



*Homeland Security Investigations*

# Asset Forfeiture Handbook

HSI HB 20-01 / January 28, 2020



U.S. Immigration  
and Customs  
Enforcement

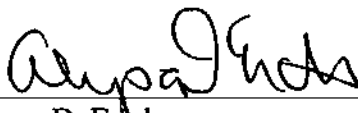
## Foreword

The Asset Forfeiture Handbook provides a uniform source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents assigned to Asset Identification and Removal Groups when conducting asset seizure and forfeiture investigations as part of this specialized investigative program. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency across all HSI field offices. Oversight for the national Asset Forfeiture Program within HSI resides with the Unit Chief, Asset Forfeiture Unit.

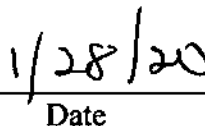
The Asset Forfeiture Handbook supersedes HSI HB 10-04 by the same title, dated June 30, 2010; Office of Investigations (OI) memorandum, "Asset Sharing With Foreign Governments," dated September 8, 2004; OI memorandum, "Asset Sharing with DEA," dated May 5, 2005; and HSI memorandum titled, "Updated Federal Adoptions Policy and Equitable Sharing Guidance," dated August 30, 2017.

The Asset Forfeiture Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter, nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE. This Handbook is For Official Use Only (FOUO) – Law Enforcement Sensitive. It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with the Department of Homeland Security policy relating to FOUO information and the ICE Directive on Safeguarding Law Enforcement Sensitive Information. This information shall not be distributed beyond the original addressees without prior authorization of the originator. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit, as well as the appropriate ICE Counsel and/or U.S. Attorney, are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure pursuant to the law enforcement privilege. Any other requests for disclosure of this Handbook or information contained herein should be referred to the Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit which will coordinate all needed revisions with the Asset Forfeiture Unit.



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Date

# ASSET FORFEITURE HANDBOOK

## Table of Contents

<b>Chapter 1. PURPOSE AND SCOPE</b> .....	<b>1</b>
<b>Chapter 2. DEFINITIONS</b> .....	<b>1</b>
• 2.1 Adoptions.....	1
• 2.2 Designated Agency Representative .....	1
• 2.3 Encumbrance.....	2
• 2.4 Equitable Sharing.....	2
• 2.5 Facilitation .....	2
• 2.6 Final Order of Forfeiture.....	2
• 2.7 Interlocutory Sale.....	2
• 2.8 Lien .....	2
• 2.9 <i>Lis Pendens</i> .....	2
• 2.10 Net Equity .....	3
• 2.11 Payment in Lieu of Forfeiture.....	3
• 2.12 Post-and-Walk.....	3
• 2.13 Preliminary Order of Forfeiture .....	3
• 2.14 Pre-Seizure Analysis.....	3
• 2.15 Proceeds .....	3
• 2.16 Seizure Threshold .....	3
• 2.17 Specified Unlawful Activity .....	4
• 2.18 Torrens System .....	4
• 2.19 Turnover Order .....	4
• 2.20 Victim .....	4
<b>Chapter 3. AUTHORITIES/REFERENCES</b> .....	<b>4</b>
• 3.1 Federal Forfeiture Statutes .....	4
• 3.2 Treasury Executive Office of Asset Forfeiture Guides and Guidelines .....	6
• 3.3 Department of Justice, Money Laundering and Asset Recovery Section Manuals.....	6
<b>Chapter 4. RESPONSIBILITIES</b> .....	<b>7</b>
• 4.1 Executive Associate Director, Homeland Security Investigations .....	7
• 4.2 Assistant Director, Investigative Programs.....	7
• 4.3 Deputy Assistant Director, Investigative Services Division.....	7

• 4.4	Unit Chief, Asset Forfeiture Unit.....	7
• 4.5	Program Manager, Asset Forfeiture Unit.....	7
• 4.6	Special Agents in Charge.....	8
• 4.7	AIRG Group Supervisors.....	8
• 4.8	Special Agents .....	9
• 4.9	Asset Forfeiture Specialists.....	9
<b>Chapter 5. NATIONAL AIRG CONCEPT .....</b>		<b>9</b>
• 5.1	Purpose and Benefits of AIRGs.....	9
• 5.2	AIRG Mission Statements .....	10
• 5.3	National Code of Professional Conduct for Asset Forfeiture .....	10
• 5.4	Office and Project Codes .....	11
• 5.5	Headquarters Oversight .....	12
• 5.6	Relationship with TEOAF .....	12
<b>Chapter 6. AIRG STRUCTURE .....</b>		<b>13</b>
• 6.1	Structure.....	13
• 6.2	Background and Training .....	13
• 6.3	Tenure of AIRG Personnel .....	13
• 6.4	Management Support.....	14
<b>Chapter 7. GENERAL DUTIES OF AN AIRG.....</b>		<b>14</b>
• 7.1	Critical Points to Remember.....	14
• 7.2	Mandates .....	14
• 7.3	Liaison.....	15
• 7.4	Knowledge of Forfeiture Law and Procedures .....	15
<b>Chapter 8. CASE MANAGEMENT GUIDELINES .....</b>		<b>15</b>
• 8.1	Proactive Case Development.....	16
• 8.2	Case Referrals .....	16
• 8.3	AIRG Case Determination and Coordination .....	17
• 8.4	Collaboration on Enforcement Actions .....	17
• 8.5	Opening an AIRG Case .....	18
• 8.6	Inclusion of Originating Case Numbers .....	18
• 8.7	Initial Report of Investigation .....	19
• 8.8	Interim Reports of Investigation .....	19
• 8.9	Case Closing and Disposition .....	19
• 8.10	Project Codes .....	20

• 8.11	National AIRG Project Code .....	21
• 8.12	Individual AIRG Project Codes .....	21
<b>Chapter 9.</b>	<b>INVESTIGATIVE STEPS .....</b>	<b>22</b>
• 9.1	General Guidelines for AIRG Investigations .....	22
• 9.2	Real Property .....	23
• 9.3	Facilitation .....	23
• 9.4	Proceeds .....	23
• 9.4.1	Seizure and Forfeiture of Cryptocurrency .....	24
• 9.5	Possible Defenses Against Forfeiture .....	25
• 9.6	Evaluation of a Property Independent of a Pre-Seizure Analysis .....	25
• 9.7	Using Online Real Estate Information .....	25
• 9.8	Requesting Mortgage and Escrow Documents .....	26
• 9.9	Investigative Steps When the Target of the Investigation Is Not the Legal Owner.....	27
• 9.10	Requesting a Pre-Seizure Analysis .....	27
• 9.11	Receipt of Pre-Seizure Information from the Real Property Contractor ...	28
• 9.12	Descriptions of Available Pre-Seizure Analysis Services .....	29
• 9.13	Environmental Concerns.....	31
• 9.14	Coordination with the Assistant U.S. Attorney .....	31
• 9.15	Filing of <i>Lis Pendens</i> and Service of Notice .....	31
• 9.16	Maintenance of Real Property Files.....	32
• 9.17	Financial Seizures .....	33
• 9.18	Seizures of Businesses .....	35
<b>Chapter 10.</b>	<b>PRE-SEIZURE PLANNING.....</b>	<b>35</b>
• 10.1	What is Being Seized? .....	35
• 10.2	Why is the Asset Being Seized? .....	36
• 10.3	How is the Asset Going to Be Seized? .....	36
• 10.4	Calculation of Net Equity/Avoiding Liability Seizures.....	37
• 10.5	Special Considerations When Planning the Seizure of a Commercial Enterprise .....	38
• 10.6	Seizure Thresholds.....	38
• 10.7	Pre-Seizure Summary Report .....	38
• 10.8	Seizures of Complex Assets.....	39
• 10.9	Adopted Seizures .....	39
<b>Chapter 11.</b>	<b>TYPES OF FORFEITURES.....</b>	<b>41</b>
• 11.1	Administrative Forfeiture.....	41
• 11.2	Judicial Civil Forfeiture .....	42

- 11.3 Criminal Forfeiture .....42
- 11.4 Parallel Proceedings.....43
- 11.4.1 Civil.....43
- 11.4.2 Criminal .....44

**Chapter 12. SPECIAL CONSIDERATIONS IN AIRG INVESTIGATIONS .....44**

- 12.1 Criminal Cases .....44
- 12.2 Plea Agreements .....45
- 12.3 Financial Affidavits .....45
- 12.4 Out of District Actions.....46
- 12.5 Receiverships and Unique Court Orders.....47
- 12.6 Restraining Orders .....47
- 12.7 International Cooperation .....47
- 12.8 Joint Investigations .....48
- 12.9 Retention of Seized Property .....49
- 12.10 Notice to Property Owners of Illegal Activity.....49

**Chapter 13. SEIZURE PROCESSING, (b) (7)(E) ENTRY, AND ADMINISTRATIVE GUIDELINES FOR REAL PROPERTY FORFEITURES.....49**

- 13.1 Real Property Pre-Seizure Planning Meeting .....49
- 13.2 Pre-Seizure Viewing of the Property .....49
- 13.3 Post-and-Walk.....50
- 13.4 Non-Custodial Property Considerations .....51
- 13.5 Payment of Real Property Liens .....52

**Chapter 14. FINES, PENALTIES, AND FORFEITURES .....53**

- 14.1 Interaction Between the Designated Agency Representative, the Contract Property Manager, and FP&F .....53
- 14.2 Responsibilities of Seizing Special Agents.....54
- 14.3 Coordination .....54
- 14.4 Using (b) (7)(E) to Consign Property to the Real Property Contractor...55

**Chapter 15. (b) (7)(E) INCIDENT REPORTS.....55**

- 15.1 Preparation of an (b) (7)(E) Incident Report.....55
- 15.2 Investigations Involving Multiple Seizures .....56
- 15.3 Updating the Pre-Seizure Incident Report for Real Property .....56
- 15.4 Payments in Lieu of Forfeiture .....57

<b>Chapter 16. EQUITABLE SHARING.....</b>	<b>58</b>
• 16.1 Approval Authority.....	58
• 16.2 Task Force Agreements .....	58
• 16.3 Filing Instructions .....	59
• 16.4 Filing Instructions for International Agencies .....	60
• 16.5 Reverse Sharing .....	61
<b>Chapter 17. COMPENSATION FOR VICTIMS OF CRIME IN ASSET FORFEITURE AND REFUNDS .....</b>	<b>62</b>
• 17.1 Forfeiture and Compensation for Victims of Crime .....	62
• 17.2 Procedure Types.....	62
• 17.3 Liabilities and Obligations .....	63
• 17.4 Federal Agencies as Victims.....	63
• 17.5 U.S. Victims of State Sponsored Terrorism Fund .....	64
<b>APPENDIX</b>	
Appendix           Acronyms.....	A-i

# ASSET FORFEITURE HANDBOOK

## Chapter 1. PURPOSE AND SCOPE

The Asset Forfeiture Handbook establishes policies and procedures to be used by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) when conducting asset forfeiture investigations within the scope of the HSI Asset Identification and Removal Group (AIRG) program.

(Note: Any HSI-initiated seizure and/or forfeiture of evidence and/or assets must also conform to the policies and procedures set forth in U.S. Customs and Border Protection (CBP) Handbook (HB) 4400-01B, “Seized Asset Management and Enforcement Procedures Handbook” (SAMEPH), dated July 2011, or as updated. The SAMEPH contains specific policies, procedures, and guidelines to be followed during the pre-seizure, seizure, storage, and forfeiture stages of asset removal, including rules concerning proper documentation of seizures and forfeitures, interaction with the CBP Office of Fines, Penalties and Forfeitures (FP&F), and compliance with the Civil Asset Forfeiture Reform Act (CAFRA) of 2000. SAs contemplating seizures of vehicles, monetary instruments, financial accounts, real property, or other assets should comply with the provisions of this Handbook as well as those of the SAMEPH.)

## Chapter 2. DEFINITIONS

The following definitions are provided for the purposes of this Handbook:

### 2.1 Adoption

Section 6 (D) of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 34 (2017), Policy Regarding the Federal Adoption of Seizures by State and Local Law Enforcement Agencies, dated July 26, 2017, or as updated, defines “adoption” as follows: An adoption occurs when a state or local law enforcement agency seizes an asset, pursuant to its own authorities and without federal involvement (for example, without federal intelligence sharing, federal coordination, or federal oversight), and requests that a federal agency “adopt” the asset and forfeit it under federal law.

### 2.2 Designated Agency Representative

The Designated Agency Representative (DAR) is the field representative for all local interactions with the TEOAF Real Property and General Property Contractors, including consignments, inventories, quarterly evaluations, vehicle examinations, etc. The DAR is the one who ensures that all interactions (whether CBP’s, HSI’s, or private entities’) with a Contractor occur within the parameters of the TEOAF Contract Statement of Work (SOW) and that the Contractor



performs all duties on a timely basis and according to the SOW. Oversight by the DAR is necessary to ensure that no deficiencies or abuses exist.

### **2.3 Encumbrance**

Anything that affects or limits the title of a property (e.g., liens, mortgages, easements, leases, or restrictions).

### **2.4 Equitable Sharing**

Division and transfer of forfeited property, or proceeds from forfeited property, between government agencies, based on each agency's contributions to and participation in an investigation.

### **2.5 Facilitation**

Use of an asset in the commission of a crime or in furtherance of criminal or otherwise proscribed activity.

### **2.6 Final Order of Forfeiture**

An order entered by the court in a judicial civil or criminal forfeiture proceeding, following the preliminary order of forfeiture and any ancillary proceedings, authorizing the Government to take ownership and dispose of a property. The final order considers any third-party rights, as well as the defendant's interest in the property (if criminal) – known in some judicial districts as an “amended order of forfeiture.”

