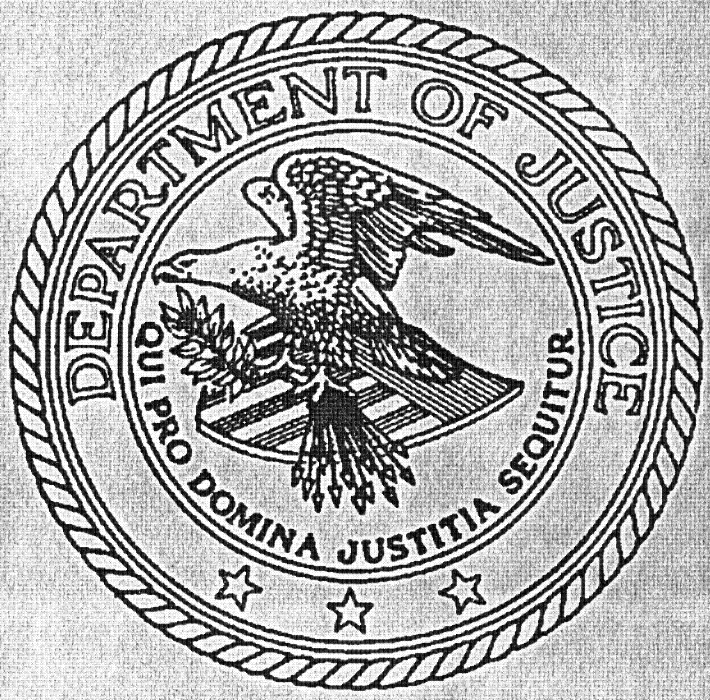
U.S. Department of Justice
Washington, D.C. 20530

A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies

March 1994



A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies

March 1994

Prepared by the Executive Office for Asset Forfeiture
Office of the Deputy Attorney General

Office of the Attorney General
Washington, D.C. 20530

FOREWORD

In the nine years since the Comprehensive Crime Control Act of 1984 gave federal investigators and prosecutors the tools they needed to mount an effective national asset forfeiture program, forfeiture has become an important component of the federal criminal justice process.

One of the most important provisions of the 1984 law authorized the sharing of federal forfeiture proceeds with cooperating state and local law enforcement agencies. As this is written, the Department of Justice has shared over $1.4 billion in forfeited assets with more than 3,000 state and local law enforcement agencies.

It is the purpose of this Guide to enhance the integrity of the sharing program so that it will continue to merit public confidence and support. For this reason, we have appended to this Guide the National Code of Professional Conduct for Asset Forfeiture (Appendix G). All seizing and prosecutorial agencies should take steps to ensure that they are in compliance with this Code.

Janet Reno

March 1994
Washington, D.C.

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I. SHARING AUTHORITY

The Attorney General's authority to share federally forfeited property with participating state and local law enforcement agencies is established in federal law.[1] The exercise of this authority is discretionary. The Attorney General is not required to share property in any case.

The Controlled Substances Act most fully states the intent of Congress in the sharing of forfeited property. It provides that:

> *The Attorney General shall assure that any property transferred to a State or local law enforcement agency . . .*
>
> *(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and*
>
> *(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.*

21 U.S.C. § 881(e)(3).

II. PURPOSES OF THE DEPARTMENT OF JUSTICE FORFEITURE PROGRAM

The primary purpose of the Department's Forfeiture Program is law enforcement: to deter crime by depriving criminals of the profits and proceeds of their illegal activities and to weaken criminal enterprises by removing the instrumentalities of crime. An ancillary purpose of the program is to enhance cooperation among federal, state, and local law enforcement agencies through the equitable sharing of federal forfeiture proceeds.

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

III. FEDERAL AGENCIES IN THE JUSTICE FORFEITURE PROGRAM

As of October 1, 1993, the following federal entities are in the Department of Justice Forfeiture Program:

Federal Bureau of Investigation

Drug Enforcement Administration

Immigration and Naturalization Service

United States Park Police[2]

United States Marshals Service[2]

United States Attorneys' Offices[2]

Criminal Division[2]

United States Postal Inspection Service[3]

NOTE: Sharing by agencies of the U.S. Department of the Treasury is subject to the Treasury Department's Guide to Equitable Sharing for Foreign Countries and Federal, State, Local Law Enforcement Agencies (October 1, 1993).

IV. AGENCIES ELIGIBLE TO RECEIVE EQUITABLE SHARING PAYMENTS

Any state or local law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture.[4] (See Section IX on How to Calculate the Sharing Percentage.)

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[2] These entities do not directly adopt state and local seizures.

[3] Although required only in judicial forfeitures involving proceeds, the U.S. Postal Inspection Service has adopted the DAG-71 and DAG-72 forms for use in sharing with state and local law enforcement agencies. The Memorandum of Understanding between the U.S. Postal Inspection Service and the Department of Justice should be referred to in connection with the distribution of federal forfeiture proceeds among federal agencies. (See Executive Office for Asset Forfeiture Directive No. 91-7, "Equitable Sharing Information," May 20, 1991.)

[4] Sharing with foreign countries and other federal agencies is not covered in A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (March 1994), hereinafter referred to as the Guide.

NOTE: No sharing request or recommendation, including shares negotiated in task force or other agreements, is final until approved by the federal decision-maker. *(See pages 5-9.)*

V. TWO WAYS AN AGENCY CAN PARTICIPATE IN THE EQUITABLE SHARING PROGRAM

A. Joint Investigation

Most sharing is the result of joint investigations. Joint investigations are those in which federal agencies work with state or local law enforcement agencies to enforce federal criminal laws.

B. Adoption of a State or Local Seizure

A state or local law enforcement agency that has seized property may request that one of the federal agencies listed in Section III adopt the seizure and proceed with federal forfeiture. Federal agencies may adopt such seized property for federal forfeiture where the conduct giving rise to the seizure is in violation of federal law and federal law provides for forfeiture. State and local agencies have **thirty (30) calendar days** from the date the property was originally seized to request a federal adoption. Waivers of the 30-day rule may be approved by the adopting federal agency where the state or local law enforcement agency requesting adoption demonstrates the existence of exceptional circumstances justifying the delay.

VI. WHAT THE MINIMUM MONETARY THRESHOLDS ARE

Seizures are not generally adopted for federal forfeiture unless the equity in the seized property exceeds the following thresholds:

Conveyances	Vehicles Vessels Aircraft	$5,000 $10,000 $10,000
Real Estate	Land and any improvements	$20,000 or 20 percent of the appraised value, whichever is greater[5]
All Other Property	Currency, bank accounts, monetary instruments, jewelry, etc.[6]	$5,000

A United States Attorney may institute higher district-wide thresholds for judicial forfeiture cases; written notice of such higher thresholds shall be provided to the Executive Office for Asset Forfeiture.

It is understood that in some circumstances the overriding law enforcement benefit will require the seizure of an asset that does not meet the 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," of a conveyance with hidden compartments, or of a vehicle seized at an international border for alien smuggling. Any downward departure from the monetary 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. The fact that the owner or person in possession of the property has been arrested or will be criminally prosecuted is an appropriate basis for a downward departure.

