paid to a crime tip organization or payment for a specific reward for information in a specific case), recruitment and advertisement costs, and translation and interpretation services.
- b. **Law enforcement training and education**—the training of investigators, prosecutors, and sworn and non-sworn law enforcement personnel in any area that is necessary to perform official law enforcement duties. For example, training and conference registration fees, speaker fees, or costs to produce training curriculum. This provision does not permit donations or the transfer of funds to associations or organizations providing training.

Tuition for law enforcement classes necessary to the performance of sworn or non-sworn personnel’s official duties is also permitted. For example, criminal justice,

language, constitutional law, accounting/finance, or forensics classes could be permissible provided that the employee's regular duties require knowledge of such topics.

- c. **Law enforcement, public safety, and detention facilities**—the costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement or detention facilities used or managed by the recipient agency. For example, the costs of leasing, operating, and furnishing an off-site undercover narcotics facility. Capital improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease.

Approval from AFMLS is required prior to building new facilities or making structural changes to existing facilities. Approval is not required for cosmetic or non-structural improvements such as cabling, electrical, interior walls, carpeting, or furniture costs.

- d. **Law enforcement equipment**—the costs associated with the purchase, lease, maintenance, or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. For example, furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, vehicles (e.g., patrol and unmarked vehicles), animals and animal-related expenses.
- e. **Joint law enforcement/public safety operations** – the costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel. For example, 911 call center equipment, defibrillators, search and rescue boats, aircraft, and diving equipment. These expenditures are exempt from the pro-rata calculation. This provision does not include equipment to be used solely by non-law enforcement personnel, such as fire and EMS vehicles.
- f. **Contracting for services** – the costs associated with a contract for a specific service that supports or enhances law enforcement is permitted. For example, helicopter services, feasibility studies, forensic accountant for a specific case, auditor to perform an audit of equitable sharing funds, subject matter expert, grant writer, software developer. Contracts for long-term and/or full-time employment services or services that should be provided by an agency employee are not permitted.
- g. **Law enforcement travel and per diem**—the costs associated with travel and transportation to perform or in support of law enforcement duties and activities.

All related costs must be in accordance with the agency's per diem policy and must not create the appearance of extravagance or impropriety.

- h. Law enforcement awards and memorials**—the costs associated with the purchase of plaques and certificates for law enforcement personnel in recognition of a law enforcement achievement, activity, or training. Shared funds may not be used to pay awards in the form of cash or cash equivalents such as stored value cards.

Shared funds may be used to pay the costs for commemorative plaques, displays, or memorials on law enforcement property that serve to recognize or memorialize a law enforcement officer's contributions, such as a memorial plaque or stone in honor of an agency's officers killed in the line of duty. The plaque, display, or memorial must not create the appearance of extravagance.

- i. Drug and gang education and other awareness programs**—the costs associated with conducting awareness programs by law enforcement agencies. For example, meeting costs, motivational speakers, child identification kits, and anti-crime literature or software.
- j. Matching funds**—the costs associated with paying a state or local law enforcement agency's matching contribution or share in a state or federal grant program for items other than salaries, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide*. For information regarding the use of equitable sharing funds to match federal salary grants, *see* Section V.B.3.
- k. Transfers to other law enforcement agencies**—cash transfers of shared funds from one state or local law enforcement agency to another. In order to receive a cash transfer of shared funds, the law enforcement agency must be compliant with the Agreement, Certification, and Audit provisions of this *Guide* (*see* Section X). All cash transfers must be used in accordance with the permissible use provisions of this *Guide*. The agency transferring funds is responsible for verifying that the recipient agency is eligible to receive sharing. The transfer must be reported on the Equitable Sharing Agreement and Certification form filed by both the transferring and recipient agencies. Transferring agencies must verify the recipient agency's compliance at the time of transfer on the agency compliance list found on AFMLS' public website.
- l. Support of community-based programs**—transfers of shared funds from a state or local law enforcement agency to a state, county, or local governmental agency or community non-profit organization (501(c)(3) or (4)). An agency may, at its discretion, transfer up to a total of \$25,000 of its shared funds annually to community-based programs whose missions are supportive of and consistent with a law enforcement effort, policy, and/or initiative. Examples include a drug

treatment facility, job skills program, or a youth program with drug and crime prevention education. The chief law enforcement officer must approve the transfer and must ensure the recipient is a qualified entity.

2. Impermissible uses

- a. Use of forfeited property by non-law enforcement personnel**—Personnel from non-law enforcement agencies are not permitted to use shared vehicles, forfeited property, or items taken for official use or purchased with shared funds.
- b. Creation of endowments or scholarships**—Shared funds may not be used to create or establish endowments or scholarships.
- c. Uses contrary to the laws of the state or local jurisdiction**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
- d. Personal or political use of shared assets**—Shared funds may not be used for any use that creates the appearance that shared funds are being used for political gain or personal benefit. For example, campaign paraphernalia, gym memberships, bar, union, or other individual dues.
- e. Purchase of food and beverages**—Shared funds may not be used to pay for food and beverages (alcoholic and non-alcoholic) except for meals during local operations. Shared funds may be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses. For example, meals purchased for officers engaged in a disaster operation, such as earthquake or hurricane relief, or per diem for meals while an officer is on official travel.
- f. Extravagant expenditures**—Recipient agencies should use federal sharing funds prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals or travel in excess of the per diem.
- g. Petty cash accounts and stored value cards**—Shared funds may not be used to establish petty cash accounts, purchase prepaid credit cards (except for use as a form of payment for buy-back programs), or any other type of transaction where expenditures are not monitored and tracked to ensure permissibility in accordance with this *Guide*.

- h. **Purchase of items for other law enforcement agencies** – Shared funds may not be used to purchase equipment or other permissible items for other law enforcement agencies. To ensure proper tracking and accounting of funds, agencies wishing to support other participating law enforcement agencies must transfer the cash required for such purchases to the recipient law enforcement agency. The recipient law enforcement agency must report the receipt of funds and the expenditure on its annual Equitable Sharing Agreement and Certification form. *See* Section V.B.1.k for inter-agency transfer of funds.
- i. **Costs related to lawsuits** – Shared funds may not be used to pay attorney fees, settlement payments, or any other related costs of lawsuits involving the agency or its employees.
- j. **Loans** – Shared funds may not be used as advance payment for expenditures being reimbursed or paid by other funds. For example, OCDETF overtime reimbursements and appropriated funds.
- k. **Money laundering operations** – Shared funds may not be used to support state and local undercover money laundering operations.

3. Salaries

Equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel. The purpose of this rule is to protect the integrity of the Asset Forfeiture and Equitable Sharing Programs so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, law enforcement decisions.

Exceptions: Equitable sharing funds may be used to pay the salaries and benefits of current law enforcement officers and personnel in the limited situations listed below.¹

Task force agencies may only pay salaries as a match to a federal grant or officer overtime. To avoid a conflict of interest, at no time can a task force member's full salary be paid with equitable sharing funds.

- (1) **Matching federal grants**—Shared funds may be used to pay the match requirement for the salaries and benefits of current sworn and non-sworn law enforcement personnel funded by federal grant programs.