### **2.7 Interlocutory Sale**

The court-ordered sale of an asset prior to a final order or judgment of forfeiture. A court may authorize such an action in cases where loss of market value or physical deterioration of an asset has occurred or is imminent.

### **2.8 Lien**

A legal claim against an asset which is used to secure a loan and must be repaid if the asset is sold.

### **2.9 *Lis Pendens***

Latin for “suit pending.” A written notification, filed with a county recorder's office, indicating that a forfeiture action against the property is pending on behalf of the Government. The notice minimizes the potential for the transfer of ownership by alerting potential buyers or lenders that

the title of the property is in question and any purchase of the property may result in the new owner being bound by the court decision.

## **2.10 Net Equity**

The market value of an owner's unencumbered interest in an asset (i.e., the difference between the fair market value of an asset and the outstanding balance of liens against that asset).

## **2.11 Payment in Lieu of Forfeiture**

A defendant's voluntary substitution of a monetary payment in place of the forfeiture of a particular asset.

## **2.12 Post-and-Walk**

The process of delivering a warrant of arrest *in rem* to the owner of a real property and affixing a copy of the warrant to the property itself. Undertaken as part of a civil forfeiture action following the filing of a civil complaint for forfeiture.

## **2.13 Preliminary Order of Forfeiture**

In criminal forfeiture proceedings, an order of the court, issued after the defendant is found guilty by a jury or enters a plea of guilty, which sets forth a money judgment or directs the defendant to surrender his or her interest in the property to the Government. The preliminary order of forfeiture does not deem the seized property forfeited until a final order of forfeiture is issued.

## **2.14 Pre-Seizure Analysis**

A title search, appraisal, net equity analysis, cost/benefit analysis, and/or other services performed by the real property contractor at the request of an AIRG representative following the identification of a real property that may be subject to forfeiture.

## **2.15 Proceeds**

Any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

## **2.16 Seizure Threshold**

The amount of net equity that a criminal must hold in an asset before an SA may contemplate the seizure and subsequent forfeiture of that asset.

## **2.17 Specified Unlawful Activity**

Criminal acts that constitute predicate offenses for certain money laundering violations contained in Title 18, United States Code (U.S.C.), Sections 1956 and 1957. Specified Unlawful Activities (SUAs) are listed in 18 U.S.C. § 1956(c)(7).

## **2.18 Torrens System**

A title registration system, used in some states, in which a register of land holdings maintained by the state guarantees title to those included in the register. The system is an alternative to the traditional deeds system under which proof of ownership relies on demonstrating an unbroken chain of title back to an original land grant or purchase.

## **2.19 Turnover Order**

A state court order, obtained from a state court with jurisdiction over the seizure, which authorizes the state or local agency to turn the seizure over to HSI.

## **2.20 Victim**

A person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A person, as used in this definition, is an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property. Title 28, Code of Federal Regulations (C.F.R.) Section 9.2. Federal agencies can qualify as victims under this regulation.

## **Chapter 3. AUTHORITIES/REFERENCES**

### **3.1 Federal Forfeiture Statutes**

- A. Title 18, Chapter 46, “Forfeiture,” contains general forfeiture provisions under federal law:
  - 1) 18 U.S.C. § 981, “Civil Forfeiture,” and 18 U.S.C. § 982, “Criminal Forfeiture.” These statutes give a general legal basis for the civil and criminal forfeiture of some proceeds (defined in Section 2.15) and for facilitating (defined in Section 2.5) assets; they also provide forfeiture provisions for numerous federal statutes. Chief among these are provisions for the forfeiture of property related to a violation of money laundering statutes under 18 U.S.C. §§ 1956, 1957, and 1960.
  - 2) 18 U.S.C. § 983, “General Rules for Civil Forfeiture Proceedings.” This statute outlines procedures applicable to civil forfeitures and includes provisions of CAFRA.

- 3) 18 U.S.C. § 984, “Civil Forfeiture of Fungible Property.” This statute provides for the civil forfeiture of fungible property (e.g., cash, monetary instruments in bearer form, funds on deposit with a financial institution, or precious metals) without the necessity of tracing the specific funds involved in the offense as long as the forfeiture action begins within 1 year of the offense.
  - 4) 18 U.S.C. § 985, “Civil Forfeiture of Real Property.” This statute establishes the requirement that forfeitures of real property must be judicial (as opposed to administrative) and outlines the procedures for filing and carrying out a civil forfeiture action against a real property.
  - 5) 18 U.S.C. § 986, “Subpoenas for Bank Records.” This statute provides a means to subpoena bank records pursuant to civil forfeiture actions.
  - 6) 18 U.S.C. § 1963, “Criminal Penalties.” This statute provides for the forfeiture of any proceeds of, or property giving a defendant a source of influence over, a racketeering enterprise, as defined by the “Racketeer Influenced and Corrupt Organizations” (RICO) statutes (18 U.S.C. §§ 1961-1968).
- B. In addition to the general forfeiture provisions found in Title 18, SAs should examine the statutes underlying the criminal investigation when planning their forfeiture strategy. Many titles of the United States Code contain forfeiture provisions allowing SAs to seize and forfeit assets as proceeds, for facilitation, or both. Some of the forfeiture provisions most commonly used by SAs include, but are not limited to, the following:
- 1) 8 U.S.C. § 1324, “Bringing in and harboring certain aliens.” This statute provides a legal basis and procedures for the forfeiture of proceeds of alien smuggling or conveyances used to smuggle aliens.
  - 2) 18 U.S.C. § 545, “Smuggling goods into the United States.” This statute contains a forfeiture provision for merchandise introduced into the United States contrary to law.
  - 3) 19 U.S.C. § 1595a, “Aiding unlawful importation.” This statute provides for the seizure and forfeiture of merchandise imported contrary to law, as well as for the forfeiture of any conveyance used to import the merchandise contrary to law. It also provides for the seizure and forfeiture of merchandise exported or sent from the United States contrary to law.
  - 4) 21 U.S.C. § 853, “Criminal Forfeitures,” and 21 U.S.C. § 881, “Forfeitures.” These statutes provide for criminal and civil forfeiture, respectively, of assets

obtained as proceeds and used in the facilitation of controlled substance violations.

- 5) 31 U.S.C. § 5317, “Search and forfeiture of monetary instruments.” This statute provides for the criminal and civil forfeiture of property involved in a violation of the reporting requirements of the transportation of monetary instruments into or out of the United States.
- 6) 31 U.S.C. § 5332, “Bulk cash smuggling into or out of the United States.” This statute provides for the criminal and civil forfeiture of any property involved in or traceable to a bulk cash smuggling violation.

### **3.2 Treasury Executive Office for Asset Forfeiture Guides and Guidelines**

Since HSI is a participant in the Treasury Forfeiture Fund (TFF), SAs must adhere to certain policies and guidelines issued by TEOAF. The following documents, among others, are available on HSI Net in the Asset Sharing Section.

- A. “Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies,” Department of Justice (DOJ) and Department of the Treasury, Executive Office for Asset Forfeiture, July 2018 (hereafter referred to as the 2018-DOJ TEOAF Joint Guide to Equitable Sharing).
- B. TEOAF Memorandum, “Revisions to TEOAF’s *Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests* (“Blue Book”) and New Forms to Identify Victims Liabilities,” dated July 15, 2016, or as updated.
- C. TEOAF Directive No. 20, “Net Equity Requirements for Seized Property,” dated July 9, 2015, or as updated.
- D. TEOAF Directive No. 30, “Interim Guidelines re: Lead-Based Paint in Residential Property Built Prior to 1978,” dated November 25, 1996, or as updated.
- E. TEOAF Directive No. 34, “Policy Regarding the Federal Adoption of Seizures by State and Local Law Enforcement Agencies,” dated July 26, 2017, or as updated.
- F. TEOAF Directive No. 39, “Tax Refund Fraud Cases,” dated May 29, 2014, or as updated.

### **3.3 Department of Justice, Money Laundering and Asset Recovery Section Manuals**

Since any judicial forfeiture must be pursued via the U.S. Attorney’s Office (USAO), SAs should be aware of policies and procedures for asset forfeiture established by DOJ’s Money Laundering

and Asset Recovery Section (MLARS). In addition to providing DOJ policies and procedures, the following resources, found at <https://www.justice.gov/criminal-mlars/publications>, are also useful legal references:

- A. “Asset Forfeiture and Money Laundering Statutes,” DOJ, MLARS, 2019.
- B. “Asset Forfeiture Policy Manual,” DOJ, 2019.

## **Chapter 4. RESPONSIBILITIES**

### **4.1 Executive Associate Director, Homeland Security Investigations**

The Executive Associate Director of HSI has overall responsibility for the oversight of the policies and procedures set forth in this Handbook.

### **4.2 Assistant Director, Investigative Programs**

The Assistant Director, Investigative Programs, is responsible for overseeing the implementation of the provisions of this Handbook within HSI.

### **4.3 Deputy Assistant Director, Investigative Services Division**

The Deputy Assistant Director, Investigative Service Division, is responsible for overseeing the Asset Forfeiture Unit (AFU) and ensuring compliance with its responsibilities.

### **4.4 Unit Chief, Asset Forfeiture Unit**

The Unit Chief, AFU, is responsible for the overall implementation of the provisions of this Handbook within HSI and for the national administration and support of the AIRG program.

### **4.5 Program Manager, Asset Forfeiture Unit**

The primary responsibilities of the Program Manager, AFU, include administering the budget for the national AIRG program and performing the duties of the DAR. The Program Manager is also responsible for the general oversight and direction of the AIRG program on a national level.

The Program Manager is the DAR for all contracts that are utilized to provide a variety of support personnel for the AIRG program. The contracts are formally administered by DOJ; as a result, the AIRG Program Manager has established Interagency Agreements with DOJ to link the AIRG program’s needs to existing contracts in order to obtain services from the private sector. The DAR is the HSI point of contact with the contract service providers.

In relation to the AIRG program, DAR duties include preparing the Interagency Agreements with DOJ, interpreting certain aspects of the existing contracts, obtaining additional contracts or positions, filling vacancies, reviewing and authorizing invoices for payment, authorizing expenditures including overtime, and acting as a liaison for any other issues between HSI and the contract service providers.

#### 4.6 Special Agents in Charge

Special Agents in Charge (SACs) are responsible for implementing the provisions of this Handbook within their respective areas of responsibility (AORs). SACs are also responsible for staffing the AIRGs in their AOR with experienced SAs. SACs should select only SAs with at least 3 years of investigative experience for assignment to the AIRG. SACs should also allow the AIRGs to preserve their function as separate, specialized groups, dedicated solely to asset forfeiture responsibilities and not commingled with other groups or burdened with excessive collateral duties. If an AIRG cannot be established within an AOR, the SAC must designate AIRG responsibilities as a collateral duty to a Group Supervisor (GS) and an SA of an existing group.

#### 4.7 AIRG Group Supervisors

AIRG GSs will ensure that SAs assigned to their AIRGs comply with the provisions of this Handbook and remain trained and knowledgeable with respect to the most up-to-date asset forfeiture laws and procedures. They must monitor the investigative activity within their AIRGs to make certain that HSI forfeiture actions are legally and economically feasible and meet required seizure thresholds.

AIRG GSs will be designated to act as the DAR for real property contracting activities within their AOR and may designate AIRG SAs or Asset Forfeiture Specialists (AFSSs) as alternate DARs. As DARs, they will furnish technical clarification, monitor contract performance, and maintain a professional relationship with the representatives of the real property contractor. On a quarterly basis, the AIRG GSs, in conjunction with AIRG SAs, shall perform a physical drive-by inspection of each real property that is the subject of an HSI forfeiture action within their AOR. The inspection should verify the condition of the property. If the condition of the property has changed, the real property contractor, as well as the Assistant U.S. Attorney (AUSA), should be immediately notified of the changed condition.

The AIRG GS shall review the status of all AIRG seizures in the (b) (7)(E) as well as the status of all AIRG investigations in (b) (7)(E) (b) (7)(E), during supervisory case reviews. The GS should ensure that all seizures and forfeiture actions are progressing in the most efficient and timely manner possible.

## **4.8 Special Agents**

SAs are responsible for complying with the provisions of this Handbook. SAs should have a familiarity with all core investigative areas under the jurisdiction of HSI. Preferably, they should possess a strong background in financial investigations and computer skills. SAs should be capable of writing complex affidavits, have excellent interviewing skills, be both motivated and tenacious, and have the desire to conduct complex investigations.

SAs should establish and maintain relationships with the other investigative groups throughout the SAC's AOR, promoting the expertise and benefits of the AIRG and encouraging investigative groups of every specialization to enlist the aid of the AIRG in their casework. On a quarterly basis, AIRG SAs, in conjunction with AIRG GSs, shall perform a physical drive-by inspection of each real property that is the subject of an HSI forfeiture action within their AOR. The inspection should verify the condition of the property. If the condition of the property has changed, the real property contractor, as well as the AUSA, should be immediately notified of the changed condition.

## **4.9 Asset Forfeiture Specialists**

AFSs are responsible for assisting all investigative units under the direction of the AIRG. They assist SAs in identifying property alleged to be involved in a criminal activity for the purpose of potential seizure and forfeiture. AFSs assist the case agents in presenting cases to the AUSA and the FP&F Officer. AFSs may review and process equitable/asset sharing requests from state, local, federal, and international law enforcement agencies. They also assist the seizing officer in the seizure, consignment, and oversight of real property seizures within the custody of the TEOAF Real Property Contractor.

# **Chapter 5. NATIONAL AIRG CONCEPT**

## **5.1 Purpose and Benefits of AIRGs**

The seizure and forfeiture of criminally derived assets has been identified as a valuable law enforcement tool that can be utilized to permanently dismantle criminal enterprises that operate in the United States and abroad. The assets to be targeted are accumulated through successful criminal activities, including, but not limited to, international money laundering; bulk cash smuggling; contraband smuggling; human smuggling; human trafficking; sexual exploitation of children; commercial, identity, benefit, and document fraud; and the illegal export of arms and strategic technologies. These violations are among the SUAs (defined in Section 2.17) for which HSI has been designated as the primary investigative agency.