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[5] As a general rule, the Department of Justice does not adopt contaminated real properties. See Executive Office for Asset Forfeiture Directive No. 90-3, "Departmental Policy Regarding the Seizure and Forfeiture of Real Property that is Potentially Contaminated, or is Contaminated, with Hazardous Substances," June 29, 1990.

[6] Firearms are forfeited without regard to value.

VII. HOW PROPERTY IS FEDERALLY FORFEITED

A. Administrative Forfeiture

Federal law authorizes the seizing or adopting agency to administratively forfeit the following types of property (unless a timely claim is filed):

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

B. Judicial Forfeiture

Judicial forfeiture is required for any property other than monetary instruments and hauling conveyances if:

1. the value of the "other property" exceeds $500,000;
2. a claim and cost bond has been filed; or
3. the property is real estate.

VIII. HOW TO APPLY FOR AN EQUITABLE SHARE

After the **seizure** in a **joint case** or **adoption** in an **adoptive case**, a state or local agency may request a share of the property by submitting a **Form DAG-71, Application for Transfer of Federally Forfeited Property,** to the pertinent federal investigative agency. A separate DAG-71 must be completed for each asset to be shared. (See Appendix A for a copy of the DAG-71 Form and other supplemental instructions.)

No sharing request may be considered unless it is submitted within **sixty (60) calendar days** of the seizure or within **sixty (60) days** of the federal adoption of a state or local seizure. The 60-day rule may be waived by the federal seizing agency in exceptional circumstances upon a written request stating the reasons for the late submission of the equitable sharing request and providing justification for the waiver. The request for waiver must accompany the DAG-71.

Forfeiture, like all legal proceedings, takes time. Equitable sharing may only occur after the federal forfeiture has been completed, the United States has taken clear title to the property, and a final sharing decision has been made by the appropriate federal official. In addition, where a claimant has filed a petition for remission or mitigation of the forfeiture, sharing must be delayed until resolution of the petition. Finally, if the forfeiture involves property that must be sold, sharing may not occur until the sale has been completed and the net proceeds of sale have been determined.

The federal seizing or adopting agency or the coordinator for the Law Enforcement Coordinating Committee (LECC) in the United States Attorney's Office may assist state and local agencies in preparing the DAG-71 and in determining the status of requests.

IX. HOW TO CALCULATE THE SHARING PERCENTAGE

A. Sharing is Always Based on Net Proceeds

Equitable sharing is based on the **net proceeds** of the forfeiture. Net proceeds are calculated as follows:

Gross receipts from forfeiture or the sale of forfeited property:

Less: Qualified third-party interests (e.g., valid liens, mortgages)

Federal case-related expenses (e.g., advertising costs, out-of-pocket investigative or litigation expenses)

Any award paid to a federal informant

Federal property management expenses (e.g., appraisal, storage, security, sale)

Equals: Net proceeds available for sharing

B. Sharing in Joint Operations Reflects the Degree of Direct Participation of the Requesting Agencies

Federal law mandates that sharing in joint cases reflects the "degree of direct participation of the state or local agency in the law enforcement effort resulting in the forfeiture." **Normally this is determined by comparing the number of hours expended by the agents involved.**

Example: Federal agents devote 1,000 hours, and state officers devote 500 hours, to a joint investigation and prosecution that result in a federal forfeiture. The net proceeds of the forfeited property are $150,000. As the state law enforcement agency provided one third of the total 1,500 hours of effort, the equitable share for the state law enforcement agency would be $50,000.

The following factors may be considered by the federal decision-maker where the hours devoted do not adequately reflect the degree of participation of the state or local agencies:

1. Did an agency originate the information leading to the seizure?

Example: As part of its normal intelligence gathering activities, a local law enforcement agency has been monitoring the activities of Drug Organization X. One day the agency learns specific information regarding the location of a forfeitable asset belonging to X. It shares this information with a federal agency and they both assign two agents to do a short-term joint investigation of one of X's drug dealers before making the seizure. The local agency merits a larger share of the proceeds of the sale of the asset than the 50 percent it would get based only on the time devoted to the joint investigation. The fact that this seizure was the indirect result of long-term intelligence gathering activities should be made known in the request for equitable sharing.

Similarly, a federal undercover investigation produces intelligence about drug shipments. In order to avoid compromise of the investigation, the federal government asks the state or local agency to execute the stop and seizure. The federal agency merits a larger share than it would get based strictly on agent time involved in the seizure.

2. Did an agency provide unique and indispensable assistance?

Example: An agency is asked to provide assistance only it can provide; for example: (1) seizing property in its jurisdiction (which may be hundreds of miles away from the area where the investigation is being

conducted); (2) providing an informant who has access to critical information that is essential to securing a conviction; or (3) recovering relevant information from a target that only it can obtain without making the target suspicious that he is under investigation. Such an agency would merit a relatively large share of the forfeiture proceeds even though its contribution to the overall investigation on a time and effort basis was relatively small. Therefore, the significance of any contribution should be made known in the request. By contrast, the provision of services many agencies typically can provide, such as use of a drug detection dog, a laboratory analysis, an aerial surveillance, or an undercover operative, would not necessarily be considered unique.

3. **Could the state agency have achieved forfeiture under state law, but joined forces with the United States to conduct a more effective investigation?**

Example: A local agency has conducted an investigation on its own that has led to the identification of certain assets for seizure. Rather than effecting an immediate seizure, the agency joins forces with a federal agency to conduct a broader investigation, which, while it results in more arrests, does not lead to the identification of significant additional assets. The local agency is entitled to receive most of the proceeds of the forfeited assets, regardless of the relative time and effort contribution of the federal agency to the overall investigation.

C. Adoptive Seizures[7]

The federal share in adoptive cases, **where 100 percent of pre-seizure activity was performed by a state or local agency**, is based on a "flat rate" of the net proceeds. This rate is **twenty percent (20%)** of the net proceeds.

NOTE: In no case (joint or adoptive) will the federal share be less than twenty percent.

D. Sharing with State and Local Prosecutorial Agencies

The following are examples of ways prosecutors may qualify for an equitable share:

1. Providing assistance in the preparation of search and seizure warrants and

[7] For details on adoption, see Executive Office for Asset Forfeiture Directive No. 93-1, "General Adoption Policy and Procedure," January 15, 1993.

other documents relating to the forfeiture. (Sharing percentage will normally be based on hours expended.)

2. Providing a key informant, or substantially assisting throughout the investigation that leads to a federal forfeiture. (Sharing percentages will normally be based on hours expended.)

3. Cross-designating state or local attorneys to handle the federal forfeiture or related criminal cases in federal court. (The Department will authorize sharing up to 5 percent of the federal government's share of the net forfeiture proceeds with cooperating local prosecutors who cross-designate attorneys in adoptive cases.)

4. Prosecuting criminal cases under state law directly related to a federal forfeiture. (The sharing percentage will be determined on a case-by-case basis.)

E. The Decision-Makers

In administrative forfeiture cases where the value of the forfeited property is less than $1,000,000, the federal investigative agency determines the amount of the equitable share.