¹ For the purposes of this provision, prosecutors and members of the National Guard are considered sworn law enforcement personnel.

- (2) **Overtime of officers and investigators**—Shared funds may be used to pay the overtime and benefits of current sworn and non-sworn law enforcement personnel involved in law enforcement operations.
- (3) **Salary of an officer hired to replace an officer assigned to a task force**—Shared funds may be used to pay the salary and benefits of current, sworn law enforcement officers hired to fill vacancies created when a law enforcement agency assigns officers to a task force. The replacement officer cannot engage in the seizure of assets or narcotics law enforcement as a principal duty. A principal duty is a duty that the officer is expected to perform regularly.

In order to pay the replacement officer's salary with equitably shared funds, the task force to which the agency assigned an officer must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the chief law enforcement officer of the agency assigning an officer must not maintain direct day-to-day operational control of the task force although he or she may participate in the policy-level control of such task force.

When a law enforcement agency has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.

- (4) **Specialized programs**—Shared funds may be used pay the salary and benefits of current, sworn law enforcement officers assigned to specialized programs which do not generally involve traditional law enforcement functions. For example, School Resource Officers (SRO) or officers assigned to programs such as DARE. SROs and other officers assigned to specialized programs must be employed by the law enforcement agency. If the officer does not serve in this position on a full time basis, only the pro rata portion of the salary and benefits covering the time worked in the specialized position may be paid with shared funds.

VIII. What Are the Uses of Equitably Shared Property?

A. Law enforcement uses

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. Subject to laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes, the expenses noted below are pre-approved as permissible uses of shared funds and property.

To avoid a conflict of interest or the appearance of a conflict of interest, any employee of any federal, state, or local governmental agency (or members of his or her immediate family or those residing in his or her household) who was involved in the investigation which led to the forfeiture of the property to be sold by the USMS contractor is prohibited from purchasing, either directly or indirectly, forfeited property. Additionally, Department of Justice employees and contractors may not, without prior written approval of a designated agency official, directly or indirectly purchase property that has been forfeited to the United States; or personally use such property that has been directly or indirectly purchased from the United States by a member of his or her immediate family.

The fact that shared property was forfeited as a result of a particular federal violation does not limit its use. For example, when an agency receives a share of property that was forfeited for a federal drug violation, the recipient is not limited in its use of the property in the recipient agency's drug enforcement program. Among the following uses, priority should be given to supporting community policing activities, training, and law enforcement operations:

1. Permissible uses

- a. **Law enforcement investigations**—the support of investigations and operations that may result in furthering the law enforcement goals and mission, e.g., payment of overtime for officers and investigators; payments to informants; “buy,” “flash,” or reward money; and the purchase of evidence.
- b. **Law enforcement training**—the training of officers, investigators, prosecutors, and law enforcement support personnel in any area that is necessary to perform official law enforcement duties. Priority consideration should be given to training in: (1) asset forfeiture in general (statutory requirements, policies, procedures, case law); (2) the Fourth Amendment (search and seizure, probable cause, drafting affidavits, confidential informant reliability); (3) ethics and the National Code of Professional Conduct for Asset Forfeiture,¹⁶ (4) due process; (5) protecting the rights of innocent third parties (individuals and lienholders); (6) use of computers and other equipment in support of law enforcement duties; and (7) this *Guide*.
- c. **Law enforcement and detention facilities**—the costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement or detention facilities used or managed by the recipient agency. For example, the costs of leasing,

¹⁶ See Appendix B for a copy of the National Code of Professional Conduct for Asset Forfeiture.

operating, and furnishing an off-site undercover narcotics facility is a permissible use of shared funds. Capital improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease; improvement costs are generally covered in the terms of the lease. Approval from AFMLS is required prior to making such capital expenditures.

- d. **Law enforcement equipment**—the costs associated with the purchase, lease, maintenance, or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. For example, furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, and vehicles (e.g., patrol cars and surveillance vehicles).
- e. **Law enforcement travel and transportation**—the costs associated with travel and transportation to perform or in support of law enforcement duties and activities. All related costs must be in accordance with the agency's state per diem and must not create the appearance of extravagance or impropriety.
- f. **Law enforcement awards and memorials**—the cost of award plaques and certificates for law enforcement personnel, provided that the plaque or certificate is in recognition of a law enforcement achievement, activity, or the completion of law enforcement training, and the cost does not create the appearance of extravagance or impropriety. Shared funds may not be used to pay cash awards.

Shared funds may be used to pay the costs for modest commemorative plaques, displays, or memorials that serve to recognize or memorialize a law enforcement officer's contributions, such as a memorial plaque or stone at a police department facility in honor of officers killed in the line of duty.

- g. **Drug and gang education and awareness programs**—the costs associated with conducting drug or gang education and awareness programs by law enforcement agencies. Such costs include meeting costs, anti-drug abuse literature costs, travel expenses, and salaries for officers working in a drug education program such as DARE.
- h. **Matching funds**—the costs associated with paying a state or local law enforcement agency's matching contribution or share in a federal grant program, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide* or where such use is authorized by federal law.
- i. **Pro rata funding**—a law enforcement agency's percentage of the costs associated with supporting multi-agency items or facilities. For example, if a town purchases a new computerized payroll system, and the police department payroll represents 20 percent of the total use of the payroll system, then the police department may use shared money to fund its pro rata share (20 percent) of the operating and maintenance expenses of the system.

- j. **Asset accounting and tracking**—the costs associated with the accounting, auditing, and tracking of expenditures for federally shared cash, proceeds, and tangible property. For example, the use of shared funds to pay the fees associated with the contracting of a bookkeeper is permissible.

The OMB Single Audit Act requires any agency that expends more than \$500,000 in federal funds in an agency's fiscal year to complete an external audit. The use of forfeiture funds to perform this audit is permissible.

- k. **Language assistance services**— In connection with their law enforcement activities and operations, recipient agencies are encouraged to consider the need for language services for persons with limited English proficiency and, consistent with the provisions of this *Guide*, may use shared funds to provide such services. Examples of such permissible uses include the costs of language training for law enforcement personnel and 911 operators, contracting for interpretation services, and printing law enforcement documents in foreign languages.
- l. **Transfers to other law enforcement agencies**—Cash transfers of shared funds from one state or local law enforcement agency to another are permitted. In order to receive a cash transfer of shared funds, the law enforcement agency must be in compliance with the Agreement, Certification and Audit provisions of this *Guide* (see part X). All cash transfers must be used in accordance with the permissible use provisions of this *Guide*. The agency transferring the funds is responsible for verifying that the recipient agency is eligible to receive sharing. The transfer must be reported on the Equitable Sharing Agreement and Certification form filed by both the donor and recipient agencies.
- m. **Support of community-based programs**—A state or local law enforcement agency or prosecutor's office may use up to 15 percent of the total of shared monies received by that agency in the last two fiscal years for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities that are formally approved by the chief law enforcement officer (e.g., chief, sheriff, prosecutor). All expenditures must be supportive of and consistent with a law enforcement effort, policy, and/or initiative.