In concert with the criminal prosecution of the defendants, the primary responsibility of an AIRG is to identify the assets of violators within all HSI core areas of investigation for administrative, civil, and/or judicial seizure and forfeiture. Ideally, assets should be seized as soon as practical



to prevent their liquidation, without jeopardizing the integrity of the investigation. With the creation of AIRGs, the seizure and forfeiture of criminally derived assets has become part of HSI's ongoing investigative strategy.

There are two primary benefits to be gained through the utilization of the AIRG concept. First, AIRGs are specialized in this complex field of investigation. Second, it allows the case agents to concentrate their efforts on the primary unlawful activity under investigation, without the added responsibilities of asset identification and removal.

## **5.2 AIRG Mission Statements**

- A. Develop expertise in identifying and tracking assets in all HSI investigative disciplines.
- B. Identify all assets and investments that have been illegally acquired by individuals and criminal organizations.
- C. Establish probable cause for criminal cases to seize and forfeit all property, real and personal, used and/or acquired as a result of criminal activity.
- D. Establish a preponderance of the evidence for civil cases to seize and forfeit all property, real and personal, used and/or identified during an investigation.
- E. Identify, analyze, trace, seize, and forfeit all criminal proceeds deposited into traditional and non-traditional financial institutions; trace and forfeit all stocks, bank accounts, bonds, and other investments related to criminal activity.
- F. Dismantle known criminal organizations by targeting their financial infrastructure and seeking criminal, civil, or administrative actions to accomplish that mission.
- G. Develop sources of information that can provide leads and intelligence on criminal groups and how they attempt to legitimize their wealth.
- H. Collect and assess intelligence on investment trends, modus operandi, and financial structures favored by criminal organizations.

## **5.3 National Code of Professional Conduct for Asset Forfeiture**

SAs and supervisors must follow the ten points of DOJ's National Code of Professional Conduct for Asset Forfeiture:

- A. 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.
- B. The Constitution and federal statutes prohibit the improper use of personal characteristics such as race, color, national origin, gender, or religion to target individuals for law enforcement action.
  - C. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend on the level of seizures or forfeitures he or she achieves.
  - D. Whenever practicable, and in all cases involving real property, a judicial finding or 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 procedures.
  - E. 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.
  - F. Seizing entities shall have a manual detailing the statutory grounds for forfeiture. This manual will 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.
  - G. 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.
  - H. 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.
  - I. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.
  - J. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

#### **5.4 Office and Project Codes**

The AIRG program is operational in all SAC offices throughout the United States. Just as the SAC offices have their own office codes, each AIRG has its own unique office code (for example, the SAC New York AIRG's code is <sup>(b) (7)(E)</sup>). This office code allows the AIRG to open its own cases and track its statistics in <sup>(b) (7)(E)</sup>

In addition to the office codes, each AIRG has its own project code (for example, the project code for the SAC San Diego AIRG is <sup>(b) (7)(E)</sup>). The AIRG program also has its own unique national project code <sup>(b) (7)(E)</sup>. Both are used for statistical reporting purposes in <sup>(b) (7)(E)</sup> and **(b) (7)(E)**. Both the national project code and the individual AIRG's project code must be on all case records, Reports of Investigation (ROIs), and **(b) (7)(E)** Incident Reports.

Individual AIRGs are evaluated by the quantity and the quality of their cases. <sup>(b) (7)(E)</sup> quantifies the number of investigations opened by each individual AIRG via the unique project codes. This includes special project codes for the various HSI disciplines. This is important because it allows all case participants to retrieve statistical credit for the overall results of their cases. **(b) (7)(E)** quantifies the number of seizures made by the AIRGs, as well as their values.

## 5.5 Headquarters Oversight

The AIRG program receives operational and administrative support by AFU staff at HSI Headquarters (HQ). AFU consists of a Unit Chief, Section Chiefs, full-time national Program Managers (General Schedule (GS)-1811 series), and AFSs.

## 5.6 Relationship with TEOAF

TEOAF administers the TFF. (Note: The TFF was established in 1992 as the successor to what was then the U.S. Customs Service Forfeiture Fund.) The TFF is the receipt account for the deposit of non-tax forfeitures made by the following member agencies:

- A. HSI, ICE, Department of Homeland Security (DHS);
- B. Criminal Investigation Division, Internal Revenue Service, Department of the Treasury;
- C. CBP, DHS;
- D. U.S. Secret Service, DHS; and
- E. U.S. Coast Guard, DHS.

Assets seized for forfeiture by HSI SAs may be deposited in the TFF and are available for official use through TEOAF. HSI is reimbursed tens of millions of dollars each year from the TFF for asset sharing, training, state and local police overtime, **(b) (7)(E)** major case initiatives, equipment upgrades, and other case-specific costs that HSI would otherwise be unable to fund.

In addition to administering the TFF, TEOAF is responsible for the development of seizure and forfeiture policy. TEOAF also coordinates with the DOJ Forfeiture Fund on legislative, policy,

and procedural matters affecting forfeiture and equitable sharing. (See Chapter 16 for guidance on equitable sharing.)

## **Chapter 6. AIRG STRUCTURE**

### **6.1 Structure**

AIRGs are created at the discretion of the SAC. If an AIRG is created, it should consist of one GS, SAs at the GS-13 grade levels, one or more Criminal Analysts, an Investigative Assistant, an AFS, and contract personnel. If an AIRG cannot be established within an AOR, the SAC must assign AIRG responsibilities as a collateral duty to a GS and an SA of an existing group.

### **6.2 Background and Training**

The GS should be highly motivated to support the program through liaison efforts both within and outside the SAC office. The GS should have at least a familiarity with financial investigations, the Money Laundering Control Act, and various forfeiture provisions.

As stated in Section 4.6, experienced SAs should be selected by their respective SAC to be assigned to the AIRG. SACs should select only SAs with at least 3 years of experience for the AIRGs in their respective AOR. The SAs should have a familiarity with all core investigative areas under the jurisdiction of HSI. Preferably, they should possess a strong background in financial investigations and computer skills. SAs should be capable of writing complex affidavits, have excellent interviewing skills, be both motivated and tenacious, and have the desire to conduct complex investigations.

After their selection for the AIRG, these SAs will receive formal training in asset identification and forfeiture provided by AFU.

Periodically, AIRG SAs will also receive updated asset forfeiture training through attendance at various topic-related courses offered by both the private sector and government entities (e.g., the Department of the Treasury, DOJ, and ICE).

### **6.3 Tenure of AIRG Personnel**

Frequent rotation of personnel into and out of the AIRG is undesirable; it prevents the development of the necessary skills and expertise and squanders scarce funding for training and other costs associated with this work. These appointments are to be considered long-term, and care should be taken in the selection of incumbents to minimize disruption and maintain efficient operations.

Personnel assigned to the position of AIRG GS should remain in place for at least 36 months. SAs assigned to AIRGs should remain in place for a minimum of 24 months. These minimum

tenures will provide a sufficient length of service to ensure continuity in these important investigations.

## **6.4 Management Support**

The Asset Forfeiture Program is a unique function unlike the normal duties in an enforcement office. Asset forfeiture and its related laws and procedures are highly specialized and in a constant state of change. The ability to investigate an asset forfeiture case requires core knowledge of all ICE investigative areas, as well as specialized knowledge of asset forfeiture laws. An AIRG should be separate, dedicated solely to AIRG functions, and not commingled with other groups.

Field managers should fully understand and support the idea that the primary responsibility of the AIRG is the identification and seizure of assets. This is not to suggest that members of the AIRG may not be used to cover some of the collateral duties required in the day-to-day operation of a SAC office; these collateral duties, however, should not be long-term, but rather should require no more than a day away from asset forfeiture responsibilities.

## **Chapter 7. GENERAL DUTIES OF AN AIRG**

### **7.1 Critical Points to Remember**

- A. Law enforcement is the principal objective of asset forfeiture.
- B. Assets should be a primary investigative consideration.
- C. AIRG SAs should not waste investigative time and resources on liabilities, i.e., investigations lacking forfeiture potential or assets which do not meet legal or financial requirements for forfeiture.
- D. Communication and coordination are critical throughout the entire asset identification and removal process; AIRG SAs, however, should be aware that **all** electronic correspondence is discoverable.

### **7.2 Mandates**

One of the most important functions of both the GS and the members of an AIRG is to ensure that seizures are both fiscally responsible and legally sound (i.e., able to withstand both public and legal scrutiny).

AIRG SAs must gather evidence and plan for the legal and logistical aspects of seizures and forfeitures. They must also give consideration to the economic impact of each seizure, including the cost of management, storage, possible depreciation, and disposal of the seized property. **An**

## (b) (7)(E)

Once property has been seized, it is in the interest of the seizing AIRG to shepherd the seizure through the forfeiture process as expeditiously as possible. AIRG SAs should ensure that ROIs thoroughly document the basis for seizure and forfeiture. They should coordinate with FP&F early in the asset forfeiture investigation and provide copies of the ROIs to the appropriate FP&F paralegal specialist as soon as possible following a seizure.

The deteriorating value of any item seized, commensurate with its associated storage and disposal fees, should be a primary concern of all parties involved. It is incumbent upon AIRG SAs to remain up-to-date on the status of their seizures and be responsive to FP&F status requests. SAs should check the status of their seizures in (b) (7)(E) on a quarterly basis to ensure that seized property is forfeited in a timely manner.

### 7.3 Liaison

Regarding real property seizures, all AIRG personnel should be familiar with the TEOAF Real Property Contract SOW located in the HSI Net, AFU, Seized Property Section. It should be noted, however, that **only** the DAR assigned to each SAC Office is authorized to task the TEOAF Real Property Contractor and incur costs on behalf of HSI. This DAR is usually the AIRG GS or AFS.

It is important that both the GS and members of the AIRG establish and maintain a close working relationship with all entities involved in a specific investigation. Relationships should be established and maintained with the USAO, Seized Property Specialists (SPSs), FP&F, the real property contract manager, and the U.S. Marshals Service asset forfeiture unit supervisor, as needed, within the AIRG's AOR.

### 7.4 Knowledge of Forfeiture Law and Procedures

All AIRG members should become familiar with the statutes, policies, and procedures relating to forfeiture and the operation of the forfeiture funds, including the TEOAF Directives and Guidelines and the asset forfeiture manuals issued by DOJ's MLARS (*see* Sections 3.2 and 3.3). These policy directives have an impact on a variety of subjects relating to asset forfeiture and the day-to-day operation of the AIRG.

## Chapter 8. CASE MANAGEMENT GUIDELINES

To ensure that AIRGs receive the proper level of manpower and resources needed to accomplish their mission, it is essential that all work be documented in (b) ((b) (7)(E)) as appropriate. Investigative case funding is directly tied to AIRG efforts. This is why the tracking of statistics is

so important. The tracking of statistics in <sup>(b) (7)(E)</sup> through case initiations and ROIs reflects both the quantity and scope of cases opened by the AIRG. Seizure and forfeiture analysis conducted in **(b) (7)(E)** supports the requests for additional personnel, including SAs, AFSs, and contract personnel, as well as equipment expenditures.

Generally, AIRG investigations will be generated in one of two ways: through proactive development or from collateral requests.

## **8.1 Proactive Case Development**

AIRG cases are traditionally collateral cases, but in some instances an AIRG SA may independently develop information to generate an asset forfeiture case. In these instances, the AIRG SA should provide the information to the appropriate investigative group for potential criminal case initiation.

## **8.2 Case Referrals**

Case referrals can be handled in different ways:

- A. According to the Case Management Handbook (Office of Investigations (OI) HB 08-02), dated February 1, 2008, or as updated, a collateral investigation is initiated by an ROI. This also applies to requests for AIRG assistance. Any time a referral is from another SAC office, the collateral request should be made with an ROI. It can also be used within the SAC AOR when there are definite assets that are to be seized.
- B. Within the SAC's AOR, SAs may utilize an informal referral to request that the AIRG conduct a preliminary evaluation of the criminal investigation for asset forfeiture potential.

