

conferred by law. Absent a specific designation by the Attorney General, jurisdiction to conduct investigations for violations of 18 U.S.C. § 1962 lies with the agency having jurisdiction over the violations constituting the pattern of racketeering activity listed in 18 U.S.C. § 1961.

9-110.101 Division Approval

No RICO criminal indictment or information or civil complaint shall be filed, and no civil investigative demand shall be issued, without the prior approval of the Criminal Division. See RICO Guidelines at USAM 9-110.200.

9-110.200 RICO Guidelines Preface

The decision to institute a federal criminal prosecution involves balancing society's interest in effective law enforcement against the consequences for the accused. Utilization of the RICO statute, more so than most other federal criminal sanctions, requires particularly careful and reasoned application, because, among other things, RICO incorporates certain state crimes. One purpose of these guidelines is to reemphasize the principle that the primary responsibility for enforcing state laws rests with the state concerned. Despite the broad statutory language of RICO and the legislative intent that the statute ". . . shall be liberally construed to effectuate its remedial purpose," it is the policy of the Criminal Division that RICO be selectively and uniformly used. It is the purpose of these guidelines to make it clear that not every proposed RICO charge that meets the technical requirements of a RICO violation will be approved. Further, the Criminal Division will not approve "imaginative" prosecutions under RICO which are far afield from the congressional purpose of the RICO statute. A RICO count which merely duplicates the elements of proof of traditional Hobbs Act, Travel Act, mail fraud, wire fraud, gambling or controlled substances cases, will not be approved unless it serves some special RICO purpose. Only in exceptional circumstances will approval be granted when RICO is sought merely to serve some evidentiary purpose.

These guidelines provide only internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.

9-110.210 Authorization of RICO Prosecution -- The Review Process

The review and approval function for all RICO matters has been centralized within the Organized Crime and Racketeering Section of the Criminal Division. To commence the review process, the *final* draft of the proposed indictment or information and a RICO prosecution memorandum shall be forwarded to the Organized Crime and Racketeering Section. Separate approval is required for superseding indictments or indictments based upon a previously approved information. Attorneys are encouraged to seek guidance from the Organized Crime and Racketeering Section by telephone prior to the time an investigation is undertaken and well before a final indictment and prosecution memorandum are submitted for review. Guidance on preparing the RICO prosecution memorandum is in the Criminal Resource Manual at 2071 et seq.

RICO reviews are handled on a first-in-first-out basis. Accordingly, the submitting attorney must allocate sufficient lead time to permit review, revision, conferences, and the scheduling of the grand jury. *Unless there is a backlog, 15 working days is usually sufficient.* The review process will not be dispensed with because a grand jury, which is about to expire, has been scheduled to meet to return a RICO indictment. Therefore, submitting attorneys are cautioned to budget their time and to await receipt of approval before scheduling the presentation of the indictment to a grand jury.

If modifications in the indictment are required, they must be made by the submitting attorney before the indictment is returned by the grand jury. Once the modifications have been made and the indictment has been returned, a copy of the indictment filed with the clerk of the court shall be forwarded to Organized Crime and Racketeering Section. If, however, it is determined that the RICO count is inappropriate, the submitting attorney will be advised of the Section's disapproval of the proposed indictment. The submitting attorney may wish to redraft the indictment based upon the Section's review and submit a revised indictment and/or prosecution memorandum at a later date.

9-110.300 RICO Guidelines Policy

It is the purpose of these guidelines to centralize the RICO review and policy implementation functions in the section of the Criminal Division having supervisory responsibility for this statute.

9-110.310 Considerations Prior to Seeking Indictment

Except as hereafter provided, a government attorney should seek approval for a RICO charge only if one or more of the following requirements is present:

1. RICO is necessary to ensure that the indictment adequately reflects the nature and extent of the criminal conduct involved in a way that prosecution only on the underlying charges would not;
2. A RICO prosecution would provide the basis for an appropriate sentence under all the circumstances of the case in a way that prosecution only on the underlying charges would not;
3. A RICO charge could combine related offenses which would otherwise have to be prosecuted separately in different jurisdictions;
4. RICO is necessary for a successful prosecution of the government's case against the defendant or a codefendant;
5. Use of RICO would provide a reasonable expectation of forfeiture which is proportionate to the underlying criminal conduct;
6. The case consists of violations of State law, but local law enforcement officials are unlikely or unable to successfully prosecute the case, in which the federal government has a significant interest;
7. The case consists of violations of State law, but involves prosecution of significant or government individuals, which may pose special problems for the local prosecutor.

The last two requirements reflect the principle that the prosecution of state crimes is primarily the responsibility of state authorities. RICO should be used to prosecute what are essentially violations of state law only if there is a compelling reason to do so. *See also* the Criminal Resource Manual at 2070.

9-110.320 Approval of Organized Crime and Racketeering Section Necessary

A RICO prosecution memorandum and draft indictment, felony information, civil complaint, or civil investigative demand shall be forwarded to the Organized Crime and Racketeering Section, Criminal Division, 1001 G Street, N.W., Suite 300, Washington, D.C. 20038, *at least 15 working days prior to the anticipated date of the proposed filing or the seeking of an indictment from the grand jury.*

No criminal or civil prosecution or civil investigative demand shall be commenced or issued under the RICO statute without the prior approval of the Organized Crime and Racketeering Section, Criminal Division. Prior authorization from the Criminal Division to conduct a grand jury investigation based upon possible violations of 18 U.S.C. § 1962 is not required.

A RICO prosecution memorandum and draft pleading or civil investigative demand shall be forwarded to the Organized Crime and Racketeering Section. It is essential to the careful review which these factually and legally complex cases require that the attorney handling the case in the field not wait to submit the case until the grand jury or the statute of limitations is about to expire. Authorizations based on oral presentations will not be given. *See* the Criminal Resource Manual at 2071 et seq. for specific guidance.

These guidelines do not limit the authority of the Federal Bureau of Investigation to conduct investigations of suspected violations of RICO. The authority to conduct such investigations is governed by the FBI Guidelines on the Investigation of General Crimes. However, the factors identified here are the criteria by which the Department of Justice will determine whether to approve the proposed RICO. The fact that an investigation was authorized, or that substantial resources were committed to it, will not influence the Department in determining whether an indictment under the RICO statute is appropriate.

Use of RICO in a prosecution, like every other federal criminal statute, is also governed by the Principles of Federal Prosecution. *See* USAM 9-27.000, *et seq.* Inclusion of a RICO count in an indictment solely or even primarily to create a bargaining tool for later plea negotiations on lesser counts is not appropriate and would violate the Principles of Federal Prosecution.

9-110.330 Charging RICO Counts

A RICO charge where the predicate acts consist only of state offenses will not be approved except in the following circumstances:

- A. Local law enforcement officials are unlikely to investigate and prosecute otherwise meritorious cases in which the Federal government has significant interest;
- B. Significant organized crime involvement exists; or
- C. The prosecution of significant political or governmental individuals may pose special problems for local prosecutors.

9-110.400 RICO Prosecution (Pros) Memorandum Format

A well written, carefully organized prosecution memorandum is the greatest guarantee that a RICO prosecution will be authorized quickly and efficiently. See the Criminal Resource Manual at 2071 *et seq.* for specific guidelines on drafting the RICO prosecution memorandum.

Once a RICO indictment has been approved by the Organized Crime and Racketeering Section and has been returned by the grand jury, a copy of a file-stamped copy of the indictment shall be provided to the Section. The Section shall also be notified in writing of any significant rulings which affect the RICO statute--for example, any ruling which results in a dismissal of a RICO count, or any ruling affecting or severing any aspect of the forfeiture provisions under RICO. In addition, copies of RICO motions, jury instructions and briefs filed by the United States Attorney's Office (USAO), as well as the defense, should be forwarded to the Organized Crime and Racketeering Section for retention in a central reference file. The government's briefs and motions will provide assistance to other USAOs handling similar RICO matters.

Once a verdict has been obtained, the USAO shall forward the following information to the Section for retention: (a) the verdict on each count of the indictment; (b) a copy of the judgment of forfeiture; (c) estimated value of the forfeiture; and (d) judgment and sentence(s) received by each RICO defendant.

9-110.600 Syndicated Gambling

See the Criminal Resource Manual at 2085.

9-110.700 Loansharking

Useful information on the prosecution of loansharking is available in the Criminal Resource Manual at 2086 through 2088.

9-110.800 Violent Crimes in Aid of Racketeering Activity (18 U.S.C. § 1959)

Section 1959 makes it a crime to commit any of a list of violent crimes in return for pecuniary compensation from an enterprise engaged in racketeering activity, or for the purpose of joining, remaining with, or advancing in such an enterprise. The listed violent crimes are murder, kidnapping, maiming, assault with a dangerous weapon, assault resulting in serious bodily injury, and threatening to commit a "crime of violence," as defined in 18 U.S.C. § 16. The listed crimes may be violations of State or Federal law. In addition, attempts and conspiracies to commit the listed crimes are covered. The maximum penalty varies with the particular violent crime involved, ranging from a fine and/or three years imprisonment up to a fine and/or life imprisonment, except for any murder occurring on or after September 13, 1994, which are subject to the death penalty.

For any murder occurring on or after September 13, 1994, the prosecutor must comply with the Department's death penalty protocol (*see* USAM 9-10.000).

See approval guidelines at USAM 9-110.811 through 816.

**9-110.801 Violent Crimes in Aid of Racketeering
(18 U.S.C. § 1959) -- Division Approval**

No criminal prosecution under Section 1959 shall be initiated by indictment or information without the prior approval of the Organized Crime and Racketeering Section (OCRS). All requests for approval must be submitted at least 15 days in advance and accompanied by a prosecution memorandum and final proposed indictment.

See approval guidelines at USAM 9-110.811 through 816.

**9-110.802 Violent Crimes in Aid of Racketeering
(18 U.S.C. § 1959) -- Approval Guidelines**

Because Section 1959 reaches conduct within state and local jurisdictions, there is, absent compelling circumstances, a need to avoid encroaching on state and local law enforcement authority. Moreover, Section 1959 complements the RICO statute, 18 U.S.C. §§ 1961-1968, and incorporates RICO concepts and terms, namely "enterprise" and "racketeering activity," and there is a need to maintain consistent applications and interpretations of the elements of RICO. All proposed prosecutions under Section 1959 therefore must be submitted to the Organized Crime and Racketeering Section Criminal Division, for approval in accordance with the following guidelines.

9-110.811 The Review Process for Authorization under Section 1959

The review process for authorization of prosecutions under Section 1959 is similar to that for RICO prosecutions under 18 U.S.C. §§ 1961 to 1968. See USAM 9-110.200, *et seq.* To commence the formal review process, submit a final draft of the proposed indictment and a prosecution memorandum to the Organized Crime and Racketeering Section. Before the formal review process begins, prosecuting attorneys are encouraged to consult by telephone the Organized Crime and Racketeering Section in order to obtain preliminary guidance and suggestions.

The review process can be time-consuming because of the likelihood that modifications will be made to the indictment and because of the heavy workload of the reviewing attorneys. Therefore, unless extraordinary circumstances justify a shorter time frame, *a period of 15 working days must be allowed for the review process.*

9-110.812 Specific Guidelines for Section 1959 Prosecutions

A. In deciding whether to approve a prosecution under Section 1959, the Organized Crime and Racketeering Section will analyze the prosecution memorandum and proposed indictment to determine whether there is a legitimate reason the offense cannot or should not be prosecuted by state or local authorities. For example, federal prosecution may be appropriate where local authorities do not have the resources to prosecute, where local authorities are reasonably believed to be corrupt, where local authorities have requested federal participation, or where the offense is closely related to a federal investigation or prosecution. A prosecution will not be authorized over the objection of local authorities in the absence of a compelling reason. Accordingly, every prosecution memorandum must state the views of local authorities with respect to the proposed prosecution, or the reasons for not soliciting them. In addition, the specific factors set forth in the following sections will be considered with respect to all proposed prosecutions.

B. Section 1959 was enacted to combat "contract murders and other violent crimes by organized crime figures." See S.Rep. No. 225, 98th Cong., 1st Sess. 304-307, 306 (1983), reprinted in 1984 U.S. Code & Admin. News (U.S.C.A.N.) 3182, 3483-3487. The statutory language is extremely broad, in that it covers such conduct as a threat to commit an assault, and other relatively minor conduct normally prosecuted by local authorities. Thus, although the involvement of traditional organized crime will not be a requirement for approval of proposed prosecutions, a prosecution will not be authorized unless the violent crimes involved are substantial because of the seriousness of injuries, the number of incidents, or other aggravating factors.

C. The statutory definition of "enterprise" also is very broad; it is closely related to the definition of the same term in the RICO statute, 18 U.S.C. § 1961(4). (It should be noted that the definition in section 1959, unlike the RICO definition, includes a requirement of an effect on interstate commerce as part of the definition, and does not include an "individual" within the definition.) No prosecution under section 1959 will be approved unless the enterprise has an identifiable structure and purpose apart from the racketeering activity and crimes of violence it is engaged in, and otherwise meets the standards for a RICO prosecution.

D. The term "racketeering activity" is borrowed directly from the RICO statute, 18 U.S.C. Sec. 1961(1). It will be construed in the same way under Section 1959 as it is under RICO, for purposes of approval. *See* USAM 9-110.100, *et seq.*

9-110.815 Prosecution Memorandum -- Section 1959

Every request for approval of a proposed prosecution under section 1959 must be accompanied by a final draft of a proposed indictment and by a thorough prosecution memorandum. The prosecution memorandum should generally conform to the standards outlined for RICO prosecutions. *See* USAM 9-110.400. The memorandum must contain a concise summary of the facts and a statement of the evidentiary basis for each count, a statement of the applicable law, a discussion of anticipated defenses and unusual legal issues (federal, and where applicable, state), and a statement of justification for using section 1959. It is especially important that the memorandum include a discussion of the nexus between the enterprise and the crime of violence, the defendant's relationship to the enterprise, and the evidentiary basis for each section 1959 count. Submission of a thorough memorandum is particularly important, because of the complexity of the issues involved and because of the statute's similarity to RICO.

9-110.816 Post-Indictment Duties -- Section 1959

Once the indictment or information has been approved and filed, it is the duty of the prosecuting attorney to submit to the Organized Crime and Racketeering Section a copy bearing the seal of the clerk of the court. In addition, the attorney should keep the Organized Crime and Racketeering Section informed of any unusual legal problems that arise in the course of the case, so those problems can be considered in providing guidance to other prosecutors.

9-110.900 The Gambling Ship Act -- 18 U.S.C. §§ 1081 et seq.

See the Criminal Resource Manual at 2089.

9-111.000 FORFEITURE/SEIZURE

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9-111.110 Seizure -- General Pre-Seizure Planning Policy Guidelines

What follows are broad pre-seizure planning policy guidelines for all agencies participating in the Asset Forfeiture Program. Minor variations and exceptions to the mandatory aspects of these guidelines are permitted only with the explicit approval of the Asset Forfeiture and Money Laundering Section.

The United States Attorney, or in administrative forfeiture cases, the agent in charge of a field office, is responsible for ensuring that proper and timely pre-seizure planning occurs in the appropriate asset forfeiture cases within that federal judicial district. All pre-seizure planning meetings will include, at a minimum, as applicable, the Assistant United States Attorney or investigative agent in charge of the forfeiture matter (and, if applicable, the Assistant United States Attorney in charge of the related criminal matter), investigative agents, and the appropriate United States Marshals Service representative (which should include a representative from the district where the property is to be seized if different than the district where the action is to be filed). A federal regulatory agency representative will also attend in FIRREA forfeiture cases.

For asset forfeiture cases involving more than one federal judicial district, the United States Attorney instituting the forfeiture action has the primary responsibility to ensure that all Asset Forfeiture Program participants are notified, and that proper and timely pre-seizure planning occurs in those districts where assets will be seized as a result of that asset forfeiture matter.

Further information on this topic is available in the Criminal Resource Manual

Pre-Seizure Planning	Criminal Resource Manual at 2201
Scope of Assets Covered by Pre-seizure Planning Guidelines	Criminal Resource Manual at 2202
Pre-seizure Planning Defined	Criminal Resource Manual at 2203
Planning Checklists	Criminal Resource Manual at 2204

9-111.120 Net Equity Values

Whether a property should be seized must be documented during the pre-seizure process. These guidelines set minimum net equity levels that generally must be met before federal forfeiture actions are instituted. The net equity values are intended to decrease the number of federal seizures, thereby enhancing efforts to improve case quality and to expedite processing of the cases we do initiate. The thresholds are also intended to encourage state and local law enforcement agencies to use state forfeiture laws. These

thresholds are to be applied in adoptive cases. In general, the minimum net equity requirements are:

- Real Property -- net equity must be at least 20 percent of the appraised value, or \$20,000, whichever is greater. As a general rule, the Department of Justice does not seize or adopt contaminated real properties. *See* Contaminated Real Property Policy, at 9-111.400.
- Vehicles -- net equity must be at least \$5,000. However, if the person from whom the vehicle was taken was or is being criminally prosecuted by state or federal authorities for criminal activities related to the property and there is justification for a downward departure, such as the vehicle being used to facilitate criminal activities, the minimum net equity is \$1,000. (The arrest of the person from whom the property is taken, for an offense related to the illegal use or acquisition of the property for which a forfeiture action may be brought, satisfies the condition of criminal prosecution.) This restriction does not apply in the case of seizures by the Immigration and Naturalization Service of vehicles used in the smuggling of aliens or in the case of vehicles modified or customized to facilitate illegal activity.
- Cash - amount must be at least \$5,000, unless the person from whom the cash was taken was criminally prosecuted or is being prosecuted by state or federal authorities for criminal activities related to the property, in which case, the amount must be at least \$1,000.
- Aircraft -- net equity must be at least \$10,000.
- Vessels -- net equity must be at least \$10,000.
- All Other Personal Property -- net equity must be at least \$5,000 in the aggregate. Downward departures should not be made for any individual item if it has a value of less than \$1,000.

Exceptions can be made if: (a) the seizure will have a substantial law enforcement effect, e.g., a computer is seized to disrupt a major fraud scheme; or (b) practical considerations support the seizure, e.g., 20 items of jewelry, each valued at \$500, might be seized as the total value of the items is \$10,000 and the cost of storing 20 small items of jewelry is not excessive.

Heads of investigative agencies may continue to establish higher thresholds for seizures made by their agencies. If an investigative agency head establishes higher monetary thresholds than those set out in the directive, the Asset Forfeiture and Money Laundering Section shall be advised in writing of the change.

Each United States Attorney may institute higher district-wide thresholds for judicial forfeiture cases. In doing so, United States Attorneys should confer with the seizing agencies affected by the change and develop in concert with those agencies written district-wide guidelines for implementation. Written notice of such higher thresholds shall be provided to the Asset Forfeiture and Money Laundering Section. Any threshold higher than those identified in the directive shall not be the basis for failing to assist in seizing property when requested to do so by another district with lower monetary thresholds where the requesting district intends to file the judicial action.

It is understood that in some circumstances the overriding law enforcement benefit will require the seizure of an asset that does not meet these criteria. In individual cases, these thresholds may be waived where forfeiture will serve a compelling law enforcement interest, e.g., forfeiture of a "crack house," or of a conveyance with hidden compartments. Any downward departure from the above thresholds must be approved in writing by a supervisory-level official and an explanation of the reason for the departure noted in the case file.

9-111.123 Avoiding Liability Seizures

When real property and businesses are targeted for asset forfeiture, the potential net equity must be calculated. *See* the Criminal Resource Manual at 2205. If the financial analysis indicates that the aggregate of all liens (including judgment liens), mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, the United States Attorney will either determine not to go forward with the seizure (*see* Alternatives to Seizure, the Criminal Resource Manual at 2209, or acknowledge the potential financial loss and document the circumstances that warrant the continuation of the seizure and institution of the forfeiture action.

In cases where the integrity of the investigation could be compromised resulting in a seizure

without any pre-seizure planning, the seizing agency shall be responsible for custody and maintenance of the property until the United States Marshals Service has had an opportunity to respond. The Marshals Service shall complete a pre-seizure checklist and financial analysis worksheet within 5 business days of the seizure. If the financial assessment indicates that the aggregate of all liens, mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, the United States Attorney will either take action to dismiss the forfeiture action, and to void any expedited settlement agreements (if any have been entered into), or acknowledge the potential loss and document the circumstances that warrant the continuation of the forfeiture action.

In making decisions whether and how to proceed with the seizure and forfeiture of assets identified during the pre-seizure phase in judicial forfeitures, the United States Attorney or his or her designee, in consultation with the seizing agency and the United States Marshals Service, and in administrative forfeitures, the agent in charge of the field office responsible for the administrative forfeiture, or his or her designee, in consultation with the Marshals Service, shall evaluate and consider the forfeitable net equity and the law enforcement purposes to be served in light of the potential problems and estimated costs of post-seizure management and disposition.

9-111.124 Business Seizures

Due to the complexities of seizing an ongoing business and the potential for substantial losses from such a seizure, a United States Attorney's Office shall obtain the concurrence of the Asset Forfeiture and Money Laundering Section prior to initiating a forfeiture action against, or seeking a temporary restraining order affecting, an ongoing business. See the Criminal Resource Manual at 2206 and 2207.

9-111.130 Pre-Indictment and Other Forfeiture Coordination

In criminal forfeitures, the United States Attorney will ensure proper and timely pre-indictment coordination with the United States Marshals Service to prepare for and assess the property management and financial needs of those assets subject to criminal forfeiture. The United States Attorney should consult with the United States Marshals Service prior to the submission of any proposed orders to a court that impose any restraint, seizure, property management, or financial management requirements relating to any property that is or will be in the Marshals Service's custody.

Further guidance on pre-seizure activity is available in the Criminal Resource Manual

Use of Seizure Warrants on Real Property Notification	Criminal Resource Manual at 2208
Notification By Seizing Agency	Criminal Resource Manual at 2210
Pre-Seizure Judicial Review	Criminal Resource Manual at 2211
Forms of Process To Be Used	Criminal Resource Manual at 2212
Responsibility for Execution of Process	Criminal Resource Manual at 2213
Real Property Seizures	Criminal Resource Manual at 2215
Posting Real Property Without Taking Actual Custody and Control (Continued Occupancy)	Criminal Resource Manual at 2216
Notice and an Opportunity for a Pre-seizure Hearing	Criminal Resource Manual at 2217
Seizure Upon Exigent Circumstances Without Notice and an Opportunity for a Pre-Seizure Hearing (Possible Removal of Occupants).	Criminal Resource Manual at 2218
Retroactivity of Good	Criminal Resource Manual at 2219

9-111.150 Dispute Resolution

In instances where a dispute concerning whether or not certain property should be seized for

forfeiture cannot be settled between the concerned agencies or other components, alternatives to seizure should be utilized until the issue is resolved. Dispute resolution may be sought from the Asset Forfeiture and Money Laundering Section. Timely resolution of disputes is critical.

