

Program Income Generated by Seizures and Forfeitures

The Department of Justice has revised this manual to incorporate several changes from the new Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, March 1994 (popularly known as “the orange book”) which sets out a number of requirements intended to protect against the potential for fraud, waste and abuse in connection with sharing. Although some of the requirements impose additional accounting, audit, and other paperwork requirements, we believe these safeguards are necessary to maintain public confidence in the sharing program. *Please refer the Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, March 1994 for complete guidelines. This guide and the changes noted below apply to seizures made or adopted on or after May 1, 1994.*

Program Income must be used to increase or **supplement** the resources of the receiving state or local law enforcement agency. Program Income shall not be used to replace or **supplant** the resources of the recipient.

Asset Seizures and Forfeitures Program Income. Income received from the sale of seized and forfeited assets (personal or real property) or from seized or forfeited money shall follow the “Addition Method” of handling program income unless an alternate method for handling program income is designated in the recipient’s award document. The following policies apply to program income from asset seizures and forfeitures:

- A. Program income, with the approval of the awarding agency, may be retained by the entity earning the program income and used for any purpose that furthers the objectives of the legislation under which the grant was made.
- B. States or local units of government, may use program income funds from seized and forfeiture assets as match, when assets are adjudicated by a State Court, in accordance with the State law. In addition, State and local units of government **may** use cash received under the equitable sharing program for the non-Federal portion (match) of program costs, as provided for in the guidelines established by the DOJ Asset Forfeiture Office, when the assets are adjudicated by a Federal Court.
- C. There are no Federal requirements governing the disposition of program income earned after the end of the funding period unless the terms of the award or the awarding agency’s regulations provide otherwise. **Program income from asset seizures and forfeitures is considered earned by the project at the time of the seizure and is available for use by the recipient upon forfeiture.**
- D. **All program income generated by the Task Force must remain within the Task Force for the purposes and under the conditions applicable to the**

use of the grant funds.

Addition Method of Program Income. Program income shall be added to the funds committed in the award. The program income shall be used by the recipient for any purpose that furthers the broad objectives of the legislation under which the award was made (i.e., expanding the project or program, continuing the project or program that furthers the broad objectives of the State, obtaining equipment or other assets need for the project or program, or for other activities that further the statute's objectives).

Accounting for Program Income. All income generated as a direct result of an agency-funded project shall be deemed program income. It must be used for the purposes and under the conditions applicable to the award. The Federal portion of program income must be accounted for up to the same ratio of Federal participation as funded in the project or program. For example: If a recipient was funded with 75% Federal funds and 25% non-Federal funds.

- A. Wisconsin Statutes provide that money resulting from a state forfeiture action under sections 161.555 and 973.075(4), must be deposited in the school fund. Therefore, if property is sold under a state forfeiture for \$100,000, the school fund must receive \$50,000 and the local agency may retain the remaining \$50,000. Since the grant awarded by DOJ contained 75% federal funding, at least \$75,000 of the original \$100,000 forfeiture would have been considered program income. However, since this was a state forfeiture and the local agency could retain only \$50,000 (which is less than the \$75,000 or 75% federal funding) the entire remaining \$50,000 must be considered as federal program income and reported to DOJ on the Program Income Report.
- B. Under federal forfeiture action the local agency received \$20,000. Again, since the grant provided 75% federal funding, \$15,000 must be accounted for as federal program income and reported to DOJ on the Program Income Report.
- C. Establish a separate revenue account through your Finance Department 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. The recipient must establish a system to provide adequate fund accountability for program income earned and expended. This can be accomplished by utilizing a unique accounting code which will enable budget officers and auditors to track all transactions (revenue and expenditures) involving program income.

All program income expenditures must be reported to DOJ on a quarterly basis on the Program Income Expenditure Report.

Audit. Agencies which receive \$100,000 or more in federally shared cash and property in a year or which have a balance of \$100,000 or more on hand must ensure that their

forfeiture receipts and expenditures are audited and a copy of the audit furnished to the Executive Office for Asset Forfeiture.

Increase and Not Replace. Program Income must be used to increase or **supplement** the resources of the receiving state or local law enforcement agency for specific approved program purposes. Program Income resources shall not be used to replace or **supplant** the resources of the recipient. In other words, the receiving local law enforcement agency must benefit directly from the program income for approved program purposes. If, for example, a police department receives \$100,000 in federal sharing money for task force purposes only to have its budget cut by \$100,000 by the city council, the police department has received no direct benefit of the program income. Rather, the city as a whole has received the benefit of the program income.

Permissible Uses of Program Income. The following information is contained A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies Guideline.

- 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) the Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies.
- 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., surveillance vehicles), electronic surveillance equipment, travel, transportation, supplies, leasing of office and other space for task force and undercover operations, and leasing of other types of equipment that support law enforcement activities.
- D. **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.

- E. **Drug Education and Awareness Programs** - The costs associated with conducting drug education and awareness programs by law enforcement agencies.
- F. **Asset Accounting and Tracking** - The costs associated with the accounting, auditing, and tracking of expenditures for shared cash, proceeds, and tangible property.

Impermissible 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 funding may be used to pay the expenses for drug testing of law enforcement personnel, such a use of these funding 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.
- 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.