In judicial forfeiture cases — either civil or criminal — where the value of the forfeited property is less than $1,000,000, the United States Attorney determines the amount of the equitable share.

In administrative and judicial forfeiture cases where the property is valued at $1,000,000 or more, in multi-district cases, and in cases involving the transfer of real property to a state or local agency, the Office of the Deputy Attorney General determines the amount of the equitable share.

Questions regarding sharing should be directed to the federal investigative agency that processed the request or the coordinator for the Law Enforcement Coordinating Committee in the United States Attorney's Office.

NOTE: As stated above, no requested or recommended share, including shares negotiated in task force or other agreements, is guaranteed until approved by the decision-maker.

X. USES OF EQUITABLY SHARED PROPERTY

A. Law Enforcement Uses

1. **Permissible Uses.** Subject to laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes (see paragraph 2.e. of this section), the expenses noted below are pre-approved as permissible uses of shared funds and property.[8] Among the following uses, priority should be given to supporting community policing activities, training, and law enforcement operations calculated to result in further seizures and forfeitures:

   a. **Activities Calculated to Enhance Future Investigations** — The support of investigations and operations that may result in further seizures and forfeitures, e.g., payment of overtime for officers and investigators; payment of the first year's salaries for new law enforcement positions that supplement the workforce; payments for temporary or not-to-exceed-one-year appointments; payments to informants; "buy," "flash," or reward money; and the purchase of evidence.

   b. **Law Enforcement Training** — The training of 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, caselaw); (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; (4) due process rights; (5) protecting the rights of innocent third-parties (individuals and lienholders); and (6) this Guide.

   c. **Law Enforcement Equipment and Operations** — The purchase of body armor, firearms, radios, cellular telephones, computer equipment, software to be used in support of law enforcement purposes, vehicles (e.g., patrol vehicles, surveillance vehicles), electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing of office and other space for task force and

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[8] See Appendix B for further examples of permissible and impermissible uses. Also note that expenditures for these uses are permissible only to the extent that they increase resources available to the receiving agency. See Section X.B. of this Guide.

undercover operations, and leasing of other types of equipment that support law enforcement activities.

d. **Detention Facilities** — The costs associated with construction, expansion, improvement, or operation of detention facilities managed by the recipient agency.

e. **Law Enforcement Facilities and Equipment** — The costs associated with basic and necessary facilities, government furniture, safes, file cabinets, telecommunications equipment, etc., that are necessary to perform official law enforcement duties.

f. **Drug Education and Awareness Programs** — The costs associated with conducting drug education and awareness programs by law enforcement agencies.

g. **Pro Rata Funding** — The costs associated with supporting multi-agency items or facilities. Example: a town purchases a new computerized payroll system; the police department payroll represents twenty percent of the total use of the payroll system. The police department may use shared money to fund its pro rata share (twenty percent) of the operating and maintenance expenses of the system.

Property, facilities, equipment, and other items and services **acquired** with shared monies must be used **only** for law enforcement purposes unless written approval is obtained from the Executive Office for Asset Forfeiture. Such property must continue to be used predominantly for law enforcement purposes.

h. **Asset Accounting and Tracking** — The costs associated with the accounting, auditing, and tracking of expenditures for shared cash, proceeds, and tangible property.

NOTE: The fact that the 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 shared property does not have to be used in a department's drug program. Priority consideration should be given, however, to completely equipping units that generate forfeitures in order to foster future forfeiture investigations.

2. **Impermissible Uses.**[9] Impermissible state and local law enforcement uses include:

a. **Payment of Salaries for Existing Positions** — The payment of salaries for current permanent law enforcement personnel is not permitted where the payment constitutes a supplantation of the agency's appropriated funds. Note that the payment of first year salaries for new, temporary, or not-to-exceed-one-year positions is permitted as these expenditures supplement and do not supplant existing resources.

b. **Uses of Forfeited Property by Non-Law Enforcement Personnel** — Use of a shared vehicle or other forfeited tangible property by non-law enforcement personnel for non-law enforcement business is not permitted.

c. **Payment of Non-Law Enforcement Expenses** — For example, while shared funds may be used to pay the expenses for drug testing of law enforcement personnel, such a use of these funds for the testing of all municipal employees is not permissible.

d. **Uses Not Specified in the DAG-71** — Requesting state and local agencies must specify on the DAG-71 what uses will be made of the shared property. Any departure from such stated uses must be approved in writing by the federal decision-maker or the Asset Forfeiture Office, Criminal Division, unless the use is already specified in paragraph A.1. of this section.

e. **Uses Contrary to the Laws of the State or Local Jurisdiction** — Shared funds may not be used for any purpose that would constitute an improper use of state or local law enforcement funds under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.

f. **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.

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.

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[9] See Appendix B for further examples of permissible and impermissible uses.

3. **Permissible Pass-Throughs to Other Agencies.** Although state or local law enforcement agencies may not generally pass-through (i.e. transfer) shared cash, proceeds, or tangible property to other governmental agencies, there are four types of transfers that are now permitted:

a. **Cash Transfers** — Receiving agencies may, in their discretion, transfer:

(1) up to fifteen percent (15%) of any of their shared monies; and/or

(2) in "windfall situations," (where federal sharing transfers represent over 25 percent of a state or local agency's annual budget), any amount over the 25 percent level

to governmental departments or agencies to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. Such governmental departments or agencies may, in turn, transfer any monies so received to private, non-profit community organizations to be spent for such purposes.

b. **Tangible Personal Property Transfers** — as provided in subsection X.D. below.

c. **Real Property Transfers** — as provided in subsection X.C. below.

d. **Transfers to Other Law Enforcement Agencies** — Receiving law enforcement agencies may transfer or pass-through a portion of their sharing receipts to another law enforcement agency to be spent by that agency for a law enforcement purpose.[10]

Such pass-throughs must be expressly provided for in the DAG-71 and the general purpose indicated, e.g., "drug prevention."

[10] Such expenditures are subject to the no supplantation rule described in Section B below.

4. **General Guidance Concerning Use.**

a. **Non-Law Enforcement Use of Interest Income** — Interest on forfeited cash or proceeds is subject to the same use restrictions as shared cash or proceeds.

b. **Anticipated Shared Property Should Not Be Budgeted** — Do not "spend it before you get it" or budget **anticipated** receipts. (For example, assume that a local law enforcement agency has filed a 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.)

c. **Sharing Monies Should Not Be Retained Unnecessarily** — Sharing monies should normally be expended for their designated use or uses as they are received. It is permissible to retain sharing monies in a holding account for a reasonable period of time so they can be used to satisfy future needs. Generally, monies received should not remain unspent for a period of time exceeding two years from the date of their receipt. The balance in any holding account must be fully reported in the Annual Certification Report described in Section XII and Appendix E, along with the explanation of the contemplated disposition of this balance.

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 resources of the recipient. In other words, the receiving law enforcement agency must benefit directly from the sharing. If, for example, a police department receives $100,000 in federal sharing money only to have its budget cut $100,000 by the city council, the police department has received no direct benefit whatsoever. Rather, the city as a whole has received the benefit of the equitable sharing. 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.

