

VIII. What Are the Uses of Equitably Shared Property?

A. Law enforcement uses

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

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

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

1. Permissible uses

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

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

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

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

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

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

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

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

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

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

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

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

2. Impermissible uses

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Increase and not replace

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

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

C. Transfer of forfeited real property

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

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

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

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

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

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

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

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

D. Transfer of forfeited tangible personal property

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

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

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

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

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

E. Reimbursement of federal costs

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

F. Return of equitably shared funds

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