Cash transfers to community-based programs are not permitted. State and local law enforcement agencies are prohibited from making cash transfers or donations to support community-based programs. Instead, agencies may directly purchase supplies, equipment, and/or services for eligible community-based programs, or reimburse such programs for eligible expenditures with a valid, itemized receipt. See Appendix C for guidelines to determine a community-based program's eligibility.

- n. **Windfall situations**—Where the total amount of federal equitable sharing received within one fiscal year represents over 25 percent of a state or local law enforcement agency's annual budget, recipient agencies may utilize the amount over 25 percent to provide additional support to community-based programs as referenced in letter m above. For

example, if an agency's annual appropriated budget is \$1 million and the agency receives a total of \$300,000 in equitable sharing funds during the fiscal year, the amount above \$250,000 (25 percent of the agency's budget), or \$50,000, is considered a "windfall." The agency, in its discretion, may use all or part of this money in addition to the 15 percent permitted under section m above. In windfall situations, AFMLS may require additional auditing and/or reporting regarding the agency's handling and expenditure of funds.

2. Impermissible uses

- a. **Salaries—Equitable sharing monies may not be used to pay the salaries and benefits of current, permanent law enforcement personnel, except in limited circumstances.** The purpose of this rule is to protect the integrity of the asset forfeiture and equitable sharing programs so that the prospect of receiving equitable sharing monies does not influence, or appear to influence, law enforcement decisions.

Exception: Equitable sharing funds may be used to pay the salaries and benefits of law enforcement officers in the following limited situations:

- (1) **Express statutory authorization**—When federal law expressly permits state and local law enforcement agencies to use equitably shared funds to pay the salaries and benefits of local law enforcement officers or as matching funds in federal grant programs, such use is permissible. For example, the Community Oriented Policing Services (COPS) program established by the Violent Crime Control and Law Enforcement Act of 1994, allows state and local law enforcement agencies to use equitably shared funds to meet the local match requirements of that program, including grants for salaries and benefits.
- (2) **Overtime of officers and investigators**—Shared funds may be used to pay the overtime of officers and investigators involved in law enforcement operations. This policy is applicable to all officers and is not limited to those working on drug-related investigations.
- (3) **New positions and temporary or not-to-exceed one year appointments**—Shared funds may be used to pay the first year's salary and benefits of an individual hired for a new sworn law enforcement position that supplements the current law enforcement work force. After the first year, the salary and benefits for that position must be paid entirely from the agency's appropriated funds. Shared funds may also be used to pay the salaries of temporary (less than one year) positions or not-to-exceed one year appointments. This exception applies strictly to sworn law enforcement positions. Shared funds may not be used to provide funding for unsworn, support personnel (e.g., administrative, secretarial, or clerical positions).

- (4) **Salary of an officer hired to replace an officer assigned to a task force**—When a law enforcement agency assigns a law enforcement officer to a task force¹⁷ for a period of at least one year or the life of the task force and hires a new law enforcement officer to replace the officer so assigned, the agency may pay the salary and benefits of the replacement officer from equitably shared funds so long as the replacement officer does not engage in the seizure of assets or narcotics law enforcement as a principal duty.¹⁸

A principal duty is a duty that the officer is expected to perform regularly. In order to pay the replacement officer's salary with equitably shared funds, the task force must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the chief administrative officer of the law enforcement agency assigning an officer must not maintain direct day-to-day operational control of the task force although he or she may participate in the policy-level control of such task force.

When a law enforcement agency has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.¹⁹

- (5) **Specialized programs**—A law enforcement agency may pay the salary and benefits of a law enforcement officer assigned to specific approved specialized programs which do not generally involve traditional law enforcement functions. Officers assigned to programs such as DARE do not routinely perform narcotics law enforcement or seizure duties. Accordingly, there is little risk that their conduct will actually influence law enforcement priorities or create a conflict of interest.

- b. Use of forfeited property by non-law enforcement personnel**—Non-law enforcement agency personnel are not permitted to use shared vehicles, forfeited property, or items purchased with shared funds.

¹⁷ For example, groups of state and local law enforcement agencies frequently establish separate units under the command of an experienced officer. All assigned agents have full law enforcement power within the combined area of the constituent agencies. The chief of police of any one constituent agency does not exercise day-to-day individual command authority over the task force but may sit as a member of a Steering Committee, Board of Directors, or other supervisory authority which sets general task force policies.

¹⁸ For example, Officer Y is assigned to a task force. The agency may then hire Officer Z and may pay Officer Z's salary from asset forfeiture funds. Officer Z may not be assigned to a narcotics unit and he may not be assigned to a unit that identifies assets for seizure. If during Officer Z's routine patrol duties, he stops a vehicle found to contain narcotics and cash, the agency may continue to pay Officer Z's salary from asset forfeiture funds.

¹⁹ This provision is designed to afford law enforcement agencies the opportunity to rearrange staffing assignments without suffering severe financial hardships and also recognizes that the hiring process can take time.

- c. **Payment of education-related costs**—Shared funds may not be used for scholarships, financial aid, or non-law enforcement classes. Only tuition for law enforcement classes necessary to the performance of an officer's official duties is permitted.
 - d. **Uses contrary to the laws of the state or local jurisdiction**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
 - e. **Non-official government use of shared assets**—Any use that creates the appearance that shared funds are being used for political or personal purposes is not permitted. For example, the use of shared funds for a sheriff's campaign paraphernalia is impermissible.
 - f. **Purchase of food and beverages**—Shared funds generally may not be used to pay for food and beverages (alcoholic and non-alcoholic) for consumption by law enforcement personnel or their guests, except for the limited circumstances listed below:
 - (1) **Conference package policy**—Shared funds may be used to purchase food and beverages provided as part of a conference package. For example, a hotel provides complimentary coffee and bagels for breakfast with the rental of its conference room for an authorized training event. The same conference package rule applies to food or beverages served at a banquet or party to recognize law enforcement achievements.
 - (2) **Meals during local operations**—Shared funds may also be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses, e.g., meals purchased while an officer is on official travel, attending a training conference, or engaged in a disaster operation, such as earthquake or hurricane relief.
 - g. **Extravagant expenditures**—Receiving agencies should use federal sharing monies prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals outside of the per diem are impermissible uses of shared funds.
3. **General guidance concerning use**
- a. **Windfall situation**—In a windfall situation, where an agency receives equitable sharing funds totaling more than 25 percent of its budget in a fiscal year, the agency may be subject to additional audit and reporting requirements.
 - b. **Use of interest income**—Interest earned on forfeited cash or proceeds must be deposited into the agency's equitable sharing revenue account and used for law enforcement purposes and is subject to the same use restrictions as shared cash or proceeds.

- c. **Anticipated shared property should not be budgeted**—Agencies should not “spend it before you get it” or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing monies for a certain purpose in advance. For example, if a local law enforcement agency files a Form DAG-71 to request a 50 percent share of \$100,000, the \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain.
- d. **Shared monies should not be retained unnecessarily**—Shared monies normally should be expended for their designated use or other permissible law enforcement purpose as they are received. Shared monies may be retained in a holding account for up to three years to satisfy future needs or retained longer for major long-term expenditures such as capital improvements.
- e. **Use of proceeds from sale of shared property**—Proceeds from the sale of shared property, facilities, equipment, and other items acquired with shared funds must be deposited into the agency’s equitable sharing revenue account and are subject to the same permissible use restrictions and reporting requirements as shared cash or proceeds, in accordance with the provisions of this *Guide*.

