



Department of Justice
Asset Forfeiture Program

**Returning Forfeited Assets
to Crime Victims:**
*An Overview of Remission
and Restoration*



Introduction

Returning assets to the victims of financial crime is priority in the Department's Asset Forfeiture Program. During the past decade, the Asset Forfeiture Program has returned millions of dollars to victims of financial crime, with over \$400 million returned in FY 2008 alone. Through educational tools – such as this brochure – and training, the Program seeks to highlight and expand this effort.

As the federal asset forfeiture program has matured over the years, the number of non-drug related forfeitures has increased dramatically. This has led to significant recoveries of money and property derived from fraud and other theft-related offenses. A critical element of the forfeiture program is the return of such assets to the victims of crime through the remission and restoration processes. This booklet covers the basics of remission and restoration and explains the advantages of each approach. It is essential reading for criminal prosecutors, forfeiture attorneys, paralegals, and agents.

Petitions For Remission

What is remission?

The Attorney General or the seizing agency may return forfeited property to an owner or lienholder of the property, or to a victim of the crime underlying the forfeiture, if certain eligibility criteria are met. The federal regulations governing remission are at 28 C.F.R. § 9. This brochure addresses remission of judicial forfeitures which are handled by the Asset Forfeiture and Money Laundering Section. Questions regarding administrative forfeitures should be directed to the forfeiting agency.

Who can qualify as a victim?

A victim is a person who has suffered a specific pecuniary loss as a direct result of the crime underlying the forfeiture or a related offense. The definition of “person” includes “an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.”

Who cannot qualify as a victim?

A person cannot qualify as a victim if he/she:

- Knowingly contributed to or benefited from the offense underlying the forfeiture or was willfully blind to it, or
- Has recourse to other reasonably available assets or compensation, or
- Seeks recovery for torts or physical injuries associated with the offense but are not the basis for the forfeiture

How are potential victims notified of the remission process?

Following the seizure of the property, the U.S. Attorney's Office, in cooperation with the investigating agency, identifies all potential victims and notifies them of the opportunity to file a petition for remission.

Known victims should be notified by mail. If there are unknown victims, notification may be made by publication. The U.S. Attorney's Office may also use the Victim Notification System and modify the standard victim notice to include notice of forfeiture and a model petition for remission.

How is a victim's pecuniary loss determined?

The petitioner must provide documentary evidence of a specific pecuniary (i.e., monetary) loss and the date the loss occurred. Acceptable evidence of loss may include cancelled checks, receipts, and invoices. Seized records may also be used to substantiate the victim's pecuniary loss. In calculating pecuniary loss, any money returned to the victim must be accounted for and deducted.

What losses are not included in the pecuniary loss amount?

- Losses not supported by evidence
- Losses indirectly resulting from the underlying offense or a related offense
- Interest forgone
- Collateral expenses (i.e., attorney's fees and investigative expenses) incurred to recover lost property

Can a trustee be used?

With the approval of the AFMLS, a trustee may be employed in large multiple-victim cases to support the U.S. Attorney in notifying potential victims of the opportunity to seek remission, in processing the petitions, and in making recommendations to the United States Attorney.

What if the forfeited funds are not sufficient to compensate multiple victims?

When the forfeited funds are insufficient to fully compensate all the victims in a multi-victim case, the funds are generally distributed on a pro-rata basis in accordance with the amount of loss suffered by each victim. For example, if the forfeited funds cover one-half of the victims' losses, each victim receives 50 percent of his/her actual pecuniary loss.

Are there any exceptions to pro-rata distribution?

Priority can be granted to victims in cases where a pro-rata distribution would cause extreme financial hardship, a particular victim has better proof of loss, has cooperated with the government investigation, or other appropriate reasons.

What administrative costs can be deducted by the government?

Costs incident to the forfeiture, sale, or other disposition of the property are deducted from the amount available for remission. The remaining balance is distributed to the victims.

What documents should the U.S. Attorney send to AFMLS?

- The petition(s) for remission (see AFML Online for sample)
- A letter describing the offense and recommending approval or denial of the petition
- The seizing agency report and recommendation
- Pertinent judicial documents (preliminary order of forfeiture, indictment, plea agreement, etc.)

What if AFMLS denies the petition for remission?