9-111.250 Obtaining Criminal Forfeiture Seizure Warrants for Property Located Outside Districts

A seizure warrant for property subject to criminal forfeiture may be issued in the district where the property is located, or it may be issued by the court in the district where the criminal indictment is pending. See the Criminal Resource Manual at 2214.

9-111.400 Contaminated Real Property Policy

This policy envisions United States Attorneys exercising discretion in the seizure and forfeiture of real property that is contaminated or potentially contaminated with hazardous substances. Normally, such properties should not be forfeited unless there is at least \$30,000 in net equity belonging to the defendant. **Furthermore, such properties should not be forfeited when there is reason to believe the property is substantially contaminated with hazardous substances and that such contamination would render the property unmarketable.** Clean-up costs can be considerable, particularly when the water table is involved. In making this determination, the USA may order an environmental assessment that will be paid from the Assets Forfeiture Fund. (The Chief, Environmental Quality Section, Tulsa District, U.S. Army Corps of Engineers, (918) 581-7877, has agreed to conduct environmental assessments for the Department on a cost basis.) See the Criminal Resource Manual at 2220.

9-111.600 Seized Cash Management

The Attorney General has established the following policy on the handling of seized cash:

Seized cash, except where it is to be used as evidence, is to be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. The Chief, Asset Forfeiture and Money Laundering Section, may grant exceptions to this policy in extraordinary circumstances. Transfer of cash to the United States Marshal should occur within 60 days of seizure or 10 days of indictment.

Paragraph (VII (1), *Attorney General's Guidelines on Seized and Forfeited Property*, July 1990.) This policy applies to all cash seized for purposes of forfeiture. Therefore, all currency seized that is subject to criminal forfeiture or to civil forfeiture, must be delivered to the United States Marshals Service (USMS) for deposit in the USMS Seized Asset Deposit Fund either within 60 days after seizure or 10 days after indictment, whichever occurs first. (This policy does not apply to the recovery of buy money advanced from appropriated funds. To the extent practical, negotiable instruments and foreign currency should be converted and deposited.) Where appropriate, photographs or videotapes of the seized cash should be taken for later use in court as evidence.

If the amount of seized cash to be retained for evidentiary purposes is less than \$5000, permission need not be sought from the Asset Forfeiture and Money Laundering Section for an exception, but any exception granted must be granted at a supervisory level within a United States Attorney's Office using the aforementioned criteria. (The criteria and procedure for obtaining exemptions remains the same for cash retained by Customs.)

If the amount of seized cash to be retained for evidentiary purposes is \$5000 or greater, the request for an exemption must be forwarded to the Asset Forfeiture and Money Laundering Section. Requests for an exemption should be filed by the United States Attorney's Office or Criminal Division Section responsible for prosecuting, or reviewing for prosecution, a particular case. The request should include a brief statement of the factors warranting its retention and the name, position, and phone number of the individual to contact regarding the request.

Limited exceptions to this directive, including extensions of applicable time limits, will be granted, on an interim basis, only with the express written permission of the Chief of the Asset Forfeiture and

Money Laundering Section, Criminal Division. Retention of currency will be permitted when retention of that currency, or a portion thereof, serves a significant independent, tangible, evidentiary purpose due to, for example, the presence of fingerprints, packaging in an incriminating fashion, or the existence of a traceable amount of narcotic residue on the bills. Avoidance of the effect of a court order is *not* a significant evidentiary purpose. If only a portion of the seized cash has evidentiary value, only that portion with evidentiary value should be retained. The balance should be deposited in accordance with Department policy. See the Criminal Resource Manual at 2228. See also:

Seizure of Postal Money Orders	Criminal Resource Manual at 2221
Seizure of Personal or Cashiers' Checks	Criminal Resource Manual at 2222
Seizure of Certificates of Deposit	Criminal Resource Manual at 2223
Seizure of Travelers' Checks	Criminal Resource Manual at 2224
Seizure of Stocks and Bonds	Criminal Resource Manual at 2225
Seizure of U.S. Savings Bonds	Criminal Resource Manual at 2226
Seizure of Airline Tickets	Criminal Resource Manual at 2227

9-111.700 International Seizures

See the Criminal Resource Manual at 2229 (International Seizures), 2230 (Policy on International Contacts), and 2231 (Importance of Reciprocal Cooperation).

ADMINISTRATIVE AND JUDICIAL FORFEITURE

9-112.110 Administrative Forfeiture Policy

9-112.120 Administrative Forfeiture of Bank Accounts

9-112.130 Judicial Forfeiture of Real Property

9-112.210 Sixty-Day Notice Period in All Administrative Forfeiture Cases

9-112.220 Procedures for In Forma Pauperis Petitions

9-112.230 Exemption of Certain Assets from Pre-trial Restraint of Substitute Assets

9-112.240 Prior Approval Requirements

9-112.320 Cost Bond Procedures

9-112.330 Administrative Forfeiture by Settlement Agreement After A Cost Bond Has Been Filed

9-112.110 Administrative Forfeiture Policy

Properties subject to administrative forfeiture must be forfeited administratively, unless one or more of three exceptions applies. The three exceptions are:

- where several items of personalty are subject to civil forfeiture under the same statutory authority, on the same factual basis, have a common owner, and have a combined appraised value in excess of \$500,000, they shall all be forfeited judicially. Monetary instruments as defined by 31 U.S.C. § 5312(a) (3) and Part 103 of Title 31, C.F.R., hauling conveyances or seizures of personalty that occur over a period of weeks are not subject to this aggregation policy;
- prosecutive considerations dictate the criminal forfeiture of the property as part of a criminal prosecution;
- the Department's Criminal Division has expressly authorized judicial forfeiture based upon exceptional circumstances. *See the Criminal Resource Manual at 2232.*

9-112.120 Administrative Forfeiture of Bank Accounts

Bank accounts are not "monetary instruments" and therefore may not be administratively forfeited pursuant to 19 U.S.C. § 1607(a)(4). However, bank accounts of a value of \$500,000 or less may be administratively forfeited pursuant to 19 U.S.C. § 1607(a)(1). *See the Criminal Resource Manual at 2233.*

9-112.130 Judicial Forfeiture of Real Property

All forfeitures of real property or interests therein shall be conducted judicially. *See the Criminal Resource Manual at 2208.*

9-112.210 Sixty-Day Notice Period in All Administrative Forfeiture Cases

It is the policy of the Department of Justice that the "written notice" under 19 U.S.C. § 1607 to possessors, owners, and other interested parties, including lienholders, known at the time of seizure, shall occur not later than 60 days from the date of seizure. For interested parties determined after seizure, the "written notice" shall occur within 60 days after reasonably determining ownership or interest. Waivers of this notice may be obtained in writing in exceptional circumstances from a designated official within the seizing agency. If a waiver is granted, the waiver must set forth the exceptional circumstances and be included in the administrative forfeiture case file. Where a reasonable effort of notice has not been made within the 60-day period and no waiver has been obtained, the seized property must be returned and the forfeiture proceeding terminated. (This policy does not change the existing policy that the phrase "date of seizure" for adoptive seizures means at the time of federal seizure.) *See the Criminal Resource Manual at 2234.*

9-112.220 Procedures for In Forma Pauperis Petitions

The following procedural steps will apply when considering IFP petitions to seizing agencies processing administrative forfeitures:

- All agencies shall provide express reference in the seizure notice to the owner's right to contest the forfeiture by either posting a claim and cost bond or petitioning for a waiver in the event he/she is indigent. All parties claiming indigent status must be provided with the IFP request form and instructions.
- All parties claiming indigent status must establish that they are unable to post the required bond for reasons of financial hardship and must do so in a sworn affidavit under oath that is submitted to the seizing agency. The format for this affidavit is Form 4 of the Federal Rules of Appellate Procedure.
- All cases involving claimants who establish, in the sworn affidavit of indigence submitted to the seizing agency, that they are unable to post the required bond will immediately be referred to the United States Attorney for judicial action.
- In cases where the seizing agency believes there are clear and articulable reasons for denial of the IFP petition, the request for waiver shall be referred to AFMLS for final determination.
- If the IFP petition is denied, the seizing agency shall inform the claimant that he/she may seek judicial review of the denial of the bond waiver request. The seizing agency shall inform the claimant that it will postpone the administrative declaration of forfeiture for 20 days in order to give claimant time to institute such a challenge if desired.
- In cases where a false IFP petition has been submitted to the agency resulting in the United States Attorney proceeding with judicial forfeiture in reliance upon the false information, prosecutions under 18 U.S.C. §§ 1001 and 1621 should be considered. *See the Criminal Resource Manual at 2235.*

9-112.230 Exemption of Certain Assets from Pre-trial Restraint of Substitute Assets

To be consistent with the Department's position on proposed legislation, the United States Attorneys should adhere to the following policy: where orders restraining substitute assets are permitted and entered, United States Attorneys should agree to allow the exemption from such orders of those legitimate assets that are needed to pay attorneys' fees, necessary living expenses, and the expenses of maintaining restrained assets. See the Criminal Resource Manual at 2236.

9-112.240 Prior Approval Requirements

Prior approval of the Criminal Division is required for the forfeiture of attorneys' fees and preindictment *ex parte* applications for Temporary Restraining Orders in criminal forfeiture cases. See USAM 9-119.200 et seq. for the Department's policy regarding forfeiture of attorneys' fees.

9-112.320 Cost Bond Procedures

Upon receipt of the cost bond from the seizing agency, the United States Attorney shall forward the bond to the U.S. Marshal. (United States Attorneys usually will receive cost bonds from the seizing agencies after the agency has determined that the claim and the bond are in proper form. See, e.g., 21 C.F.R. § 1316.76(a), 28 C.F.R. § 8.8(b). However, United States Attorneys usually will not receive cost bonds from the U.S. Customs Service because it is the general policy of the Customs Service to place the cost bond in a Customs Service suspense account pending resolution of the claim.) The U.S. Marshal shall hold the bond in the Seized Asset Deposit Fund pending resolution of the claim for which the cost bond was filed.

If *any* of the property for which the cost bond was filed is judicially forfeited:

- judgment for allowed costs should be included in the judgment of forfeiture or sought by separate motion and order;
- the costs allowed should be recovered from the amount of the cost bond; and
- the amount remaining, if any, after the deduction of allowed costs should be returned.

In the settlement of judicial forfeiture cases, the United States Attorney shall retain the authority to waive the costs incurred in the case and return the bond.

If *none* of the property for which the cost bond was filed is forfeited, the cost bond, or the entire amount deposited as the cost bond, should be returned to the claimant when the property is returned.

9-112.330 Administrative Forfeiture by Settlement Agreement After a Cost Bond has been Filed

When a claim and a cost bond have been filed and the claim is withdrawn pursuant to a settlement agreement, the Department's policy regarding the disposition of the cost bond is as

follows.

If allowable costs *have not been* incurred: the settlement agreement should provide for return of the cost bond, or the entire amount deposited as the cost bond; and the cost bond, or the entire amount deposited as the cost bond, should be returned to the claimant pursuant to the settlement agreement.

If allowable costs *have been* incurred: the settlement agreement should provide for return of the amount of the cost bond remaining, if any, after deduction of an agreed upon sum specified as allowable costs; the agreed allowable costs should be recovered from the cost bond; and the bond amount remaining, if any, after deduction of agreed costs should be returned pursuant to the settlement agreement. See the USAM 9-113.310, for a discussion regarding the Administrative Forfeiture in Settlement of Civil Judicial Forfeitures Stemming From Administrative Actions (policy concerning requirement that a forfeiture that proceeds administratively pursuant to written settlement agreement include specific reference to the withdrawal of the claim and the disposition of the cost bond).

All final orders of forfeiture in judicial cases following an administrative seizure and referral must contain a provision for the disposition of the cost bond in accordance with the policies outlined above. Failure to include such a provision may prohibit the United States from applying the cost bond to cover case-related expenses and may result in the return of the cost bond to the claimant by the United States Marshals Service.

Further information on cost bonds is available in the Criminal Resource Manual at 2237 (Disposition of Cost Bonds), 2238 (Costs Chargeable Against Cost Bond), and 2239 (Cost Bond Disposition Generally and in U.S. Customs Service Cases).

9-113.000

FORFEITURE SETTLEMENTS

- 9-113.100 Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions
 - 9-113.101 Statutory Basis Requirement for Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions
 - 9-113.102 Consultation with the Seizing Agency Requirement for Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions
 - 9-113.103 Consultation with the Seizing Agency Before Settlement or Plea Bargaining in Civil and Criminal Actions to Determine Pending Administrative Forfeitures
 - 9-113.104 Dispute Resolution in Consultations with the Seizing Agency Before Settlement or Plea Bargaining in Civil and Criminal Actions
 - 9-113.105 Coordination of Forfeiture Settlements by United States Attorneys
 - 9-113.106 Settlement of Forfeiture in Conjunction with Plea Bargaining
 - 9-113.107 Forfeiture Settlements Involving Partial Payments
 - 9-113.108 Reacquisition of Forfeited Property
 - 9-113.109 Tax Obligations, Fines, Penalties, and Other Monetary Obligations in Forfeiture Settlements
 - 9-113.200 Monetary Amounts of Forfeiture Settlement Authority
 - 9-113.300 Effecting Settlement Agreements Through Administrative Forfeiture
 - 9-113.310 Use of Administrative Forfeiture in Settlement of Civil Judicial Forfeitures Stemming From Administrative Actions
 - 9-113.320 Use of Administrative Forfeiture in Settlement of Civil Judicial Forfeitures not Stemming from Administrative Actions
 - 9-113.330 Use of Administrative Forfeiture in Settlement of Criminal Forfeitures
 - 9-113.400 Judicial Forfeiture Settlements and Petitions for Remission or Mitigation
 - 9-113.410 Civil Judicial Forfeiture Settlement Procedures
 - 9-113.420 Criminal Forfeiture Settlement Procedures
 - 9-113.500 Acceptance of a Monetary Amount in Lieu of Forfeiture
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 - 9-113.700 Settlement with Fugitives in Civil Forfeiture Cases
 - 9-113.800 Expedited Payment of Lienholders in Forfeiture Cases
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9-113.100 Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions

Settlements to forfeit property are encouraged to conserve the resources of both the United States and claimants in situations where justice will be served. *See the Criminal Resource Manual at 2240. The following principles must be observed when negotiating and structuring settlements.* The critical principle that must be applied to all settlements is that civil forfeiture, either judicial or administrative, should not be used to gain an advantage in a criminal case. Furthermore, all settlements must be in compliance with Attorney General Order No. 92-1598, Appendix to Subpart Y, Part O, Title 28, Code of Federal Regulations (C.F.R.) establishing the settlement and compromise authority redelegated to the United States Attorneys from the

Assistant Attorney General, Criminal Division, in accordance with the requirements of 28 C.F.R. § 0.168(d). Other general requirements applicable to all settlements are set out in USAM 9-113.101 through 9-113.800.

9-113.101 Statutory Basis Requirement for Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions

There must be a statutory basis for the forfeiture of the property and sufficient facts stated in the settlement documents to satisfy the elements of the statute.

9-113.102 Consultation with the Seizing Agency Requirement for Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions

All settlements must be negotiated in consultation with the seizing agency and the U.S. Marshals Service. *See the Criminal Resource Manual at 2241.*

9-113.103 Consultation with the Seizing Agency Before Settlement or Plea Bargaining in Civil and Criminal Actions to Determine Pending Administrative Forfeitures

It is the obligation of both the Assistant United States Attorney (AUSA) and the investigating agent before any type of settlement is discussed to determine what property, if any, is presently being processed for administrative forfeiture. Moreover, AUSAs may not reach agreements with defendants or their counsel about the return of property that is the subject of an administrative forfeiture proceeding without first consulting the seizing agency. *See the Criminal Resource Manual at 2242.*

9-113.104 Dispute Resolution in Consultations with the Seizing Agency Before Settlement or Plea Bargaining in Civil and Criminal Actions

When the seizing agency disagrees with the United States Attorney's recommended settlement proposal, it must follow the procedures that are set forth in Attorney General Order 1598-92.

9-113.105 Coordination of Forfeiture Settlements by United States Attorneys

A United States Attorney has the authority to settle those judicial forfeiture actions involving property located in his or her judicial district. In addition to complying with Department rules and regulations governing the settlement of cases, to settle forfeiture actions involving property located in another judicial district, the United States Attorney handling the forfeiture must notify and coordinate with the United States Attorney in the district where the property is located. It is the complete responsibility of the United States Attorney in the district that forfeits real property located in another district to comply with the requirements for forfeiture in the district where the property is located. Failure to comply with such requirements may result in a cloud on the government's title; coordination will minimize this possibility.

9-113.106 Settlement of Forfeiture in Conjunction with Plea Bargaining

The government may conclude a civil forfeiture action in conjunction with the criminal charges against the defendant which provided the cause of action against the property. The government should *not* agree, however, to release property subject to forfeiture (civil or criminal) in order to *coerce* a guilty plea on the substantive charges, nor should the government agree to dismiss criminal charges in order to *coerce* a forfeiture settlement. If a plea agreement is not to conclude the civil forfeiture case, language to that effect should also be stated in the plea agreement. Failure to specify in this manner could be fatal to the concurrent civil forfeiture action. Further specific principles governing "global" settlements are as follows:

In all cases, agreements must be based upon facts which support forfeiture. The Department does not release property which is otherwise subject to forfeiture to encourage guilty pleas; nor does it permit defendants to submit property which is otherwise not subject to forfeiture in order to lighten the potential incarceration component of the punishment.

To the maximum extent possible, the criminal plea and forfeiture should conclude the defendant's business with the government. Delaying forfeiture considerations until after the conclusion of the criminal case unnecessarily extends the government's involvement with the defendant and diminishes its effectiveness.

Where the claimant/defendant has negotiated a plea agreement and concurrently wishes to forfeit the property subject to a civil forfeiture action, the plea agreement should state that the defendant has waived any and all rights--constitutional, statutory, or otherwise. Any civil settlement should be documented independently of the plea agreement and should include the following information:

- the claimant/defendant's interest in the property;
- an admission of the facts supporting forfeiture;
- the claimant/defendant gives up all rights to the property;
- he/she gives up any right to contest the forfeiture; and
- settlement should be supported by written agreement.

Furthermore, the defendant, in the plea agreement, must admit to facts sufficient to support the forfeiture. The government, however, should not waive its right to reopen a civil forfeiture action where it is later determined that the settlement was based on false information or where the defendant violates his plea agreement.

9-113.107 Forfeiture Settlements Involving Partial Payments

Settlements shall not provide for partial payments, except upon the advice and approval of the Asset Forfeiture and Money Laundering Section, Criminal Division, in consultation with the U.S. Marshals Service, Headquarters Seized Assets Division. In Department of the Treasury cases also, the advice and approval of the Asset Forfeiture and Money Laundering Section, Criminal Division, should be sought.

9-113.108 Reacquisition of Forfeited Property

The settlement should state that the claimant/defendant may not reacquire the forfeited property directly or indirectly through family members or others acting in concert with him or her.

9-113.109 Tax Obligations, Fines, Penalties, and Other Monetary Obligations in Forfeiture Settlements

The terms of the settlement, unless specified, do not affect the tax obligations, fines, penalties, or any other monetary obligations of the claimant/defendant owed to the government. The civil settlement documents should state this clearly. *See the Criminal Resource Manual at 2243.*

9-113.200 Monetary Amounts of Forfeiture Settlement Authority

United States Attorneys have authority to settle civil and criminal forfeitures within the following monetary amount or value limitations:

- cases not in excess of \$500,000; and
- cases between \$500,000 and \$5,000,000, provided that the settlement releases not more than 15 percent of the amount involved.

The United States Attorney must consult with the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, before settling forfeiture cases involving \$5,000,000 or more, and before a settlement releasing more than 15 percent of the amount involved in any case between \$500,000 and \$5,000,000. *See* Attorney General Order No. 92-1598, Appendix to Subpart Y, Part O, Title 28, Code of Federal Regulations (C.F.R.).

The authority of the Assistant Attorney General pursuant to 28 C.F.R. § 0.160 for settlement of forfeiture cases is delegated to the Chief, AFMLS, (formerly "Director, Asset Forfeiture Office"), Criminal Division, by paragraph (c) of Attorney General Order No. 1598-92. This authority is limited to settlements releasing not more than \$2,000,000 or 15 percent of the amount involved, whichever is greater. When the proposed settlement would release more than \$2,000,000 or 15 percent of the amount involved, whichever is greater, the Director, AFMLS, Criminal Division must refer the matter to the Deputy Attorney General for approval pursuant to 28 C.F.R. § 0.161.

9-113.300 Effecting Settlement Agreements Through Administrative Forfeiture

The following procedures apply to settlement agreements in civil judicial forfeiture cases and to criminal forfeiture plea agreements where an administrative forfeiture is necessary to effectuate the agreement. In such cases, the headquarters of the seizing agency involved must be consulted by the United States Attorney's Office prior to finalizing an agreement in order to ensure the agency can accommodate the terms of the agreement. The Department's policy is to pursue an agreed upon administrative forfeiture where it is possible and economically efficient to

do so.

9-113.310 Use of Administrative Forfeiture in Settlement of Civil Judicial Forfeitures Stemming From Administrative Actions

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

The terms of the settlement should be reduced to writing by the United States Attorney and include:

- A provision whereby the claimant/defendant identifies his or her ownership interest in the property to be forfeited;
- A provision whereby the claimant/defendant gives up all right, title, and interest in the property;
- A provision whereby the claimant/defendant agrees not to contest the government's administrative forfeiture action;
- A provision whereby the claimant/defendant agrees and states that the property to be forfeited administratively was connected to the illegal activity as proscribed by the applicable civil forfeiture statute (e.g., money to be forfeited is in fact proceeds from illegal drug trafficking);
- Specific reference to the withdrawal of the claim and the disposition of the cost bond, (*see* discussion regarding the disposition of cost bonds at USAM 9-112.330, and in the Criminal Resource Manual from 2237 to 2239; and
- A "hold harmless" provision and a general waiver of Federal Tort Claims Act rights and *Bivens* actions, as well as other actions based on the Constitution (e.g., the Excessive Fines Clause). Finally, a *Halper* waiver should be included so that future civil or criminal cases are not hampered by the settlement agreement.