B. Increase and not replace

Sharing must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Shared resources **shall not be used** to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice will examine the law enforcement agency’s budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice may terminate sharing with law enforcement agencies that are not permitted by their governing authorities to benefit directly from equitable sharing.

Example of Improper Supplantation: A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

C. Transfer of forfeited real property

The transfer of federally forfeited real property is permitted only in the following three situations:

1. Through the equitable sharing process, real property may be transferred to a state or local agency which substantially participated in the investigation that led to the seizure of the property. The agency must demonstrate a compelling law enforcement need for the property and outline its intended use on the DAG-71 form. The agency must also sign a memorandum of understanding with regard to the use of the property and agree to pay any federal costs/expenses as well as the federal share before the transfer will be approved.

Example: A state police department assists in the seizure of a farm where drugs were grown. The agency may request the property instead of the proceeds from its sale if the agency has a compelling need, such as a law enforcement training facility or a police substation.

2. The Weed and Seed Initiative²⁰ authorizes the transfer of federally forfeited real property through state or local law enforcement agencies to private, nonprofit organizations to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. The requirements of the Weed and Seed Initiative are as follows:
 - a. The initial recipient of the property must be a state or local law enforcement agency which participated in the investigation that resulted in the forfeiture;
 - b. The ultimate recipient must be an appropriate nonprofit organization, which agrees to use the property in compliance with the initiative and agrees that if the property ceases to be used for its intended purposes for a specified time period, title may revert back to the United States.
 - c. Any state or local agency with a claim to an equitable share of the property must agree to waive the claim.
 - d. A Form DAG-71 must be submitted by the initial recipient to the USAO identifying the property to be transferred to the nonprofit organization pursuant to the Weed and Seed Initiative.
 - e. The USAO must submit a “Request for Transfer of Real Property Pursuant to the Weed and Seed Initiative” and a draft Memorandum of Understanding along with the Form DAG-71 to AFMLS.
 - f. AFMLS will submit the completed package to the Deputy Attorney General for approval of the transfer.

Generally, title to real property will be transferred to the state or local law enforcement agency. If the initial recipient state or local law enforcement agency is not authorized to take title to the real property, then either the state or local government agency authorized to accept title on behalf of the law enforcement agency will receive title, or under certain circumstances, the Department of Housing and Urban Development may be able to take title to the property for re-transfer to the Weed and Seed recipient.

Questions on transfers pursuant to the Weed and Seed Initiative should be directed to AFMLS.

²⁰ See *Asset Forfeiture Policy Manual* (2008), Chap. 6, Sec. VIII.

3. A governor of a state in which a forfeited property is located may request that the property be transferred to that state for recreational or historic purposes or for the preservation of natural conditions. See 21 U.S.C. § 881(e)(4)(B). The Deputy Attorney General must approve these transfers.

D. Transfer of forfeited tangible personal property

1. Any forfeited tangible property (any property other than real estate) transferred to a state or local agency for official use must be used for law enforcement purposes only. Moreover, such transferred property is subject to the rules applicable to similar property purchased by a state or local agency with appropriated funds. Finally, forfeited luxury motor vehicles—an automobile with a National Automotive Dealers Association (NADA) wholesale value of \$50,000 or more—may be placed in official use only for undercover law enforcement purposes.

Example: A federally forfeited SUV is assigned to a state or local law enforcement official who is not authorized to use a government vehicle under local rule. This is impermissible because the forfeited SUV would be subject to the same use restrictions as purchased vehicles.

Example: A federally forfeited luxury car worth more than \$50,000 is assigned to a law enforcement official who is authorized to use a government vehicle, but the luxury vehicle is used for routine law enforcement work. This is impermissible because a luxury vehicle is being used for purposes other than undercover work, thereby misusing government resources and creating an appearance of impropriety.

2. The recipient law enforcement agency may, at its discretion, transfer the tangible property to another governmental department or agency to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. Such governmental department or agency may, in turn, transfer any tangible property so received to a private, nonprofit community organization to be used for such purposes.

Tangible property transferred for official law enforcement use must be used for at least two years. If, however, the property becomes unsuitable for the stated purpose before the end of the two-year period, it may be sold with approval from AFMLS and the proceeds deposited in the agency's federal equitable sharing revenue account and used in compliance with this *Guide*.

E. Reimbursement of federal costs

State and local law enforcement agencies that receive real property or tangible personal property must pay the Department of Justice Assets Forfeiture Fund for any liens, costs related to storage or maintenance, costs of shares to other agencies, and the federal share. If the agency is unable to pay these expenses with appropriated or equitably shared funds, these costs can be charged against the agency's equitable share of other assets in the case. If the requesting agency is unable to pay the federal share, costs, and the shares of other agencies, the property will be sold and the proceeds equitably distributed to participating agencies.

F. Return of equitably shared funds

On occasion, a criminal conviction, forfeiture order, or equitable sharing decision may be reversed after the equitable sharing payments have been disbursed to state and local law enforcement agencies. In such cases, it may be necessary for the shared funds to be returned to the United States. The state and local agency recipients will be notified of the reversal by the Department of Justice component that rendered the equitable sharing decision. When such a return of funds is necessary, the recipient state or local agency will have the option of either: (A) returning the funds via a check to the USMS or (B) having an equivalent amount off-set against future equitable sharing. When an agency elects to have the funds off-set against future sharing, it must contact the USMS District Office in writing.

IX. What Are the Accounting Procedures and Requirements for Shared Cash, Proceeds, and Tangible Property?

All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls (e.g., tracking share requests and receipts, electronically depositing shares into a separate revenue account or accounting code) to track equitably shared monies and tangible property. Those procedures must be consistent with those set forth below.

A. Bookkeeping procedures and internal controls

The state or local participating law enforcement agency must:

1. Establish a separate revenue account or accounting code through the agency's finance department for the proceeds from the Department of Justice Equitable Sharing Program. This account or accounting code will be used solely for funds from the Department of Justice Equitable Sharing Program. No other funds may be included in this account or with this accounting code.

This bank account information must be provided to the USMS on the ACH Vendor form. The process of electronic payments, known as E-Share, provides a fast, efficient, and secure method of making equitable sharing payments. Participation in the program is mandatory. The form may be downloaded from www.usmarshals.gov/assets.eshare or www.usdoj.gov/criminal.afmls.
2. Not commingle Department of Justice equitable sharing funds with funds from any other source. Corrective measures must be taken if this occurs.
3. Deposit any interest income earned on equitably shared funds in the same revenue account or under the accounting code established solely for the shared funds.
4. Maintain a log and copies of all Forms DAG-71 forwarded to the Department of Justice. A consecutive numbering system should be used for control purposes. The log should contain seizure type (property or currency), amount, share amount requested, amount received, and date received.
5. Update the log when an E-Share notification is received. The amount received may differ from the amount requested.
6. Establish an internal procedure to recommend expenditures from the revenue account. In many small agencies, the chief of police determines the purposes for which the funds are used. In larger agencies, committees have been formed to make recommendations for expenditures to the agency head. The agency head must authorize all expenditures from the federal sharing revenue account.
7. Use tangible property placed into official use for a law enforcement purpose for at least two years following the transfer. After two years, the property may be sold for the benefit of the law enforcement agency. All proceeds from the sale of such property must be deposited into

the agency's equitable sharing account. Agencies requesting to sell property prior to two years must obtain approval from AFMLS.