C. Transfer of Forfeited Real Property

The transfer of federally forfeited real property is permitted, with the approval of the Office of the Deputy Attorney General, in the following three situations only:

1. For official law enforcement use, where a requesting agency substantially participated in the investigation that led to the seizure or forfeiture and there is a compelling law enforcement need for the property. All such requests should contain a detailed description of the intended use of the property.

2. For community-based use, where the recipient law enforcement agency re-transfers the real property to another governmental agency or to a private non-profit organization to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs.[11]

3. Under the Controlled Substances Act, to a state for recreational or historic purposes or for the preservation of natural conditions. (See Pub. L. 102-239.)

NOTE: Real property may be transferred only to the participating state or local law enforcement agency, or, if such agency is unable to receive title under applicable law, to the state or local government agency empowered to hold such title for the benefit of the participating agency.

D. Transfer of Forfeited Tangible Personal Property

1. Any forfeited tangible property 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 $40,000 or more) may be placed in official use only for undercover law enforcement purposes.

Example 1. A federally forfeited motor vehicle is assigned to a state or local law enforcement official who is not authorized to use a government vehicle pursuant to local rule. This is impermissible, as forfeited vehicles are subject to the same use restrictions as purchased vehicles.

Example 2. A federally forfeited Mercedes Benz worth $60,000 is assigned to a law enforcement official who is authorized to use a

[11] Failure to use shared real property for the approved purpose may result in reversion of title to the property to the United States.

government vehicle, but the "luxury vehicle" is used for routine law enforcement work. This is impermissible as a "luxury vehicle" is being used for purposes other than undercover work, thereby wasting government resources and creating an appearance of impropriety.

2. The recipient law enforcement agencies may, in their 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 departments or agencies may, in turn, transfer any tangible property so received to private, non-profit community organizations to be spent for such purposes.

NOTE: Vehicles and other tangible property transferred for official law enforcement use must be so used for at least two years. However, if they become unsuitable for such stated purpose before the end of the two-year period, they may be sold.

E. Reimbursement of Federal Costs

In cases where real or tangible personal property is transferred to a state or local law enforcement agency, the value of that property shall be charged against that agency's equitable share of other assets in the case. In cases where there are insufficient other assets against which to charge that share, the recipient state or local law enforcement agency must pay to the Assets Forfeiture Fund a sufficient amount to compensate the Fund for the federal costs and share. If the requesting agency is unable to pay the costs and the federal share, the property shall be sold and the proceeds equitably distributed. Exceptions to this requirement may be granted by decision-makers in two situations:

1. Where the property will be transferred to a state or local unit of government, or through such agency, to a private non-profit organization to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs; or

2. Where the requesting state or local agency lacks funds or authority to make such payments, and the forfeited property will fill a demonstrable need of the requesting agency.

In no event, however, may such property be transferred until the recipient agency reimburses the Assets Forfeiture Fund for the amount of any liens paid off on the property.

F. Sharing in Task Force and other Multi-Agency Cases

Many task forces involving federal, state, and local law enforcement have pre-agreed upon equitable sharing distribution arrangements based upon relative numbers of personnel dedicated and other contributions to the task force operation. These pre-agreed percentages will be honored when: (1) the agreement is in writing; (2) the decision-maker is satisfied that the percentages agreed upon continue to reflect the true overall agency contributions to the task force; and (3) the task force has a well-defined subject area or organization target as its focus, and the specific seizures are part of the overall investigative function of the task force (e.g., an airport seizure by an airport interdiction task force is part of an investigation of airport drug smuggling, not simply an investigation of a particular smuggler.)

1. Formally Chartered Task Forces

Distribution arrangements are honored by the Department of Justice when the task force itself is a legal entity entitled to receive and spend money. Single checks will be issued to the task force and/or its constituent member agencies, pursuant to their internal sharing agreed percentages, when the agreed percentages fairly reflect overall agency contributions to the task force. The National Crime Information Center (NCIC) number of the task force must be indicated on the DAG-71.

2. Informal Task Forces

When an informal task force is involved, separate checks will be written to each individual law enforcement agency in the task force. So-called task force agreements based merely on jurisdictional boundaries will not be honored. In other words, an agency may not claim a percentage of all seizures occurring within its geographic area without regard to whether it made any significant contribution to the seizure.

Conversely, a joint investigation of a specific target or organization does not constitute an informal task force simply because it is labelled as such. Informal task force agreements will only be honored where the task force is a permanent or semi-permanent entity established to conduct a long-term investigation of multiple targets committing similar violations in a single location (e.g., long-term interdiction operation at local airport), or of a single target engaged in multiple criminal activities over a lengthy period of time such that multiple forfeiture cases over the life of the task force are likely (e.g., long-term investigation of major Colombian drug trafficking organization where participating agencies work on different aspects of investigation). In such instances, sharing agreements will be

honored to the extent that they accurately reflect the proportional contributions of the participating agencies to the entire task force investigation, as the entire task force project is considered to be a single investigation for equitable sharing purposes (as opposed to normal situations where the proportional contributions of requesting agencies are determined by reference to their contributions to a specific seizure or forfeiture case).

XI. ACCOUNTING FOR SHARED CASH, PROCEEDS, AND TANGIBLE PROPERTY

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

Sharing checks will not under any circumstances be made out to individuals.

Moreover, state and local law enforcement agencies that receive federal shared cash, proceeds, or tangible property valued at over $100,000 in a single year, or that maintain a federal forfeiture fund account balance of over $100,000, shall ensure that an independent financial audit is performed annually consistent with the audit requirements set forth in Appendix D.[12] A copy of a state or local government audit report, if consistent with Appendix D, will satisfy this requirement. Alternatively, an independent accounting firm may be engaged to perform the required audit, in which case the audit may be paid for from shared cash or proceeds. Generally, the head of a state or local law enforcement agency that has received equitable sharing proceeds should initiate an audit of such monies whenever circumstances exist that indicate the need for such an audit. Audit reports must be sent to the Executive Office for Asset Forfeiture. If the sharing includes resources received from the Department of the Treasury as well as the Department of Justice, a copy of the audit report must also be sent to the Department of the Treasury's Executive Office for Asset Forfeiture.

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[12] For purposes of determining if a financial audit is required in a given year, monies or other property received in equitable sharing are not counted if they are promptly transferred to other law enforcement organizations or governmental agencies pursuant to the provisions of Section X.A.3.

XII. CERTIFICATION REQUIREMENT

For each fiscal year, any state or local agency that received forfeited property or cash as a result of a federal forfeiture shall execute the certification set forth in Appendix E. The certification shall be promptly forwarded to the Executive Office for Asset Forfeiture. This requirement also applies to any agency that had any unspent, previously shared money in a holding account at any time during a fiscal year.

XIII. NONCOMPLIANCE

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

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

A. Being barred, temporarily or permanently, from further participation in the sharing program;

B. Offsets from future sharing in an amount equal to impermissible uses;

C. Civil enforcement actions in U.S. District Court for breach of contract; or

D. Where warranted, federal criminal prosecution for false statements under 18 U.S.C. § 1001, fraud involving theft of federal program funds under 18 U.S.C. § 666, or other sections of the criminal code, as applicable.