The case should be referred promptly back to the seizing agency to reinstitute the administrative process. The seizing agency shall reinstitute the administrative forfeiture process to effectuate the agreement upon receipt of a referral in compliance with this policy, consistent with its lawful authority.

Where the agreement provides for the claimant to withdraw the claim to all property covered by claim and cost bonds filed, the entire case will be referred back to the agency for administrative forfeiture. Re-publication of the notice of the administrative forfeiture action is not necessary, provided publication occurred prior to filing of the claim and cost bond.

Where the agreement provides for the claimant to withdraw only a part of a claim, the case will be referred back to the agency for administrative forfeiture of that portion of the forfeitable

property named in the agreement, and the agency may release the remainder to the claimant consistent with the settlement. Re-publication of the notice or of the administrative forfeiture action is not necessary, provided publication covering the property to be forfeited occurred prior to the filing of the claim and cost bond.

9-113.320 Use of Administrative Forfeiture in Settlement of Civil Judicial Forfeitures not Stemming from Administrative Actions

In cases where the judicial action was commenced without a prior administrative forfeiture action having begun and a settlement agreement has been reached involving a proposed administrative forfeiture of seized property:

- the headquarters of the seizing agency must concur in that part of the settlement that would obligate the agency to commence administrative forfeiture proceedings;
- the complaint must be dismissed; and
- the jurisdiction of the district court must be relinquished before referral may be made to a seizing agency under this policy.

The seizing agency shall initiate the administrative forfeiture process to effectuate such an agreement upon receipt of a referral in compliance with this policy, consistent with its lawful authority.

9-113.330 Use of Administrative Forfeiture in Settlement of Criminal Forfeitures

In those cases where property has been seized or restrained for forfeiture under criminal statutes and an agreement reached between the United States Attorney and the claimant/defendant prior to an order of forfeiture relating to a proposed administrative forfeiture of the property:

- the headquarters of the seizing agency must concur in that part of the settlement that would obligate the agency to commence administrative forfeiture proceedings;
- the seizure or restraining orders must be dismissed; and
- the jurisdiction of the district court over the property must be relinquished. The provisions of USAM 9-113.310 must be met before referral may be made to a seizing agency under this policy.

The seizing agency shall initiate the administrative forfeiture process to effectuate such an agreement upon receipt of a referral in compliance with this policy, consistent with its lawful authority.

9-113.400 Judicial Forfeiture Settlements and Petitions for Remission or Mitigation

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

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

The Asset Forfeiture and Money Laundering Section, however, in appropriate cases upon request, will adjudicate a properly filed petition for remission or mitigation prior to the negotiation of a forfeiture settlement or entry of a final order of forfeiture. It is proper to include in a settlement agreement a provision that expressly leaves open or expressly forecloses the right of any party to file a petition for remission or mitigation. The settlement document should also include a "hold harmless" provision and a general waiver of Federal Tort Claims Act rights and *Bivens* actions, as well as other actions based on the Constitution (e.g., the Excessive Fines Clause). Finally, a *Halper* waiver should be included so that future civil or criminal cases are not hampered by the settlement agreement.

9-113.410 Civil Judicial Forfeiture Settlement Procedures

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

- A civil verified complaint for forfeiture of the property must be filed in the U.S. District Court to establish the court's jurisdiction. Filing an action as a "Miscellaneous Docket" and other attempts to short-cut the process will not be recognized as a valid forfeiture.
- A warrant of arrest in rem must be executed against the property.
- All known parties in interest must be given written notice, and notice by publication must be made.
- After 10 days, if no claim has been filed pursuant to Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a default judgment must be sought pursuant to Rule 55, Federal Rules of Civil Procedure.
- Proposed orders of forfeiture must be filed with the settlement agreement and include the terms of the settlement agreement. *See the Criminal Resource Manual at 2244.*

9-113.420 Criminal Forfeiture Settlement Procedures

The following procedures must be followed to ensure that a valid forfeiture results from a plea settlement:

- There must be a forfeiture count in the indictment or information, otherwise forfeiture is legally impossible. To the extent property is known to be subject to forfeiture, it should be listed in the indictment, information, or in a subsequent Bill of Particulars. The United States Attorney's Office must ensure that its criminal pleadings are in compliance with

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Rules 7 and 31 of the Federal Rules of Criminal Procedure.

- The United States Attorney must comply with the requirements applicable to third party interests (e.g., 21 U.S.C. § 853(n)(1)-(7), including notice of the forfeiture and the right of third parties to obtain an adjudication of their interests in the property.
- The settlement to forfeit property must be in writing, and the defendant must concede facts supporting the forfeiture.
- Close attention should be paid to the potential issue of "double jeopardy." Any plea or settlement agreement should include a waiver of any and all double jeopardy claims that might otherwise be asserted with respect to any subsequent government enforcement action. Therefore, a *Halper* waiver should be included so that future civil or criminal cases are not hampered by the settlement agreement. The settlement document should also include a "hold harmless" provision and a general waiver of Federal Tort Claims Act rights and *Bivens* actions, as well as other actions based on the Constitution.
- The court must issue a Final Order of Forfeiture that incorporates the settlement and, if applicable, addresses any third party claims.
- Wherever possible, in order to avoid protracted litigation of ownership issues in the context of ancillary hearings, the United States should agree to accept unencumbered property only, with the exception of valid financial institution liens, or at the very least, the plea agreement should require the defendant to convey clear title to the government. *See USAM 9-113.107, (Forfeiture Settlements Involving Partial Payments).*

9-113.500 Acceptance of a Monetary Amount in Lieu of Forfeiture

A monetary amount may be accepted in lieu of forfeiture of the property in civil or criminal judicial forfeiture actions pursuant to 19 U.S.C. § 1613(c), which is one of the customs laws (Tariff Act of 1930, 19 U.S.C. § 1602-21) incorporated by reference into various federal forfeiture statutes. *See, e.g., 21 U.S.C. § 881(d).* The following procedures must be followed:

- A civil complaint against the property or an indictment, or information naming the property, and alleging the defendant's interest in the property must be filed.
- A written statement that incorporates the language of section 1613(c) must be filed and approved by the court.
- The agreement to substitute money in lieu of forfeiture of property in judicial cases must be approved by the court.
- The U.S. Marshals Service will accept this court approved settlement and deposit the money (and share it where appropriate) in the same manner as the proceeds of sale of a forfeited item.
- Monies received in lieu of forfeiture must be transferred to the U.S. Marshals Service's

District Office in custody of the asset being returned.

- In cases where the Postal Inspection Service or the National Marine Fisheries Service is the primary federal investigative agency, the U.S. Marshals Service must deposit the money, deduct expenses (if any) incurred with respect to the property being returned, deduct the approved equitable shares attributable to other federal agencies participating in the Department of Justice Assets Forfeiture Fund, and transfer the balance by refund to the above services, as appropriate. Each service will be responsible for sharing with participating state and local agencies in these cases.

9-113.600 Agreements to Exempt Attorneys' Fees from Forfeiture

Any agreement to exempt an asset from forfeiture so that it can be transferred to an attorney as fees must be approved by the Assistant Attorney General for the Criminal Division. See USAM 9-119.200

9-113.700 Settlement with Fugitives in Civil Forfeiture Cases

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

9-113.800 Expedited Payment of Lienholders in Forfeiture Cases

The former Executive Office for Asset Forfeiture interpreted 28 U.S.C. § 524(c) as authorizing pre-forfeiture payment of liens and mortgages. Use of this authority must be approved in writing by the Asset Forfeiture and Money Laundering Section prior to entering into any agreement to pay a lienholder. It is intended that this authority be used sparingly and only in those situations where pre-forfeiture payment of liens and mortgages is necessary to avoid extreme hardship to natural persons. All other viable options, including interlocutory sales, must be pursued prior to seeking this authority.

9-114.000
THIRD PARTY INTERESTS

9-114.100 State and Local Real Property Taxes in Civil and Criminal Forfeiture Cases

9-114.110 Payment of Interest and Penalties on State and Local Real Property Taxes

9-114.200 Waiver of Costs to Owner Victims in Remission Cases

9-114.100 State and Local Real Property Taxes in Civil and Criminal Forfeiture Cases

In civil and criminal forfeiture cases, the United States will pay standard ad valorem property taxes up to the date of entry of an order of forfeiture. Payment of taxes upon forfeited properties is permitted when:

- A. The properties have not yet been sold, or
- B. The properties are the subject of pending litigation regarding payment of taxes, *provided however*, that:
 - a tax claim was filed with the federal district court prior to entry of the order of forfeiture; or
 - a valid lien had been recorded among the pertinent land records giving the federal district court notice of the tax claim prior to entry of the order of forfeiture. *See the Criminal Resource Manual at 2246.*

9-114.110 Payment of Interest and Penalties on State and Local Real Property Taxes

The following policy is meant to ensure consistent national treatment of the payment of interest and penalties on state and local taxes on forfeited real property:

- A. The United States will pay interest but not penalties on overdue taxes;
- B. The formula for the rate of interest is set forth in 28 U.S.C. § 1961(a);
- C. Higher rates of interest may be paid where the taxing authority has incurred out-of-pocket interest expenses in excess of the rate specified by § 28 U.S.C. 1961(a), e.g., where tax certificates have been sold to private investors;
- D. United States Attorneys, with the concurrence of Asset Forfeiture and Money Laundering Section, Criminal Division, may agree to a higher rate of interest provided that such higher rate is not punitive; and

- E. Interest thereon may only be paid up to the amount realized from taxes and the sale of the property.

9-114.200 Waiver of Costs to Owner Victims in Remission Cases

It is the policy of the Department of Justice to waive the payment of certain costs and expenses incident to the seizure and forfeiture of property that is being restored through remission to an owner victim of the underlying offense when the owner victim is a natural person. This policy does not apply to non-owner victims. The costs and expenses subject to waiver are property management and case-related expenses incurred in connection with the forfeiture and include storage, maintenance, and security costs, as well as those costs incurred in connection with the requirement that the government provide notice of the action to potential claimants. It is preferable to restore forfeited property to owner victims, thus avoiding disposition costs. In the event property must be sold to restore property to one or more victim owners, the costs of sale will not be waived. Nor should costs be waived where the petitioner seeking remission as an owner victim is an agency of a state or the federal government. *See the Criminal Resource Manual at 2247. See also the Criminal Resource Manual at 2290 ("Guidelines and Procedures for Restoration of Forfeited Property to Crime Victims via Restitution in lieu of Remission").*

9-115.000

**USE AND DISPOSITION OF
SEIZED AND FORFEITED PROPERTY**

9-115.100 Role of the United States Marshals Service

9-115.200 Use of Seized Property by Department of Justice Personnel

9-115.202 Use of Seized Property Where Custody is Retained by the State or Local Seizing Agency

9-115.203 Use of Seized Real Property by Occupants

9-115.300 Disposition of Forfeited Property

9-115.310 Disposition of Forfeited Property Pursuant to 21 U.S.C. § 881(e), 21 U.S.C. § 853(h), and 18 U.S.C. § 1963(f) and (g).

9-115.400 Attorney General's Authority to Warrant Title

9-115.412 Indemnification Agreement in Addition to Special Warranty Deed

9-115.413 Approval for Use of a Special Warranty Deed with Indemnification

9-115.420 General Warranty Deed

9-115.421 Approval for Use of a General Warranty Deed

9-115.430 Dispute Resolution

9-115.500 Purchase or Personal Use of Forfeited Property by Department Employees

9-115.600 Review of Official Use of Forfeited Property Valued at over \$50,000

9-115.100 Role of the United States Marshals Service

The United States Marshals Service shall have primary authority over the management and disposal of seized assets in its custody that are subject to forfeiture or are forfeited. Arrangements for property services or commitments pertaining to the management and disposition of such property are the responsibility of the Marshals Service.

Prior to taking any action (e.g., in a settlement or plea agreement) concerning the management or disposition of property, the United States Attorney or agent in charge of the field office responsible for an administrative forfeiture case should consult with the United States Marshals Service or other custodial agency. Such discussions shall address the impact that such proposed action may have on the United States Marshals Service or other custodial agency in undertaking, continuing, or terminating custody of the property. If the interests of claimants are to be satisfied in whole or in part by payments from the proceeds of a sale of the property by the Marshals Service or other custodial agency, the proposed forfeiture order should provide specific guidance for the Marshals Service or other custodial agency concerning such payments.

9-115.200 Use of Seized Property by Department of Justice Personnel

Property under seizure and pending forfeiture shall not be utilized for any reason by Department personnel, including for official use, until such time as the final decree or court order

of forfeiture is issued.

Likewise, Department personnel shall not make such property available for use by others, including person(s) acting in the capacity of a substitute custodian, for any purpose prior to completion of the forfeiture. However, exceptions may be granted by the U.S. Marshals Service in situations such as the seizure of a ranch or business where use of equipment under seizure is necessary to maintain the ranch or business. *See the Criminal Resource Manual at 2248.*

9-115.202 Use of Seized Property Where Custody is Retained by the State or Local Seizing Agency

To minimize storage and management costs incurred by the Department of Justice, state and local agencies which present motor vehicles for federal adoptions should generally be asked to serve as substitute custodians of the property pending forfeiture.

Any use of such vehicles, including official use, by state and local law enforcement officials or others is prohibited by Department of Justice policy until such time as the forfeiture is completed and the equitable transfer is made. *See the Criminal Resource Manual at 2248.*

9-115.203 Use of Seized Real Property by Occupants

As a general rule, occupants of real property seized for forfeiture should be permitted to remain in the property pursuant to an occupancy agreement pending the forfeiture. *See the Criminal Resource Manual at 2249.*

9-115.300 Disposition of Forfeited Property

The disposition of property forfeited to the United States is an executive branch decision and not a matter for the court. Consequently, orders of forfeiture should be drafted broadly to direct forfeiture of the property to the United States "for disposition in accordance with law." It is also unnecessary to have the court confirm the manner and conditions of sale of forfeited property except in certain civil settlements. In the usual case, the United States Marshals Service is to determine the best method and conditions of sale of forfeited property in its custody.

9-115.310 Disposition of Forfeited Property Pursuant to 21 U.S.C. § 881(e), 21 U.S.C. § 853(h), and 18 U.S.C. § 1963(f) and (g).

It is the policy of the Department of Justice that the Attorney General has been given the authority under 21 U.S.C. § 881(e), 21 U.S.C. § 853(h) and 18 U.S.C. § 1963(f) and (g) to dispose of forfeited property "by sale or any other commercially feasible means," without subsequent court approval. This is generally called a "forfeiture sale" of the property. Forfeiture sales do not require judicial confirmation pursuant to 28 U.S.C. § 2001. However, if before forfeiture an interlocutory sale is necessary because the property is declining in value, then the procedures contained in 28 U.S.C. § 2001 should be followed requiring judicial confirmation of such interlocutory sales. When property is sold in this manner, it is called a "judicial sale."

Further information on this topic is available in the Criminal Resource Manual

Disposition of Forfeited Property Pursuant to 21 U.S.C § 881(e), 21 U.S.C. § 853(h), and 18 U.S.C. § 1963(f) and (g)	<u>Criminal Resource Manual at 2250</u>
Forfeiture Sale Defined	<u>Criminal Resource Manual at 2251</u>
Statutory Authority for Forfeiture Sale	<u>Criminal Resource Manual at 2252</u>
Legislative History Supporting Forfeiture Sale	<u>Criminal Resource Manual at 2253</u>
Caselaw Supporting Forfeiture Sale	<u>Criminal Resource Manual at 2254</u>
Judicial Sale Defined	<u>Criminal Resource Manual at 2255</u>
Distinction of Interlocutory Sales	<u>Criminal Resource Manual at 2256</u>

9-115.400 Attorney General's Authority to Warrant Title

The preferred deed to transfer forfeited property is a U.S. Marshal's quitclaim deed (USM-159A) executed by the marshal. The quitclaim deed makes no warranty representations. It serves only to convey whatever right, title and interest that the Government had as of the execution date.

A special warranty deed may be used instead when the marshal, in consultation with the United States Attorney, concludes that such a deed is necessary and appropriate under the facts of a particular case, as described in the Criminal Resource Manual at 2258. The special warranty deed assures the grantee/buyer that the United States, as the current seller, has done nothing to encumber the property, nor has it conveyed any right, title, or interest in the property while the government was the owner of the property. In effect, the special warranty deed warrants the forfeiture process. *See the Criminal Resource Manual at 2259.*

Finally, property may be transferred by a general warranty deed. A general warranty deed assures the grantee/buyer that title to the property is free and clear of any and all liens and encumbrances, and insures the grantee/buyer from any future claims against the property. *See the Criminal Resource Manual at 2260.* It is Department policy to use general warranty deeds only in exceptional circumstances. *See the Criminal Resource Manual at 2258.* As used in this policy, the terms "general warranty deed" and "special warranty deed" are not intended to be limiting in their application. In some states, warranty deeds are not used (e.g., in California a "grant deed" provides limited statutory warranties). The use of such state variations equivalent to a general warranty deed is satisfactory for purposes of this policy. *See the Criminal Resource Manual at 2257.*

9-115.412 Indemnification Agreement in Addition to Special Warranty Deed

When the circumstances for use of a special warranty deed exist, the buyer may also

request that the United States provide certain indemnifications in order to obtain title insurance. These indemnification agreements establish affirmative measures to be taken by the United States, beyond the basic terms and obligations of its warranty deed, in the event that claims are later made against the property. The indemnification agreement may be included either in the terms of the special warranty deed or in a separate document which incorporates the deed by reference. In either form, indemnification agreements will be limited to the following terms:

- The United States will specially warrant its title against defects or clouds arising out of the forfeiture process, and hold the buyer harmless as a result of such defects in title or clouds involving the propriety of the forfeiture of the property.
- In the event that a court in a final judgment rules that the United States did not acquire valid legal title to the real property through the forfeiture process and therefore was not able to convey clear title to the buyer, the United States will refund to the buyer the amount of the purchase price of the property, plus the value of any improvements made to the property by the buyer. The amount will be paid out of the Assets Forfeiture Fund, plus interest on the total amount at the current rate as provided in 28 U.S.C. § 1961 from the date of the purchase of the property by the buyer to the date of the final judgment.
- The United States, by its special warranty deed, does not warrant the title of the prior owner of the property who acquired title before the forfeiture.

9-115.413 Approval for Use of a Special Warranty Deed with Indemnification

Requests to the Seized Assets Division of the U.S. Marshals Service for approval to convey title through a special warranty deed with indemnification must be accompanied by the following:

- An explanation of the special circumstances which justify the indemnification;
- A proposed indemnification agreement, whether in a separate agreement or as additional paragraphs in a special warranty deed; and
- A statement of the amount of the purchase price which potentially may have to be refunded.

9-115.420 General Warranty Deed

If the buyer of the forfeited property is unable to procure a title insurance policy with a special warranty deed and indemnification agreement, then the Marshal may be authorized by a Significant Property Decision to execute a general warranty deed.

It is the policy of the Department that the Attorney General's discretion to warrant clear title, through the use of a general warranty deed, will be exercised only in compelling circumstances where the financial advantage of offering a general warranty deed in the particular case, compared to the available alternatives, far outweighs both the potential cost of honoring the warranty in that case and the potential effect of increased purchaser demand for general warranty

deeds in future sales of other forfeited properties. The Seized Asset Division of the U.S. Marshals Service, in the exercise of sound business judgment, shall also consider the cumulative potential liability which will accrue over time as a result of each successive use of a general warranty deed.

9-115.421 Approval for Use of a General Warranty Deed

If one or more of the circumstances listed in the Criminal Resource Manual at 2258 is present, and the Marshal and the United States Attorney responsible for the forfeiture action deem it appropriate to warrant clear title, the Marshal and the United States Attorney shall request approval from the Seized Assets Division to convey title through a general warranty deed or its equivalent.

Requests to the Seized Assets Division of the U.S. Marshals Service for approval to convey title through a general warranty deed or its equivalent shall include the following:

- A title report, identifying specific deficiencies and/or exceptions that are the basis of the inability to secure title insurance, and a written explanation from the responsible Assistant United States Attorney addressing why the deficiencies and/or exceptions have not been or cannot be corrected in order to avoid the necessity of a general warranty deed;
- An explanation establishing that a special warranty deed (e.g., warranting only the forfeiture process) would not be sufficient;
- A statement of, and an explanation of the basis for, the estimated financial advantage of offering a general warranty deed as compared to other options; and
- An explanation of the circumstances that do not permit disposition of the property by allowing the lienholder to foreclose, sell the property, recover the amount of the lien plus interest and expenses from the proceeds of the sale, and pay to the Marshal for forfeiture, any remaining proceeds in return for the release of the *lis pendens* on the property.

9-115.430 Dispute Resolution

The Asset Forfeiture and Money Laundering Section (AFMLS) will resolve any disputes that may arise in the event the United States Attorney and the U.S. Marshal cannot agree on the appropriate form of deed to be used.

9-115.500 Purchase or Personal Use of Forfeited Property by Department Employees

Title 28, C.F.R., §§ 45.735-18(a) and (b) prohibit Department of Justice employees from purchasing, either directly or indirectly, or using any property if the property has been forfeited to the government and offered for sale by the Department or its agents. *See the Criminal Resource Manual at 2261*. A waiver to the aforementioned restrictions may be granted by the head of the employee's division upon a determination that two requirements are satisfied:

- the purchase was not based on nonpublic information that came to the employee's attention

by reason of his status as a Department of Justice employee, i.e., that the purchase was based upon nonpublic source information; and

- the employee's reason for purchasing or using the property is so compelling as to outweigh any appearance of impropriety. See Title 28, C.F.R., sections 45.735-18(c)(1) and (2).