8. Use purchased or acquired luxury automobiles only for undercover assignments.
9. Obtain approval for expenditures from the governing body, such as the town council or city manager's office, if appropriate.
10. Upon final approval, issue contracts or purchase orders to formally disburse deposited assets for goods or services. Deduct purchase orders and contracts from the account balance.
11. Maintain a record of all expenditures from the revenue account or accounting code. These expenditures must be in accordance with this *Guide*.
12. Issue quarterly and yearly reports that detail the actual amounts and uses of the federal asset sharing funds and property within their jurisdiction, if appropriate.

X. What Are the Reporting and Audit Requirements?

To ensure effective management, promote public confidence in the integrity of the Equitable Sharing Program, and protect the Asset Forfeiture Program against potential waste, fraud, and abuse, the Department of Justice has established for participating law enforcement agencies reporting requirements that include the annual submission of the Equitable Sharing Agreement and Certification form and, if applicable, an audit report. A state or local law enforcement agency must be in compliance with the reporting requirements set forth in this *Guide* to receive any distribution of money or property under the Equitable Sharing Program. An agency is considered to be in compliance once the Equitable Sharing Agreement and Certification form is submitted electronically and the signed Affidavit/Signature page is received within the required deadlines.

A. Federal Equitable Sharing Agreement and Certification Form

As a prerequisite to participating in the Department of Justice Equitable Sharing Program, a state or local law enforcement agency must annually submit to AFMLS a signed Equitable Sharing Agreement and Certification form. (See Appendix E.) The agreement must be signed by the head of the law enforcement agency and a designated official of the governing body.²¹ By signing the Affidavit, the signatories agree to be bound by the statutes and guidelines that regulate the equitable sharing program and certify that the law enforcement agency will comply with these guidelines and statutes.

State and local law enforcement agencies must submit this form within 60 days after the end of an agency's fiscal year, regardless of whether funds were received or maintained during the fiscal year. The report must be completed electronically and emailed to aca.submit@usdoj.gov.

Once the agency has emailed the form, the Affidavit/Signature page must be printed, signed, and faxed to AFMLS.

²¹ For purposes of the Equitable Sharing Agreement and Certification form, a governing body is an institution or organization that has budgetary oversight over the law enforcement agency. A law enforcement official should not sign for the governing body unless the official has budgetary oversight over the agency.

New participants will check the “New Participant” button on the form, enter the agency’s fiscal year end date, current fiscal year budget information, and proceed to the Affidavit/Signature page. Existing participants will check the “Existing Participant” button on the form and complete the Annual Certification Report and the Affidavit/Signature page. Participating agencies must notify AFMLS of any change in administration at the law enforcement agency and/or its governing body by checking the “Change in Administration” button and resubmitting the Agreement and Certification form electronically.

Where the agency or organization submitting the Agreement is a multi-agency task force, Table A of the Equitable Sharing Agreement and Certification form must be completed providing a list of the task force members or participating law enforcement agencies. If the task force distributes or transfers any equitably shared monies or property to any member or participating state or local law enforcement agency, it must ensure that each such recipient agency has a valid Equitable Sharing Agreement and Certification form on file with AFMLS.

If equitable sharing receipts are deposited in an interest bearing account, interest income must be reported on the certification section of the form. Agencies are not required to use interest bearing accounts. If an agency enters a zero in the “interest income accrued,” it must check the non-interest-bearing account box.

If the reporting law enforcement agency uses any funds for “other law enforcement expenses,” “transfers to other law enforcement agencies,” “permissible use transfers,” or “matching grants,” the tables in the certification section of the form must be completed with all requested information. The total values will auto-populate into the certification section of the form.

Agencies that do not receive federal equitable sharing funds or property during a fiscal year must submit the Equitable Sharing Agreement and Certification form listing “0” receipts. The head of the law enforcement agency and a designated official of the governing body must sign the Affidavit page of the Equitable Sharing Agreement and Certification form.

B. Annual audit

State and local law enforcement agencies that receive federally shared cash, proceeds, or tangible property are required to perform an audit consistent with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*. Per those guidelines, agencies that expend more than \$500,000 in federal funds (e.g., Justice and/or Treasury forfeiture funds, grants, cooperative agreements) per fiscal year are required to conduct an external audit. In such circumstances, an independent accounting firm may be contracted to perform the required audit. Copies of this audit must be retained by the law enforcement agency. Forfeiture funds may be used to pay the fees associated with conducting such audits.

The *Government Auditing Standards*, issued by the U.S. General Accounting Office, must be followed by auditors and audit organizations conducting the required independent financial audit. These standards pertain to the auditor’s professional qualifications, the quality of the audit effort, and the characteristics of professional and meaningful audit reports.

C. Record retention

State and local law enforcement agencies shall retain for a period of at least five years all documents and records pertaining to their participation in the Department of Justice Equitable Sharing Program and their receipt and expenditure or use of shared cash, proceeds, real property, or tangible personal property, including but not limited to Forms DAG-71, Equitable Sharing Agreement and Certification forms, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports.

XI. What If Agencies Do Not Fulfill the Compliance Requirements?

This *Guide* describes the sharing process and is binding upon all state and local agencies seeking federal sharing transfers.

At the time agencies receive shared funds, they will be asked to certify that the cash or property shared will be used consistent with the Form DAG-71 or as otherwise authorized and consistent with the policies set forth in this *Guide*. Noncompliance with the policies of this *Guide* may subject recipient agencies to one or more of the following sanctions:

1. Denial of an agency's sharing request;
2. Temporary or permanent exclusion from further participation in the equitable sharing program;
3. Offsets from future sharing in amounts equal to impermissible uses;
4. Civil enforcement actions in U.S. District Court for breach of contract; or
5. Where warranted, federal criminal prosecution for false statements under 18 U.S.C. § 1001, fraud involving theft of federal program funds under 18 U.S.C. § 666, or other sections of the criminal code, as applicable.

No equitable sharing funds or property will be distributed to any state or local law enforcement agency that is not in compliance with the annual reporting requirements outlined in this *Guide*. A law enforcement agency that has requested an equitable share of federally forfeited money or property in accordance with the provisions of the *Guide* but is not in compliance with the reporting requirements will be notified in writing by AFMLS and will be given 60 calendar days to come into compliance. If the requesting agency comes into compliance within the 60-day period, it will receive any withheld sharing funds or property.

Additional time to comply may be granted upon request. However, if the agency fails to become compliant within one year, the agency's sharing requests will be denied and extinguished, and any equitable sharing money and/or property being held will be deposited into the Department of Justice Assets Forfeiture Fund. Any such denial and the deposit of money and/or property into the Assets Forfeiture Fund shall be final and irrevocable. Any sharing requests for money and/or property not yet forfeited are not affected.