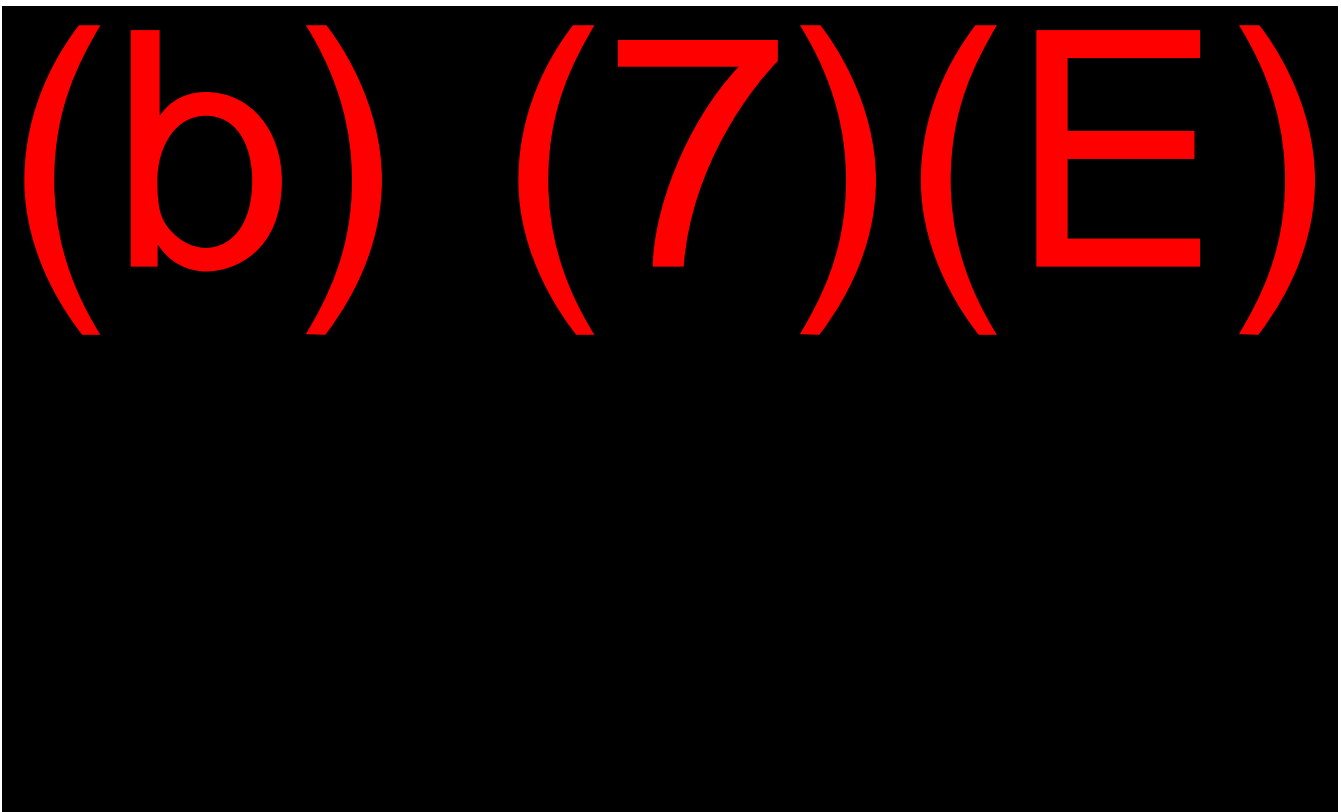
A case referral, whether requested by a collateral ROI or an AIRG referral request, should include: (1) a brief case summary, (2) the case number, (3) any unique facts relating to the case, (4) whether there are any known assets, and (5) known actual or potential witnesses in support of seizure.

Prior to opening a formal asset investigation, the prospective AIRG case agent may wish to conduct a brief evaluation of the criminal investigation to determine, if possible: (1) whether or not a law with a forfeiture provision has been violated and (2) the likelihood that probable cause for criminal cases or the preponderance of the evidence when pursuing civil actions can be developed through investigation to support the seizure/forfeiture. The prospective AIRG case agent should also evaluate the assets involved in the case in light of national and local forfeiture threshold amounts.

### 8.3 AIRG Case Determination and Coordination

Asset identification should occur at the onset and continue for the duration of the investigation. This should also include the decision of which seizure method will be best suited to the case, i.e., administrative, civil, or criminal. In cases involving several investigative groups or multiple agencies, case responsibilities should be delineated at the beginning of the investigation. If it is determined that another agency will be conducting the asset forfeiture, an AIRG case should not be opened. Every effort should be made to ensure that HSI-led investigations have the AIRG conduct the asset identification and removal.

It is imperative that the criminal case agent and the AIRG case agent coordinate investigative activities. This should include working jointly to advance the investigation and to identify:



### 8.4 Collaboration on Enforcement Actions

The AIRG case agent and the criminal case agent should participate in all enforcement actions related to the criminal and collateral AIRG investigations.

During the execution of any search warrant that provides the authority to search for and seize financial documents, SAs should attempt to locate and obtain:

**(b) (7)(E)**



**(b) (7) (E)**

It is extremely important that constant coordination and communication between the criminal case agent, the AIRG case agent, the criminal AUSA, and the asset forfeiture AUSA occur on a regular basis.

### **8.5 Opening an AIRG Case**

According to Section 4.1.2(2) of the Case Management Handbook (OI HB 08-02), dated February 1, 2008, or as updated, case records must be opened in <sup>(b) (7)(E)</sup> no later than the end of the fifth business day after an investigation has been initiated.

An **(b) (7)(E)** opening need not be created if a cursory review of the criminal investigation is enough to determine that there is no asset forfeiture potential. If the investigation requires a more in-depth analysis, however, the AIRG case agent should open a case to ensure that the AIRG documents and receives credit for its efforts.

When opening the AIRG case record, the AIRG case agent should use the defendant's/subject's name and the type of investigation as the case title (e.g., "John Doe/Asset Forfeiture Investigation"). If a case is the result of a referral, credit and recognition should always be given to the referring group in the narrative of the case opening and in subsequent ROI investigative synopses.

If, once an AIRG case has been opened, it is subsequently determined that the case has no asset forfeiture potential, the investigation should be closed with a closing ROI. The closing ROI should delineate the reason(s) why there is no forfeiture potential. The referring office should be included in the distribution code field on the closing ROI.

### **8.6 Inclusion of Originating Case Numbers**

ROIs for both cases, the AIRG investigation and the originating criminal case, should reflect each other's case numbers in the "Additional Case Number" field. This allows for the immediate recognition by any querying SAs that an asset forfeiture investigation is being worked in conjunction with the primary criminal case. **(b) (7)(E)** Incident Reports should reference the counterpart AIRG or criminal case number in the narrative section, as appropriate.

## **8.7 Initial Report of Investigation**

According to Section 4.1.3(4) of the Case Management Handbook (OI HB 08-02), dated February 1, 2008, or as updated, an initial ROI must be completed within 20 business days after an investigation is initiated and submitted in (b) (7)(E) to the supervisor for approval.

For most referrals, the initial ROI should include the same information outlined in the collateral request and any other information gathered from meetings with the criminal case agent. If there is little information to review and no evidence connecting the property to the criminal act, the AIRG SA may, with the concurrence of the GS, complete an open-and-close ROI documenting database checks and any other work that was completed. The case can be reopened later if additional information supporting forfeiture is developed.

All ROIs, whether completed by the criminal case agent or the AIRG SA, should include the ICM distribution codes for all concerned. With the inclusion of the proper distribution codes, all concerned parties will receive a copy of the report and will be apprised of the investigation's progress.

## **8.8 Interim Reports of Investigation**

Documenting the progress of an AIRG investigation is extremely important. As additional assets are identified, the AIRG case agent should document such discoveries in a detailed ROI. Every ROI should be distributed to the criminal case agent. This keeps everyone apprised of the investigation's progress.

It is the responsibility of the AIRG case agent not only to identify assets, but to determine if they meet the seizure threshold guidelines (*see* Section 10.6). Even if an asset does not meet the seizure threshold and even if there is no probable cause to justify the seizure of an asset, the AIRG SA must prepare an ROI documenting the asset's identification.

When the case involves real property, the AIRG case agent should prepare ROIs summarizing the information contained in the title searches and net equity analyses provided by the real property contractor. This should be done even if the net equity does not meet the seizure threshold.

AIRG case agents must complete an ROI documenting an enforcement or seizure action within 5 business days of the action. They must also prepare ROIs documenting the service of all subpoenas, as well as the subsequent return and analysis of documents relating to those subpoenas.

## **8.9 Case Closing and Disposition**

AIRG case agents should keep cases in open or pending status until all seized property has been forfeited, either administratively or through a court order, or has reached some other final

disposition. This could include return to its owner, release to a third-party innocent owner, remission to the victims of a financial crime, release to a lien holder, or abandonment.

If real property has been seized, the AIRG investigation should not be closed until a final order of forfeiture (defined in Section 2.6) is obtained from the court, the order has been filed with the county clerk, and the property has been sold. For case management purposes, if the case agent anticipates a period of inactivity prior to receiving the final order of forfeiture, the case may be maintained in a “pending” status. In some rare instances, the court, the USAO, or HSI may request that, after a real property has been indicted, it be sold through an interlocutory sale (defined in Section 2.7) to preserve its value. In these instances, the proceeds of the sale remain in an escrow account until the final order of forfeiture is issued by the court. During the forfeiture proceedings, the judge will still rule on the forfeiture of the property itself, not the funds from the sale. Once a final order of forfeiture is received and the proceeds are distributed, the case may be closed.

Prior to closing an investigation, AIRG case agents should check for the following:

- A. If a pre-seizure analysis request was entered as a **(b) (7)(E)** Incident Report and the property was never forfeited, the **(b) (7)(E)** Report must be closed. The Incident Report must never be cancelled. To correctly close a pre-seizure incident report, the AIRG case agent should email the AFS informing that the line item in the pre-seizure incident report should be closed. The AFS should utilize **(b) (7)(E)** function “Manage Property” and add and accomplish a “PC” disposition for that line item. This will successfully close that line item and still allow for proper accounting and expense reimbursement. Once this is accomplished, the AFS should notify the CBP FP&F paralegal specialist to close out the FP&F number associated with this property. Following the closure of the line item in **(b) (7)(E)** the Incident Report will be updated in **(b) (7)(E)** automatically.
- B. If a *Lis Pendens* (defined in Section 2.9) was filed with the county clerk’s office, it must be removed. To accomplish this, AIRG case agents must obtain a removal order from the USAO and file this order with the county clerk. A copy of the removal order, with the filing receipt from the county clerk, should be placed in the case file with a copy of the original *Lis Pendens*.

## 8.10 Project Codes

The project code field in case records and in **(b) (7)(E)** Incident Reports allows for the inclusion of numerous project codes. It is imperative that this field reflect **all** other associated project codes. In addition to the national project code, all case records and **(b) (7)(E)** Incident Reports should reflect the individual office project code for each AIRG that either directly or indirectly participated in the seizure. This field should also include project codes for the criminal case’s investigative area and any other relevant project codes. (See Sections 5.4, 8.11, and 8.12 for more information.)

## 8.11 National AIRG Project Code

As stated in Section 5.4, the national project code for the AIRG program is **(b) (7)(E)** and will be utilized on all case records and **(b) (7)(E)** Incident Reports. This project code should be reflected in reports pertaining to any enforcement actions which an AIRG case agent either assisted or directly caused. This is important because it allows anyone querying the case to immediately recognize that a companion/collateral AIRG investigation exists in conjunction with the criminal case.

## 8.12 Individual AIRG Project Codes

Individual project codes have been designated for each AIRG office. By including the individual AIRG project codes in **(b) (7)(E)** Incident Reports and case records, each office contributing to the investigation can receive credit for its investigative work.

The group acronyms, office codes, and project codes for the AIRG offices are as follows:

**(b) (7)(E)**

**(b) (7)(E)**

## **Chapter 9. INVESTIGATIVE STEPS**

### **9.1 General Guidelines for AIRG Investigations**

AIRG SAs and GSs should maintain strong liaisons with their counterparts in their AOR's criminal investigative groups, continually stressing the need for criminal case agents to enlist the aid of the AIRG early in any investigation with asset forfeiture potential. As a general rule, the earlier an AIRG becomes involved in an investigation, the more effective it will be at asset identification and the formulation of a forfeiture strategy.

AIRG SAs assigned to an investigation should adhere to the following investigative steps:

**(b) (7)(E)**

## 9.2 Real Property

There are <sup>(b) (7)(E)</sup> ways to justify the seizure of real property for forfeiture. In the first, **(b) (7)(E)**

**(b) (7)(E)**

**(b) (7)(E)**

**(b) (7)(E)** **(b) (7)(E)**

## 9.3 Facilitation

When a real property is to be seized for facilitation, the AIRG case agent should consult with the criminal case agent in order to determine the following:

**(b) (7)(E)**

## 9.4 Proceeds

When the property is to be seized for proceeds, the AIRG case agent should take the following investigative steps:

**(b) (7) (E)**

#### **9.4.1 Seizure and Forfeiture of Cryptocurrency**

See HSI Directive 18-04, “Seizure and Forfeiture of Cryptocurrency,” dated August 16, 2018, or as updated.

## 9.5 Possible Defenses Against Forfeiture

(b) (7)(E)

## 9.6 Evaluation of a Property Independent of a Pre-Seizure Analysis

Determining whether or not to seize a real property requires information from various sources. Factors that AIRG case agents should consider from the outset are: (b) (7)(E)

(b) (7)(E)

## 9.7 Using Online Real Estate Information

Depending on the resources in the SA's area, online real estate information systems may be available (the same services utilized by real estate sales offices). The source of the information is usually derived from the local tax rolls. **The online information should always be verified by an actual search of county records.** The types of information available from these commercial databases normally include:

- A. Basic Data Information: the assessor parcel number, property address, bedrooms, bathrooms, half bath(s), legal description, assessment, taxes, mortgage company information, sale date, and sale amount history.
- B. Deeds and Mortgages: information obtained from the documents recorded at the county recorder's office, which usually includes the mortgage amount, lender information, and borrower information.



- C. Tax History Data: tax history breakdown of what the owner of the property pays in taxes.
- D. Full Legal Screen: the full, official, legal description of the property, which must be included in any affidavits or other legal documents pertaining to the forfeiture of the property.
- E. Property Dimensions: the gross, adjusted, and living square footage.
- F. Comparables: history of recent sales prices for properties of the same approximate size, type, and value as the subject property from the most recent sale going back in time.

## 9.8 Requesting Mortgage and Escrow Documents

After identifying mortgage and escrow companies from county property records and online resources, the AIRG case agent should coordinate with the appropriate AUSA, through the criminal case agent, **(b) (7)(E)**

**(b) (7)(E)**

## 9.9 Investigative Steps When the Target of the Investigation Is Not the Legal Owner

When the target of the investigation is not the same individual as the legal owner of the property, the AIRG case agent, in conjunction with the criminal case agent, should attempt to:

**(b) (7) (E)**

## 9.10 Requesting a Pre-Seizure Analysis

Real properties are held in different types of titles, i.e., grant deeds, warranty deeds, and Torrens titles. AIRG case agents should check with the Asset Forfeiture Section of their USAO or with the AIRG in the property's jurisdiction for any specific local terminology or procedures concerning a property with forfeiture potential.