XIV. EFFECTIVE DATE

This Guide applies to seizures made or adopted on or after May 1, 1994.

Date: ☐☐ ☐☐ ☐☐

Investigative Agency: ☐☐☐

Case Number: _____

Appendix A

U.S. Department of Justice

Application for Transfer of Federally Forfeited Property
(For Use By United States Law Enforcement Agencies Only)

For Federal Use Only

I.

Asset #:

Seizure Date:

Judicial District:

Case Type: Adoption ☐ Joint ☐ *(Check One)*

(For Additional Information - See Instructions)

- All assets transferred must be used for the law enforcement purpose stated in the request.
- Deadline for submission of this request is sixty *(60)* days following the seizure.
- The requesting agency will be responsible for reimbursing the Federal Government its costs and may be responsible, in a single-asset case, for reimbursing the federal share.

II. Requesting Agency Name: _____

Address: _____

_____

NCIC Code: ☐☐☐☐☐☐☐☐

Contact Person: _____ Telephone Number: ( )

III. Asset Requested _____
Property Description

_____

☐ Other assets in this case. *(Attach list).*
Request Type

☐ Item ☐ Cash / Proceeds _____ %

IV. Specific Intended Law Enforcement Use:

☐ Salaries ☐ Purchase of Equipment ☐ Other *(Please Explain)*: _____

☐ Purchase of Vehicles ☐ Place Into Official Use *(If other than Cash)*

_____

_____

V. Contribution *(If any answer to A thru E is yes, provide details in Part VI)*

	Yes	No
A. Did your agency originate the information leading to the seizure?	☐	☐
B. Were any other assets seized under state law?	☐	☐
C. Were extraordinary expenses incurred?	☐	☐
D. Did your agency supply any unique or indispensable assistance?	☐	☐
E. Are there any assets located in foreign countries associated with this case?	☐	☐

F. How many hours were expended? _____ hours

Case Number: _____

U.S. Department of Justice

Application for Transfer of Federally Forfeited Property
(Page 2)

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

(If more space is required, use a separate sheet of paper and attach.) Attachment: ☐ Yes ☐ No

VII. Certifications:

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

_____ _____
Signature / Title Date

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

_____ _____
Signature / Title Date

Address: _____

_____

Telephone Number: (____) _____

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

General Instructions

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

DAG-71

Part I: For federal use only. (**Note:** Asset Number refers to federal investigative agency case number or uniform identifier.)

Part II: Provide information requested. If **NCIC code** is not known, contact the federal agency responsible for processing this forfeiture. **Contact person** is the person who has authority to accept property and transfer documents, and/or money.

Part III: Provide as complete a property description as possible. Include serial or vehicle identification number. You must check either **"Item"** (if requesting the asset) or **"Cash/Proceeds"** (if requesting a percentage of the asset). Attach list of any other assets in this case.

By law, **percentage requested** must be based on the "degree of direct law enforcement effort by the state or local agency resulting in the forfeiture, taking into account the total value of all property forfeited and total law enforcement effort, including any related criminal prosecution with respect to the violation of law on which the forfeiture is based." (21 U.S.C. 881(e)(3)).

Part IV : Indicate specific intended law enforcement purpose(s) for requested cash, proceeds or tangible property. Pursuant to the Guidelines, all property, including cash and proceeds, must be used for the specific law enforcement purpose(s) approved.

Part V: Answer all items A - F. If an answer to A thru E is yes, provide details in Block VI.

Part VI: Space for additional information.

Part VII: Agency head or his designee and appropriate legal office must **certify** that information provided in Blocks I - VI is true and accurate.

SUPPLEMENTAL INSTRUCTIONS FOR MULTIPLE ASSETS

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

(1) Complete one original of the DAG-71. In Block III, Asset Requested, enter "See asset marked by an 'x' on the attached list."

(2) Prepare a list of all assets seized in the case, as shown in the sample below.

(3) Photocopy the DAG-71 and the list as many times as needed. You will need one copy for each asset.

(4) Enter an "x" in the appropriate place next to one asset on each copy of the list. That copy will serve as the original DAG-71 for the asset marked with an "x."

(5) Provide original signatures on all DAG-71s.

Below is a sample of such a list:

LISTING OF ASSETS SEIZED
CASE NO.: _____

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

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

Appendix B

ACTUAL CASE EXAMPLES OF USES OF SHARING PROCEEDS

I. OPERATIONS

A. **A city deposited shared cash received by the police department into the city's general fund. Because the shared cash did not maintain a separate identity in the general fund, auditors could not determine for what purpose it was spent. Law enforcement spending increased by $52,000 during a year in which $765,000 in shared cash was deposited into the general fund.**

This practice is clearly improper. The assets went into the city's general fund. There is no record that the money was ever spent for any particular law enforcement purpose and total law enforcement expenditures did not increase commensurate with the amount of equitable sharing money received.

B. **A local police department used $4,000 in shared cash to pay for an audit of asset forfeiture funds by an outside accounting firm.**

This use is entirely proper. However, it would raise a supplantation question if there are existing appropriated funds available to cover audits of equitable sharing monies.

C. **A local police department contracted with a private helicopter firm on contingency, paying the firm a percentage of forfeiture proceeds from seizures in which the department used the firm's helicopter services.**

This use is improper. The first problem is the commitment to use future equitable sharing monies in a certain way. A local law enforcement agency may not commit in advance to spend seized assets in a certain way — it has no authority to make such a commitment because it has no authority to bind the federal decision-maker either as to the possibility of sharing or as to how the money may be spent. Second, once the money is received by the agency, it is being used to pay for a service already provided, and a liability incurred, hence the money is not being spent to augment law enforcement resources, but rather to supplant the use of existing appropriations to pay off contingent liabilities. Third, this arrangement creates a serious ethical appearance problem because it ties in compensation with the fact and amount of forfeiture — something that is clearly barred for government workers.

It should be noted that a local law enforcement agency that incurs out-of-pocket expenses to contract with a helicopter firm in support of an investigation resulting in a federal forfeiture could seek reimbursement for those expenses independent of equitable sharing, as the Department of Justice is authorized to reimburse such out-of-pocket forfeiture-related expenses.

D. **A city used $4,000 in asset forfeiture funds to pay for drug testing of all city employees operating motor vehicles, not just law enforcement agency employees.**

This use is improper. Money is being spent for drug testing of city employees, not just law enforcement personnel. There could be a supplantation problem even if testing was limited to law enforcement agency personnel, unless the money was being used only for a trial program.

E. **A local police department used shared cash to pay legal fees and damages in suits filed against the city in narcotics-related cases. Prior to the city receiving shared cash, these costs were paid out of general fund monies. Total police department spending has increased each year by at least the amount of shared cash expended.**

Using equitably shared money in this way serves a valid law enforcement purpose. However, it must first be clear that under applicable state or local law, appropriated funds may be used to satisfy judgments against the entity involved, and second, that no such funds are currently appropriated to satisfy this particular judgment. Otherwise, the no supplantation rule would be violated.