APPENDIX A:

What Are the Types of Federal Forfeiture?

Forfeiture is the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or harder to detect.

A. Administrative Forfeiture

Administrative forfeiture is the process by which property may be forfeited to the United States without judicial involvement. Federal seizing agencies perform administrative forfeitures. Seizures must be based on probable cause. The authority for a seizing agency to start an administrative forfeiture action is found in 19 U.S.C. § 1607.

Administrative forfeiture can be used to seize and forfeit the following:

- any amount of currency;
- personal property valued at \$500,000 or less, including cars, guns, and boats;
- hauling conveyances of unlimited value.

Real property cannot be forfeited administratively.

If the property owner files a claim, the administrative forfeiture process stops and the Government must bring a forfeiture action in federal court or return the property to the claimant. The seizing agency forwards the claim to the United States Attorney's Office for action.

B. Judicial Forfeiture

Judicial forfeiture, civil and criminal, is the process by which property may be forfeited to the United States by filing a forfeiture action in federal court.

- Criminal Forfeiture

Criminal forfeiture is an action brought as part of the criminal prosecution of a defendant that includes the forfeiture of property used or derived from the crime. If the defendant is convicted, the judge or the jury may find that the property is forfeitable. Forfeiture is limited to the property interests of the defendant and only to property involved in the particular counts on which the defendant is convicted. Only the defendant's interest can be forfeited in a criminal case because criminal forfeiture is part of the sentence in the criminal case. For example, if the defendant used someone else's car to commit a crime and the owner of the car was not indicted for the crime in which the car was used, the car cannot be forfeited in the criminal case. Instead, a civil forfeiture case can be filed against the car.

If a third party claims an interest in the property that the Government seeks to forfeit criminally, the issue is determined in an ancillary hearing before the court only after the criminal trial is completed, the defendant convicted, and a preliminary order of forfeiture is entered. Once the interests of third

parties are resolved, the court issues a final order of forfeiture. The order of forfeiture might not happen for months or years, even if the forfeiture is uncontested, resulting in a delay in the disposal of the property.

If the property subject to forfeiture is no longer available, the court can enter a money judgment or order the forfeiture of substitute assets.

- Civil Forfeiture

Civil forfeiture is a proceeding brought against the property rather than against the person who committed the offense. Civil forfeiture does not require either criminal charges against the owner of the property or a criminal conviction.

To obtain a federal forfeiture, the Government must prove the forfeiture and the connection between the property and the crime by a preponderance of the evidence. Forfeiture may be applicable to property that is traceable as proceeds of the offense, that facilitated the offense, or that was involved in money laundering. All claims of interest or ownership in the property, such as property owned by third parties, are resolved in a single trial.

APPENDIX B:

National Code of Professional Conduct for Asset Forfeiture

1. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.
2. The Constitution and Federal Statutes prohibit the improper use of personal characteristics such as race, color, national origin, gender, or religion to target individuals for law enforcement action.
3. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.
4. Whenever practicable, and in all cases involving real property, a judicial finding or probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedures.
5. If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.
6. Seizing entities shall have a manual detailing the statutory grounds for forfeiture. This manual will include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.
7. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations processes of that entity.
8. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
9. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.
10. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

APPENDIX C:

Guidelines for Determining a Community-Based Program's Eligibility

To ensure that recipient law enforcement agencies administer these guidelines for determining a community-based program's eligibility in accordance with the federal law and Department of Justice policy, an agency's chief law enforcement officer must ensure his or her agency's adherence to the following requirements governing eligibility, background, and compliance of applicants to be eligible to benefit from shared funds. The federal investigating agencies and the United States Attorney's Offices also are tasked with helping to ensure applicants' suitability to receive guidelines for shared funds use expenditures. Once completed, the chief law enforcement officer's certification that an applicant is eligible to benefit from shared funds will remain effective for one year.

I. Eligibility

For an applicant to benefit from permissible use expenditures, the chief law enforcement officer shall determine that the applicant fulfills the following eligibility requirements:

A. Type of Entity

The applicant must be either:

- (1) a state, county, or local governmental department or agency; or
- (2) a private, nonprofit organization, pursuant to 26 U.S.C. § 501(c)(3) or (4).

B. Activity of Entity

The applicant also must be primarily engaged in providing a program that is both:

- (1) community-based; and
- (2) supportive of and consistent with a law enforcement effort, policy, or initiative.

Such programs include, but are not limited to, the following:

- (1) drug abuse treatment;
- (2) drug and crime prevention education;
- (3) providing housing; or
- (4) providing job skills.

In order to assist chief law enforcement officers in determining whether a potential recipient of benefits under the guidelines for supporting community-based programs with shared funds is eligible,

the Department of Justice provides the following non-exclusive list of examples of activities that it has approved in the past as qualifying to benefit from equitable sharing:

- (1) establish a detoxification center;
- (2) fund a Police Athletic League's "Summer Playstreets" program for crime and drug prevention;
- (3) fund a city parks department's anti-gang initiative;
- (4) fund "Law Enforcement Explorer Posts," a Boy Scouts program promoting law enforcement training and community service;
- (5) fund a "Crime Stoppers" program providing reward money and assistance to neighborhood watch groups including training on observance and effective witness skills;
- (6) purchase a computer for teaching job skills and drug and alcohol awareness to probationers;
- (7) fund programs for incarcerated youth, parents of murdered children, and domestic violence victims; and
- (8) fund a methadone clinic.

Considering each of these approved activities, the Department of Justice based its approval on the activity's nexus to a law enforcement interest, whether:

- (1) direct (e.g., paying rewards for key information);
- (2) preventative (e.g., funding a methadone clinic, drug awareness program, anti-gang initiative, and probationer training); or
- (3) developmental in promoting community policing (e.g., incorporating law enforcement awareness in a Boy Scout program).

II. Background and Compliance with Law and Policy

A. Certification by Applicant

An applicant for benefits to support community-based programs with shared funds must certify in writing the following aspects of its background and compliance with federal law and Department of Justice guidelines:

- (1) The applicant fulfills the basic eligibility requirements set forth in parts I.A and B above.
- (2) The applicant agrees:
 - a. to account separately for all guidelines for shared funds use benefits received; and
 - b. to subject such accounting to the standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds.

- (3) The applicant is in compliance with the federal civil rights laws.
- (4) The applicant is in compliance with federal laws that apply to the applicant.
- (5) No officer, director, trustee, or fiduciary of the applicant has been:
 - a. convicted of a felony offense under federal or state law; or
 - b. convicted of any drug offense.
- (6) No shared benefits will be used for political or personal purposes.
- (7) No shared benefits will be used for any purpose that would constitute an improper or illegal use under the laws, rules, regulations, or orders of the state or local jurisdiction in which the applicant is located or operates.

The applicant's certification must be signed by the head of the applicant entity and must be submitted to the chief law enforcement officer who will approve expenditures on the applicant's behalf. The chief law enforcement officer shall maintain this certification as a record as long as the applicant may benefit from shared funds, and thereafter, for as long as the chief law enforcement officer is required to maintain records under applicable state or local laws or regulations.