9-115.600 Review of Official Use of Forfeited Property Valued at over \$50,000

Part IV, D of *The Attorney General's Guidelines on Seized and Forfeited Property* (July 1990) (USAM 9-118.000 et seq.) requires notification to the "Executive Office for Asset Forfeiture . . . at the time property valued at \$50,000 or greater is placed into official use." Although this requirement may be satisfied by post-transfer notification, the FBI and U.S. Marshals Service provided the then Executive Office for Asset Forfeiture with advance notice of and an opportunity to review such decisions. Such notification should now be made to the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division.

Please ensure that AFMLS is given advance notice of and an opportunity to review official use actions involving federal forfeited property valued at \$50,000 or more. AFMLS will endeavor to act on all such notifications within two weeks of receipt.

9-116.000 EQUITABLE SHARING

- 9-116.100 General Adoption Policy and Procedure
 - 9-116.110 Federal Adoption Form
 - 9-116.120 Federal Investigative Agency Review of Adoption Requests
 - 9-116.150 Judicial Review Favored
 - 9-116.160 30-Day Rule for Presentation for Federal Adoption
 - 9-116.170 United States Attorney Recommendation For Adoption of Seizure
 - 9-116.180 Notice Requirements in Adopted Seizures
 - 9-116.190 Retention of Custody by State or Local Agency
 - 9-116.200 Referral of DAG 71/DAG 72 Forms to United States Attorneys' Offices
 - 9-116.210 Notifying the Department's Criminal Division of United States Attorneys' Equitable Sharing Decisions
 - 9-116.310 Equitable Sharing Check Disbursement in Judicial Forfeitures
 - 9-116.311 Equitable Sharing Check Disbursement in Administrative Forfeitures
 - 9-116.312 Role of Law Enforcement Coordinating Committees
 - 9-116.330 Transmittal Letters for Equitable Sharing Checks
 - 9-116.400 International Sharing of Forfeited Assets
 - 9-116.500 Weed and Seed Initiative -- Transfers of Real Property
 - 9-116.520 Transfer of Forfeited Real Property Pursuant to Weed and Seed Initiative
 - 9-116.530 Liens, Mortgages, and Third Party Ownership Interests in Weed and Seed Transferred Real Property
 - 9-116.540 Asset Seizure, Management and Case-Related Expenses
 - 9-116.550 Law Enforcement Concurrence
 - 9-116.600 Transfer of Property Forfeited under the Magnuson Fisheries Conservation and Management Act from the Department of Justice to the National Oceanic and Atmospheric Administration
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9-116.100 General Adoption Policy and Procedure

The policies and procedures set forth below are intended to ensure consistent review and handling of state and local seizures presented for Federal adoption. *See the Criminal Resource Manual at 2262*. These policies and procedures do not apply to adoption of seizures by the United States Customs Service.

9-116.110 Federal Adoption Form

All state and local requests for adoption must be reported on a form entitled "Request for Adoption of State or Local Seizure." A copy of this form is in the Criminal Resource Manual at 2288. The form must be completed by the requesting state or local agency, but Federal personnel may, in their discretion, complete the form for the requesting state or local agency.

Information concerning any state forfeiture proceedings instituted against the property must be detailed in the request for adoption. The state or local agency must also complete the Federal agency's standard federal asset seizure form as part of its adoption request. All information provided must be complete and accurate. An estimate of fair market value must be provided for each item of seized property presented for adoption and any liens and lienholders must be identified. Copies of any investigative reports and of any affidavits in support of warrants pertinent to the seizure shall be attached for review. State or local agencies may redact from investigative reports information which may disclose the identity of a confidential informant.

9-116.120 Federal Investigative Agency Review of Adoption Requests

The adopting federal agency must review and accept or decline adoption requests promptly. Property management issues must be addressed in consultation with the U.S. Marshals Service prior to an adoption. The request for adoption must be accepted prior to the transfer of the property to federal custody unless exceptional circumstances exist.

Seizures presented for adoption must be reviewed by an attorney outside the chain-of-command of operational officials (e.g., the seizing agency's Office of Chief Counsel or other legal unit) unless:

- the seizure was based on a judicial seizure warrant; or
- an arrest was made in connection with the seizure; or
- drugs or other contraband were seized from the person from whom the property was seized.

Such attorney review shall verify that:

- the property is subject to federal forfeiture;
- there is probable cause to support the seizure;
- the property is not within the custody of a state court; and
- there is no legal impediment to a successful forfeiture action.

For more information on this topic, *see* the Criminal Resource Manual at 2263 (Federal Investigative Agency Review of Adoption Requests), 2264 (Minimum Monetary Thresholds for Adoption), and 2265 (Forfeitures Generally Follow The Prosecution).

9-116.150 Judicial Review Favored

Judicial review allows a neutral and detached magistrate to assess the basis for seizure prior to adoption and protects federal enforcement personnel against potential civil suits. Pre-seizure judicial review is not required for adoptive, joint, or federal seizures, but federal

personnel are encouraged to secure judicial review whenever practicable prior to Federal seizures or the adoption of a state or local seizure. A judicial determination of probable cause is required prior to a federal adoption of seized real property.

9-116.160 30-Day Rule for Presentation for Federal Adoption

State and local agencies have 30 calendar days from the date of seizure to request a Federal adoption. Waivers of the 30-day rule may be approved by the adopting Federal agency where the state or local agency requesting adoption can demonstrate the existence of circumstances justifying the delay.

9-116.170 United States Attorney Recommendation For Adoption of Seizure

A United States Attorney may recommend in writing that a Federal seizing agency adopt a particular state or local seizure. If the Federal agency declines to adopt the seizure despite the recommendation of the United States Attorney, the agency must promptly document its reasons for declination in a memorandum and forward copies of the memorandum to the United States Attorney and the Asset Forfeiture and Money Laundering Section (AFMLS). AFMLS will resolve any disagreements and may authorize direct adoption of state or local seizures by United States Attorneys for judicial forfeiture in appropriate circumstances.

9-116.180 Notice Requirements in Adopted Seizures

Prior to approval of an adoption, the state or local agency must not state or imply that a federal agency is the seizing agency or has any law enforcement interest in the property. Once adoption is approved, then notice to all interested parties will be executed by the adopting federal investigative agency pursuant to federal law and policy.

As applied in the case of adopted seizures, the requirements of written notice "at the time of seizure" as set out in 21 U.S.C. § 888(b) and in the editorial note to 21 U.S.C. § 881, are construed to mean *at the time of the federal seizure*, i.e., the decision to adopt the seizure for federal forfeiture. This construction reflects the intent of Congress and no other interpretation is feasible because seizing state and local law enforcement agencies cannot know that the property they seize will be accepted for federal forfeiture until the appropriate federal officials review the seizure and agree to adopt it.

Once a decision has been made to adopt the seizure of an item of property covered by the notice requirements set out at 21 U.S.C. § 888(b) or the note to 21 U.S.C. § 881, the adopting agency must take steps to ensure that the statutory notices are served in the most expeditious manner practicable. Each component of the Department should adjust its internal policies and procedures as necessary to give force to this construction.

9-116.190 Retention of Custody by State or Local Agency

To minimize storage and management costs to the Department of Justice, state and local agencies which present motor vehicles for federal adoption should generally be asked to serve as substitute custodians of the property pending forfeiture. Any use of such vehicles, including official use, by state and local law enforcement officials or others is prohibited by Department of

Justice policy until such time as the forfeiture is completed and the equitable transfer is made. Adopted cash and real property must, however, be turned over to the custody of the U.S. Marshals Service. In addition, the Marshals Service must be consulted prior to the adoption of a seizure of real property.

9-116.200 Referral of DAG 71/DAG 72 Forms to United States Attorneys' Offices

Seizing agency field offices will provide a copy of the Application of Transfer of Federally Forfeited Property (DAG-71) and the "preliminary" Decision for Transfer of Federally Forfeited Property (DAG-72) to the pertinent United States Attorney's Office for *all* (whatever the value) administrative and judicial forfeiture actions. The originals of these forms will be concurrently forwarded to the agency's headquarters decision-maker. A United States Attorney's Office may choose not to receive the DAG-71 and/or the preliminary DAG-72 for property appraised at \$100,000 or less. Written notice of this decision should be forwarded to the seizing agency for its records.

9-116.210 Notifying the Department's Criminal Division of United States Attorneys' Equitable Sharing Decisions

Even though United States Attorneys have final decision authority with respect to equitable sharing in judicial forfeiture cases involving less than \$1 million, the "Application for Transfer of Federally Forfeited Property" (DAG 71) and "Decision Form for Transfer of Federally Forfeited Property" (DAG-72), along with final orders of forfeiture, must be forwarded to the Criminal Division for processing and record-keeping purposes. Moreover, all DAG-71s should be filled out completely and all DAG-72s should be signed by the United States Attorney or an official authorized by the United States Attorney to sign on his or her behalf. Such authorizations of persons to sign on behalf of the United States Attorney should be reduced to writing and a copy supplied to the Criminal Division. *See the Criminal Resource Manual at 2266.*

9-116.310 Equitable Sharing Check Disbursement in Judicial Forfeitures

In judicial forfeiture cases in which the United States Attorney or a Departmental official is the decision maker for equitable transfer, the U.S. Marshal will mail the check to the United States Attorney's office, attention "Law Enforcement Coordinating Committee (LECC) Coordinator." If the United States Attorney makes an equitable sharing decision on a request from a state or local law enforcement agency from a different judicial district, the coordinator should contact the United States Attorney's office in the second district to determine whether or not that United States Attorney wishes to present the check. *See the Criminal Resource Manual at 2267.*

9-116.311 Equitable Sharing Check Disbursement in Administrative Forfeitures

In administrative forfeiture cases in which the federal investigative agency makes the equitable sharing decision, the U.S. Marshal will mail the check to that agency unless otherwise directed by the local agency head.

9-116.312 Role of Law Enforcement Coordinating Committees

Pursuant to the *Attorney General's Guidelines on Seized and Forfeited Property*, July 1990, (USAM 9-118.000) the Law Enforcement Coordinating Committees "shall promote and facilitate the Department of Justice forfeiture program with federal, state and local law enforcement agencies." By memorandum dated June 15, 1990, to all United States Attorneys from the Associate Deputy Attorney General, LECC Coordinators were required to "serve as a clearinghouse for state and local inquiries about the status of pending sharing cases."

To perform these functions, the U.S. Marshal shall provide advance notice to the LECC coordinator of *all* equitable sharing payments and transfers to state and local law enforcement agencies in the judicial district. United States Attorneys' Offices and seizing agencies should work together to ensure proper coordination of all equitable sharing activities.

9-116.330 Transmittal Letters for Equitable Sharing Checks

All federal components shall enclose a transmittal letter which reiterates the policies governing the use of equitable shares as set forth in *The Attorney General's Guidelines on Seized and Forfeited Property* (July 1990) (USAM 9-118.000).

It is important to consistently give the same message to the recipient agencies. The following points should be made:

- The sharing check represents the agency's equitable share of the net proceeds.
- The monies must be used for the law enforcement purposes stated in the Application for Transfer of Federally Forfeited Property (DAG 71).
- These funds must increase and not supplant the agency's appropriated operating budget.
- Any interest earned on these funds must also be used for law enforcement purposes.

A sample letter is in the Criminal Resource Manual at 2289.

9-116.400 International Sharing of Forfeited Assets

It is the policy of the Department to share, in accordance with United States law and established procedure, the proceeds of successful forfeiture actions with the country or countries which facilitate the forfeiture of assets under United States law. Commitments to share internationally in specific cases can only be made with the approval of the Attorney General and the Department of State. Please advise the Asset Forfeiture and Money Laundering Section in writing of any foreign assets that have been forfeited or are about to be forfeited under United States law with the assistance of a foreign country.

To initiate this process, the investigative agency or prosecutive office responsible for the forfeiture should send AFMLS a memorandum detailing the foreign assistance provided and recommending the amount to be shared. Representatives of foreign governments should not be asked to submit a sharing request. Unlike domestic sharing, there is no authority for us to insist that a foreign country use shared property in any particular manner or allocate it to any particular

governmental component (e.g., a provincial law enforcement agency). See the Criminal Resource Manual at 2268.

9-116.500 Weed and Seed Initiative -- Transfers of Real Property

United States Attorneys, assisted by the United States Marshals Service, are authorized to identify seized or forfeited properties for potential transfer in support of the Weed and Seed initiative. See the Criminal Resource Manual at 2269 and 2270. As properties are forfeited, appropriate Weed and Seed transfers will be made pursuant to the policies and procedures set out herein.

The proposed uses of any property to be so transferred must be in accordance with the Weed and Seed initiative, focusing on the support of community-based drug abuse treatment, prevention, education, housing, job skills, and other activities that will substantially further Weed and Seed goals. United States Attorneys are encouraged to consult with the Asset Forfeiture and Money Laundering Section for guidance in particular cases. The property must also be suited to the proposed use and the use must be consistent with all applicable federal, state, and local laws and ordinances.

Any proposed transfer must have the potential for significant benefits to a particular community and these benefits must outweigh any financial loss or adverse effects to the Department of Justice Assets Forfeiture Fund.

9-116.520 Transfer of Forfeited Real Property Pursuant to Weed and Seed Initiative

All requests for sharing of real property pursuant to the Weed and Seed Initiative shall be in a Form DAG-71 and must follow the established sharing procedures as outlined in the *Attorney General's Guidelines on Seized and Forfeited Property (USAM 9-118.000)*. The appropriate official of the seizing federal investigative agency must recommend the transfer, as well as the United States Attorney in the particular judicial district where the property is located. Approval by the Office of the Deputy Attorney General is required for transfers of forfeited real property.

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

The authority of the participating state or local investigative agency to transfer forfeited real property to other state or local public agencies may vary from jurisdiction to jurisdiction. In each case, the issue must be addressed in the submitted DAG-71 prior to the sharing transfer to the state or local agency.

9-116.530 Liens, Mortgages, and Third Party Ownership Interests in Weed and Seed Transferred Real Property

Mortgages on real property transferred pursuant to the Weed and Seed initiative are not

payable from the Department of Justice Assets Forfeiture Fund. Liens and mortgages shall be the responsibility of the recipient state or local community-based organization.

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

9-116.540 Asset Seizure, Management and Case-Related Expenses

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

9-116.550 Law Enforcement Concurrence

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

9-116.600 Transfer of Property Forfeited under the Magnuson Fisheries Conservation and Management Act from the Department of Justice to the National Oceanic and Atmospheric Administration

Under the authorities contained in the Magnuson Fisheries Conservation and Management Act, (MFCMA) 16 U.S.C. § 1801-1882, the Department of Justice will transfer to the National Oceanic and Atmospheric Administration (NOAA) funds forfeited by the Attorney General for violations under the MFCMA. Assets seized for forfeiture under the MFCMA should be deposited in the Seized Asset Deposit Fund with the United States Marshals Services (USMS). Following the forfeiture action, the funds will then be transferred by the USMS to NOAA. Where expenses have been incurred by the USMS, these expenses must first be deducted before the net proceeds of forfeiture are transferred to NOAA. If no expenses are incurred, the entire amount will be transferred to NOAA.

Any MFCMA forfeitures and requests for transfers occurring after June 1, 1992, should be identified and processed pursuant to the procedures in set forth in the Criminal Resource Manual at 2272. In addition to USMS expenses, the Department of Justice (DOJ) Assets Forfeiture Fund will retain 10 percent of the total net proceeds of the forfeiture. This amount represents the Department of Justice share based upon its effort in forfeiting the property. *See the Criminal Resource Manual at 2271.*

9-117.000

**DEPARTMENT OF JUSTICE
ASSETS FORFEITURE FUND**

9-117.100 Transfer of Funds From the Seized Asset Deposit Fund to the Assets Forfeiture Fund
9-117.200 Payment of Costs and Attorneys' Fees From the Assets Forfeiture Fund -- Limited Authority
9-117.210 Payment of Costs and Attorneys' Fees From the Assets Forfeiture Fund -- Procedure
9-117.300 Disposition of ADP Equipment Purchased with Assets Forfeiture Fund Allocations

9-117.100 Transfer of Funds From the Seized Asset Deposit Fund to the Assets Forfeiture Fund

The United States Attorney's Office securing a forfeiture is responsible for initiating transfers from the Seized Asset Deposit Fund to the Assets Forfeiture Fund and should provide prompt notification to the United States Marshals Service (USMS) of the events which should lead to a transfer from the Seized Asset Deposit Fund.

In the case of either a consent judgment or a default judgment, the USMS will immediately transfer the forfeited cash to the Assets Forfeiture Fund, unless the United States Attorney determines that execution of the judgment should be delayed.

In the case of a judgment after trial or upon summary judgment, there is an automatic stay of execution of the judgment of 10 working days. If the United States Attorney's Office indicates that no motions or requests for additional stays have been filed, then the forfeited cash will be transferred to the Assets Forfeiture Fund on the eleventh working day following a summary judgment or a judgment after trial.

9-117.200 Payment of Costs and Attorneys' Fees From the Assets Forfeiture Fund -- Limited Authority

Notwithstanding the legal availability of the Assets Forfeiture Fund for EAJA awards, *see* the Criminal Resource Manual at 2273, the Department limits by policy the cases in which Fund monies may be used for such awards. The Congress enacted the EAJA for specific public policy reasons. It would be inappropriate for the Fund to be used in a manner that completely ignored or negated the public policy basis for the EAJA. In an attempt to balance the competing interests involved, the following three tier policy is established:

- The Assets Forfeiture Fund will fund the EAJA award in any case in which the actions of the Federal participants were clearly consistent with current law and Department policy. This includes those cases in which:

- The Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, is involved in planning a specific case or program initiative and the participating agency was executing the planned initiative in good faith;
- The Federal participants were executing their responsibilities in consonance with current law and Department policy but the court creates a novel reason or basis for overturning a case that could not be anticipated;
- Similar "no fault" cases. Once approved, the EAJA awards in these cases will be paid by the Fund against the case related expenses category;
- The Assets Forfeiture Fund allocations of the federal participant will be available to fund awards where the agency personnel were acting in good faith but it is not clear that their actions were consistent with existing law and Department policy. Once approved, the funds are to be taken from the case related expenses category. If there are insufficient funds available to cover the award, then the shortfall may be made up by funds available for other categories of expense. A request for reallocation will be approved for this purpose. Total allocations will not be increased to make up for the payment of the award; and
- In any case in which the court finds bad faith or an intentional disregard for existing law or Department policy by the federal participants, the Assets Forfeiture Fund will not be available, either directly or indirectly, to fund the EAJA award.

9-117.210 Payment of Costs and Attorneys' Fees From the Assets Forfeiture Fund -- Procedure

No EAJA award may be charged against the Assets Forfeiture Fund or the Federal participant's Fund allocations without the express written approval of the Asset Forfeiture and Money Laundering Section (AFMLS). Requests for approval to charge an EAJA award against the Fund or against Fund allocations must be submitted to AFMLS in writing. *See the Criminal Resource Manual at 2274.*

If the government has contested the case and incurred an adverse judgment, a copy of the court order should be provided to all involved agencies immediately to permit their participation in preparation of the request package. The request should be forwarded by the United States Attorney's Office to AFMLS by express mail within 5 business days of the court order. The request should include, as appropriate:

- a copy of the court order indicating that the award is being made under 28 U.S.C. § 2412 (d) or that the government's position was not substantially justified;
- a copy of the seizure warrant and associated affidavit or a copy of the probable cause statement supporting the seizure, if the seizure was cited as a basis for the award;
- a copy of any pleadings or answers or a description of any litigative position that was cited as a basis for the award;

- a description of any governmental action not referenced above that was cited as a basis for the award; a description of any extenuating factors affecting the seizing agency and the United States Attorney's Office that should be considered;
- a list of the agencies involved in the case; and
- a joint proposal for allocation of responsibility for the EAJA award among the involved agencies.

If the United States Attorney's Office is proposing to settle an EAJA claim, the materials cited in items (2) through (7) above should be provided to AFMLS *in advance* of agreeing to any settlement. This policy is in addition to any other policies governing settlements.

Proposed court orders drafted by the government should be silent as to the source of funds for paying any award. The identification of appropriate sources of funding to pay court judgments is an Executive Branch function and may vary from case to case depending on the facts of the particular case. *See also* the Criminal Resource Manual at 2275 and 2276.

9-117.300 Disposition of ADP Equipment Purchased with Assets Forfeiture Fund Allocations

ADP equipment purchased with Assets Forfeiture Fund monies shall retain any statutory conditions or limitations on its use until:

- The equipment fails or suffers serious performance degradation and it is economically impractical to invest in equipment repair; or
- The equipment is rendered functionally obsolete for forfeiture program purposes of the using office, *and*
- No other agency participating in the Assets Forfeiture Fund within a reasonable radius can use the equipment for forfeiture program purposes, *and*
- The Asset Forfeiture and Money Laundering Section is provided 30 days written notice of the intent to redirect the equipment out of the asset forfeiture program with a brief explanation of the attendant circumstances.

**THE ATTORNEY GENERAL'S GUIDELINES
ON SEIZED AND FORFEITED PROPERTY**

NOTE: The following is a reprint of the *Attorney General's Guidelines on Seized and Forfeited Property* (July 1990) with USAM section numbers added.

- 9-118.010 I. Statement of Goals and Purposes
- 9-118.200 II. Definitions
- 9-118.300 III. General Provisions
- 9-118.400 IV. Federal Retention and Use of Forfeited Property -- A. General Authorization
- 9-118.420 IV.B. Real Property
- 9-118.430 IV.C. Cash
- 9-118.440 IV.D. Personal Property
- 9-118.450 IV.E. Investigative Bureau and Department Component Official Use Policies
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9-118.010 I. Statement of Goals and Purposes

The Department of Justice asset forfeiture program has three primary goals: (1) to punish and deter criminal activity by depriving criminals of property used or acquired through illegal activities; (2) to enhance cooperation among foreign, federal, state and local law enforcement agencies through the equitable sharing of assets recovered through this program; and, as a by-product, (3) to produce revenues to enhance forfeitures and strengthen law enforcement.

To meet these goals it is essential that the program be administered in a fiscally responsible manner which will minimize the costs incurred by the United States while maximizing the impact on criminal enterprises. Moreover, the integrity of the entire forfeiture program depends upon the faithful stewardship of forfeited property and the proceeds thereof.

The Law Enforcement Coordinating Committees shall promote and facilitate the Department of Justice forfeiture program with federal, state and local law enforcement agencies.

These Guidelines are not intended to create or confer any rights, privileges or benefits on prospective or actual claimants, defendants or petitioners. Likewise, they are not intended to have the force of law. See, *United States v. Caceres*, 440 U.S. 741 (1979).