When a real property is identified and there is evidence that ties the property to the crime, the

**(b) (7) (E)**

enter the port code of the actual location of the property. This may or may not correspond to the port code of the AIRG case agent's SAC office.

After the **(b) (7)(E)** Report is approved by the AIRG GS, the local DAR (the AIRG GS or AFS) will approve the request and submit it for services to the real property contractor.

**(b) (7)(E)** will automatically generate an FP&F case number for the "PA" incident that will apply to the individual property throughout the entire seizure/forfeiture process. Since only one number is assigned to each individual property, multiple real properties must be entered as separate incidents in **(b) (7)(E)**

If the result of the pre-seizure analysis indicates that it is not in the interest of the Government to seize the property, additional investigative or judicial activity against the property should not continue and the pre-seizure **(b) (7)(E)** Incident Report must be closed immediately unless the criminal case warrants forfeiture for law enforcement purposes. To accomplish this, *see* Section 8.9 (A) of this Handbook.

According to the terms of the TEOAF Real Property Contract SOW, there are several services that the contractor will perform with respect to the pre-seizure analysis of a particular real property. These services include, but are not limited to:

**(b) (7)(E)**

### 9.11 Receipt of Pre-Seizure Information from the Real Property Contractor

When the AIRG case agent receives the title report, appraisal, cost/benefit analysis, and any other relevant documents from the real property contract manager, he or she is responsible for ensuring that all documents, liens, or mortgages pertain to the particular property under consideration. <sup>(b) (7)(E)</sup>

Any additional pre-seizure work (e.g., an update of the title search and report) prior to the initiation of a civil action or criminal indictment **must** be charged to the original pre-seizure number, not a new one.

Within 10 business days prior to filing a *Lis Pendens*, securing an indictment, or filing a civil complaint, the AIRG GS or the AFS must submit the pre-seizure summary report to AFU for consideration. AFU will make the final determination of whether to proceed with the seizure and/or forfeiture process.

## 9.12 Descriptions of Available Pre-Seizure Analysis Services

### A. Researching the Title or Legal Ownership of a Real Property

Upon request of the AIRG, the real property contractor will perform one or more of the following services to research the title or legal ownership of a real property:

- 1) Property Profile. This consists of a report provided by a title company, generally at little or no charge, that lists a property's owner(s), legal description, date of construction, square footage, and location on a plat. This report may not have all these things or may not be available, depending on the county where the property is located.
- 2) Chain of Title. This provides a history of the property's ownership/vesting over a specified period of time. This report will not include information concerning liens or encumbrances.
- 3) Title Search/Title History. This is a report which provides a legal description, chain of title, current liens, mortgages, judgments, tax information, any other matters that are pending against the property, and copies of the corresponding documents. It will provide a chain of title showing all deeds from a specified time period to the present and will include copies of the deeds themselves.
- 4) Current Owner and Encumbrance (O&E) Search. Although similar to a title search/title history, a current owner search provides only current owner information. This report will include the legal description; tax information; and the current deed and any open mortgages, liens, and judgments. It will include copies of the relevant documents.
- 5) Preliminary Title Commitment. This report will document the results of a search for the current condition of the property's title and the steps that must be taken if a clear title is to be issued. It should include the legal description, current owner, and all matters pending against the property, including encumbrances, tax information, mortgages, liens, judgments, restrictions, and easements. Copies of the relevant documents will be included in the report.

## B. Assessing the Value and Determining the Net Equity of a Property

At the request of the AIRG, the real property contractor will perform one or more of the following services to assess the value and to help determine the net equity of a property:

- 1) Online Valuation. As of March 1, 2007, the real property contractor utilizes online valuation as the default option when requested to conduct a pre-seizure analysis for a piece of residential real property. This is a report generated by an online service which will, in most cases, provide comparable sales and will usually give a low, medium, and high value for the specified property. This report may not be available on all properties, and the real property DAR may request one of the other forms of appraisal listed below if deemed necessary for the investigation.
- 2) Drive-by Appraisal. Also referred to as a “limited scope” appraisal, a drive-by appraisal is limited to a roadside inspection of the property. The inspection, therefore, will be limited to the exterior of the property only. Assumptions are made as to the interior condition of the property and the condition of any portions of the property not visible from the road. Upon request, this report can be done without taking photographs of the property.
- 3) Full Appraisal. Access to the entire property is required to complete this report, which is performed by a certified appraiser and includes a comprehensive physical inspection of the subject property without any limiting conditions.
- 4) Broker’s Price Opinion. A real estate broker issues this letter of opinion, which estimates the value of the property based on the broker’s knowledge of the local market and recent comparable sales. When requesting this type of appraisal product, the AIRG SAs should specify whether or not a drive-by inspection should be included in the opinion. This report may not be available on all properties.
- 5) Business Valuation. This is an appraisal of a business entity based on the entity’s ability to generate income. The valuation may also include an appraisal of any land and improvements owned by the business entity. Although it is possible to complete without business records, the availability, quality, and completeness of the accounting and financial records play a critical role in the difficulty in completing the valuation, as well as in the accuracy of the valuations.
- 6) Sales Comparables. Usually obtained from a local real estate agent or an online service, sales comparables are presented as a list of similar properties in the area that have been sold within the previous 6 months (or later depending on recent sales). They may not be available for all properties.

- 7) Recertification. A certified appraiser provides this letter of opinion which states the appraised value of a particular property based on a previous appraisal of the same property.
- 8) Rental Survey. A certified appraiser prepares this report which estimates the market rental rate for a particular property.

### **9.13 Environmental Concerns**

In light of TEOAF Directive No. 30, “Interim Guidelines re: Lead-Based Paint in Residential Property Built Prior to 1978,” dated November 25, 1996, or as updated, the initial identification of the subject property must include the construction date.

### **9.14 Coordination with the Assistant U.S. Attorney**

Once it has been determined that there are viable assets to seize, the Asset Forfeiture Section of the USAO should be contacted to have an AUSA assigned to the case. The Asset Forfeiture Section AUSA, the criminal AUSA, the AIRG case agent, and the criminal case agent should all remain in constant communication.

### **9.15 Filing of *Lis Pendens* and Service of Notice**

In criminal proceedings, once indicted, a *Lis Pendens* is obtained from the AUSA and filed with the appropriate county clerk. In a civil proceeding, the AIRG case agent will obtain a warrant *in rem*, protective order, *Lis Pendens*, writ of entry, and/or eviction orders, as the specific investigation dictates. Within 10 business days whenever practical, the AIRG SA must identify and serve all interested parties with copies of the arrest warrant *in rem* and/or protective order and file the *Lis Pendens* with the appropriate county clerk. (Note: In some judicial districts, the federal court clerk or the USAO may file the *Lis Pendens* via registered mail.)

Once the *Lis Pendens* has been received and filed, the pre-seizure incident type should be updated to either a <sup>(b) (7)(E)</sup> for criminal forfeiture or a <sup>(b) (7)(E)</sup> for a civil forfeiture. (See Section 15.3.)

The AIRG case agents should become familiar with the laws pertaining to *Lis Pendens* in their particular state. AIRG case agents should request that the AUSA file the appropriate *pro forma* motion prior to the expiration date of the *Lis Pendens*. The AIRG case agent should prepare and return a “Process Receipt and Return” (Treasury Department Form (TD F) 90-22.48).

When providing notice of the *Lis Pendens* to all interested parties, the AIRG case agent should ensure that a copy is delivered to the defendant in the jail and/or to the defendant’s attorney if the defendant is in custody. Mailing the notice to the home or business of an incarcerated defendant

does not constitute serving notice. A legitimate attempt must be made and documented to serve the necessary individuals. In many jurisdictions, the AUSA will send the notice.

## 9.16 Maintenance of Real Property Files

Once a pre-seizure **(b) (7)(E)** Incident Report has been approved, a separate file will be maintained for each real property pending possible forfeiture. A multi-sectional file will be maintained by the AFS in the following order:

### A. Section A

- 1) Left Side – Property Information Sheet.
- 2) Right Side – **(b) (7)(E)** and other HSI documents:
  - a) Copy of the initial AIRG ROI;
  - b) Pre-seizure summary (approved copy);
  - c) Copy of the **(b) (7)(E)** Incident Report;
  - d) Copy of the disposition orders for any and all requests sent to the real property contractor;
  - e) Any extension requests for previously sent dispositions; and
  - f) Copies of any other correspondence related to the property (e.g., email).

### B. Section B

- 1) Left Side – Legal Documents from the AUSA:
  - a) Preliminary order of forfeiture;
  - b) Final order of forfeiture;
  - c) Appeals;
  - d) Sentencing agreement;
  - e) Motions on real and personal property;
  - f) Substitute asset agreement;

- g) Final sentencing documents;
  - h) Copy of the *Lis Pendens*;
  - i) Any legal documents provided by the AUSA for service by HSI; and
  - j) Any memorandums received from the AUSA that refer to the investigation.
- 2) Right Side – Documents from the Property Contractor:
- a) Title search;
  - b) Historical report;
  - c) Equity report;
  - d) Cost/benefit analysis;
  - e) Plat map;
  - f) Appraisal;
  - g) Report of environmental issues (e.g., lead-based paint, oil/gas spills, toxic waste);
  - h) Photos of property (from both surveillance and pre-seizure analysis);
  - i) Copy of the Custody Receipt for Seized Property and Evidence (DHS Form 6051S) with the property contractor’s signature and the date this form was submitted to FP&F;
  - j) Consignment order/inventory sheet (including a photo inventory of property that records any high value items in, or any existing damage to, the property); and
  - k) Property management plan from the real property contractor, including contact information for the local manager to whom the property has been consigned.

## 9.17 Financial Seizures

One of the main goals of the AIRG is to

**(b) (7)(E)**

Business, personal, and



securities accounts can be seized. These may be regular bank accounts, including, but not limited to, checking, savings, or certificates of deposit, or they may be brokerage or other investment accounts.

Once probable cause has been established to seize an account, the AIRG and criminal case agents should contact their AUSAs and seek to obtain seizure warrants. **(b) (7)(E)**

**(b) (7)(E)**

**(b) (7)(E)**

## 9.18 Seizures of Businesses

**(b) (7)(E)**

## Chapter 10. PRE-SEIZURE PLANNING

Pre-seizure planning consists of anticipating and making decisions concerning what is to be seized, why it is being seized, and how it is going to be seized. The following sections contain some of the many factors that AIRG case agents should consider when planning an anticipated seizure.

**(b) (7)(E)**

**(b) (7)(E)**

### 10.1 What is Being Seized?

**(b) (7)(E)**

**(b) (7)(E)**

## **10.2 Why is the Asset Being Seized?**

- A. Was the property used during the commission of a crime or to facilitate criminal activity?
- B. Is there enough net equity in the property to justify seizure under TEOAF guidelines?
- C. If there is not enough net equity to justify seizure and forfeiture, is there an overriding law enforcement reason to justify the seizure (e.g., a vehicle with a smuggling compartment or a firearm in the possession of a felon)? In these cases, the value of the item may be of secondary importance.
- D. Was the property purchased with illegal proceeds?
- E. Who is the legal owner of the property?
- F. Does the property have any liens or encumbrances against it?
- G. What are the estimated costs of managing and disposing of the property prior to seizure?
- H. Are there victims? If so, can the recovered assets be used to compensate victims when authorized under federal law?

## **10.3 How is the Asset Going to Be Seized?**

**(b) (7)(E)**

**(b) (7)(E)**

#### **10.4 Calculation of Net Equity/Avoiding Liability Seizures**

The AIRG case agent must obtain net equity information prior to seizing real property and businesses

**(b) (7)(E)**

The AIRG case agents are responsible for providing adequate information about the liabilities and costs of a seizure to the AUSA.

**(b) (7)(E), (b) (5)**

**(b) (7)(E), (b) (5)**

**(b) (7)(E)**

## 10.5 Special Considerations When Planning the Seizure of a Commercial Enterprise

**(b) (7)(E)**

**(b) (7)(E)**

## 10.6 Seizure Thresholds

Pursuant to TEOAF Directive No. 20, “Net Equity Requirements for Seized Property,” dated July 9, 2015, and DOJ’s “Asset Forfeiture Policy Manual,” dated 2019, and barring an overriding law enforcement purpose, net equity must exceed the following thresholds to justify a seizure:

**(b) (7)(E)**

The USAO in the AIRG case agent’s district may require net equity amounts greater than the national thresholds listed above. It is the responsibility of each AIRG to know the local prosecutorial thresholds.

## 10.7 Pre-Seizure Summary Report

The pre-seizure summary report is required prior to the seizure of all real property, including businesses, and any general property valued in excess of \$100,000. This would include significant seizures that would require consignment to the TEOAF General Property Contractor warehouse. (Note: This does not include seizures of monetary instruments.) The pre-seizure summary report for real property must be approved by the SAC in the AIRG’s AOR and

- B. The local Assistant Special Agent in Charge (ASAC) (or higher) must approve the adoption and send the OPLA embedded attorney written notice of their approval; a short email would suffice.
- C. The OPLA embedded attorney will review and sign the Adoption Form.
- D. The signed Adoption form, as well as corresponding paperwork, will be sent to CBP FP&F or the USAO no later than 25 days following the seizure.
- E. Seizures of cash equal to or less than \$10,000 will require additional AUSA approval, unless it was seized: (1) pursuant to a state warrant, (2) incident to arrest for an offense relevant to the forfeiture, (3) at the same time as a seizure of contraband relevant to the forfeiture, or (4) where the owner or person from whom the property is seized makes admissions regarding the criminally derived nature of the property.
- F. These steps must be completed PRIOR to the transfer of seized property to HSI.