II. SALARIES

A. **A large city police department budgeted nearly $1.9 million in shared cash to pay the salaries of 63 new entry-level police officers. General fund support for the police department did not decrease. The city was unable to fund the salaries from any other source. Shared cash had not been used for salaries in prior years.**

This use is proper. Despite the supplantation concern, it is appropriate to use equitable sharing monies to pay salaries for new positions on a temporary basis. The rationale is that available law enforcement resources are increasing, assuming no money would otherwise be made available for such positions. Such funding for these positions would be limited to one year.

B. **A county sheriff's department used several million dollars a year in shared cash to pay the salaries of sworn and non-sworn personnel in several special programs. The programs included an anti-drug community education program, narcotics task forces, inmate treatment, and an automated information retrieval system for patrol stations.**

This use is proper, unless there is a supplantation problem. The designated uses are proper law enforcement uses. However, it appears from the facts given that these special program personnel were already employed prior to the equitable sharing. Hence, the use of shared monies for their salaries may create a supplantation problem unless these new positions are limited to one year. Sharing proceeds used to pay the installation costs of a new automated information retrieval system were clearly proper.

III. EDUCATION AND TREATMENT

A. **A local police department used shared cash as the main funding source for a youth drug education program. Program expenditures totalled almost $10,000 and included over $4,000 for student and advisor meetings and travel (non-law enforcement personnel) and almost $2,000 for pizza, parties, dances, and movies. Other expenditures included tee-shirts and identification cards.**

Using shared proceeds as the main funding source for a youth drug education program operated by the police department is proper. However, the meeting and entertainment costs seem high and should be carefully justified.

B. **A county sheriff's department used $3-$4 million in shared cash to educate county students about drug abuse. Sheriff's deputies went into schools to teach children about resisting drugs. The department also used the funds to participate in a public/private sector drug abuse education organization that prepared anti-drug abuse materials and distributed them to the community.**

This use is proper. The expenditure of funds to pay the cost to educate students using agency personnel is proper. The sharing agency should document actual expenditures for a project of this magnitude. Where an agency has a question, it should consult the LECC Coordinator or the Executive Office for Asset Forfeiture. It is not clear, though, why $3 to $4 million was necessary for this purpose. The money could not be used to cover salaries unless new positions were involved. It could be used to purchase training materials and to cover travel expenses.

C. **A county sheriff's department used $7 million in sharing proceeds to pay for a treatment program to rehabilitate inmates with drug problems. Program costs included $1.2 million spent in one year for the salaries of probation officers who worked directly with the inmates. Sharing proceeds also paid the salaries of sheriff's deputies working in the program.**

This use is part proper and part improper. Funding an inmate drug rehabilitation program may be a proper law enforcement use when the agency has custodial responsibility for the inmates in question. However, part of the money is going to pay for agency salaries. This use is proper if limited to new positions, and only for the payment of the first year's salaries. See answer to II.A above. The use of sharing proceeds to pay for probation officers' salaries is clearly an improper pass-through to another entity, as the officers are employees of the court and not a law enforcement agency.

IV. EQUIPMENT

A. **A local police department received a forfeited luxury sports car in May of 1989. Six months later, the department traded the vehicle to a car dealer for six other vehicles to be used in police investigations. The transaction did not involve the exchange of cash.**

This use may be proper depending on the original intent. The question that needs to be answered is whether the agency had a bona fide use for the luxury car when it first acquired it. Under Department rules, when cars are transferred to local agencies, they must be used by that agency for law enforcement purposes for two years before they may be sold. However, an earlier disposition is proper if the vehicle ceases to be of use after a period of time. Here, it is entirely possible that the vehicle was needed for a legitimate undercover operation, was used for that purpose, and once used, had become known to the criminal element and thus could not be used again. It would be entirely proper, then, to trade the car for six regular cars, which could be used to carry on the agency's mission. As a matter of prudence, the agency should request Department of Justice approval in writing prior to such a trade.

If there was no bona fide intended use for the luxury vehicle, this activity would constitute a violation of the two-year rule. The reason for this rule is to assure that when a local agency places a car into official use, it has a legitimate law enforcement purpose in mind.

B. **A local police department used $13,000 in shared cash to purchase a property tracking system that tracks all police property using scannable bar codes.**

This use is proper. As a capital expenditure, there is no supplantation problem. The system is clearly of benefit to the efficient operation of the agency.

C. **A county sheriff's department purchased 118 semi-automatic weapons. According to the sheriff, he thought the weapons should have been paid for out of the county general fund. However, the county**

refused to do so. Because the sheriff considered having the weapons to be an officer safety issue, he approved buying them with sharing proceeds rather than going without them.

This use is proper. The sheriff was correct to say that this is the type of purchase that should be financed with appropriated funds. However, absent such funds, the purchase of additional equipment of any type is permissible so long as it enhances the ability of the agency to do its job.

V. FACILITY COSTS

A. **A state police department used shared cash to make lease payments on substation buildings. General fund monies paid the substation leases in prior years. The leases were paid from an account that contained shared cash and other revenues such as fees for accident reports and a state cellular phone tax. There were no restrictions on uses of the other revenues, which made up about 20 percent of the funds in the account.**

This use is an improper supplantation. Sharing proceeds can be used to temporarily lease new facilities, by analogy to the rule on temporary salaries. See II.A above. These appear to be recurring expenditures, and appropriated funds have been made available in the past. Therefore, there is a supplantation problem under these facts.

B. **A city police department used shared cash to pay the costs of operating an off-site undercover narcotics facility. Included in these costs were lease payments, telephone bills, furniture, improvements to the building, and paving the parking lot. The department did not have an off-site narcotics facility prior to using the funds for this purpose.**

This use is proper. This is a temporary facility and appropriated funds were not available. This is an excellent use for shared funds.

C. **City council minutes stated that sharing proceeds were being used to fund new carpeting for the city library. This was not readily apparent in the official police department appropriation legislation. However, this legislation reduced the narcotics unit's overtime allocation. At the same time, the library's appropriation was raised by the same amount.**

This use is clearly improper. It is clear from the stated facts that the sharing proceeds in fact paid for the carpeting in the public library. Accounting gimmicks made it appear that the money went to agent overtime, but in fact that did not happen. Had the city council minutes not been so candid, the city might have been able to disguise this fact. The justification that all budgets were in fact increased makes no difference where it is clear that but for sharing proceeds, the carpeting would not have been purchased.

VI. USE OF INTEREST INCOME

A. **At two city police departments, interest earned on shared cash maintained in seized asset funds went to the city general funds pursuant to city policy. In both cases, the interest did not maintain a separate identity in the general fund so it could not be determined for what purpose it was spent.**

This use is clearly improper. This Guide is clear that interest on equitable sharing monies is subject to the same rules as the monies themselves.

VII. PASS-THROUGHS TO OTHER AGENCIES

A. **A county-based narcotics task force passed-through a portion of shared cash to cities that had law enforcement personnel assigned to the task force. City officials completed documents similar to a DAG-71 stating that the funds would be used for law enforcement purposes. Neither the county nor the task force verified that the cities spent the funds for law enforcement purposes.**

This use is improper. This situation involves passing-through money from a county-based narcotics task force to "cities" that had law enforcement personnel assigned to the task force. Cities are not law enforcement agencies and are not entitled to receive money as such, unless, for some reason, a local law enforcement agency is legally unable to receive money directly, and the money, which is then received by the city, is earmarked for a law enforcement activity of that law enforcement agency.