9-118.200 II. Definitions

- A. Adoptive Seizure refers to the federal adoption and forfeiture of property seized exclusively through the efforts of state or local agencies. Investigative bureaus empowered by statute or regulation may adopt such seized property for forfeiture where the conduct giving rise to the seizure is in violation of federal law. Forfeitures of seized property accepted in this manner have the same effect as if the property had originally been seized by the investigative bureau.
- B. Appraised Value means the estimated fair market value at the time of seizure of the same or similar property. For vehicles, this will generally mean the average wholesale value in the N.A.D.A. Appraisal Guides. For personal property, this will generally mean estimated fair market value. For real property, businesses and certain personal property, the value shall be determined by experts qualified to make such determinations.
- C. Cash means currency, negotiable instruments or securities.
- D. Department component refers to agencies, divisions, offices, sections or units of the Department of Justice.
- E. District refers to the federal judicial district.

- F. The Fund refers to the Department of Justice Assets Forfeiture Fund as established by 28 U.S.C. § 524(c)(1).
- G. Investigative bureau refers to Department of Justice agencies authorized by federal statute to investigate and enforce forfeiture statutes. These agencies are: the Federal Bureau of Investigation, the Drug Enforcement Administration and the Immigration and Naturalization Service. It also refers to other federal agency investigative units whose forfeitures result in deposits into the Fund (e.g., U.S. Postal Inspection Service, Internal Revenue Service, and the Bureau of Alcohol, Tobacco and Firearms).
- H. Joint investigation means cases in which one or more foreign, state or local agencies participates in an investigation with a federal law enforcement agency empowered to forfeit property.
- I. Law enforcement means the investigation or prosecution of criminal activity and the execution of court orders arising from such activity.
- J. Net proceeds means the forfeited cash or gross receipts from the sale of forfeited property less allowable asset management and case related expenses, third party interests and any award based on the value of the forfeiture.
- K. Official use means utilization by a law enforcement agency in the direct performance of law enforcement activities.
- L. Property means tangible personal and real property, other than cash, when used in the context of the equitable transfer of property.
- M. Seized Asset Deposit Fund refers to the holding account administered by the U.S. Marshals Service for seized cash pending resolution of forfeiture cases.
- N. Sharing means the transfer of cash, property or proceeds realized through federal forfeitures pursuant to these Guidelines.
- O. State and local agencies refers to state and local law enforcement agencies.
- P. Transfer and "sharing" are synonymous under these Guidelines.

9-118.300 III. General Provisions

- A. Whenever reference is made to a specific Department official, such reference shall also be deemed to include any duly authorized person acting for that official by law, regulation or delegation. References to the Executive Office for Asset Forfeiture include any successor organization.
- B. Whenever a statute, regulation or official form cited in these Guidelines is replaced by a substantially identical one, the citation shall be deemed to refer to the replacement.

- C. The Deputy Attorney General or his designee may issue supplementary and interpretative guidance to address issues that arise under these Guidelines. The Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, shall provide assistance to the Deputy Attorney General in the oversight and management of the Department's forfeiture program.

9-118.400 IV. Federal Retention and Use of Forfeited Property -- A. General Authorization

The Attorney General has the authority to retain any civilly or criminally forfeited property for official use by any federal agency. No seized property shall be placed into official use until a final determination of forfeiture has been made and the request to place the property into official use has been approved by the appropriate official.

9-118.420 IV.B. Real Property

The Attorney General does not delegate his authority to place real property into official use. A department component may request authority to place real property into official use only if the proposed usage of that property would be and remain thereafter consistent with a law enforcement purpose. Transfers of real property to other federal components may be considered, if such transfers will serve a significant and continuing federal purpose.

9-118.430 IV.C. Cash

No forfeited cash, nor any proceeds from the sale of forfeited property, may be transferred to or retained by any federal agency except as provided for in Chapter X or by statute.

9-118.440 IV.D. Personal Property

The Attorney General delegates his authority to place personal property into official use in the order of priority set forth below. Written notice to the Director, Executive Office for Asset Forfeiture is required at the time property valued at \$50,000 or greater is placed into official use. The Director, Executive Office for Asset Forfeiture, shall determine which agency may place property into official use if more than one Department component seeks to retain the same forfeited property for official use. All property should be promptly turned over to the local U.S. Marshal after seizure, including property intended to be placed into official use, unless it is intended that such property will be used in an undercover capacity.

1. **Seizing Investigative Bureau.** The head of the seizing investigative bureau will determine whether to place forfeited property into official use.
2. **Other Investigative Bureaus.** If the property is not equitably transferred to a foreign, state or local agency, and the seizing investigative bureau chooses not to place the forfeited property into official use, then another investigative bureau or the U.S. Marshals Service may, by written request to the Director, U.S. Marshals Service, seek the transfer of the property for its use.
3. **Other Department Components.** If no investigative bureau chooses to place the property

into official use and the property has not been equitably transferred, other Department components may, by written request to the Director, U.S. Marshals Service, seek the transfer of the forfeited property for its official use.

4. **Transfer of Forfeited Property to Other Federal Agencies.** All requests by other federal agencies shall be referred to the Director, U.S. Marshals Service. In exceptional circumstances, the U.S. Marshals Service may transfer personal property suitable for official use to a requesting federal agency which did not participate in the acts which led to a seizure or forfeiture. In all such cases, the U.S. Marshals Service shall consult with the investigative bureau responsible for the investigation which led to the forfeiture. Careful consideration shall be given to the value of the property requested, its potential benefit to the United States for law enforcement purposes and its impact on the Fund. A decision to grant a request for personal property with an aggregate value of less than \$25,000 shall be approved in writing by the Director, U.S. Marshals Service. The recipient agency shall pay expenses incurred by the Department of Justice in connection with the forfeiture and transfer of such property. A report on all such transfers shall be prepared by the U.S. Marshals Service on a quarterly basis and submitted to the Executive Office for Asset Forfeiture. A decision to grant a request for any property valued at \$25,000 or more shall be approved in writing by the Director, Executive Office for Asset Forfeiture. The recipient agency shall pay expenses incurred by the Department of Justice in connection with the forfeiture and transfer of such property.

9-118.450IV.E. Investigative Bureau and Department Component Official Use Policies

Each investigative bureau and department component shall promulgate internal guidelines consistent with these Guidelines governing the placement of property into official use. Such guidelines and any subsequent supplements or revisions shall be filed with the Executive Office for Asset Forfeiture ten (10) days in advance of issuance.

All official use guidelines shall:

1. Prohibit the placement into official use of any seized property prior to the entry of a final determination of forfeiture and the appropriate approval of the request to place the property into official use;
2. Require that all seized property be recorded and tracked in an official inventory of seized property without regard to its intended disposition;
3. Require that a written justification be prepared in each instance detailing the reasons why the forfeited property was placed into official use and that these justifications be retained for three (3) years;
4. Require that a specific supervisory-level official be responsible and accountable for the decision to place each item of forfeited property into official use and for ensuring appropriate official use of such property following its transfer;
5. Require that property placed into official use shall be identified and tracked in an accountable property system; and

6. State that the property may not be transferred or retained if it is primarily for purposes of trade or sale, or home-to-work transportation or other uses not expressly authorized for property acquired through the expenditure of appropriated funds. There must be an intention to place the property into official use for two (2) years.

9-118.460IV.F. Competing Requests for Property for Official Use by Investigative Bureau and Other Federal, State or Local Agency

When the head of an investigative bureau seeks to place forfeited property into official use and a federal, state or local agency has filed a request for an equitable share of that property, the head of the investigative bureau shall consider the following factors in making a determination regarding the disposition of the property:

1. The relative need of the requesting agency and the investigative bureau for the particular property;
2. The uniqueness of the property and the likelihood of securing similar property through seizures in the near future;
3. The relative percentage of the requesting agency's participation in the cases in addition to the other factors pertinent to the determination of equitable transfer;
4. The likelihood that the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from seizures in other cases in the near future;
5. The impact that a decision to place the property into official use might have on federal, state and local relations in the district; and
6. The number and value of past equitable transfers to the federal, state or local agency.

9-118.470IV.G. Payment of Liens on Personal Property Placed Into Federal Official Use

Liens on personal property placed into official use by investigative bureaus and the U.S. Marshals Service may be paid from the Fund provided that:

1. There is an intent to place the property into official use for at least two (2) years;
2. The total amount to be paid from the Fund amounts to less than one-third the appraised value of the property; and
3. The total amount to be paid from the Fund is less than \$25,000.

Requests for exceptions may be submitted in writing to the Director, Executive Office for Asset Forfeiture.

9-118.500V. Equitable Transfer of Forfeited Property to Participating State and Local

Agencies

Pursuant to 21 U.S.C. § 881(e)(1) and nbsp;U.S.C. § 1616a, as made applicable by 21 U.S.C. § 881(d) and other statutes, the Attorney General has the authority to equitably transfer forfeited property and cash to state and local agencies that directly participate in the law enforcement effort leading to the seizure and forfeiture of the property. Requests for equitable transfers shall be filed in the form prescribed by the Director, Executive Office for Asset Forfeiture.

9-118.510V.A. Equitable Transfers Generally

1. All equitable shares shall be based on the net proceeds of the forfeiture.
2. State and local investigative and prosecutive agencies may share in forfeited cash and property and the proceeds from the sale of forfeited property.
3. All property transferred to state and local agencies and any income generated by this property shall be used for the law enforcement purposes specified in the request.
4. A state or local agency may file a request for an equitable share of cash or property where it can demonstrate that it participated directly in the law enforcement effort that resulted in the forfeiture.
5. No request shall be considered if it is submitted after sixty (60) days following the seizure.
6. Cash and property shall be equitably shared with a state or local agency only where it will increase and not supplant law enforcement resources of the specific state or local agency that participated in the forfeiture.
7. The deciding official shall ensure that the share approved 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 with respect to the violation of law on which the forfeiture is based.

9-118.520V.B. Factors Governing the Amount of the Equitable Transfer

The amount of equitable transfer of proceeds from the sale of forfeited property shall be based upon the net proceeds realized from the sale of the property or liquidation of negotiable instruments. Equitable sharing amounts shall be calculated after the determination of any award based upon the value of the forfeiture. Asset management expenses may be calculated on a pro rata basis where expenses cannot reasonably be determined for a specific asset.

In determining the amount of the equitable transfer for each participating agency, the following factors shall be considered:

1. Whether the seizure was adopted or was the result of a joint investigation;
2. The degree of direct participation in the 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));
3. Whether the state or local agency originated the information that led to the seizure and whether the agency obtained such information fortuitously or by use of its investigative resources;
4. Whether the state or local agency provided unique or indispensable assistance;
5. Whether the state or local agency initially identified the asset(s) for seizure;
6. Whether the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and
7. Whether the state or local agency could have achieved forfeiture under state law, with favorable consideration given to an agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

9-118.530V.C. Sharing Percentages

1. In cases involving adoptive seizures that are forfeited administratively or in uncontested judicial proceedings, the determining official shall allocate to the United States fifteen (15) percent of the total net proceeds realized through the disposition of forfeited property. In cases involving adoptive seizures that are forfeited in contested judicial proceedings, the determining official shall allocate to the United States twenty (20) percent of the total net proceeds realized through the disposition of the forfeited property. These amounts represent the federal equitable share based upon its effort in forfeiting the property. These sharing percentages shall be applicable to property seized on or after September 1, 1990.
2. In non-adoptive cases the determining official shall allocate to the United States at least the applicable percentages set forth in paragraph 1.
3. The United States' equitable share will normally be satisfied by the allocation of one or more of the items forfeited (or a portion of the proceeds thereof) to the United States. In cases where only one asset or item is forfeited and a state or local agency requests that asset in lieu of proceeds from the disposition of the property, the determining official shall ensure that the United States receives its costs and equitable share to reflect total federal participation in the forfeiture effort. If the requesting agency is unable to pay the costs and federal share in such a one-asset forfeiture case, the property shall be sold by the U.S. Marshals Service and the proceeds distributed in accordance with these Guidelines. Exceptions to this requirement may be granted by the deciding official upon assurances that (1) the requesting state or local agency lacks funds or authority to satisfy the United States' equitable share and costs; and (2) the forfeited item will fill a demonstrable need of the requesting agency. Such exceptions shall be liberally granted where the two abode

showings are made.

4. Nothing in this section shall alter the ability of the U.S. Marshals Service to pay appropriate expenses from the Fund or to recover costs directly from participating agencies.

9-118.540V.D. Decision-Making Authority

Sharing decisions should be made during the period when forfeiture proceedings are being conducted. Decision-making authority shall be as follows:

1. **Administrative Forfeitures Valued at Less than \$1,000,000.** The head of the seizing investigative bureau shall determine the appropriate equitable transfer of assets forfeited in a single administrative proceeding where the appraised value of the asset(s) is less than \$1,000,000.
2. **Judicial Forfeitures Valued Less Than \$1,000,000.** The United States Attorney shall determine the appropriate equitable distribution of asset(s) forfeited in a single judicial proceeding in his or her district where the appraised value of the asset(s) is less than \$1,000,000.
3. **Administrative and Judicial Forfeitures Valued at \$1,000,000 or Greater and Multi-District Cases.** In the case of a single administrative or judicial proceeding where the appraised value of the asset(s) forfeited is \$1,000,000 or more and in multi-district cases, the United States Attorney(s) shall, after consultation with the investigative bureau(s), forward his (their) evaluation(s) and recommendation(s) to the Deputy Attorney General or his designee for determination.
4. **Real Property Forfeitures.** The Deputy Attorney General or his designee shall approve any equitable transfer of real property. Where appropriate, any such transfer shall include a provision for reversion of title to the United States if the property is not used for the agreed upon purposes.

9-118.600VI. Sale of Seized and Forfeited Property -- A. Pre-Forfeiture Sale of Seized Property

1. Pre-forfeiture sale of property (i.e., interlocutory or stipulated sale) is favored as a means of preserving asset value and mitigating asset management expenses.
2. The United States Attorney shall consult with the investigative bureau and the U.S. Marshals Service to determine the status of any requests for equitable transfer or petitions for remission or mitigation prior to seeking a pre-forfeiture sale of property pending judicial forfeiture.
3. Proceeds from any pre-forfeiture sale shall be promptly deposited into the Seized Asset Deposit Fund unless otherwise ordered by the court.

9-118.620VI.B. Sale of Forfeited Property

1. Upon the successful completion of the forfeiture action and if the property is not placed into official use or transferred to a federal, state, or local agency, it shall be promptly sold and the proceeds of sale promptly deposited in the Fund.
2. Investigative bureaus and the United States Attorneys' offices shall promptly notify the U.S. Marshals Service of all relevant facts affecting the forfeited property. Relevant facts include, but are not limited to:
 - a. Outstanding bills, invoices, orders of mitigation and remission of forfeiture;
 - b. Orders of transfers to federal, state and local agencies;
 - c. Orders of designation for official use by Department components if known; and,
 - d. Appraisals.

Based upon these and other relevant factors, the U.S. Marshals Service shall promptly and appropriately dispose of the property.

9-118.700VII. The Department of Justice Assets Forfeiture Fund -- A. Administration of the Fund

1. The Attorney General delegates the administration of the Fund to the Director, U.S. Marshals Service under the supervision of the Deputy Attorney General.
2. The U.S. Marshals Service shall prepare annual reports on the Fund in accordance with 28 U.S.C. § 524(c) (6).
3. Pursuant to these Guidelines, federal agencies reimbursed by or contributing to the Fund, shall provide information necessary to prepare these reports as requested by the U.S. Marshals Service.
4. The U.S. Marshals Service shall submit a monthly financial statement reflecting the current status of the Fund to the Director, Executive Office for Asset Forfeiture.
5. The U.S. Marshals Service shall prepare annual budget estimates for the Fund based on information submitted by the requesting agencies.

9-118.720VII.B. Payments and Reimbursements

Payments and reimbursements are permitted in six (6) general categories. In any fiscal year, reimbursement for program management expenses and investigative expenses expressly identified in 28 U.S.C. § 524(c)(1) shall not exceed the amount specified in the annual appropriation limitation on the Fund. The categories listed in order of priority are set forth in USAM 9-118.721 (VII.B.1 through VII.B.6 below).

9-118.721 VII.B.1. Asset Management Expenses

Asset management expenses are those expenses that are incurred in connection with the seizure, inventory, appraisal, packaging, movement, storage, maintenance, security and disposition (including destruction) of the asset(s). Asset management expenses include payments for contract services and the employment of outside contractors to operate and manage properties or provide other specialized services as necessary to dispose of such properties. If the asset is an on-going business, the normal and customary expenses of operating the business are asset management expenses only to the extent they are not covered by the income of the business.

9-118.722 VII.B.2. Case Related Expenses

Case related expenses are those expenses that are incurred in connection with normal proceedings undertaken to perfect the United States' interest in seized property through forfeiture. This includes fees and other costs of advertising, translation, court and deposition reporting, expert witness, courtroom exhibit services, employment of attorneys or other specialists in state real estate law by the U.S. Marshals Service, travel and subsistence related to a specific proceeding, and other related items as approved by the Director, Executive Office for Asset Forfeiture. The Director, Executive Office for Asset Forfeiture, may approve the expenses incurred in connection with retention of foreign counsel to gain access to information needed to conduct pre-seizure planning on identified assets, to effect a seizure of assets or to perfect title of forfeited property in a foreign country.

9-118.723 VII.B.3. Payment of Qualified Third Party Interests

Qualified third party interests are those incurred in the payment of valid liens, secured mortgages and debts owed to qualified general creditors pursuant to court order or a favorable ruling on a petition for remission to a court order or an administrative determination. Nothing in this section shall preclude a departmental component from seeking reimbursement from the state or local agency that received the property that is the basis of the claim.

9-118.724 VII.B.4. Equitable Sharing Payments

Equitable sharing payments are those payments which represent amounts paid directly to foreign governments or agencies and state or local agencies. Pursuant to 21 U.S.C. § 881 (e)(3) (a), these amounts shall reflect the degree of participation 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 with respect to the violation of law on which the forfeiture is based.

9-118.725 VII.B.5. Program Management Expenses

Program management expenses are those expenses incurred in conducting program responsibilities that are not related to any specific asset or to any one specific seizure or forfeiture. Expenses included under this heading are:

- a. Automatic Data Processing

1. Expenses for the purchase or lease of automatic data processing equipment which is utilized the majority of the time for asset forfeiture program related work;
 2. Expenses for the development of computer software that will enhance the capability of the Department of Justice to identify, track, manage, process and dispose of forfeitable property may be approved by the Director, Executive Office for Asset Forfeiture;
 3. Each investigative bureau and Department component receiving monies from the Fund for automatic data processing purposes shall develop internal guidelines consistent with these Guidelines governing the use of and accountability for automatic data processing resources acquired with monies from the Fund. Copies of such internal guidelines shall be filed with the Director, Executive Office for Asset Forfeiture; and
 4. The design of all systems to be developed in whole or in part with Fund monies shall be submitted to the Director, Executive Office for Asset Forfeiture, for approval. The design of such software shall be consistent with and advance the overall objective of the Department to implement and maintain an integrated asset seizure and forfeiture information system.
- b. Contracting for services directly related to the processing, data entry and accounting for forfeiture cases.
- c. Printing and graphic services reasonably necessary to effectuate program goals.
- d. Training
1. The Executive Office for Asset Forfeiture shall have responsibility for oversight of forfeiture training and will assist Department components in coordinating asset seizure and forfeiture training conferences. Goals of the Department's training program shall be to provide consistent treatment of identical topics, to take advantage of opportunities for joint training, and to foster cooperation and appreciation of the needs of all components.
 2. Any agency that anticipates requesting reimbursement for training personnel shall submit a justification indicating numbers of persons to be trained, the purpose and scope of training, the location and approximate cost of such training, an outline of topics in need of coverage, and the priority of training needs, as requested by the Director, Executive Office for Asset Forfeiture.
 3. A consolidated training calendar shall be maintained by the Executive Office for Asset Forfeiture for asset seizure and forfeiture training for Department components.
 4. The Assets Forfeiture Fund may be used to finance necessary training expenses directly related to the asset forfeiture program. Generally, this will include:

- a. any required training for employees or contractors dedicated to the asset forfeiture program (e.g., trial advocacy for asset forfeiture attorneys, training on agency computers for contract employees);
 - b. any exclusively asset forfeiture training program that is conducted for other personnel, for whom asset forfeiture is an ancillary duty, to enable them to be more effective in performing asset forfeiture program functions; and
 - c. that portion of a broader law enforcement training program that is directly related to the identification, tracking, evaluation, seizing, processing, accounting for, management or disposition of property subject to forfeiture (e.g., 25 percent of the expenses of a money laundering conference or a drug investigation conference if 25 percent of the conference program deals directly with the asset forfeiture program). Exceptions may be granted on a case-by-case basis by the Director, Executive Office for Asset Forfeiture.
5. Other types of general program management and operational costs as approved by the Director, Executive Office for Asset Forfeiture.

9-118.726VII.B.6. Investigative Expenses

Investigative expenses are those expenses normally incurred in the identification, location and seizure of property subject to forfeiture. Investigative expenses statutorily eligible to be paid from the Fund include such items as:

- a. Awards for information concerning violations of the criminal drug laws;
- b. Awards for information leading to the forfeiture of property under the Comprehensive Drug Abuse Prevention and Control Act of 1970 or the Racketeer Influenced and Corrupt Organizations (RICO) statute;
- c. Awards for information concerning the killing or kidnapping of a Federal drug law enforcement agent;
- d. Purchase of evidence of any violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, RICO or 18 U.S.C. §§ 1956 and 1957;
- e. Contracting for services directly related to the identification of potentially forfeitable assets;
- f. Equipping of conveyances for drug law enforcement functions; and
- g. The storage, protection and destruction of controlled substances.

9-118.730VII.C. Liens and Mortgages

1. Liens or mortgages on real property placed into federal official use or transferred to state or local agencies are not payable from the Fund unless expressly approved by the Director, Executive Office for Asset Forfeiture.
2. Liens and mortgages shall be satisfied after the sale of forfeited property pursuant to a determination to remit or mitigate the forfeiture or an order of the court, except under the following conditions where payments may be made from the Fund:
 - a. Where the payment prior to sale will improve the United States' ability to convey title to the property;
 - b. Where the United States has substantial equity in forfeited real property and payment prior to sale will not result in a net loss to the United States; or
 - c. Where the property is approved for placement into official use by an investigative bureau or the U.S. Marshals Service and all necessary approvals have been obtained.