Any applicant that cannot certify its compliance with number 5 above (criminal record of principals) should provide the chief law enforcement officer with a detailed explanation of the aspects in which, and the reasons why, certification is not possible. A chief law enforcement officer who wishes to provide support to an applicant that cannot certify compliance with number 5 above shall provide an explanation for his or her position, along with a copy of the applicant's explanation, as an attachment to the law enforcement agency's Form DAG-71 (Application of Transfer of Federally Forfeited Property) to the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, Department of Justice. AFMLS will make the final decision on whether the provision of guidelines for shared funds use benefits is appropriate.

An applicant for benefits under these guidelines that cannot certify the other aspects of its background and compliance with federal law and Department of Justice guidelines (numbers 1–4, 6 and 7 above) will be denied guidelines for shared funds use benefits.

B. Statement by Chief Law Enforcement Officer

The chief law enforcement officer shall explain in writing why the applicant's receipt of permissible use benefits for the particular activity or use is supportive of and consistent with a law enforcement effort, policy, and/or initiative within the guidelines to support community-based programs. The chief law enforcement officer also shall maintain this written statement as a record as specified in section II.A above.

C. Inquiry by the Chief Law Enforcement Officer

A chief law enforcement officer is also responsible for determining whether an applicant for benefits under these guidelines or its principals (e.g., officer, director, trustee, or fiduciary) currently is the subject of federal, state, or local criminal investigation. Accordingly, a chief law enforcement officer shall:

- (1) utilize all investigative resources available (e.g., National Crime Information Computer) to determine the applicant's status and provide the findings to the federal investigative agency on the Form DAG-71; and
- (2) fully identify the applicant and its principals on the Form DAG-71.

D. Inquiry by the Federal Investigating Agency

The federal investigative agency that receives the Form DAG-71 shall use the information identifying the applicant and its principals to conduct further checks of whether the applicant or its principals currently are the subject of a federal, state, or local criminal investigation. The federal investigative agency also shall provide this identifying information to the United States Attorney in the district where the applicant is located, and where the applicant is operating, and to the chief law enforcement officer involved (unless non-disclosure is required to safeguard a federal investigation in progress).

E. Inquiry by the United States Attorney

The United States Attorney in the district where an applicant or one of its principals is located, or where it or one of its principals is operating, shall determine whether the applicant or principal currently is the subject of grand jury proceedings or other prosecutorial scrutiny in that district, and the United States Attorney shall notify the federal investigative agency of the findings, and also shall notify the chief law enforcement officer involved (unless non-disclosure is required by federal law or to safeguard a federal investigation in progress).

Form DAG-71: Application for Transfer of Federally Forfeited Property

FORM DAG-71
DEC 90

Case Number: _____

U.S. Department of Justice

Application for Transfer of Federally Forfeited Property
(Page 2)

VI. Additional space for detailed answers (Indicate Part to which answer(s) apply)

Form is available online
www.afmhs.gov/criminal/afmhs/forms

(If more space is required, use a separate sheet of paper and attach.)

Attachment: ☐ Yes ☐ No

VII. Certifications:

- A. The requester certifies that the above information is true and accurate, that the property transferred will be used for the law enforcement purpose stated, and that all monies received pursuant to this request will be deposited and accounted for consistent with applicable state laws, regulations, and orders. The requester agrees to report on the actual use of equitably transferred property upon request. The requester agrees to pay fees and expenses necessary to effect transfer of title not later than the time of transfer. The requester understands that if it is unable to pay the necessary fees and expenses at the time of transfer, the asset will be sold and the maximum percent of net sale proceeds will be forwarded in lieu of the asset.

Signature/Title

Date _____

- B. As legal counsel, I have reviewed this Application for Transfer of Federally Forfeited Property and I certify that the contract person identified in Part II has the authority to accept forfeited property and is the official to whom transfer documents and/or money should be delivered.

Signature/Title

Date _____

Address: _____

Telephone Number: (____) _____

U.S. DEPARTMENT OF JUSTICE
Instructions for Completing Form DAG-71
Application for Transfer of Federally Forfeited Property

General Instructions

- Transfer of federally forfeited property is governed by the Department of Justice Attorney General's Guidelines on Seized and Forfeited Property (Guidelines).
- Requesting **state or local** law enforcement agency (Agency) head or designee must complete the DAG-71. (**Note:** Incomplete or inaccurate information is the most common cause of delay in processing.)
- For international transfer of federally forfeited property, contact the Asset Forfeiture Office, Criminal Division, Department of Justice, Washington D.C.
- A **separate** DAG-71 must be completed for **each** asset (or proceeds) requested.
- The **deadline** for submitting the DAG-71 to the federal investigative agency processing the forfeiture (federal agency) is **60 days from the date of the last seizure in the case**. No DAG-71 will be considered if submitted after the deadline.
- In a one-asset case where the Agency requests the tangible property in lieu of proceeds, the Agency must return costs and the appropriate federal equitable share to the United States. If the Agency is unable to return the costs and federal share, the property will be liquidated and the proceeds distributed proportionally. (Upon adequate justification, exceptions may be granted by the deciding official.)

DAG-71

- Part I:** For federal use only. (**Note:** Asset Number refers to federal investigative agency case number or uniform identifier.)
- Part II:** Provide information requested. If **NCIC code** is not known, contact the federal agency responsible for processing this forfeiture. **Contact person** is the person who has authority to accept property and transfer documents, and/or money.
- Part III:** Provide as complete a property description as possible. Include serial or vehicle identification number. You must check either **"Item"** (if requesting the asset) or **"Cash/Proceeds"** (if requesting a percentage of the asset). Attach list of any other assets in this case.
- By law, **percentage requested** must be based on the "degree of direct law enforcement effort by the state or local agency resulting in the forfeiture, taking into account the total value of all property forfeited and total law enforcement effort, including any related criminal prosecution with respect to the violation of law on which the forfeiture is based." (21 U.S.C. 881(e)(3)).
- Part IV:** Indicate specific intended law enforcement purpose(s) for requested cash, proceeds or tangible property. Pursuant to the Guidelines, all property, including cash and proceeds, must be used for the specific law enforcement purpose(s) approved.
- Part V:** Answer all items A-F. If an answer to A thru E is yes, provide details in Block VI.
- Part VI:** Space for additional information.
- Part VII:** Agency head or his designee and appropriate legal office must certify that information provided in Blocks I-VI is true and accurate.

SUPPLEMENTAL INSTRUCTIONS FOR MULTIPLE ASSETS

Where multiple assets are seized on the same date, in the same case, and the same request is made for each asset, preparation of paperwork can be simplified by using the following method:

- (1) Complete one original of the DAG-71. In Block III, Asset Requested, enter "See asset marked by an 'x' on the attached list."
- (2) Prepare a list of all assets seized in the case, as shown in the sample below.
- (3) Photocopy the DAG-71 and the list as many times as needed. You will need one copy for each asset.
- (4) Enter an "x" in the appropriate place next to one asset on each copy of the list. That copy will serve as the original DAG-71 for the asset marked with an "x."
- (5) Provide original signatures on all DAG-71s.