Other points:

- G. When an SA sends the Request for Adoption of State or Local Seizure (Adoption form) to his or her embedded OPLA attorney, the SA should also send a copy to his or her corresponding AFU AFS point of contact. The SA must include program code (b) (7)(E) in **(b) (7)(E)** for all Adoptions.
- H. For SAC offices in a number of states, including Arizona, California, Colorado, Maryland, Nebraska, New Mexico, Ohio, and Pennsylvania, as well as the District of Columbia, there are additional restrictions involving adoptions and equitable sharing. SAs should contact their AFU AFS and/or embedded OPLA attorney for additional information.
- I. When completing the Adoption form, SAs must be sure to use the correct form. There are two versions of the form, one with the DOJ seal and one without. TEOAF's version is the one without the DOJ seal and is the only version authorized to be used.

Some states require turnover orders. As stated in Section 2.19, a turnover order is a court order obtained from the state court with jurisdiction over the seizure, which authorizes the state or local agency to turn the seizure over to HSI. Certain states require "turnover" documents to be filed when a state court authorized a seizure warrant for the property. Case agents should seek guidance from the USAO regarding the state policy on turnover documents. Obtaining a turnover order may be as simple as submitting a letter from the District Attorney's Office or it may require a more formal filing with the appropriate state court. AIRG case agents should consult with the seizing agency, local prosecutors, and the OPLA field location in their AOR prior to adopting seizures in these locales. Waiting for a court to issue a turnover order will

likely take longer than the 10 allotted days for HSI to approve an adoption. SAs should contact AFU for an extension if necessary.

## **Chapter 11. TYPES OF FORFEITURES**

There are three types of forfeiture procedures to be considered when conducting an AIRG investigation: administrative, judicial civil, and criminal.

### **11.1 Administrative Forfeiture**

Administrative forfeiture is a type of civil forfeiture initiated and carried out by an agency without judicial involvement. It is limited to certain types and values of property:

- A. Real property **may not** be seized or forfeited administratively.
- B. All contraband and conveyances used to transport controlled substances may be forfeited administratively regardless of value.
- C. Currency of any value may be administratively forfeited.

Currency seized administratively by HSI is turned over to CBP FP&F for processing. FP&F will provide notice to violators within 30 calendar days of the date of seizure. FP&F will process all related currency petitions within 30 calendar days from the date of receipt. FP&F will grant extensions should they be requested by the violator. If a petition is filed by the violator and/or any third-party claimant, that petition will be forwarded to the SA for his or her review and recommendation. If the petitioner challenges its seizure and forfeiture under administrative proceedings, the forfeiture will become a civil forfeiture, subject to judicial proceedings.

- D. All property not falling into one of the categories listed above, including financial accounts, is limited to a value of \$500,000.

Property seized administratively by HSI is turned over to CBP FP&F for processing. FP&F will provide notice to owners and lien holders, ensuring that the forfeiture conforms to requirements established by CAFRA. If a petition is filed by the owner of the property and/or any third-party claimant, that petition will be forwarded to the SA for his or her review and recommendation.<sup>(b)(7)</sup>

**(b) (7)(E)**

## 11.2 Judicial Civil Forfeiture

Judicial civil forfeiture occurs when SAs, with the assistance of the local USAO, file a civil complaint for forfeiture *in rem* with the federal district court. Civil forfeitures are actions against the property itself; essentially, they hold the property civilly liable for its involvement in criminal activity. They are conducted independently of any criminal proceedings and do not rely on a criminal conviction for their success or failure. The standard of proof for a civil forfeiture in those cases subject to the requirements of CAFRA is preponderance of the evidence. For forfeitures not subject to CAFRA (i.e., the Tariff Act of 1930, Title 19 of the United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); and Section 1 of Title VI of the Espionage Act of June 15, 1917 (22 U.S.C. § 401)), the burden of proof on the Government is probable cause.

**(b) (7)(E)**

## 11.3 Criminal Forfeiture

Criminal forfeiture occurs when SAs, through the USAO, include a forfeiture allegation in a grand jury indictment, information, or criminal complaint filed against a defendant. The fate of items seized under criminal forfeiture proceedings is tied to the fate of the criminal defendants. For the item to be forfeited, the defendant must be convicted of the underlying criminal violation, and either a trial jury or the defendant's plea agreement must concur with the grounds for the proposed forfeiture. Once the defendant has been convicted, a federal judge will issue a preliminary order of forfeiture. This preliminary order cedes the defendant's ownership interests in the property to the Government.

Following the issuance of the preliminary order of forfeiture, the USAO will publish a notice of the pending forfeiture and send the notice to lien holders or other parties with an ownership interest in the property. Within 30 calendar days of publication and notice, all interested parties will be given an opportunity to present their claims in an ancillary hearing. Once all claims have been resolved in the ancillary hearing, the judge will issue a final order of forfeiture (defined in Section 2.6), called an "amended order of forfeiture" in some districts.

**(b) (7)(E)**

r



**(b) (7)(E)**

FP&F should be notified immediately if any item that has been seized has been included in a criminal indictment. Administrative forfeiture may occur prior to the final judicial disposition of the seized item. If the administrative forfeiture has been accomplished during the judicial action, it is incumbent on the case agent to notify the AUSA regarding the action against the asset.

At the culmination of criminal forfeiture proceedings, even if a plea agreement has been reached whereby the defendant agrees to the forfeiture, an order of forfeiture is required to perfect the forfeiture in the criminal case. SAs, therefore, should ensure that all indicted assets have been included in an order of forfeiture or an order of sentencing issued by the presiding judge.

#### **11.4 Parallel Proceedings**

Federal law contains forfeiture provisions for both civil forfeiture and criminal forfeiture. Under CAFRA, Congress provided that criminal forfeiture may be pursued under any statute authorizing civil forfeiture. The law provides that property may be forfeited under either a criminal or civil statutory basis or under both simultaneously. There is no restriction on filing parallel proceedings and no requirement that one precede the other. **(b) (7)(E)**

##### **11.4.1 Civil**

Since CAFRA deadlines apply to most property seizures, FP&F will generally begin an administrative forfeiture action against the property. If a claim is filed, the case will be referred to the USAO which must file a civil complaint, indict the property, or return the property within 90 calendar days of the claim being filed, unless the court grants an extension of time.

**(b) (7)(E)**

In the case of real property or many assets valued at more than \$500,000 (*see* Section 11.1), there can be no administrative forfeiture proceeding; **(b) (7)(E)**

## 11.4.2 Criminal

When a case is criminally indicted, the property should be included in the criminal indictment as part of a forfeiture allegation, even if that property is already the subject of a parallel civil forfeiture. The criminal case may proceed through the normal course and likely will result in the ultimate forfeiture of the property as part of the criminal sentence. At that time, the third-party interests may be addressed as part of the criminal ancillary proceeding. **(b) (7)(E)**

**(b) (7)(E)**

## Chapter 12. SPECIAL CONSIDERATIONS IN AIRG INVESTIGATIONS

### 12.1 Criminal Cases

Criminal case agents should contact the AIRG for assistance well in advance of the formulation of an indictment. If assistance is not sought from an AIRG, the criminal case agent should ensure that the indictment contains appropriate general forfeiture language.

**(b) (7)(E)**

It is important to remember to include the members of the AIRG on the USAO's 6(e) grand jury access letter if information is to be provided to assist in the asset forfeiture investigation.

If there is to be asset forfeiture in a criminal case, an order of forfeiture must be submitted to the court before or at the time of sentencing in order for forfeiture to occur. **(b) (7)(E)**

Criminal forfeitures must also be included in the oral pronouncement by the judge of the sentence in the presence of the defendant, absent a waiver. The oral pronouncement by the judge "controls" over any written order. If forfeiture is omitted from the written judgment, the SAs must contact the AUSA immediately to have the omission corrected.

In the event that any of the criminal case court documents are sealed, AIRG case agents must arrange to have the asset forfeiture seizure affidavits and court documents sealed as well.

## 12.2 Plea Agreements

Ownership and legal title must be verified prior to acceptance of the plea. The defendant should be asked if any properties are in foreclosure. If the defendant states that the property payments are current or that the property is free and clear of any type of encumbrance and that is either not the case or changes at a later time, the agreement should be revoked and voided.

In cases where plea agreements involve known, offshore assets, the plea agreements should contain explicit admissions by the defendant(s) that the foreign-based assets and properties represent criminal proceeds or properties purchased therewith. If possible, the plea agreement should stipulate that the defendant(s) will make every possible effort to repatriate these assets back to the United States.

AIRG case agents, in cooperation with criminal case agents, should make sure that plea agreements include the following:

- A. A brief statement of the defendant's ownership interest in the property to be forfeited;
- B. The defendant's consent to the forfeiture and to any related civil forfeitures;
- C. The defendant's agreement to cooperate in resolving third-party claims in favor of the United States, including obtaining a waiver of ownership rights from the defendant's spouse;
- D. The defendant's agreement to endorse a preliminary order of forfeiture to be submitted to the judge at the time the guilty plea is entered; and
- E. All property that is not subject to administrative forfeiture.

The Government cannot readily accept the defendant's property given up through a plea agreement if the indictment did not contain forfeiture language. Neither a settlement agreement nor a plea agreement grants forfeiture of property. A final order of forfeiture is still necessary to take possession of property.

## 12.3 Financial Affidavits

AIRG case agents and AUSAs may require defendants to complete affidavits of financial information prior to finalizing plea agreements

**(b) (7)(E)**

## 12.4 Out of District Actions

When a request for seizure assistance is sent from one office to another and the assistance is minimal (e.g., service of a warrant and preparation of a **(b) (7)(E)** Report), the AIRG office receiving the request may use the <sup>(b) (7)(E)</sup> case number of the originating office. If the assistance results from a formal collateral request or involves additional investigative steps, the receiving AIRG will open a collateral case. The new case record and any **(b) (7)(E)** Incident Reports must also include the project code of the requesting office and the corresponding office AIRG unit, and any ROIs should show the requesting office's case number in the related case field.

### A. Out of District Forfeitures of Real Property

In all cases involving the potential seizure of real property that is located in a district outside the investigating SAC Office, the **(b) (7)(E)** Incident Report must reflect the port code for the area where the real property is located. It is imperative for the AIRG case agent in the originating office to coordinate with the local FP&F office and both the AIRG and FP&F offices where the real property is located. The AIRG whose AOR encompasses the location of the real property is required to perform periodic drive-by inspections.

In all cases where a pre-seizure analysis is anticipated for the seizure of real property in another office's AOR, the ASAC with responsibility for AIRG functions must contact his or her counterpart, advise him or her of the anticipated seizure, and coordinate expectations of AIRG responsibilities. It is recognized that the AIRG overseeing the AOR where a property is physically located may likely be asked to expend significant time in furtherance of the seizure, including inspections, document filing, property maintenance issues, and auction/bid coordination. In some circumstances, it may be appropriate for the AIRG where the property is located to assume overall responsibility for the pre-seizure analysis and functions discussed in Chapter 9 of this Handbook. In other cases, an AIRG's AOR may receive collateral requests so frequently that local resources are insufficient to fully support out of area needs, in which case the originating office may be required to provide additional support, possibly including temporary duty (TDY) travel.

In cases of unique circumstances or disagreement, the AFU Unit Chief, in concert with other applicable HQ Managers, will act as the final arbiter for delineation of AIRG responsibilities for out of district real property seizures.

### B. Out of District Forfeitures of Bank Accounts

Seized funds may be turned over either to the local FP&F office or returned to the originating office. In either case, the AIRG case number of the affiant's office is to be entered on the **(b) (7)(E)** Incident Report. When an out of district seizure warrant is

executed and the check is returned to the originating office, the AIRG case number of the affiant's office, along with the port code of the physical location of the seizure, must be entered in the (b) (7)(E) Incident Report. The project codes of all participants, including any codes associated with the criminal investigation, must be entered in the (b) (7)(E) Incident Report. The seizure will be entered into the (b) (7)(E) Incident Report in the same manner as a controlled delivery. The seizure is transferred back to the originating office for forfeiture. An executed copy of the (b) (7)(E) ) must be sent to the FP&F office in the originating port.

## 12.5 Receiverships and Unique Court Orders

The (b) (7)(E) Incident Report must use a (b) (7)(E) code (for a civil forfeiture) or a “(b) (7)(E)” code (for a criminal forfeiture) rather than an (b) (7)(E) code when the court order specifies that the item is to remain under the physical control of the court.

## 12.6 Restraining Orders

The same port code rules that apply to bank account seizures also apply to restraining orders. AIRG case agents should use a (b) (7)(E) or a “(b) (7)(E)” code when entering the (b) (7)(E) Incident Report.

## 12.7 International Cooperation

There has been a steady increase in international cooperation between the United States and other countries in the asset forfeiture arena. In part, this is due to the fact that more and more countries continue to enact their own forfeiture and money laundering laws, enabling them to render assistance in seizing, freezing, and forfeiting assets on behalf of the U.S. Government.

Seeking assets and/or assistance from a foreign country is time consuming and must follow a strict protocol. Coordination and communication are critical. All AIRG case agents should beware of violating established procedures, treaties, or working agreements when seeking assistance and assets in a foreign country. The extent and type of assistance which may be obtained from a foreign country will depend on that particular country's domestic laws.

(b) (7)(E)

**(b) (7)(E)**

B. Plea Agreements Involving Foreign Assets

**(b) (7)(E)**

rities to forfeit the funds if, for some reason, the United States is unable to do so.

C. Foreign Forfeiture

**(b) (7)(E)**

## **12.8 Joint Investigations**

In multi-agency investigations, the decision as to which agency will be responsible for identifying and seizing the assets should be made at the onset of the investigation. If an Organized Crime Drug Enforcement Task Force case is originated by HSI, the AIRG is to be designated as the asset seizing agency. This should be documented and included in the case file if the AIRG is involved.