9-118.740VII.D. Limitations on Use of the Fund -- 1. Items Not Payable From the Fund

Items not payable from the Fund include:

- a. Personnel expenses (e.g., salaries, overtime and benefits) for employees of the United States;
- b. Expenses in connection with the seizure, detention and forfeiture of property where the seizure was effected by a U.S. Postal Inspection Service or a U.S. Customs Service officer and the proceeds of forfeiture, if any, are to be deposited into the Postal Fund or the Customs Forfeiture Fund, respectively;
- c. Purchase of real property or any interest therein except to acquire full title to or to satisfy liens or mortgages on forfeited property;
- d. Payments to equip property transferred to federal agencies (other than investigative bureaus or the U.S. Marshals Service) or state or local agencies;
- e. Expenses in connection with the seizure, detention and disposition of property where the seizure was effected for debt collection or other non-forfeiture purposes; and
- f. Reception and representation expenses (e.g., refreshments, meals, gifts or entertainment).

9-118.742VII.D.2. Claims of Unsecured Creditors

Claims of unsecured creditors generally may not be paid from the Fund, particularly if such payment may jeopardize the legitimate claims of existing lienholders. Pursuant to 28 C.F.R. § 9.6(b), claims of unsecured creditors for debts incurred within one hundred and twenty

(120) days before seizure may be paid by the U.S. Marshals Service in order to preserve the continued operation of a seized business. Such payable expenses include the following:

- a. Payment of reasonable salaries and benefits of employees not believed to have been involved in the unlawful activities giving rise to forfeiture and not having an ownership interest in the business entity;
- b. Payments to third party contractors for goods or services essential to carry on the business and who continue to provide those goods or services as in the regular course of business; and
- c. Utilities.

9-118.743VII.D.3. Payment of Expenses

- a. Asset management expenses incurred by the U.S. Marshals Service, qualified third party interests and equitable sharing payments as set forth above will be obligated against and paid directly from the Fund in accordance with standard Departmental financial management and accounting policies and procedures.
- b. Pursuant to a properly executed Reimbursement Agreement Between Agencies (DOJ-216), all other obligations incurred under these Guidelines will be paid by the agency incurring the obligation and will be reimbursed from the Fund on a monthly basis where practicable by means of an Inter-Agency Fund Transfer (SF-1081).
- c. It is the responsibility of the agency incurring the obligation to prepare the DOJ-216 and SF-1081 forms and obtain the proper authorization from the Director, U.S. Marshals Service. Each DOJ-216 and SF-1081 shall identify the appropriation to be reimbursed from the Fund.
- d. Approved DOJ-216's and SF-1081's will be registered upon receipt by the U.S. Marshals Service. Properly authorized requests (SF 1081's) will be processed for payment in order of receipt. If sufficient funds are available, the U.S. Marshals Service shall approve the transfer of funds to the appropriation identified.
- e. All transfers from the Fund shall be based upon certification of actual expenditures by the requesting agency. Transfers shall not be made based upon estimated obligations.
- f. If a payment requested is in excess of funds available, the U.S. Marshals Service shall not process the request and shall advise the requesting agency of the reason.
- g. If the U.S. Marshals Service and the requesting agency cannot agree on deferral or cancellation of the request, the parties shall seek in writing a determination from the Deputy Attorney General or his designee. The U.S. Marshals Service shall provide notice of the decision to the agency submitting the SF-1081.

9-118.750VII.E. Preparation of Estimates of Anticipated Expenses and Reimbursement

Agreements

1. By June prior to the fiscal year in which the expenses are anticipated and as necessary during the fiscal year, any agency that anticipates requesting reimbursement for expenses from the Fund shall submit requests to the Director, Executive Office for Asset Forfeiture, based upon estimates of anticipated expenditures. Prior to submission to the Director, Executive Office for Asset Forfeiture, these requests shall be reviewed and approved in accordance with the agency's internal procedures for budget submissions.
2. Requests for anticipated reimbursements with accompanying justification shall be submitted in the format required by the Director, Executive Office for Asset Forfeiture. Information regarding appropriated resource levels shall be provided as part of the justification. These requests shall include information regarding the effect that any reprogramming of appropriated resources had on the need for additional resources from the Fund.
3. In evaluating the requests and approving allocations, the Deputy Attorney General or his designee shall ensure that:
 - a. Overall amounts recommended for authorization in a budget for any fiscal year do not exceed appropriation limitations for that year; and
 - b. Overall amounts recommended for authorization in a budget for any fiscal year do not exceed an agreed upon estimate of amounts available for obligation, to include current year income plus any carry-over from the prior year.
4. To the extent possible, the Deputy Attorney General or his designee shall approve a budget of expenses prior to the beginning of the fiscal year. This budget will form the basis for the establishment of reimbursement agreements between the U.S. Marshals Service as the administrator of the Fund and the participating agencies.
5. An agency may change the distribution of its allocation among particular categories of reimbursable expenses during a fiscal year without approval of the Deputy Attorney General or his designee, subject to the following conditions:
 - a. A redistribution cannot increase the total amount allocated for expenses subject to appropriation (i.e., program management and investigative expenses); and
 - b. A proposal for any redistribution shall be submitted with supporting justification to the Director, Executive Office for Asset Forfeiture, thirty (30) days in advance of the proposed effective date of the proposal. A copy of the proposed redistribution shall also be provided to the U.S. Marshals Service. The Director, Executive Office for Asset Forfeiture, may deny such proposed redistribution with notice to the agency and U.S. Marshals Service.
6. Forfeiture funds allocated for specific purposes shall supplement and not supplant appropriated funds provided explicitly or implicitly for those purposes. The calculation of appropriated funds available for specific purposes shall take into account any completed

reprogrammings.

9-118.760VII.F. Payment of Awards

Monies from the Fund may be used to pay awards for specific information or instances of assistance. These monies are not to be used to pay retainers or to pay cooperating informants in the expectation of future specific information or assistance.

1. Applications for awards will be accepted on behalf of any individual. (The term "individual" encompasses corporations and associations.)
2. Applications for awards shall be submitted in a format developed and approved by the Director, Executive Office for Asset Forfeiture.
3. Awards pursuant to 28 U.S.C. § 524 (c)(1)(C) shall be paid only after disposition of the forfeited property.
4. Awards will not be paid to individuals who are representatives of state or local agencies. Any information or assistance provided by an individual who represents a state or local agency will be compensated under rules governing transfers of forfeited property.
5. Any awards pursuant to 28 U.S.C. § 524(c)(1)(B) shall not exceed \$250,000. Any award pursuant to 28 U.S.C. § 524 (c)(1)(B) or (C) shall preclude the recipient of such award from any additional award based on a forfeiture resulting in any way from the same information or assistance. Any award pursuant to 28 U.S.C. § 524 (c)(1)(C) shall not exceed the lesser of \$250,000 or one-fourth the amount realized by the United States from the property forfeited.
 - a. If forfeited property is sold, then the "amount realized by the United States from the property forfeited" is the net proceeds; and
 - b. If forfeited property is retained for official use, the "amount realized by the United States from the property forfeited" is the value of the property at the time of seizure minus expenses paid from the Fund under Section VII.B (1, 2 and 3).
6. All applications for awards shall be directed to the field office of the investigative bureau responsible for processing the forfeiture. Non-Department of Justice agencies (e.g., Organized Crime Drug Enforcement Task Force members such as Internal Revenue Service) should be instructed to direct any inquiries concerning these awards to the investigative bureau responsible for processing the forfeiture.
7. The investigative bureau field unit receiving or initiating an application for an award will prepare a written report that will evaluate the value of the information or assistance provided by the applicant and recommend an amount to be paid.
8. If more than one application for an award pursuant to 28 U.S.C. § 524(c)(1)(C) is received in a single action for forfeiture, the applications should be handled in a consolidated

manner. Decisions on all applications should be made at the same time, and should consider the comparative value of information or assistance provided by each applicant and the aggregate amount of award(s) to be made. In these cases, the limits discussed in paragraph VII. F (3 and 4) apply to the aggregate amount of the awards to be made.

9. Recommendations for payment of awards pursuant to 28 U.S.C. § 524(c)(1)(B) shall:
 - a. Identify the investigation, including agency and/or federal district court case numbers;
 - b. Identify the recommended dollar amount of the award; and
 - c. Include the recommendation of the amount of the award, the seriousness and scope of the criminal activity involved, the degree to which the information or assistance aided the investigation, and whether the information or assistance provided was unique or indispensable.
10. Recommendations for payment of awards pursuant to 28 U.S.C. § 524(c)(1)(C) shall:
 - a. Identify the property or properties regarding which information or assistance was provided, including agency and/or federal district court case numbers;
 - b. Identify which of those properties were forfeited and when;
 - c. Identify the recommended dollar amount of the award, the degree to which the information or assistance aided in the forfeiture and whether the information or assistance provided was unique or indispensable; and
 - d. Identify costs incurred under Section VII.B 1-3 with respect to the property forfeited. A report on those costs shall be obtained from the U.S. Marshals Service.
11. Approval of awards will be in accordance with 28 U.S.C. § 524(c) (2) and any subsequent delegations of authority.

9-118.770VII.G. Purchase of Evidence

1. Pursuant to 28 U.S.C. § 524(c)(1)(G) the Attorney General is authorized to utilize monies from the Fund for purchase of evidence of any violation of the Controlled Substances Act, the controlled Substances Import and Export Act, 18 U.S.C. Ch. 96 or 18 U.S.C. §§ 1956 and 1957.
2. Approval of amounts for the purchase of evidence will be in accordance with (1)(G) and any subsequent delegations of authority.
3. Each investigative agency shall develop internal guidelines covering the use of monies from the Fund for the purchase of evidence. Such guidelines shall be filed with the Executive Office for Asset Forfeiture.

4. If a participating agency recovers part or all of the monies that are used to purchase evidence for which it has obtained reimbursement from the Fund, the recovered monies shall be returned to the Fund.

9-118.780VII.H. Payments to Equip Conveyances for Drug Law Enforcement Functions

1. Decisions to equip a government-owned or leased conveyance (vehicle, vessel, or aircraft) for drug law enforcement functions shall be made by the organizational component within the agency which is responsible for management of the conveyance.
2. Reimbursable payments may be made to equip conveyances which are used the majority of the time for activity relating to the investigation or apprehension of violators of the federal drug laws and the seizure and forfeiture of their assets. Monies from the Fund may not be used for recurring expenses such as fuel, spare or replacement parts, maintenance, or replacement of equipment due to wear and tear by the agency using the conveyance.
3. Equipping should generally occur before the conveyance is placed into official use and only if it is intended to be in service for at least two (2) years. Exceptions may be made to this guidance only under extraordinary circumstances and shall be documented.
4. Unreasonable amounts shall not be spent on equipping Government-owned or leased conveyances for drug law enforcement purposes. Purchased equipment must be affixed to the conveyance and used integrally with the conveyance.
5. Each agency shall establish internal guidelines which shall ensure the effective utilization of monies from the Fund budgeted for equipping forfeited, leased or owned conveyances for drug law enforcement purposes. These guidelines should consider the estimated useful life of the conveyance and the availability of similarly equipped conveyances. Such guidelines, and any subsequent revisions, are to be filed with the Executive Office for Asset Forfeiture. Agencies shall maintain records, by conveyance, of amounts from the Fund spent on equipping.

9-118.790VII.I. Cash Management

Seized cash, except where it is to be used as evidence, is to be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. The Director, Executive Office for Asset Forfeiture, may grant exceptions to this policy in extraordinary circumstances. Transfer of cash to the United States Marshal should occur within sixty (60) days of seizure or ten (10) days of indictment.

9-118.800VIII. Transfer of Forfeited Property to Foreign Countries

- A. The Attorney General may transfer any forfeited personal property or the proceeds from the sale of any forfeited personal or real property, as authorized by statute, to a foreign country which participated directly or indirectly in any acts which led to the seizure or forfeiture of the property, if such transfer:

1. Has been agreed to by the Secretary of State;
2. Is authorized in an international agreement between the United States and the foreign country; and
3. Is made to a country which, where applicable, has been certified under § 481(h) of the Foreign Assistance Act of 1961.

B. Requests by a foreign agency shall be in the form prescribed by the Director, Executive Office for Asset Forfeiture.

9-118.900IX. Discontinuance of Federal Forfeiture Proceedings -- A. Federal Judicial Forfeiture Proceedings

1. A decision to discontinue a federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the presenting investigative bureau.
2. In making this decision, the United States Attorney shall consider the impact of such decision on the financial status of the Fund.
3. Decisions to discontinue judicial forfeitures in favor of state or local proceedings are to be documented.

9-118.920IX.B. Federal Administrative Forfeiture Proceedings

1. A decision to discontinue a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the investigative bureau.
2. In making this decision, the head of the investigative bureau must consider the impact of such decision on the financial status of the Fund and where appropriate consult with the U.S. Marshals Service in that regard.
3. Investigative bureaus shall develop guidelines for recording these decisions and providing reports to the Director, Executive Office for Asset Forfeiture, as requested.

9-118.990X. U.S. Customs Service Forfeitures

- A. Pursuant to 28 U.S.C. § 524 (c), all proceeds from the forfeiture of property under any law enforced or administered by the Department are to be deposited in the Department of Justice Assets Forfeiture Fund, except as specified in 28 U.S.C. § 524 (c) (4) and except to the extent that the seizure was effected by a U.S. Customs Service officer or to the extent that custody was maintained by the Customs Service, in which case the provisions of

19 U.S.C. § 1613b (Customs Forfeiture Fund) shall apply.

- B. To the extent that the U.S. Marshals Service may have the authority and the capacity and pursuant to a Memorandum of Understanding between the Department of Treasury and the Department of Justice, the Marshals Service may store and maintain seized property for the U.S. Customs Service. The reimbursement for expenses incurred by either the U.S. Marshals Service or the U.S. Customs Service attendant to custody of seized property shall be in accordance with this agreement.
- C. Pursuant to 19 U.S.C. § 1616a, requests for transfers of forfeited property by federal agencies or by participating foreign, state and local agencies in forfeitures where the seizure was effected by a U.S. Customs Service officer or custody was maintained by the Customs Service shall be directed to the Customs Service for processing and disposition pursuant to guidelines of the Department of Treasury. An information copy shall be sent to the United States Attorney in the district of seizure.
- D. In the event of an unresolved dispute concerning whether a forfeiture constitutes a U.S. Customs Service or Department of Justice forfeiture for purposes of cash or proceeds disposition or for federal, state and local transfers, the Deputy Attorney General or his designee and the Assistant Secretary for Enforcement, Department of the Treasury, shall resolve the issue.

July 31, 1990

DICK THORNBURGH

ATTORNEY GENERAL

9-119.000
MISCELLANEOUS

- 9-119.100 Forfeiture-related Approval/Consultation Requirements -- Administrative Forfeiture 60-Day Notice Waiver
 - 9-119.102 Adoption Policy -- Approval/Consultation Procedure
 - 9-119.103 Assets Located in Foreign Countries -- Approval/Consultation Procedure
 - 9-119.104 Attorney Fees -- Approval/Consultation Procedure
 - 9-119.105 EAJA Attorneys' Fees and Costs Payment from the Assets Forfeiture Fund -- Approval/Consultation Procedure
 - 9-119.106 Equitable Sharing -- Approval/Consultation Procedure
 - 9-119.107 Equitable Sharing in International Cases -- Approval/Consultation Procedure
 - 9-119.108 Exceptions to Cash Management Policy -- Approval/Consultation Procedure
 - 9-119.109 Expedited Payment of Lienholders in Forfeiture Cases -- Approval/Consultation Procedure
 - 9-119.110 Expedited Settlement -- Approval/Consultation Procedure
 - 9-119.111 Forfeiture Appeals -- Approval/Consultation Procedure
 - 9-119.112 In Forma Pauperis Petitions -- Approval/Consultation Procedure
 - 9-119.113 Judicial Forfeiture of Property that is Administratively Forfeitable -- Approval/Consultation Procedure
 - 9-119.114 Official Use of Personal Property -- Approval/Consultation Procedure
 - 9-119.115 Official Use of Real Property -- Approval/Consultation Procedure
 - 9-119.116 Seizure/Restraint of Ongoing Business -- Approval/Consultation Procedure
 - 9-119.117 Settlement Authority (Attorney General Order 1598-92) -- Approval/Consultation Procedure
 - 9-119.118 Settlements -- Unsecured Partial Payments -- Approval/Consultation Procedure
 - 9-119.119 Temporary Restraining Orders Pre-Indictment -- Approval/Consultation Procedure
 - 9-119.120 Warranting Title -- Approval/Consultation Procedure
 - 9-119.121 Weed and Seed Initiative -- Approval/Consultation Procedure
 - 9-119.200 Policy Limitations on Application of Forfeiture Provisions to Attorney Fees
 - 9-119.202 Division Approval
 - 9-119.203 Agreements to Exempt from Forfeiture an Asset Transferred to an Attorney as Fees for Legal Services
 - 9-119.300 Food, Drug and Cosmetic Act Cases
 - 9-119.400 Money Laundering Prosecutions and Forfeitures
 - 9-119.500 FIRREA Memorandum of Understanding
 - 9-119.600 Memorandum of Understanding Regarding Money Laundering Investigations
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9-119.100 Forfeiture-related Approval/Consultation Requirements -- Administrative Forfeiture 60-Day Notice Waiver

In all administrative forfeitures, the notice under 19 U.S.C. § 1607 to possessors, owners, and other interested parties, including lienholders, known at the time of seizure, shall occur no

later than 60 days from the date of seizure. For parties whose identity is determined after seizure, the written notice shall occur within 60 days after such determination. Waivers of this 60-day rule may be obtained in writing in exceptional circumstances from a designated official within the seizing agency. *See Asset Forfeiture Policy Manual (1996), Chapter 2; Asset Forfeiture Manual, Volume III, Policy Compendium -tab 45; and USAM 9-112.210.*

9-119.102 Adoption Policy – Approval/Consultation Procedure

If a Federal agency declines to adopt a seizure despite the recommendation of the United States Attorney, the agency must promptly document its reasons for declination in a memorandum and forward copies of the memorandum to the United States Attorney and the Asset Forfeiture and Money Laundering Section (AFMLS). AFMLS will resolve any disagreements and may authorize direct adoption of state or local seizures by United States Attorneys for judicial forfeiture in appropriate circumstances. *See Asset Forfeiture Policy Manual (1996), Chapter 6; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 42; and USAM 9-116.170.*

9-119.103 Assets Located in Foreign Countries -- Approval/Consultation Procedure

Assistant United States Attorneys shall consult with the Office of International Affairs (OIA) before filing a civil action based on 28 U.S.C. § 1355(b)(2). OIA and AFMLS will determine whether the foreign country where the assets are located can assist in the U.S. action. *See USAM 9-13.526.*

9-119.104 Attorney Fees – Approval/Consultation Procedure

No criminal or civil forfeiture proceedings may be instituted to forfeit an asset transferred to an attorney as fees for legal services without the prior approval of the Assistant Attorney General, Criminal Division. Requests for approval to forfeit attorneys' fees should be made to the Asset Forfeiture and Money Laundering Section (AFMLS).

No formal or informal, written or oral agreements, including the exemption of certain assets to pay attorneys' fees restrained as substitute assets, may be made to exempt an asset transferred to an attorney as fees for legal services from forfeiture without the prior approval of the Assistant Attorney General, Criminal Division. All such requests for approval to exempt the attorneys' fees should be made to AFMLS. *See Asset Forfeiture Manual, Volume III, Policy Compendium - tab 15; Asset Forfeiture Policy Manual (1996), Chapter 9, section II; and USAM sections 9-119.202 and 9-119.203.*

9-119.105 EAJA Attorneys' Fees and Costs Payment from the Assets Forfeiture Fund -- Approval/Consultation Procedure

Payment of costs and attorneys' fees from the Assets Forfeiture Fund to pay Equal Access to Justice (EAJA) awards arising from actions related to the forfeiture of property must be approved. Requests for approval to charge an EAJA award against the Fund or against Fund allocations must be submitted to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Asset Forfeiture Policy Manual (1996), Chapter 7; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 48; and USAM 9-117.210.*

9-119.106 Equitable Sharing -- Approval/Consultation Procedure

The Deputy Attorney General (or designee) must approve equitable sharing:

- in cases involving \$1 million or more in forfeited assets;
- in multi-district cases; and
- in cases involving real property transfers to a state or local agency for law enforcement related use.

The United States Attorney may approve equitable sharing in judicial cases involving less than \$1 million in forfeited assets (including transfer of personal property for official use.)

The seizing agency may approve equitable sharing in administrative cases involving less than \$1 million in forfeited assets (including transfer of property for official use.)

The Deputy Attorney General (or designee) must approve allocations from the Assets Forfeiture Fund to program participants for statutorily designated uses.

Personal approval of the United States Attorney is required for discontinuance of federal forfeiture action in favor of state proceedings.

See Attorney General's Guidelines on Seized and Forfeited Property; Asset Forfeiture Policy Manual (1996), Chapter 8; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 10; and USAM 9-118.000 et seq.

9-119.107 Equitable Sharing in International Cases -- Approval/Consultation Procedure

Commitments to share internationally in specific cases may only be made with the approval of the Attorney General and the Secretary of State. Prior commitments regarding sharing with foreign governments should be scrupulously avoided. The request to share internationally should be made to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Asset Forfeiture Policy Manual (1996), Chapter 6; Asset Forfeiture Manual, Volume III, Policy Compendium - tabs 11, 24; and USAM 9-116.400.*

9-119.108 Exceptions to Cash Management Policy -- Approval/Consultation Procedure

The Department of Justice Cash Management Policy requires that all seized cash be deposited promptly into the Seized Asset Deposit Fund. Cash may be detained only when its retention serves an essential evidentiary purpose. The United States Attorney may approve this retention for amounts less than \$5,000. The Chief of the Asset Forfeiture and Money Laundering Section (AFMLS) may grant exceptions for amounts of \$5,000 or more in extraordinary circumstances. *See Asset Forfeiture Policy Manual (1996), Chapter 1; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 33; and USAM 9-111.600.*

9-119.109 Expedited Payment of Lienholders in Forfeiture Cases -- Approval/Consultation

Procedure

The Asset Forfeiture and Money Laundering Section (AFMLS) must approve in writing any agreement to pay liens and mortgages to a lienholder prior to forfeiture under the Expedited Forfeiture Settlement Policy for Mortgage Holders. *See Asset Forfeiture Policy Manual (1996), Chapter 3; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 44; and USAM 9-113.800.*

9-119.110 Expedited Settlement -- Approval/Consultation Procedure

The United States Attorney shall within 10 working days report the denial of a request for expedited settlement made by a financial institution (as defined in 31 U.S.C. § 5312) in real property cases to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Expedited Forfeiture Settlement and Policy for Mortgagees and Lienholders, revised October 1993; Asset Forfeiture Policy Manual (1996), Chapter 9, Section I, at page 9-4.*

9-119.111 Forfeiture Appeals -- Approval/Consultation Procedure

Adverse decision memos in any forfeiture shall be sent to the Appellate Section, Criminal Division, with a copy to the Asset Forfeiture and Money Laundering Section (AFMLS).