Below is a sample of such a list:

LISTING OF ASSETS SEIZED CASE NO. _____

<u>Asset ID No.</u> (Fed. Use Only)	<u>Asset Description</u>	<u>Serial Number</u>
— 93DEA000789	\$32,000 U.S. currency	n/a
— 93DEA000790	1993 Lexus 4-dr sedan, metallic gold	345YG89FE9332
— 93DEA000791	One Panasonic cellular phone	678954321
<u>X</u> 93DEA000792	1992 Jeep Cherokee, red	777HG90QRW772
— 93DEA000793	Electronic Equipment: IBM PS/1 computer 60 MB hard drive Okidata printer	8833IBM76321 954673021 785432976

Note: This list can also fulfill the requirement to provide a list of all assets seized in a case.

APPENDIX E:

Equitable Sharing and Agreement Annual Certification Report



Equitable Sharing Agreement and Certification



OMB Number 1123-0011
Expires 7-31-2011

- ☐ Police Department
 ☐ Sheriff's Office
 ☐ Task Force (Complete Table A, page 2)
☐ Prosecutor's Office
 ☐ Other (specify) _____

Agency Name: _____

NCIC/ORI/Tracking Number:

Street Address: _____

City: _____ State: _____ Zip: _____

Contact: Title: _____ First: _____ Last: _____

Contact Phone: _____ Contact Fax: _____

Contact e-mail: _____

Last Fiscal Year End (mm/dd/yyyy):

- ☐ **New Participant:** Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5)
☐ **Existing Participant:** Complete the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).
☐ **Change in Administration:** Select to report change to Agency or Governing Body head DURING the current fiscal year. Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5).
☐ **Amended Form:** Revise the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).

Annual Certification Report

Summary of Equitable Sharing Activity		Justice Funds	Treasury Funds
1	Beginning Equitable Sharing Funds Balance (must match Ending Equitable Sharing Funds Balance from prior FY)		
2	Federal Sharing Funds Received		
3	Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete Table B, page 2)		
4	Other Income		
5	Interest Income Accrued ☐ Check box if non-interest-bearing account.		
6	Total Equitable Sharing Funds (total of lines 1 - 5)	\$0.00	\$0.00
7	Federal Sharing Funds Spent (total of lines a - n below)	\$0.00	\$0.00
8	Ending Balance (subtract line 7 from line 6)	\$0.00	\$0.00

Summary of Shared Monies Spent		Justice Funds	Treasury Funds
a	Total spent on salaries for new, temporary, not-to-exceed one year, employees		
b	Total spent on overtime		
c	Total spent on informant and "buy money"		
d	Total spent on travel and training		
e	Total spent on communications and computers		
f	Total spent on firearms and weapons		
g	Total spent on body armor and protective gear		
h	Total spent on electronic surveillance equipment		
i	Total spent on building and improvements		
j	Total spent on other law enforcement expenses (complete Table C, page 3)		
k	Total transfers to other state and local law enforcement agencies (complete Table D, page 3)		
l	Total 15% Expenditures in Support of Community-based Programs (complete Table E, page 3)		
m	Total 25% Windfall Transfers to Other Government Agencies (complete Table F, page 3)		
n	Total spent on matching grants (complete Table G, page 3)		
Total		\$0.00	\$0.00

Miscellaneous Data

o	Agency's budget for current fiscal year	
p	Jurisdiction's budget for current fiscal year	
q	Appraised Value of Other Assets Received	

Table A: Members of Task Force

Agency Name	Address

Table B: Equitable Sharing Funds Received from other Agencies

Transferring Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table C: Other Law Enforcement Expenses

Description of Expense	Justice Funds	Treasury Funds

Table D: Equitable Sharing Funds Transferred to Other Agencies

Receiving Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table E: 15% Expenditures in Support of Community-based Programs

Recipient	Justice Funds	

Table F: 25% Windfall Transfers to Other Government Agencies

Recipient	Justice Funds	Treasury Funds

Table G: Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Table H: Civil Rights Cases

Name of Case	Type of Discrimination Alleged				Status
	☐ Race	☐ Color	☐ National Origin	☐ Gender	☐ Settled
	☐ Disability	☐ Age	☐ Other _____		☐ Pending

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section, Program Unit, 1400 New York Avenue, N.W., Second Floor, Washington, DC 20005.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the above-stated law enforcement agency ("Agency"), and (3) the governing body, sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By its signatures, the Agency agrees that it will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program. Receipt of the signed Equitable Sharing Agreement and Certification (this "Document") is a prerequisite to receiving any equitably shared cash, property, or proceeds.

1. **Submission.** This Document must be submitted to aca.submit@usdoj.gov within 60 days of the end of the Agency's fiscal year. This Document must be submitted electronically with the Affidavit/Signature page (page 5) submitted by fax. This will constitute submission to the Department of Justice and the Department of Treasury.

2. **Signatories.** This agreement must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, chairperson, secretary, city attorney, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body's head is the person who allocates funds or approves the budget for the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, director, secretary, administrator, commissioner, and governor.

3. **Uses.** Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern the federal equitable sharing program as set forth in the current edition of the Department of Justice's *Guide to Equitable Sharing (Justice Guide)*, and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide)*.

4. **Transfers.** Before the Agency transfers cash, property, or proceeds to other state or local law enforcement agencies, it must first verify with the Department of Justice or the Department of Treasury, depending on the source of the funds, that the receiving agency is a federal equitable sharing program participant and has a current Equitable Sharing Agreement and Certification on file.

5. **Internal Controls.** The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The Agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The Agency agrees that such accounting will be subject to the standard accounting requirements and practices employed for other public monies as supplemented by requirements set forth in the current edition of the *Justice Guide* and the *Treasury Guide*.

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice* or *Treasury Guides*, depending on the source of the funds/property.

6. **Audit Report.** Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and Department of the Treasury reserve the right to conduct periodic random audits.

Affidavit

Under penalty of perjury, the undersigned officials certify that **they have read and understand their obligations under the Equitable Sharing Agreement** and that the information submitted in conjunction with this Document is an accurate accounting of funds received and spent by the Agency under the *Justice and/or Treasury Guides* during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture.

The undersigned certify that the recipient agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity.

During the past fiscal year, has the Agency been part of any proceedings alleging discrimination by the Agency? ☐ Yes ☐ No

If you answered yes, complete Table H. Please disclose (1) all proceedings pending before any court or administrative agency, (2) any nondiscrimination laws the Agency has been found in violation of, and (3) any settlement agreements the Agency has entered into during the last fiscal year.

Agency Head

Signature: _____

Name: _____

Title: _____

Date: _____

Governing Body Head

Signature: _____

Name: _____

Title: _____

Date: _____

Final Instructions:

Step 1: Click button to save in PDF format for your records

Save as PDF

Step 2: Click button to save in XML format

Save as XML

Step 3: E-mail the XML file as attachment to aca.submit@usdoj.gov

Step 4: Fax a signed copy of THIS PAGE ONLY to (202) 616-1344

Note: The Agency will not be in compliance until the e-mail and the fax of this page are received.

FOR AGENCY USE ONLY

Entered by _____

Entered on _____

FY End: _____

NCIC: _____

Agency: _____

Phone: _____

State: _____

Contact: _____

E-mail: _____