When HSI participates directly or indirectly in a law enforcement effort that results in a seizure, the HSI criminal case agent must notify the AIRG GS and/or AFS of the seizure. The AFS, in coordination with the case agent, must ensure that a Federal Contribution Form (FCF) is completed and filed in the event of seizures made in a joint investigation with a DOJ agency. (Note: See Reverse Sharing between Federal agencies located in the HSI Net, AFU, Equitable Sharing Section, for instructions on the use of the FCF.)

## **12.9 Retention of Seized Property**

In special circumstances, seized vehicles or other property may be retained and placed in service. For more information, SAs should consult the Retention of Forfeited Property Handbook (HSI HB 11-04), dated September 12, 2011, or as updated.

If the forfeiture involves victims of crime who may be entitled to compensation, retention cannot occur until the victims' claims are resolved and paid in full. All available funds must be used to compensate victims before any retention requests are made.

## **12.10 Notice to Property Owners of Illegal Activity**

When real property is being used as a facilitating property, a letter may be sent to the legal owner of the property to put him or her on notice that his or her property is being used to facilitate an illegal activity. The letter informs the owner that continued illegal use of the property makes the property subject to seizure and forfeiture. The letter requests from the owner a response in writing as to the steps the owner is taking to eliminate and/or prevent the continued use of the property for illegal activity.

**(b) (7)(E)**

## **Chapter 13. SEIZURE PROCESSING, (b) (7)(E) AND ADMINISTRATIVE GUIDELINES FOR REAL PROPERTY FORFEITURES**

### **13.1 Real Property Pre-Seizure Planning Meeting**

A pre-seizure planning meeting should occur prior to taking real property into custody or as circumstances dictate. The participants should include the AIRG GS, the AIRG case agent, the real property contractor, the SPS, the AFS, and the DAR. All requests for the real property contractor services, including monitoring of the property, should be determined and addressed at this meeting. These instructions should be included in the disposition order for the real property contractor.

### **13.2 Pre-Seizure Viewing of the Property**

During the post-and-walk phase of real property seizures, AIRG case agents should arrange for a viewing of the property. This viewing is one of the most important steps in the seizure/forfeiture process; it is the final time when all remaining questions about the real property must be addressed and when any potential problems are reviewed to ensure that the seizure and subsequent forfeiture of the property are in the best interest of the Government. It may also be the only time when all involved parties in the case may view the property prior to the court's issuance of a judgment or final order of forfeiture.

The viewing of the property should be accomplished by the least intrusive means possible; however, it must allow TEOAF Real Property Contractor personnel to view the property well enough to determine if they can accept the property in accordance with the TEOAF Real Property Contract SOW should a judgment be issued by the court. The importance of viewing the property cannot be stressed enough; it gives all interested parties possibly the only opportunity to verify the existence and severity of any problems, such as contamination, the presence of livestock or other animals, and/or the presence of any occupants on the property. The viewing of the property should be accomplished in one of the following ways:

**(b) (7)(E)**

### 13.3 Post-and-Walk

Execution of a post-and-walk is a relatively simple process. After obtaining the appropriate legal documents, the AIRG case agent, along with the seized property and contractor personnel, goes to the property, contacts the owner/occupants, and posts the notice/warrant for arrest *in rem* as required by law. The AIRG case agent should post the documents at or near the front door/entrance of the property so that it can be seen easily. **(b) (7)(E)**

To the fullest extent possible, seized property and contractor personnel should view the property, noting all items that may be of concern or may deter the Government from pursuing forfeiture of the property. The national real property contractor may also perform a variety of services that are listed in the SOW. These services include, but are not limited to:

- A. Photographing and video recording\* the property;
- B. Conducting an inventory of the property and its contents\*;



- C. Appraising the value of the property;
- D. Monitoring and overseeing the posted property by means of periodic drive-by inspections; and
- E. Evaluating and/or monitoring operating businesses by performing such functions as stock inventories and audits of operating and financial records.

(Note: Photographs, video(s), and inventory should be duplicated by the AIRG case agent performing the post-and-walk.)

Upon completion of the post-and-walk, the national real property contractor will provide a summary and initial determination as to the acceptability of the property. In some cases, such as business or industrial properties, livestock ranches or farms, or properties used to manufacture or distribute narcotics, it may be necessary to have an Environmental Protection Agency Phase One Survey accomplished, or to have personnel from a state or local agency view the property to gauge the severity of any problems and determine any liabilities for which the Government would become responsible if the property is ultimately forfeited by the court.

It may also be determined that sufficient exigent circumstances exist that make it necessary to seize the property without notice or opportunity for a pre-seizure hearing. If this is the case, the Government must first show that a less restrictive measure would not protect the Government's interest in the property. Less restrictive measures may include obtaining a restraining order or requiring the violator to post a bond. It may be discovered that an interlocutory sale or substitute *res* should be pursued rather than forfeiture of the property.

It is important to note that the post-and-walk places the property only in the Court's jurisdiction and not in the Government's custody. Since the property is not under seizure, any further viewing of the property for any reason should be conducted after obtaining permission by one of the means listed in Section 13.2.

Along with viewing the property, all case participants should review: (1) the post and summary from the national real property contractor; (2) the property tax identification records from the city or county tax office; and (3) the title opinion, appraisal, and survey, along with any other documents obtained. A thorough review of these documents will ensure that any and all problems have been addressed and that the continued pursuit of forfeiture of the real property is in the best interest of the Government.

#### **13.4 Non-Custodial Property Considerations**

- A. Property with a clear title. Although the property is lien free, it still accrues local property taxes. Even though a *Lis Pendens* has been filed with the county, the AIRG case agent should monitor the status of the taxes with the tax assessor's office to prevent the sale of the property for back taxes.

- B. Mortgaged property with payments being made. AIRG case agents should monitor the mortgage payments made by the target of the investigation to ensure the integrity of the note and to prevent foreclosure on the mortgage note.
- C. Mortgaged property with no payments being made. The AIRG case agent should coordinate with the AUSA to file a restraining order preventing the financial institution from foreclosing on the property. If the forfeiture of the property has been included in an indictment and there is a risk of devaluation, the asset forfeiture AUSA may file a motion for an interlocutory sale in order to preserve the value of the property. If the interlocutory sale is granted, all liens and encumbrances will be satisfied with the sale's proceeds, and any remaining proceeds will be placed in an escrow account pending the conclusion of the judicial proceedings.
- D. Person-to-Person Mortgage. If a property appears to be free and clear, the possibility of a person-to-person mortgage should not be ruled out. Close coordination with the USAO will be required.

### 13.5 Payment of Real Property Liens

TEOAF will not approve real property lien payments if the lien is not recognized in the final order of forfeiture. If amending the final order of forfeiture is not practical, the TEOAF will accept a letter from the appropriate AUSA stating that the lien in question is valid and should be paid.

#### **(b) (7)(E)**

In addition, the recognition of the lien in the preliminary order of forfeiture (defined in Section 2.13) does not satisfy this requirement. AIRG case agents are encouraged, through coordination with their AUSA, to identify and document all liens in the final order of forfeiture prior to providing a copy to the FP&F Seized Property Division.

The process for the disbursement of lien payment checks is handled jointly by the national real property contractor and FP&F. The contractor forwards a lien payment request package to TEOAF. The request contains an approval from the FP&F officer assigned to the forfeiture and a copy of the final order of forfeiture. The package also contains an official request form listing information relevant to the lien payment, including the name of the payee and the address where the check should be sent. The check is subsequently sent to the contractor who forwards it to the payee. If an occasion arises where an AIRG case agent must receive the lien payment for later disbursement, a written justification to TEOAF should accompany the lien payment request package. The disbursement of a check by an AIRG case agent is considered an exceptional event, which should occur infrequently.

## Chapter 14. FINES, PENALTIES, AND FORFEITURES

### 14.1 Interaction Between the Designated Agency Representative, the Contract Property Manager, and FP&F

TEOAF is responsible for managing the real property contract. HSI is responsible for coordinating with TEOAF and FP&F during the real property judicial forfeiture process. In order to effectively administer this contract, HSI has designated a GS or an AFS from each AIRG to be trained as a DAR. As a DAR, the AIRG GS or AFS is responsible for a number of duties, including:

- A. Tasking the real property contractor for pre-seizure analysis (defined in Section 2.14) documents through disposition orders;
- B. Consignment of property to the real property contractor;
- C. Engaging the real property contractor in pre-seizure meetings;
- D. Coordinating sales and/or exit strategies with the real property contractor and the FP&F officer;
- E. Working with TEOAF and/or a TEOAF Real or General Property Contractor in meeting judicial requirements outside the scope of the contract;
- F. Working with and providing counsel to the Contracting Officer concerning contract modifications;
- G. Providing input for the Contractor's award fee assessment;
- H. Overseeing seized real property to ensure that the Contractor is meeting SOW requirements; and
- I. Assisting in verifying costs and analyses of cost proposals.

The FP&F officer will continue to maintain signatory authority for the conveyance of real property via a Government deed at the time of closing. In addition, the FP&F officer will continue to maintain a legal file on each real property seizure. HSI is responsible for providing the FP&F officer with copies of relevant documentation, including ownership and encumbrance reports, title commitments, *Lis Pendens*, preliminary and final orders of forfeiture, copies of chain-of-custody forms (Custody Receipt for Seized Property and Evidence (DHS Form 6051S), copies of disposition orders (Disposition Order (CBP Form 7605), warrants of arrest *in rem*, appraisal documentation, and any other pertinent documents. It is DOJ's responsibility to advertise the property during forfeiture proceedings.

## 14.2 Responsibilities of Seizing Special Agents

Immediately following a seizure, the AIRG case agent should take photographs and a video of the seized property. If the seized property is a conveyance, the AIRG case agent should also complete a Vehicle/Vessel/Aircraft Inventory and Receipt (DHS Form 58). Copies of the inventory, photographs, and video(s) should be retained in the AIRG case file in addition to any copies retained with the seized property file.

Prior to seizing a vehicle, the AIRG case agent should complete lien information research to determine whether there is enough equity to justify the forfeiture. If the equity does not meet the minimum threshold or there is no overwhelming law enforcement purpose for seizure, the conveyance should be returned to the lien holder.

AIRG case agents may need to submit all ROIs pertaining to the seizure to FP&F so that the FP&F paralegal specialist has enough information to prepare the seizure notice. A notice is required by law to be sent to any and all individuals who may have a financial interest in the seized item.

AIRG case agents must file the court orders (i.e., the preliminary and final orders of forfeiture) with the appropriate county recorder's office immediately after receiving them from the USAO. When these are finalized by the court, all costs concerning the forfeiture are passed to the Government. The real property contractor manager must be able to proceed to sell the property at the earliest opportunity. If these documents are not filed, the ownership of the property cannot be passed to the Government, liens may not be cleared, and the property cannot be sold. AIRG case agents must provide a copy of the final order of forfeiture to the real property contractor after it has been filed and stamped by the county recorder's office.

During the forfeiture process, it is the AIRG case agent's responsibility to perform a physical inspection (drive-by) that should occur every quarter on all real property that is located within the SAC's AOR to ensure that the property is not deteriorating or being damaged.

## 14.3 Coordination

Correspondence and backup documents transmitted to FP&F regarding seized property should reference the FP&F seizure number, not the (b) (7)(E) Incident Report number. A copy of each message and response should be maintained as part of the AIRG case file. Written contact enables all parties to maintain a hard copy of all communication to assist in settling whatever disputes may ensue over a particular incident.

The AIRG case agent should notify the FP&F officer immediately if any seized item is included in a criminal indictment. FP&F will then suspend administrative forfeiture of the item pending the final judicial disposition of the criminal case.

#### 14.4 Using (b) (7)(E) to Consign Property to the Real Property Contractor

Following the forfeiture of a real property, the AIRG GS or the case agent must document the transfer of the real property to the real property contractor in (b) (7)(E)

### Chapter 15. (b) (7)(E) INCIDENT REPORTS

#### 15.1 Preparation of an (b) (7)(E) Incident Report

The “TOPIC” field of the (b) (7)(E) Incident Report should reflect the action (e.g., “Criminal Indictment of Real Property Located at . . .” or “\$432,000 Seized from Bank of America”). By being specific, the topic line can be used to readily identify the items seized and assist in identifying and tracking seizures at a later time.

The “NARRATIVE” portion of the (b) (7)(E) Incident Report should give credit to the criminal investigative group referring the case and its assets to the AIRG for investigation and seizure. Examples of possible narrative statements are provided below:

(b) (7)(E)

# (b) (7)(E)

## 15.2 Investigations Involving Multiple Seizures

All seizures should be linked to their associated cases. In instances where there are multiple seizures within one investigation, the AIRG case agent should notify FP&F and request that FP&F assign the same FP&F paralegal specialist to all the seizures for that case. The AIRG case agent should notify FP&F through a notation in the narrative section of the (b) (7)(E) Incident Reports and through separate written communication. Assignment of seizures to a single paralegal simplifies coordination and ensures that FP&F actions on the multiple seizures occur within the same time frame.

## 15.3 Updating the Pre-Seizure Incident Report for Real Property

When requesting pre-seizure analyses and pre-seizure services from the real property contractor, the AIRG case agent must enter a pre-seizure analysis request through an (b) (7)(E) Incident Report bearing the incident code “PA.” (Note: Procedures for requesting a pre-seizure analysis are discussed in Section 9.10 of this Handbook.)

After the AIRG case agents complete a post-and-walk on a real property in a civil forfeiture case or after the real property is indicted in a criminal forfeiture case, the AIRG case agent must update the Incident Report in (b) (7)(E) to reflect the changed status of the real property. For civil forfeitures involving post-and-walks, the AIRG case agent will (b) (7)(E) (b) (7)(E) For criminal forfeitures, the AIRG case agent (b) (7)(E) After changing the code to reflect the new status of the property, the AIRG case agent will update the topic line and the narrative section of the (b) (7)(E) Incident Report to document the details of the post-and-walk or indictment and the filing of the *Lis Pendens*.