9-119.112 In Forma Pauperis Petitions -- Approval/Consultation Procedure

In cases where the seizing agency believes there are clear and articulable reasons for denial of an In Forma Pauperis petition, the request for waiver shall be referred to the Asset Forfeiture and Money Laundering Section (AFMLS) for final determination. *See Asset Forfeiture Policy Manual (1996), Chapter 2; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 28; and USAM 9-112.220.*

9-119.113 Judicial Forfeiture of Property that is Administratively Forfeitable -- Approval/Consultation Procedure

The Asset Forfeiture and Money Laundering Section (AFMLS) must approve judicial forfeiture of property that would otherwise be forfeited administratively in cases that are *not* covered by the exception for aggregation of seized property or the exception for compelling prosecutorial considerations. *See Asset Forfeiture Policy Manual (1996), Chapter 2; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 28; and USAM 9-112.110.*

9-119.114 Official Use of Personal Property -- Approval/Consultation Procedure

The seizing agency head (or designee) may approve placement of personal property into the agency's own official use or that of another participating agency, but the Chief, Asset Forfeiture and Money Laundering Section (AFMLS), must approve the decision if liens on the property equal \$25,000 or one-third of the value, whichever is greater.

The U.S. Marshals Service must approve the placement of personal property into official use by non-participating federal agencies, but the Chief, AFMLS, must approve the decision if:

- the property is \$25,000 or more in value; or
- liens on property equal or exceed \$25,000 or one third of the value, whichever is greater.

See The Attorney General's Guidelines on Seized and Forfeited Property, Asset Forfeiture Policy Manual (1996), Chapter 8; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 10; and USAM 9-118.400.

9-119.115 Official Use of Real Property -- Approval/Consultation Procedure

The Attorney General must approve the placement of real property into official use by any federal agency. *See The Attorney General's Guidelines on Seized and Forfeited Property, Asset Forfeiture Policy Manual (1996), Chapter 8; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 10; and USAM 9-118.400.*

9-119.116 Seizure/Restraint of Ongoing Business -- Approval/Consultation Procedure

The Money Laundering guidelines require that Assistant United States Attorneys consult with AFMLS before seeking forfeiture of an ongoing business on a money laundering facilitation theory. *See USAM 9-105.330.*

9-119.117 Settlement Authority (Attorney General Order 1598-92) -- Approval/Consultation Procedure

Consultation with the Asset Forfeiture and Money Laundering Section (AFMLS) is required regarding a proposed settlement if a civil or criminal forfeiture claim is more than \$500,000, unless the original claim is between \$500,000 and \$5 million, and the difference between the original claim and the settlement amount does not exceed 15 percent of the original claim.

United States Attorneys have authority to independently settle civil or criminal forfeiture cases:

- involving amounts not exceeding \$500,000; and
- involving amounts between \$500,000 and \$5 million when the settlement releases not more than 15 percent of the original claim.

The Deputy Attorney General's approval is required for a settlement in which the difference between the original claim and the proposed settlement exceeds \$2 million or 15 percent of the original claim, whichever is greater. *See Asset Forfeiture Policy Manual (1996), Chapter 3; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 40; and USAM 9-113.200.*

9-119.118 Settlements -- Unsecured Partial Payments -- Approval/Consultation Procedure

Settlements should not provide for unsecured partial payments except with the approval of

AFMLS in consultation with the U.S. Marshals Service. *See Asset Forfeiture Policy Manual* (1996), Chapter 3; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 55; and USAM 9-113.107.

9-119.119 Temporary Restraining Orders Pre-Indictment -- Approval/Consultation Procedure

Prior approval of the Asset Forfeiture and Money Laundering Section (AFMLS) is required to seek a pre-indictment ex parte application for a temporary restraining order in criminal forfeiture cases. (Organized Crime and Racketeering Section independently exercises authority to review restraining orders and seek the views of AFMLS.) *See Asset Forfeiture Policy Manual* (1996), Chapter 2; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 7; and USAM 9-112.240.

9-119.120 Warranting Title -- Approval/Consultation Procedure

Approval must be sought from the Seized Assets Division, Marshals Service, to convey title through a general warranty deed or its equivalent. *See Asset Forfeiture Policy Manual* (1996), Chapter 5; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 34; and USAM 9-115.421.

9-119.121 Weed and Seed Initiative -- Approval/Consultation Procedure

The Deputy Attorney General (or designee) must approve transfer of real property to a state or local agency for further transfer to other government agencies or non-profit agencies for use in the Weed and Seed Program. Requests should be submitted to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Asset Forfeiture Policy Manual* (1996), Chapter 6; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 38; and USAM 9-116.520.

9-119.200 Policy Limitations on Application of Forfeiture Provisions to Attorney Fees

While there are no constitutional or statutory prohibitions to application of the third party forfeiture provisions to attorneys fees, the Department recognizes that attorneys, who among all third parties uniquely may be aware of the possibility of forfeiture, may not be able to meet the statutory requirements for relief for third party transferees without hampering their ability to represent their clients. In particular, requiring an attorney to bear the burden of proving lack of reasonable cause to believe that an asset was subject to forfeiture may prevent the free and open exchange of information between an attorney and a client. The Department recognizes that the proper exercise of prosecutorial discretion dictates that this be taken into consideration in applying the third party forfeiture provisions to attorney fees. *See the Criminal Resource Manual at 2301 through 2303*. Accordingly, it is the policy of the Department that application of the forfeiture provisions to attorney fees be carefully reviewed and that they be uniformly and fairly applied.

9-119.202 Division Approval

No civil or criminal forfeiture proceedings may be instituted to forfeit an asset transferred to an attorney as fees for legal services without the prior approval of the Assistant Attorney

General, Criminal Division, pursuant to the guidelines set out in the Criminal Resource Manual:

Attorney Fee Forfeiture Guidelines	<u>Criminal Resource Manual at 2304</u>
Forfeiture of Assets Transferred to an Attorney in a Fraudulent or Sham Transaction	<u>Criminal Resource Manual at 2305</u>
Forfeiture of Assets Transferred to an Attorney for Representation in a Civil Matter	<u>Criminal Resource Manual at 2306</u>
Forfeiture of Assets Transferred to an Attorney for Representation in a Criminal Matter	<u>Criminal Resource Manual at 2307</u>
Discussion of Actual Knowledge and/or Reasonable Cause to Know	<u>Criminal Resource Manual at 2308</u>
At the Time of the Transfer	<u>Criminal Resource Manual at 2309</u>
Actual Knowledge of Forfeitability	<u>Criminal Resource Manual at 2310</u>
Knowledge that the Government has Asserted that a Particular Asset is Subject to Forfeiture	<u>Criminal Resource Manual at 2311</u>
Knowledge that the Asset in Fact is from Criminal Misconduct	<u>Criminal Resource Manual at 2312</u>
Reasonable Cause to Know that an Asset is Subject to Forfeiture	<u>Criminal Resource Manual at 2313</u>
Policy Concerning Issuance of Notification Letters to Attorneys	<u>Criminal Resource Manual at 2314</u>
Discovery of Information Concerning an Asset Transferred to an Attorney as Fees for Legal Services	<u>Criminal Resource Manual at 2315</u>
Compelled Disclosure of Confidential Communications During the Course of the Representation	<u>Criminal Resource Manual at 2316</u>
Subpoenas Issued to Attorneys to Obtain Fee Information	<u>Criminal Resource Manual at 2317</u>
Post-Judgment Discovery Proceedings Under the Criminal Forfeiture Statutes	<u>Criminal Resource Manual at 2318</u>

No formal or informal, written or oral, agreements may be made to exempt an asset transferred to an attorney as fees for legal services from forfeiture under any civil or criminal

forfeiture statute without the prior approval of the Assistant Attorney General, Criminal Division. *See* USAM 9-119.203.

Requests for Criminal Division approval of, and questions regarding, the forfeiture of assets transferred to an attorney as fees for legal services or agreements to exempt such assets from forfeiture should be directed to the Asset Forfeiture and Money Laundering Section, Criminal Division, (202) 514-1263.

9-119.203 Agreements to Exempt from Forfeiture an Asset Transferred to an Attorney as Fees for Legal Services

Agreements may be entered into to exempt from forfeiture an asset transferred to an attorney as fees for legal services, but only with the prior approval of the Assistant Attorney General, Criminal Division. *See* USAM 9-119.202. Agreements may be approved only if: (1) there are reasonable grounds to believe that the particular asset is not subject to forfeiture; and (2) the asset is transferred in payment of legitimate fees for legal services actually rendered or to be rendered.

Efforts should be made to assist in identifying the assets, if any, belonging to a defendant which are not subject to forfeiture. In this regard, any proffer of evidence by an attorney as to the source of the assets may be relied upon. However, an agreement to exempt fees based on such a proffer must contain an express condition that the agreement is not binding if full and accurate disclosure has not been made or if the proffer is false or misleading.

In determining whether an asset is being transferred in payment of a legitimate fee, the amount of the fee may be taken into consideration. However, the focus should not be on whether the fee is reasonable. The focus must be on whether it is a legitimate transaction or a sham transaction designed to shield assets from forfeiture. If the transaction is legitimate, the fee, even if it appears exorbitant, may be exempted if it is paid from a source that meets the first requirement. Conversely, a fee, even if reasonable, may not be exempted from forfeiture by agreement if the first requirement is not met. Any agreement to exempt a fee from forfeiture, however, may be limited to a specific amount if there is a basis to believe that only assets in that amount are not subject to forfeiture.

9-119.300 Food, Drug and Cosmetic Act Cases

The forfeiture policies contained in this chapter of the United States Attorneys' Manual (entitled "Forfeitures") do not apply to civil forfeiture cases brought pursuant to the Federal Food, Drug and Cosmetic Act (FD&C Act), 21 U.S.C. § 334. For information concerning the policies and procedures applicable to such cases, the Office of Consumer Litigation in the Civil Division should be contacted. *See* Criminal Resource 87. However, civil and criminal forfeiture investigations conducted by Special Agents under 21 U.S.C. § 334 but which result in forfeiture cases under other statutes are governed by the forfeiture policies contained in this chapter of the United States Attorneys' Manual.

9-119.400 Money Laundering Prosecutions and Forfeitures

See USAM 9-105.000 et seq. for a discussion of the Department's policy concerning

money laundering prosecutions and forfeitures.

9-119.500 FIRREA Memorandum of Understanding

See the Criminal Resource Manual at 2319 to 2320. See also the Criminal Resource Manual at 2290 ("Guidelines and Procedures for Restoration of Forfeited Property to Crime Victims via Restitution in lieu of Remission").

9-119.600 Memorandum of Understanding Regarding Money Laundering Investigations

See the Criminal Resource Manual at 2186.

9-120.000
[RESERVED]

9-121.000
[RESERVED]

9-122.000
[RESERVED]

9-123.000
[RESERVED]

9-124.000
[RESERVED]

**9-125.000
RESERVED]**

9-126.000
[RESERVED]

9-127.000
[RESERVED]

9-128.000
[RESERVED]

9-129.000
[RESERVED]

9-130.000

LABOR STATUTES GENERALLY

9-130.100 Investigative Jurisdiction
9-130.200 Supervisory Jurisdiction
9-130.300 Consultation Requirements Contained in USAM
9-131.000 to 9-139.000

9-130.100 Investigative Jurisdiction

See the Criminal Resource Manual at 2401.

9-130.200 Supervisory Jurisdiction

Questions concerning the labor statutes included in Chapters 130-139 should be referred to the Labor-Management Unit of the Organized Crime and Racketeering Section of the Criminal Division with the following exceptions:

- A. Public Integrity Section, Criminal Division, supervises violations of 18 U.S.C. § 1951 involving extortion under color of official right or extortion by a public official through misuse of his/her office;
- B. Terrorism and Violent Crimes Section, Criminal Division, supervises violations of the following statutes when the violations do not involve labor-management disputes or organized crime:
 - 1. 18 U.S.C. § 1951 -- Robbery and Commercial Extortion;
 - 2. 18 U.S.C. § 33 -- Destruction of Motor Vehicles. *See* USAM 9-63.241;
 - 3. 18 U.S.C. § 844 -- Use of explosives or arson. *See* USAM 9-63.900 et seq; and
 - 4. 49 U.S.C. § 80501 -- Damage to Property Being Transported In Interstate Commerce (formerly 15 §§ 1281 and 1282 transferred to Title 49 effective July 5, 1994).

9-130.300 Consultation Requirements Contained in USAM 9-131.000 to 9-139.000

Consultation with the Criminal Division through the Organized Crime and Racketeering Section's Labor-Management Unit is required prior to initiating criminal prosecution in the following matters:

- A. 18 U.S.C. § 1951 -- Extortion arising out of labor disputes. *See* USAM 9-131.030.
- B. 29 U.S.C. § 504 -- Prohibited Service with Labor Unions and Employer Associations. *See* USAM 9-138.030.
- C. 29 U.S.C. § 1111 -- Prohibited Service with Employee Benefit Plans. *See* USAM 9-138.030.
- D. 45 U.S.C. § 152, Tenth and Sec. 180 -- Labor-Management Disputes in the Railway and Airline Industries. *See* USAM 9-139.103.

THE HOBBS ACT -- 18 U.S.C. § 1951

-
- 9-131.010 Introduction
9-131.020 Investigative and Supervisory Jurisdiction
9-131.030 Consultation Prior to Prosecution
9-131.040 Policy
-

9-131.010 Introduction

This chapter focuses on the Hobbs Act (18 U.S.C. § 1951) which prohibits actual or attempted robbery or extortion affecting interstate or foreign commerce. Section 1951 also proscribes conspiracy to commit robbery or extortion without reference to the conspiracy statute at 18 U.S.C. § 371. Although the Hobbs Act was enacted as a statute to combat racketeering in labor-management disputes, the statute is frequently used in connection with cases involving public corruption, commercial disputes, and corruption directed at members of labor unions.

The Criminal Resource Manual contains a discussion of Hobbs Act case law and form indictments:

Generally	<u>Criminal Resource Manual at 2402</u>
Extortion By Force, Violence, or Fear	<u>Criminal Resource Manual at 2403</u>
Under Color of Official Right	<u>Criminal Resource Manual at 2404</u>
Form Indictment -- Interference with Commerce by Extortion	<u>Criminal Resource Manual at 2405</u>
Form Indictment -- Interference with Commerce by Robbery (18 U.S.C. § 1951)	<u>Criminal Resource Manual at 2406</u>

9-131.020 Investigative and Supervisory Jurisdiction

Primary investigative jurisdiction of offenses in 18 U.S.C. § 1951 lies with the Federal Bureau of Investigation. The Inspector General's Office of Investigations, Division of Labor Racketeering (formerly the Office of Labor Racketeering), United States Department of Labor, is also authorized to investigate violations of 18 U.S.C. § 1951 in labor-management disputes involving the extortion of property from employers by reason of authority conferred on investigators as Special Deputy United States Marshals.

Supervisory jurisdiction over 18 U.S.C. § 1951 is exercised by the following offices with respect to the offenses noted:

- A. Extortion under color of official right or extortion by a public official through misuse of his/her office is supervised by the Public Integrity Section, Criminal Division.
- B. Extortion and robbery in labor-management disputes is supervised by the Labor-Management Unit of the Organized Crime and Racketeering Section, Criminal Division.
- C. All other extortion and robbery offenses not involving public officials or labor-management disputes are supervised by the Terrorism and Violent Crimes Section, Criminal Division.

9-131.030 Consultation Prior to Prosecution

Consultation with the Organized Crime and Racketeering Section's Labor-Management Unit is required prior to the commencement of prosecution by the return of an indictment or the filing of a complaint or information in cases arising out of labor-management disputes.

Criminal Division attorneys may be consulted at any stage during the investigation process. When a United States Attorney requests an FBI investigation of a possible Hobbs Act violation, the FBI field offices will in certain cases notify Washington and FBI headquarters may consult with the appropriate Section of the Criminal Division before the investigation is concluded. Any delay or other difficulties arising out of this procedure may be obviated by discussing the matter with the appropriate Sections of the Criminal Division.

9-131.040 Policy

The robbery offense in 18 U.S.C. § 1951 is to be utilized only in instances involving organized crime, gang activity, or wide-ranging schemes. In certain circumstances, the appropriate section of the Criminal Division must be consulted before prosecution is initiated.

See USAM 9-131.030.

9-132.000

**LABOR MANAGEMENT RELATIONS
ACT -- 29 U.S.C. § 186**

9-132.010 Introduction

9-132.020 Investigative and Supervisory Jurisdiction

9-132.010 Introduction

Section 302 of the Labor Management Relations Act (29 U.S.C. § 186) punishes the delivery and receipt, respectively, of things of value paid by employers and persons acting in the interest of employers to representatives of employees and labor union officials in industries covered by the Labor Management Relations Act (LMRA) (29 U.S.C. § 141, *et seq.*). The LMRA, sometimes referred to as the "Taft-Hartley Act," applies to all employees whose labor-management relations is subject to the jurisdiction of the National Labor Relations Board. (29 U.S.C. § 152, *et seq.*). Therefore, section 186 does not apply to labor-management disputes involving employees in the railway and airline industries [see Railway Labor Act at 9-139.103], employees of the Federal Government, and employees of state and local governments, or of corporations wholly owned by such governments (other than the United States Postal Service which is subject to the LMRA). See 29 U.S.C. 29 U.S.C. § 152 *et seq.*

Further guidance on these issues is available in the Criminal Resource Manual:

Generally	<u>Criminal Resource Manual at 2407</u>
Form Indictment -- Solicitation or Receipt of Prohibited Payment	<u>Criminal Resource Manual at 2408</u>
Form Indictment -- Prohibited Payment to Labor Union Official	<u>Criminal Resource Manual at 2409</u>
Form Indictment -- Solicitation or Receipt of Bribery Payment	<u>Criminal Resource Manual at 2410</u>
Form Indictment -- Bribery of Labor Union Official	<u>Criminal Resource Manual at 2411</u>
Decisions and Matters Involving 29 U.S.C. § 186	<u>Criminal Resource Manual at 2412</u>
Outline of 29 U.S.C. § 186 (Taft-Hartley)	<u>Criminal Resource Manual at 2413</u>

9-132.020 Investigative and Supervisory Jurisdiction

Investigative jurisdiction lies with the Federal Bureau of Investigation and the Inspector General's Office of Investigations, Division of Racketeering (formerly the Office of Labor Racketeering), United States Department of Labor (by reason of authority conferred on investigators as Special Deputy United States Marshals).

The Labor-Management Unit of the Organized Crime and Racketeering Section, Criminal Division has supervisory jurisdiction over 29 U.S.C § 186.

9-133.000

**EMBEZZLEMENT AND THEFT FROM LABOR
UNIONS (29 U.S.C. § 501(c)) AND EMPLOYEE
BENEFIT PLANS (18 U.S.C. § 664)**

9-133.010 Introduction

9-133.010 Policy -- Concurrent Federal-State Jurisdiction

9-133.030 Investigative and Supervisory Jurisdiction

9-133.010 Introduction

This chapter focuses on two statutes that prohibit embezzlement or theft. Title 29 U.S.C. § 501(c) prohibits the embezzlement and theft of property from a labor organization covered by the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. § 401, *et seq.*). Title 18 U.S.C. § 664 prohibits the embezzlement and theft of property by any person from an employee pension or welfare benefit plan subject to title I of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.*, or a fund connected to such a plan.

See the Criminal Resource Manual for a brief discussion of the law, form indictments, and a listing of cases involving these statutes:

Generally	<u>Criminal Resource Manual at 2414</u>
Form Indictment -- Embezzlement and Theft of Labor Union Assets in the Private Sector -- (29 U.S.C. § 501 (c))	<u>Criminal Resource Manual at 2416</u>
Form Indictment -- Embezzlement and Theft From an Employee Pension or Welfare Benefit Plans or a Fund Connected With Such Plans -- (18 U.S.C. § 664)	<u>Criminal Resource Manual at 2417</u>
29 U.S.C. 501(c) Decisions	<u>Criminal Resource Manual at 2418</u>
18 U.S.C. § 664 Decisions	<u>Criminal Resource Manual at 2419</u>

9-133.010 Policy -- Concurrent Federal-State Jurisdiction

In any matter which is a violation of 29 U.S.C. § 501(c) or 18 U.S.C. § 664 as well as a violation of state criminal law, the United States Attorney (USA) is authorized to determine after

investigation whether the matter should be referred to local authorities for prosecution or whether it warrants federal prosecution. When such matters are referred to local authorities, the Federal Bureau of Investigation or the United States Department of Labor should be advised of the referral and requested to determine the status of the local prosecution 90 days after referral. In the event local authorities fail to take any action upon such a referral within 90 days, the USA should then initiate federal prosecution.

9-133.030 Investigative and Supervisory Jurisdiction

The Labor-Management Unit of the Organized Crime and Racketeering Section, Criminal Division, has supervisory jurisdiction over 29 U.S.C. § 501 and 18 U.S.C. § 664. For information on investigative jurisdiction, see the Criminal Resource Manual at 2415.