B. **A county sheriff's department contracted with a number of cities within the county to provide law enforcement services. The department passed-through a portion of shared cash to cities in which seizures took place. The contract cities did not maintain their own police forces. One contract city used the cash pass-throughs to pay the county for law enforcement services. Records did not show whether the services paid for with the cash pass-throughs were in addition to normal contract services.**

This use is improper. Monies are being spent by a non-law enforcement entity (the cities), and are supplanting existing appropriations. In reference to the pass-through issue, it could be argued that the money is in effect being spent by the recipient agency, as it is receiving the money back from the contract city. This argument might be valid if it were clear that the contract city in fact used the money to pay the agency to perform new services. But we can hypothesize no situation where it would be necessary for the money to go from the agency to the city and then back to the recipient agency.

C. **A city police department donated $10,000 of the $50,000 equitable share it received to a "Victim/Witness" program, a community-based, non-profit organization that counsels victims and witnesses.**

This use is a valid law enforcement use, as victim/witness counseling is something the police department could validly do itself as a part of its regular law enforcement mission. However, the amount donated for this purpose must be limited to fifteen percent of the amount received ($7,500) under current Department guidelines (unless the "windfall" provision applies). (See subsection X.A.3.a. of this Guide.)

Appendix C

SAMPLE BOOKKEEPING PROCEDURE

1. Establish a separate revenue account through your Department of Finance for the proceeds from the disposition of federal sharing proceeds. This account should also receive any interest income generated by the funds. This account will be solely for the use of federal sharing proceeds. No other funds may be included in this account.

2. Maintain a log and copies of all DAG-71s forwarded to the Department of Justice. A consecutive numbering system should be used for control purposes. The log should contain seizure type (property or currency), amount, share amount requested, amount received, and date received.

3. Update the log when a check is received from the Department of Justice. The amount received may differ from the amount requested.

4. Designate all checks as restrictive and have them endorsed by the responsible individual immediately upon receipt. (Example: "For Deposit Only to account _____.")

5. Deposit all funds into the revenue account on the date received or no later than the next business day.

6. Safeguard all checks received if not deposited on the day received. Physically place checks in a safe, locked cash box, locked drawer, or other secured place.

7. Establish an internal procedure to recommend expenditures from the revenue account. In many small agencies, the Chief of Police determines the purposes for which the funds are utilized. In larger agencies, committees have been formed to make recommendations for expenditures to the agency head. The agency head must authorize all expenditures from the federal sharing revenue account.

8. In some jurisdictions, approval for expenditures must also be obtained from the governing body, such as a town council or city manager's office.

9. Upon final approval, contracts or purchase orders may be issued to formally disburse deposited assets for goods or services.

10. Purchase orders and contracts are encumbered (definition: charged against account balance).

11. Maintain a record of all expenditures from the revenue account. These expenditures must be in accordance with this Guide.

12. Many agencies issue quarterly and yearly reports that detail the actual amounts and uses of the federal asset sharing funds and property within their jurisdiction.

Appendix D

COMPLIANCE REQUIREMENTS AND AUDIT PROCEDURES

A. SHARE DEPOSITS

Compliance Requirements

- Shares must be deposited into a separate revenue account that is used solely for federal shared assets.
- Any interest income generated by the funds must also be deposited in this account.

Suggested Audit Procedures

- Trace share receipts and interest earned on shares to the accounts in which they are deposited.
- Determine whether any other funds are deposited into the accounts.

B. USE OF SHARES

Compliance Requirements

- Shares must be used for law enforcement purposes as stated on the DAG-71.
- Interest earnings on equitable shares must also be used for law enforcement purposes.
- Shares must supplement and not supplant the resources of the law enforcement agency.

Suggested Audit Procedures

- Examine shared properties, share expenditures, and interest earned on shares to determine if they were used for law enforcement purposes as defined in this Guide. If funds are pro-rated based on use by law enforcement staff, verify adequacy of computations of pro-rated expenditures.
- Examine law enforcement and non-law enforcement budgets for the current and prior fiscal years. Determine whether: (1) the law enforcement budget increased more slowly or decreased more rapidly than the non-law enforcement budget; and (2) changes in the law enforcement budget resulted from actual or anticipated equitable share receipts.

C. SHARED PROPERTY

Compliance Requirements

- Property placed into official use must be used for a law enforcement purpose for at least two (2) years following the transfer. After two years, the property may be sold for the benefit of the law enforcement agency.
- Luxury automobiles may only be used for undercover assignments.
- Real property placed into official use must be used for approved purposes.

Suggested Audit Procedures

- Examine shared properties and disposal records, as appropriate, to determine if they were used for law enforcement purposes for at least two (2) years.
- Examine assignment records for luxury automobiles.
- Examine current use of shared real property.

D. AUDIT STANDARDS

Compliance Requirements

- The Government Auditing Standards, issued by the United States General Accounting Office, will be followed by auditors and audit organizations conducting the required independent financial audit. These standards pertain to the auditor's professional qualifications, the quality of the audit effort, and the characteristics of professional and meaning audit reports.

Appendix E

FEDERAL EQUITABLE SHARING AGREEMENT AND ANNUAL CERTIFICATION REPORT

Agency: _____ **Reporting Period (Your fiscal year):** _____
Address: _____ **NCIC Code:** _____
Bank Routing Code and Account Number for EFT Purposes: _____
Contact Person: _____
Telephone No.: _____

I. FEDERAL EQUITABLE SHARING PROGRAM AGREEMENT

This Agreement is entered into among (1) the Department of Justice, (2) the (above stated law enforcement agency) and (3) the (governing body) in order to recite the requirements for participation in the Federal Equitable Sharing Program and the restrictions upon the use of federally forfeited property or proceeds from such property that is equitably shared with participating agencies. By their signatures below, the parties agree to be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the Federal Equitable Sharing Program:

1. That any shared assets shall be used for the law enforcement purposes specified in the DAG-71 request submitted by the requesting agency; that requests for a change in use from that specified in the DAG-71 must be submitted in writing to the federal decision-maker or the Asset Forfeiture Office, Criminal Division, U.S. Department of Justice, P.O. Box 27322, Central Station, Washington, D.C. 20038.

2. That the misuse or misapplication of shared assets, or supplantation of existing resources with shared assets is prohibited. Failure to comply with this provision shall subject the recipient agency to the sanctions stipulated in A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (March 1994), hereinafter referred to as the Guide.

3. That this Agreement will be submitted annually to the Executive Office for Asset Forfeiture and the United States Attorney in the district in which the recipient law enforcement agency is located and/or in which the shared asset was forfeited.

4. That this Agreement is considered a part of any and all sharing requests submitted by the above-referenced state or local law enforcement agency.