A petitioner may submit a request for reconsideration within ten days of receipt of the denial notification letter. Reconsideration requests are reviewed by an AFMLS official who did not decide the original petition.

Restoration

What is restoration?

Restoration is used when the Attorney General, at the request of a U.S. Attorney, authorizes the use of forfeited funds to pay restitution to the victim of a criminal offense. Forfeited funds may be applied to the restitution order only if no other funds are available to fulfill the defendant's restitution obligation. The victim generally must meet the regulatory requirements for remission as explained below.

How does restoration work?

The U.S. Attorney's Office works with the Court to identify the victims of the crime to be included in the criminal restitution order. Following entry of the restitution order, the U.S. Attorney requests that AFMLS approve restoration and transfer to the court funds forfeited in the same and/or related civil, criminal or administrative forfeiture proceedings.

What are the primary benefits of restoration?

Restoration eliminates the need for each victim to file a petition for remission, which is particularly beneficial in large multiple-victim cases. In addition, restoration requests are generally processed faster than petitions for remission.

Is a victim defined differently for purposes of restoration than for remission?

No. A victim under the restoration procedures must meet the same qualifications as a victim pursuant to the remission process: a person who has suffered a pecuniary loss as a result of the crime underlying the forfeiture or a related offense. Therefore, the restitution order must list the same victim(s) and loss amount(s) as would have been determined through the remission process.

Can some victims have priority over others?

Although the remission regulations generally require pro-rata distribution to all victims, private victims named in a restitution order must, by statute, be paid in full before the United States is paid. See 18 U.S.C. § 3664(i). Similarly, direct victims of an offense must be paid in full before third-party claimants (typically insurance companies) are paid. 18 U.S.C. § 3664(k).

What documents should be sent to AFMLS?

- The request for restoration must include the four required representations by the U.S. Attorney:
 - All known victims have been notified and are accounted for
 - Victims' losses have been verified and reflect any compensation received
 - Victims do not have recourse reasonably available to other assets
 - Victims did not contribute to, participate in, and were not willfully blind to the offense
- Judgment and Commitment with Restitution Order
- Forfeiture Order (Administrative or Judicial)
- Pertinent judicial documents (preliminary order of forfeiture, indictment, plea agreement, etc.)

Are there any timing requirements?

- Restoration requests should be forwarded to AFMLS within 30 days of entry of the restitution order
- The U.S. Attorney may place a 12-month hold on the asset in CATS in order to prevent its dissipation through remission or equitable sharing.
- The U.S. Attorney may ask that AFMLS issue a preliminary restoration decision prior to entry of the restitution order.

What if AFMLS denies the restoration?

If restoration is denied, a person claiming losses as a victim may still file a petition for remission. A denial of restoration does not affect the person's eligibility for a direct grant of remission.

Remission and Restoration: What is the Difference?

Petition for Remission	Restoration
There is no need for a criminal conviction of the person from whom property is forfeited. Judicial forfeiture orders may be criminal or civil.	Restoration requires a criminal conviction, an Order of Restitution, and a criminal, civil, or administrative forfeiture which is related to the victim's loss.
The USAO, in cooperation with the investigative agency, sends notice to all known victims of the offense underlying the forfeiture.	The United States Attorney's Office (USAO) works with the investigative agency and probation office to identify victims and determine their losses.
In judicial forfeitures, the victim files a petition for remission with the USAO.	The victim is not required to file a petition but may be required to submit information to the investigative agency or probation office.
The USAO requests the investigative agency to prepare report and recommendation. The USAO makes a recommendation and forwards the petition package to AFMLS.	The USAO submits a restoration request, including the four required representations, to AFMLS. See <i>What documents should be sent to AFMLS?</i>
The Attorney General, through AFMLS, reviews the petition and may grant remission to eligible victims.	The Attorney General, through AFMLS, reviews the restoration request and may restore forfeited property to victims identified in the restitution order.
The victim must file a petition in order to receive compensation.	The victim must be named in the restitution order. "Hybrid" cases with both remission and restoration are not acceptable. All forfeited proceeds are turned over to the Court for distribution to victims.
The custodian of the forfeited asset distributes the net proceeds directly to victims.	The custodian of the forfeited asset transfers the net proceeds directly to the Clerk of the Court.

For More Information...

For further information and assistance, contact:

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