9-134.000
EMPLOYEE BENEFIT PLAN
KICKBACKS -- 18 U.S.C. § 1954

9-134.010 Introduction

9-134.020 Investigative and Supervisory Jurisdiction

9-134.010 Introduction

This chapter focuses on the investigation and prosecution of conduct prohibited by Title 18 U.S.C. § 1954. Section 1954 prohibits the giving or acceptance, respectively, of things of value paid by any person to four categories of recipients in relation to matters concerning an employee pension or welfare benefit plan subject to title I of Employee Retirement Income Security Act (ERISA). *See* 29 U.S.C. § 1001, *et seq.*

See the Criminal Resource Manual for a discussion of the statute, form indictments, and a list of cases involving § 1954.

Employee Benefit Plan Kickbacks -- 18 U.S.C. § 1954	<u>Criminal Resource Manual at 2420</u>
Bribery and Graft Affecting Employee Benefit Plans	<u>Criminal Resource Manual at 2422</u>
Form Indictment -- Solicitation and Receipt of Bribery and Graft	<u>Criminal Resource Manual at 2423</u>
Form Indictment -- Offer and Gift of Bribery and Graft Payments	<u>Criminal Resource Manual at 2424</u>
Form Indictment -- Employee Benefit Plan Kickbacks	<u>Criminal Resource Manual at 2425</u>
Decisions Involving 18 U.S.C. § 1954	<u>Criminal Resource Manual at 2426</u>

9-134.020 Investigative and Supervisory Jurisdiction

For information on investigative jurisdiction, *see* the Criminal Resource Manual at 2421. The Labor-Management Unit of the Organized Crime and Racketeering Section, Criminal Division has supervisory jurisdiction over 18 U.S.C. § 1954.

9-135.000

**EMPLOYEE RETIREMENT INCOME SECURITY ACT
OF 1974 (ERISA) -- 29 U.S.C. SEC. 1001 ET SEQ.**

- 9-135.010 Introduction**
9-135.020 Investigative and Supervisory Jurisdiction
-

9-135.010 Introduction

The Employee Retirement Income Security Act (ERISA) regulates employee pension and welfare benefit plans in the private sector. The crimes discussed in this chapter prohibit convicted persons from being employed by such plans (29 U.S.C. § 1111), punish willful failure to comply with the reporting and disclosure requirements of the statute (29 U.S.C. § 1131), and proscribe the use of fraud or actual or threatened violence to deprive plan participants and beneficiaries of their rights under the statute or the plan (29 U.S.C. § 1141).

See the Criminal Resource Manual for form indictments and a discussion of the law

Employee Retirement Income Security -- 29 U.S.C. §§ 1001 et seq.	Criminal Resource Manual at 2427
Failure to Perform ERISA Reporting and Disclosure	Criminal Resource Manual at 2429
Elements of Proof for 29 U.S.C. § 1131 and ERISA Obligations	Criminal Resource Manual at 2430
Form Indictment -- 29 U.S.C. § 1131	Criminal Resource Manual at 2431
Coercive or Fraudulent Interference with ERISA Rights -- 29 U.S.C. § 1141	Criminal Resource Manual at 2432
Form Indictment -- 29 U.S.C. § 1141	Criminal Resource Manual at 2433

9-135.020 Investigative and Supervisory Jurisdiction

Information on investigative jurisdiction is in the Criminal Resource Manual at 2428. Supervisory jurisdiction over ERISA violations rests with the Labor-Management Unit, Organized Crime and Racketeering Section.

9-136.000

**LABOR AND PENSION/WELFARE
REPORTING AND RECORD KEEPING --
29 U.S.C. § 439 AND 18 U.S.C. § 1027**

9-136.010 Introduction
9-136.030 Investigative and Supervisory Jurisdiction

9-136.010 Introduction

This chapter addresses violations of 29 U.S.C. § 439, and 18 U.S.C. § 1027. Section 439(a) prohibits any person from willfully failing to comply with the reporting and disclosure provisions imposed by the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. § 401, *et seq.*) on labor unions, labor union officials, employers, and labor relations consultants in the private sector. Section 439(b) generally applies to the making of false statements in reports filed by such persons with the Department of Labor. Section 439(c) proscribes the willful falsification or destruction of documents which the LMRDA requires such persons to maintain.

Section 1027 prohibits any person from knowingly making false statements or failing to disclose required information in documents required by title I of Employee Retirement Income Security Act (ERISA). These documents include reports which ERISA requires employee pension and welfare benefit plans to publish and file with the Department of Labor (29 U.S.C. § 1024), records which ERISA requires such employee benefit plans and others to maintain (29 U.S.C. § 1027), and information which must be certified to the administrator of such employee benefit plans (29 U.S.C. § 1023).

See the Criminal Resource Manual for form indictments and a list of cases involving these statutes

Form Indictment -- Falsification of Annual Financial Report Filed by Labor Union in the Private Sector (29 U.S.C. § 439(b))	Criminal Resource Manual at 2436
Form Indictment -- Falsification, Concealment or Destruction of Financial Records Required to be Kept by Labor Union in the Private Sector (29 U.S.C. § 439(c))	Criminal Resource Manual at 2437
Form Indictment -- False Statements and Concealment of Facts in Employee Benefit Plan Records or Reports	Criminal Resource Manual at 2438
Decisions Related to 18 U.S.C. § 1027	Criminal Resource Manual at 2439

9-136.030 Investigative and Supervisory Jurisdiction

Information on investigative jurisdiction over the statutes discussed in this chapter is in the Criminal Resource Manual at 2434 (29 U.S.C. § 439) and 2435 (18 U.S.C. § 1027). The Labor Management Unit of the Organized Crime and Racketeering Section, Criminal Division has supervisory authority.

9-137.000

**DEPRIVATION OF RIGHTS
BY VIOLENCE -- 29 U.S.C. § 530**

Title 29 U.S.C. § 530 prohibits any person from using actual or threatened violence for the purpose of interfering with, or retaliating against, the exercise by members of labor organizations of rights guaranteed to them by the Labor-Management Reporting and Disclosure Act (LMRDA). These rights of labor union members in the private sector include, among others, the right to assemble and speak on union affairs, to participate in union meetings, to vote in union elections, to be a candidate for union office, and to support candidates of one's choice. *See* 29 U.S.C. §§ 411 and 481. The Federal Bureau of Investigation has primary investigative jurisdiction with respect to violations of 29 U.S.C. § 530, pursuant to a Memorandum of Understanding between the Departments of Justice and Labor dated February 16, 1960. The Memorandum permits different arrangements to be made by the Departments of Justice and Labor on a case-by-case basis. The Labor Management Unit of the Organized Crime and Racketeering Section, Criminal Division, has supervisory authority.

For more information on this statute, *see* the Criminal Resource Manual at 2441. A form indictment is in the Criminal Resource Manual at 2442.

9-138.000

**PROHIBITION AGAINST CERTAIN PERSONS
HOLDING OFFICE AND EMPLOYMENT --
29 U.S.C. §§ 504 AND 1111**

9-138.010 Introduction

9-138.020 Investigative and Supervisory Jurisdiction

9-138.030 Consultation Prior to Prosecution

9-138.040 Consultation Prior To Relief of Convicted Individuals From Labor-Management and Pension-Welfare Position Disqualification

9-138.100 Reduction and Exemption Proceedings Under 29 U.S.C. § 504 and 29 U.S.C. § 1111

9-138.130 Coordination with the Department of Labor

9-138.150 Litigating Authority of Department of Labor Attorneys in District Court Proceedings Under ERISA -- 29 U.S.C. Sec. 1111

9-138.160 Special Appointment of Department of Labor Attorneys in District Court Proceedings Under LMRDA (29 U.S.C. Sec. 504)

9-138.170 Delegation of United States Attorney's Responsibility To Appear on Behalf of Federal Prosecuting Officials

9-138.180 Conflict Resolution

9-138.200 Civil Actions -- Coordination

9-138.010 Introduction

Section 504 prohibits persons convicted of certain crimes from being employed as labor union officials, corporate employees engaged in labor-management relations, and as labor relations consultants. The statute applies only to labor unions and employers in the private sector which are regulated by the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. § 401, *et seq.*).

Section 1111 prohibits persons convicted of certain crimes from being employed by employee pension or welfare benefit plans regulated by the Employee Retirement Income Security Act (ERISA) and as consultants to such plans. *See* 29 U.S.C. § 1001, *et seq.* Convicted individuals are disqualified automatically by operation of the statute upon sentencing.

See also the Criminal Resource Manual at 2442.

9-138.020 Investigative and Supervisory Jurisdiction

For information on investigative jurisdiction in 29 U.S.C. §§ 504 and 1111 cases, *see the Criminal Resource Manual at 2443.* Questions should be directed to the Labor Management Unit of the Organized Crime and Racketeering Section, Criminal Division, which has supervisory authority over these statutes.

9-138.030 Consultation Prior to Prosecution

Prior to instituting grand jury proceedings, as well as seeking an indictment, or filing an information, under either 29 U.S.C. § 504 or 29 U.S.C. § 1111, consultation is required with the Criminal Division through the Labor-Management Unit of the Organized Crime and Racketeering Section. Because the underlying purpose is to eliminate undesirable persons from the labor movement in the case of 29 U.S.C. § 504 or from access to or management of the assets of an employee benefit plan in the case of 29 U.S.C. § 1111, a procedure of notification prior to proceeding with criminal prosecution has been adopted by the Criminal Division in certain cases. *See the Criminal Resource Manual at 2444.*

In the absence of a clear demonstration of a knowing and intentional violation of either statute, the disqualified individual and the responsible person(s) who permit(s) the disqualified person to serve in violation of either statute are notified and given the opportunity to vacate the prohibited position and avoid prosecution. This policy furthers the remedial purposes of the statute and has generally resulted in compliance by the affected individuals. Following consultation with the Criminal Division, the procedure need not be used where available evidence indicates that the affected individuals were aware that the disqualified person's service was prohibited by reason of conviction at the time such service was rendered. For a discussion of the elements of the offenses of violating 29 U.S.C. §§ 504 and 1111, *see the Criminal Resource Manual at 2445 and 2446.* For form indictments, *see the Criminal Resource Manual at 2447 and 2448.*

It should be noted that convicted organizations are treated differently from convicted individuals for purposes of the ERISA disability. Convicted corporations and partnerships are not automatically disqualified upon sentencing from prohibited service with employee benefit plans as described in 29 U.S.C. § 1111. The Federal sentencing court (or a United States District court for the district where the disqualifying state crime was committed) must first determine, after notice to the convicted organization, the prosecuting attorney, and the Secretary of Labor, that the convicted organization's service would be inconsistent with the purposes of the ERISA disability. 29 U.S.C. § 1111(a)(B).

9-138.040 Consultation Prior to Relief of Convicted Individuals From Labor-Management and Pension-Welfare Position Disqualification

The Labor-Management Unit of the Organized Crime and Racketeering Section recommends that it be consulted by telephone whenever a United States Attorney's Office learns that a convicted individual seeks relief from the employment or office holding disqualifications of 29 U.S.C. §§ 504 or 1111. The Labor-Management Unit can advise attorneys of the procedures to be followed in such proceedings and assist in the coordination of these matters with the Labor Department. The Labor-Management Unit can assist whenever a convicted individual files in district court (for disqualifying crimes completed after November 1, 1987) or with the United States Parole Commission (for disqualifying crimes committed before that date) an application for exemption from disqualification in a particular position, moves a sentencing court for a reduction of the period of disqualification under the statutes, or whenever such relief is contemplated for inclusion in a plea or sentencing agreement. *See Policy Statement Sec. 5J1.1, United States Sentencing Commission, Guidelines Manual (Effective June 15, 1988).* Moreover, it should be noted that the Secretary of Labor's statutory rights to notice and representation in

these relief proceedings may not be waived or negotiated away as a part of plea or sentencing bargains. See the Criminal Resource Manual at 2449, for additional information regarding this issue.

9-138.100 Reduction and Exemption Proceedings Under 29 U.S.C. § 504 and 29 U.S.C. § 1111

In addition to USAM 9-138.130 to 180 below, see the following sections of the Criminal Resource Manual for a more detailed discussion of the law relating to reduction and exemption proceedings.

Relief by Reduction of the Length of Disability	<u>Criminal Resource Manual at 2449</u>
Relief by Exemption from Disability in a Particular Prohibited Position	<u>Criminal Resource Manual at 2450</u>
Litigating Authority Before the United States Parole Commission	<u>Criminal Resource Manual at 2451</u>
Relief By Full Restoration of Citizenship Rights Revoked As the Result of a Disqualifying Conviction	<u>Criminal Resource Manual at 2452</u>

9-138.130 Coordination with the Department of Labor

In accordance with memoranda of understanding between the Secretary of Labor and the Attorney General, the Department of Labor is responsible for conducting the investigation concerning the appropriateness of granting an application for exemption from a disqualified individual's employment disability under both 29 U.S.C. § 504 and 1111. See the Criminal Resource Manual at 2443. Moreover, because it is the policy of the Department of Justice to treat motions for reduction of the period of disability similarly to applications for exemption, any investigation concerning the appropriateness of a reduction of the length of disability should also be conducted in cooperation with the appropriate office of the Department of Labor. See the Criminal Resource Manual at 2449.

Therefore, when either a motion for reduction of the length of disability or a petition for exemption from the disqualification is filed by the convicted individual in Federal district court, ordinarily it will be necessary to seek a continuance of the proceeding in order to allow the Department of Justice and the Department of Labor an adequate opportunity to coordinate their litigative positions and to provide sufficient time for any necessary investigation by the Office of Labor-Management Standards (29 U.S.C. § 504) or the Pension and Welfare Benefits Administration (29 U.S.C. § 1111) of the Department of Labor. At the time of sentencing, a continuance may be sought on the grounds that neither statutory disability is a part of the sentence and, therefore, relief may be considered in a separate and subsequent proceeding.

When relief by way of exemption or reduction of the disability is considered as part of a plea or sentence agreement, coordination with the Department of Labor furthers the statutory

scheme which is intended to ensure that the disability not be set aside for purposes which are inconsistent with the Federal laws governing the internal affairs of labor unions and the operation of employee benefit plans. The Federal prosecutor should consider carefully the effect which the convicted offender's continued employment in regard to a labor union, employee benefit plan or employer association will have on the organization's members and participants. This effect should be outweighed by the benefits of obtaining the plea or sentence agreement.

9-138.150 Litigating Authority of Department of Labor Attorneys in District Court Proceedings Under ERISA -- 29 U.S.C. Sec. 1111

With respect to disqualifying crimes committed on or after November 1, 1987, the Department of Labor has litigating authority in district court proceedings pertaining to relief from disqualification imposed by 29 U.S.C. § 1111. ERISA Section 502(j) provides that "in all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary but all such litigation is subject to the direction and control of the Attorney General." 29 U.S.C. § 1132(j). An application for relief is viewed as a civil action because it involves a separate proceeding from the criminal prosecution and because the statutory prohibition is remedial rather than punitive in nature. *See DeVeau v. Braisted*, 363 U.S. 144 (1960).

Therefore, in relief proceedings arising under 29 U.S.C. § 1111 attorneys from the office of the Solicitor of Labor may be designated by the Secretary to appear on his behalf. Supervision of such litigation by the Attorney General is exercised by each United States Attorney for the judicial district where the proceeding for relief will be held in consultation with the Assistant Attorney General, Criminal Division, pursuant to 28 C.F.R. § 0.55(i).

9-138.160 Special Appointment of Department of Labor Attorneys in District Court Proceedings Under LMRDA (29 U.S.C. Sec. 504)

With respect to disqualifying crimes committed on or after November 1, 1987, the Department of Labor has no litigating authority under the LMRDA with respect to relief proceedings in United States District Court under 29 U.S.C. § 504. As a result, attorneys from the Office of the Solicitor of Labor must be specially appointed by the Department of Justice in order to appear on behalf of the Secretary of Labor. These appointments should be made upon the recommendation of the United States Attorney for the judicial district where the proceeding for relief will be held on a case-by-case basis pursuant to 28 U.S.C. § 543.

9-138.170 Delegation of United States Attorney's Responsibility to Appear on Behalf of Federal Prosecuting Officials

A United States Attorney's responsibility to appear in an United States district court on behalf of the Federal prosecuting officials who have standing to participate in relief proceedings may be delegated to those Department of Labor attorneys who are given special appointments pursuant to 29 U.S.C. § 543 or Department of Justice attorneys designated by the Assistant Attorney General, Criminal Division. *See USAM 9-138.160*. However, with respect to district court proceedings for relief under ERISA, attorneys appointed by the Secretary of Labor pursuant to ERISA and 29 U.S.C. § 1132(j) are authorized to represent only the Secretary of Labor. *See USAM 9-138.150*.

9-138.180 Conflict Resolution

Any conflict with respect to litigation strategy among representatives of the Secretary of Labor and the Federal prosecutors should be submitted to the Assistant Attorney General, Criminal Division, for review and recommended resolution. It is the policy of the Department of Justice that, in the absence of exceptional circumstances, each party to these relief proceedings be permitted to present to the district court its views on the merits for or against relief without regard to which agency represents that party. See the Criminal Resource Manual at 2450 et seq.

<u>See the Criminal Resource Manual at 2450 et seq.</u>	
Relief by Exemption from Disability in a Particular Prohibited Position	<u>Criminal Resource Manual at 2450</u>
Litigating Authority Before the United States Parole Commission	<u>Criminal Resource Manual at 2451</u>
Relief By Full Restoration of Citizenship Rights Revoked As the Result of a Disqualifying Conviction	<u>Criminal Resource Manual at 2452</u>
Alternative Relief to 29 U.S.C. §§ 504 and 1111	<u>Criminal Resource Manual at 2453</u>

9-138.200 Civil Actions -- Coordination

Civil actions against the Department of Justice for declaratory judgment, injunction, and/or relief from the disabilities imposed by 29 U.S.C. §§ 504 and 1111 are coordinated with the

Labor-Management Unit of the Organized Crime and Racketeering Section, Criminal Division.

A civil action to remove a fiduciary of an employee benefit plan for violation of 29 U.S.C. § 1111 may be brought by the United States Department of Labor, or by a benefit plan participant, beneficiary or fiduciary. *See* 29 U.S.C. §§ 1109(a) and 1132(a)(2). Civil actions litigated by the Department of Labor are subject to the direction and control of the Civil Division, United States Department of Justice. *See* 29 U.S.C. § 1132(j).

9-139.000

MISCELLANEOUS LABOR STATUTES

9-139.020 Investigatory and Supervisory Jurisdiction for Miscellaneous Labor Statutes

9-139.100 The Railway Labor Act (RLA) -- 45 U.S.C. § 151, et seq.

9-139.103 Railway Labor Act -- Authorization for Criminal Prosecution

9-139.020 Investigatory and Supervisory Jurisdiction for Miscellaneous Labor Statutes

For information on investigative jurisdiction, see the Criminal Resource Manual at 2455. The Labor-Management Unit of the Organized Crime and Racketeering Section has supervisory jurisdiction concerning criminal enforcement of the following statutes in all cases:

- 45 U.S.C. § 152, Tenth Railway Labor Act. See USAM 9-139.103, and the Criminal Resource Manual at 2454.
- 29 U.S.C. § 216(a) Fair Labor Standards Act. See the Criminal Resource Manual at 2456.
- 29 U.S.C. § 162 Interference with National Labor Relations Board Agent. See the Criminal Resource Manual at 2457.
- 29 U.S.C. § 461 and Sec. 463 Labor Organization Under Trusteeship. See the Criminal Resource Manual at 2460.
- 29 U.S.C. § 502 Bonding of Officers and Employees of Labor Organizations. See the Criminal Resource Manual at 2461.
- 29 U.S.C. § 503 Loans to Union Officers and Payment of Fines by Unions and Employers. See the Criminal Resource Manual at 2462.
- 18 U.S.C. § 1231 Transportation of Strikebreakers. See the Criminal Resource Manual at 2463.

The Labor-Management Unit of the Organized Crime and Racketeering Section has supervisory jurisdiction concerning criminal enforcement of the following statutes in labor disputes. Violations of these statutes not involving labor disputes are supervised by the Terrorism and Violent Crimes Section.

- 18 U.S.C. § 33 Destruction of Motor Vehicles. See the Criminal Resource Manual at 1426 and 1427.
- 18 U.S.C. § 844 Use of Explosives or Arson. See USAM 9-63.900 and the Criminal

Resource Manual at 2458.

- 49 U.S.C. § 80501 Damage to Property Being Transported In Interstate Commerce [formerly 15 Sec. 1281 and Sec. 1282 transferred effective July 5, 1994]. See the Criminal Resource Manual at 2459.

9-139.100 The Railway Labor Act (RLA) -- 45 U.S.C. § 151, et seq.

The Railway Labor Act (RLA) provides for criminal prosecution with respect to the willful failure or refusal of a railway or airline carrier, or its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, and eighth paragraphs of 45 U.S.C. § 152, Tenth, which deal with labor-management relations in the railway and airline industries. See the Criminal Resource Manual at 2454.

9-139.103 Railway Labor Act -- Authorization for Criminal Prosecution

Consultation with the Labor-Management Unit of the Organized Crime and Racketeering Section is required prior to initiating criminal prosecution under the Railway Labor Act. As a matter of policy, prosecutions as well as requests for investigation concerning violations of 45 U.S.C. § 152, Tenth, should be declined unless they contain allegations of egregious carrier interference with employee rights tantamount to actual or threatened violence, or involve prohibited payments to employee representatives. This policy is instituted primarily as a result of *United States v. Winston*, 558 F.2d 105 (2d Cir. 1977), wherein the Second Circuit reversed a conviction under 45 U.S.C. § 152, Tenth.

In *Winston*, defendants, owners and operators of a small airline charter service, were charged with conspiracy to violate the Railway Labor Act by conduct which would have been at most an unfair labor practice in an industry other than the railway or airline industries under Federal law. Accordingly, under this prosecution policy, the mere commission of an unfair labor practice is insufficient to justify criminal prosecution under the Railway Labor Act, absent the presence of one or more of the aggravating factors described above.

This policy change has the effect of treating the parties to airline and railway labor disputes for purposes of criminal prosecution in the same manner as parties in labor disputes in other federally regulated industries.

In declining prosecution with respect to complaints alleging violations of 45 U.S.C. § 152, Tenth, it may be appropriate to advise the complainant that redress may be available to him through private civil litigation.

This policy does not apply to civil litigation under 45 U.S.C. § 152, Tenth as supervised by the Civil Division. If it is determined that a particular matter merits civil enforcement under 45 U.S.C. § 152, Tenth, the Civil Division should be contacted before any action is taken. See the Criminal Resource Manual at 2454.