5. That the parties agree to establish and/or maintain Federal Equitable Sharing Program funds in a separate account, and further agree that funds from state forfeitures or other sources will not be deposited or otherwise commingled with the federal equitable sharing funds. The parties further agree that such account will be subject to the standard accounting requirements and practices employed for other such public monies as supplemented by requirements set out in the Guide.

6. That the recipient law enforcement agency and its governing body agree to conduct an annual audit of any funds or property received or expended under the Federal Equitable Sharing Program to insure compliance with this Agreement and all applicable statutes and policies, and to submit a copy of the audit to the Executive Office for Asset Forfeiture and to the United States Attorney in the district in which the recipient agency is located and/or in which the shared asset was forfeited.

7. That the undersigned law enforcement official certifies that the receiving state or local law enforcement agency is in compliance with the provisions of the Guide and the National Code of Professional Conduct for Asset Forfeiture.

II. ANNUAL CERTIFICATION REPORT

The undersigned hereby certify that the following is an accurate accounting of funds received and expended by the law enforcement agency under the Federal Equitable Sharing Program during this reporting period:

Beginning Fund Balance (beginning of your fiscal year)	$ _____
Federal Sharing Fund Received (during your fiscal year)	$ _____
Total Equitable Sharing Funds	$ _____
Interest Income Accrued	$ _____
Federal Sharing Funds Expended (during your fiscal year)	$ _____
Equitable Sharing Fund Balance	$ _____

III. DATA FOR ASSESSING LAW ENFORCEMENT BENEFITS

Total spent on salaries for new, temporary, NTE 1-year	$ _____
employees, and overtime	$ _____
Total spent on informant payments	$ _____
Total spent on travel and training	$ _____
Total spent on communications and computers	$ _____
Total spent on firearms, weapons, body armor	$ _____
Total spent on electronic surveillance equipment	$ _____
Total spent on building and improvements	$ _____
Total spent on other law enforcement expenses	$ _____
Total passed-through for non-law enforcement uses	$ _____
Total annual law enforcement budget for your jurisdiction for current fiscal year	$ _____
Total annual budget for non-law enforcement agencies for current fiscal year	$ _____
Total annual law enforcement budget for your jurisdiction for prior fiscal year	$ _____
Total annual budget for non-law enforcement agencies for prior fiscal year	$ _____

Under penalties of perjury, I declare that to the best of my knowledge and belief, the information set forth in this agreement is true and correct.

_____ _____
Signature, Law Enforcement Official Date

_____
Title

_____ _____
Signature, Designated Representative of Governing Body Date

_____
Title

Appendix F

MAJOR STATUTES ENFORCED BY FEDERAL INVESTIGATIVE AGENCIES THAT PERMIT EQUITABLE SHARING

Federal Drug Violations

Title 21 U.S.C. § 333(e)(3)	A conviction under this section of the Food Drug and Cosmetic Act for distribution of Human Growth Hormones, or for possession with intent to distribute Human Growth Hormones, shall be considered a felony violation of the Controlled Substances Act for the purposes of forfeiture under 21 U.S.C. § 853.
Title 21 U.S.C. § 853	Criminal forfeiture procedure covering all property used to commit a felony violation of the federal drug laws and proceeds obtained from such violations.
Title 21 U.S.C. § 881	Civil forfeiture of specific property with a nexus to illegal drug trafficking used or acquired in a prohibited manner.

Money Laundering Violations

Title 18 U.S.C. § 981	Civil forfeiture of property involved in a federal money laundering violation and the proceeds traceable thereto. Also provides for the forfeiture of proceeds traceable to certain federal bank fraud violations.
Title 18 U.S.C. § 982	Criminal forfeiture of property involved in a federal money laundering violation and the proceeds traceable thereto. Also provides for the forfeiture of proceeds traceable to certain federal bank fraud violations.

Gambling and Racketeering Laws

Title 18 U.S.C. § 1963	Criminal forfeiture of certain property, property interests, and proceeds obtained in violation of the federal racketeering law (RICO).
Title 18 U.S.C. § 1955	Civil forfeiture of property used in an illegal interstate gambling business.
Title 15 U.S.C. § 1177	Confiscation of gambling devices and means of transportation.

Child Pornography and Obscenity Laws

Title 18 U.S.C. § 2253	Criminal forfeiture of certain property used or acquired in violation of federal child pornography laws.
Title 18 U.S.C. § 2254	Civil forfeiture of certain property used or acquired in violation of federal child pornography laws.
Title 18 U.S.C. § 1467	Criminal forfeiture of property used to commit or promote the commission of a violation of the federal obscenity laws, and proceeds traceable to such violations.

Auto and Electronic Communication Theft Violations

Title 18 U.S.C. § 512	Civil forfeiture of automobiles and parts involved in specific prohibited conduct.
Title 18 U.S.C. § 2513	Civil forfeiture of certain property used to illegally intercept wire, oral, or electronic communications.

Other Federal Violations

Illegal War Munitions

Title 22 U.S.C. § 401	Civil forfeiture of arms, munitions of war, or other articles exported illegally, and conveyances used to export such items illegally.

Copyright Materials

Title 17 U.S.C. § 509	Civil forfeiture of specific property that has been used to illegally manufacture, reproduce or distribute phonograph records or copies of copyrighted materials.

Smuggling of Aliens

Title 8 U.S.C. § 1324(b)	Civil forfeiture of conveyances that have been used in the attempted or accomplished smuggling of aliens into the United States or transportation of illegal aliens within the United States.

Drug Paraphernalia

Title 21 U.S.C. § 857	Civil forfeiture of drug paraphernalia.

Types of Federal Forfeiture Actions

Criminal forfeiture is an action brought as a part of the criminal prosecution of a defendant. It is an *in personam* (against the person) action and requires that the government indict (charge) the property used or derived from the crime along with the defendant. If the jury finds the property forfeitable, the court issues an order of forfeiture.

For forfeitures pursuant to the Controlled Substances Act (CSA), Racketeer Influenced and Corrupt Organizations (RICO), as well as money laundering and obscenity statutes, there is an ancillary hearing for third parties to assert their interest in the property. Once the interests of third parties are addressed, the court issues a final forfeiture order.

Civil judicial forfeiture is an *in rem* action brought in court against the property. The property is the defendant and no criminal charge against the owner is necessary.

Administrative forfeiture is an *in rem* action that permits the federal seizing agency to forfeit the property without judicial involvement. The authority for a seizing agency to start an administrative forfeiture action is found in the Tariff Act of 1930, 19 U.S.C. § 1607. Property that can be administratively forfeited is:

- merchandise the importation of which is prohibited;
- a conveyance used to import, transport, or store a controlled substance;
- a monetary instrument; or
- other property that does not exceed $500,000 in value.

Appendix G

NATIONAL CODE OF PROFESSIONAL CONDUCT FOR ASSET FORFEITURE

I. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

II. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

III. Whenever practicable, and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.[1]

IV. If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.

V. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.

VI. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.

VII. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations processes of that entity.

VIII. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

IX. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.

X. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

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[1] Generally, real property can only be seized following an adversarial pre-seizure hearing. See United States v. James Daniel Good Real Property, 114 S. Ct. 492 (1993).

*U.S. Government Printing Office: 1994 — 301-175/14266