When the court issues a final order of forfeiture, the AIRG case agent must update the Incident Report again in (b) (7)(E) to document the transfer of the property to the Government. The AIRG case agent will change the (b) (7)(E) incident code to (b) (7)(E) The AIRG case agent will also update the line item of the real property to reflect the legal status as (b) (7)(E) The AIRG case agent will change the topic line to “Seizure of...”

Following approval of the <sup>(b) (7)(E)</sup> incident report, the DAR will initiate a consignment order in **(b) (7)(E)** to turn over the real property to the contractor. In addition, the DAR must complete and issue a paper copy of the consignment order to the contractor. Once the property is turned over to the contractor for management, the DAR must ensure that **(b) (7)(E)** is updated accordingly. AIRG case agents must not take premature credit for a seizure of real property in **(b) (7)(E)**. The **(b) (7)(E)** status code in the **(b) (7)(E)** Incident Report will be changed to “SZ” only after the final order of forfeiture is received from the court. If a premature change is made and the property is returned to the owner, revising the <sup>(b) (7)(E)</sup> show that the property was not seized takes intercession from a **(b) (7)(E)** National Program Manager.

Sometimes, the court will issue a preliminary order of forfeiture that specifies that the property is to be physically taken into the custody of the Government. In these cases, the AIRG case agent should seize the property and change the status of the **(b) (7)(E)** Incident Report to <sup>(b) (7)(E)</sup>. This allows expenses to be incurred and charged to the seizure by the real property contractor and FP&F. Property cannot be turned over to the real property contractor without a seizure number. If the preliminary order does not contain language directing the Government to take the property into custody, seizure should be delayed until the court issues the final order of forfeiture. This may also be the case for the liquidation of brokerage accounts.

#### 15.4 Payments in Lieu of Forfeiture

A payment in lieu of forfeiture is an appropriate method that may be used to settle any matter in which there is property that is subject to forfeiture. A payment in lieu of forfeiture occurs when the violator retains the real property or other asset that is subject to forfeiture and makes a monetary payment in its place.

Under the Treasury Forfeiture Fund Act of 1992, 31 U.S.C. § 9705, a payment in lieu of forfeiture is considered a “proceed from forfeiture” and therefore may be deposited into the TFF.

If a payment in lieu of forfeiture is ordered, the AIRG case agent must convert the **(b) (7)(E)** pre-seizure incident report **(b) (7)(E)** to an <sup>(b) (7)(E)</sup> incident. The legal status for the real property line item must be changed to <sup>(b) (7)(E)</sup> and the custodian must be changed to **(b) (7)(E)**. The AIRG case agent should turn the money received from the violator over to the CBP SPS.

The AIRG case agent should then request that the FP&F Officer issue a Release Substitution (RS) disposition for the property and a deposit disposition of the funds. When the CBP SPS enters and completes the RS disposition, **(b) (7)(E)** will automatically close the property line item and create a new line number. This procedure establishes the relationship between the money and the property for forfeiture purposes.

In cases involving multiple payments in lieu of forfeiture, additional line items will be added to the existing seizure incident for each payment received. The creation of new seizure incidents

for reoccurring payments is not authorized. An ROI must be written explaining the details of the final order of forfeiture, which explains the structured payment plan as each payment is received.

If a *Lis Pendens* has been filed against the property, a release should be obtained from the AUSA and filed with the appropriate county recorder's office after all payments have been received.

## Chapter 16. EQUITABLE SHARING

### 16.1 Approval Authority

**(b) (7)(E)** DOJ and the Department of the Treasury issued a joint "Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies." In compliance with this Guide, several changes to timelines and sharing distribution have been made. All SAC offices will continue to comply with the regulations in the *Guide* and, if there are any questions, should contact AFU for further guidance.

The Unit Chief, AFU, must approve requests for equitable sharing of amounts under \$1,000,000. Exceptions are those involving foreign sharing or real property which require approval from the Director of TEOAF.

The Assistant Director, Investigative Programs, HSI, and the Director of TEOAF must approve requests for amounts of \$1,000,000 or more. (See ICE Delegation Order (DO) 10002.1, "Authority to Determine the Equitable Sharing of Forfeited Property and Monetary Instruments," dated August 5, 2011, or as updated, and HSI DO 10007.1, "Authority to Approve the Equitable Sharing of Forfeited Property and Monetary Instruments Within the Homeland Security Investigations," dated November 18, 2011, or as updated.) Further, HSI field offices' equitable sharing recommendations on judicial forfeitures shall be sent to the USAO for AUSA input. Although concurrence of the AUSA is not required, the recommendation of the USAO is highly valued and shall be considered by the Department of the Treasury decision-making authority.

If the forfeiture involves victims of crime who may be entitled to compensation, sharing cannot occur until the victims' claims are resolved and paid in full. All available funds must be used to compensate victims before any sharing payments are made.

### 16.2 Task Force Agreements

The "Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies" **(b) (7)(E)** or as updated, located in the HSI Net, AFU, Equitable Sharing Section, provides guidance related to the proper procedures for the equitable sharing program and Task Force Equitable Sharing Agreements.

Task force equitable sharing agreements dictate the agreed-upon percentages for participation in a task force and enable a more efficient processing of payments. In circumstances of ad-hoc



participation or when an HSI office chooses not to formalize a task force agreement, equitable sharing determinations will continue to be based on a narrative justification and review of hours expended by the foreign, federal, state, or local law enforcement officers directly involved in the efforts leading up to the seizure.

All task force equitable sharing agreements must meet the criteria in the DOJ's and the Department of the Treasury's "Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies," (b) (7)(E) or as updated. (b) (7)(E)

All equitable sharing agreements must be in writing and signed by the authorized officials from the participating agencies. Furthermore, the agreements are to be reviewed annually by all participating agencies to ensure that the provisions continue to be acceptable.

AFU will maintain a repository of finalized agreements and can assist offices in developing agreements or determining appropriate sharing percentages. Once task force equitable sharing agreements are finalized, HSI field offices must contact their designated AFS in AFU at HSI HQ to provide a copy of the agreement and ensure proper application of the agreement's terms.

HSI, as the lead investigative entity, should normally conduct the seizure/forfeiture. Any other agency contributing to the seizure efforts of the task force must be entitled to a share of the forfeitures that is reflective of the assistance rendered by that agency. Pre-determined percentages in a task force may be agreed to if those percentages generally reflect the overall contributions of the involved agencies.

For all HSI-led cases, it is incumbent on HSI management to ensure that HSI retains a minimum of 30% of the net proceeds from each forfeiture unless the sharing request is an approved federal adoptive seizure, in which case HSI shall retain a minimum of 20% of the net proceeds. The minimum equitable sharing distribution to any individual partner agency is \$500; any distributions of less than \$500 will not be processed. Under normal circumstances, requests for equitable sharing on seizures of less than \$5,000 will not be processed by AFU. This minimum retention is in place to cover the investigative and forfeiture expenses incurred by all DHS agencies leading to the perfection of the forfeiture; however, it should not be considered the default percentage for HSI for all equitable sharing requests.

### 16.3 Filing Instructions

Agencies may request equitable sharing by filing a Request for Transfer of Property Seized/ Forfeited by a Treasury Agency (TD F 92-22.46). Domestic agencies, whether federal, state, or local, can file this request with HSI at any time after seizure, but **no later than** 45 calendar days after the forfeiture is completed. AFU recommends that these requests be filed earlier than this deadline, whenever possible.

It is the responsibility of the AFS to ascertain the local SAC procedures regarding preparation of equitable sharing packages. Local offices may institute earlier deadlines than the 45 calendar

days following forfeiture. On instances where federal, state, and/or local agencies fail to meet the deadline, the respective agency can submit a waiver, signed by its authorizing law enforcement official, detailing the reason for failing to meet the deadline. AFU will determine whether such a waiver will be granted.

The requested share must be delineated in percentages, not dollar amounts. Requests for equitable sharing should represent the share commensurate with the actual participation provided by the requesting agency. The narrative portion of TD F 92-22.46 must be specifically detailed as to both quantity and quality of the requesting agency's participation with respect to a particular seizure. The higher the requested percentage, the higher the requirement is for providing accurate and specific information with respect to the quality and quantity of participation.

The Guide allows participating agencies who have entered into a Memorandum of Understanding (MOU) per the new task force model to share based on percentages set out in the MOU. The task forces may be paid through a fiduciary or through individual member agencies. If paid through a fiduciary, the shared funds will be awarded to the fiduciary agency, and individual task force member agencies will neither submit individual sharing requests nor receive funds from the fiduciary agency. If paid through individual member agencies, each member agency will need to complete a TD F 92-22.46 and make reference to the MOU in the narrative section. A copy of the MOU will be provided to AFU by the SAC office.

#### **16.4 Filing Instructions for International Agencies**

It is the policy of the United States to encourage international asset sharing and to recognize all foreign assistance that facilitates U.S. forfeitures. The decision to share assets that have been forfeited to the United States with a foreign government is a discretionary function of the Secretary of the Treasury or the AG, although it also requires the concurrence of the Secretary of State and, in certain circumstances, may be vetoed by Congress.

Foreign governments are not required to follow a specific process for submitting a sharing request to the United States. The agency or the government may make its request verbally or in writing and the requests should be made to the HSI Attaché office, HSI domestic office, or HSI HQ; however, sharing may occasionally be requested via the Department of State or DOJ and transferred to HSI for processing. International sharing may be requested formally pursuant to a treaty or a sharing agreement, or, informally, through other diplomatic or law enforcement channels.

U.S. law enforcement agencies and prosecutors should make sharing recommendations on behalf of a foreign government whenever they provide assistance that facilitates the forfeiture of an asset in a U.S. case, whether the asset is located domestically or abroad.

If an HSI investigation that resulted in a forfeiture involves assistance from a foreign government, the AIRG case agent should inform the AFS in the local SAC office that an international asset sharing request should be forthcoming. The AFS should indicate that

international sharing is anticipated for a particular seizure on the appropriate Detailed Collection Report. Before the AFS submits a sharing request for this seizure, they should work with AFU and the Attaché office to determine an appropriate sharing percentage for the foreign government based on the 1995 international sharing MOU between the Departments of Justice and Treasury International Sharing Guidelines. This MOU is located in the HSI Net, AFU, Equitable Sharing Section. Once HSI determines a sharing recommendation for the foreign government, the AFS should submit a sharing request that includes both the international and domestic sharing.

Prosecutors and federal law enforcement agencies should always be mindful that any international sharing is given priority and any domestic sharing can occur only after all international sharing is completed. The HSI sharing recommendation must be approved by TEOAF and receive concurrence from DOJ and the Department of State. It should be noted that the HSI sharing recommendation is not final and may be adjusted by the approving officials; therefore, no sharing amounts should be promised to any law enforcement agencies or foreign governments until the request receives final approval.

## 16.5 Reverse Sharing

### A. Federal Contribution Form (FCF)

The FCF is a federal agency form which is used only when requesting reverse asset sharing (e.g., a transfer of funds from the DOJ Asset Forfeiture Fund (AFF) to the TFF or vice versa). Sharing requests may include a share request of forfeited net proceeds or a request of a forfeited item for official use. No FCF is submitted between federal agencies participating in the same forfeiture fund.

DOJ has implemented (b) (7)(E) system for asset sharing submissions to the DOJ AFF, known as the (b) (7)(E). When HSI requests asset sharing from federal agencies participating in the DOJ AFF, HSI will continue to utilize the FCF for requesting asset sharing from DOJ. Once the form is completed, it must be submitted to the (b) (7)(E) by the local AFS. SAs should contact their local AFS for any questions pertaining to these submissions. The deadline for agencies to submit FCFs to DOJ is 45 calendar days after forfeiture is completed.

In completing the FCF, the HSI case number and assist seizure number must be on the FCF in the space labeled “Participating Agency Case or Seizure Number.” The Participating Agency point of contact should reflect the local SAC office Asset Sharing Coordinator, not a HQ official. When computing the hours expended by HSI during the investigation, hours spent by contractors are not to be included in the HSI hours. Instead, a notation should be made stating “contractor expenses incurred for specialized expertise totaling [dollar amount].” FCFs should be signed by the SAC or his or her designee.

## B. State and Local Reverse Sharing

Checks received at field offices as the result of reverse sharing from state/local agencies should be forwarded to the Reverse Asset Sharing Coordinator in AFU at HSI HQ for deposit. When forwarded to AFU, the HSI field office must note the HSI case number and assist seizure number. This process should be handled by the AFS in each local SAC office.

## **Chapter 17. COMPENSATION FOR VICTIMS OF CRIME IN ASSET FORFEITURE AND REFUNDS**

### **17.1 Forfeiture and Compensation for Victims of Crime**

The mission of the Asset Forfeiture Program is to disrupt and dismantle criminal enterprises, deprive criminals of the proceeds of illegal activity, deter crime, and restore property to victims. Forfeiture has become a critical tool in the recovery of illicit gains arising from financial crimes, such as fraud, embezzlement, and theft. The victim must be a victim of a crime underlying the forfeiture, and his or her losses must be compensable under 28 C.F.R. Part 9. To restore victims' losses, the case must have a federal forfeiture and have available net proceeds. Once assets are forfeited and sold, the available net proceeds may be used to compensate victims of the crime underlying the forfeiture.

The TFF is not a general victim compensation fund. In order to have forfeited funds available for victim compensation, the funds must be obligated in the TFF pursuant to a granted Petition of remission or a granted Restoration derived from an investigation where victims were identified.

### **17.2 Procedure Types**

#### A. Petition for remission

The petition for remission or mitigation request is one mechanism for a victim to file for compensation. The determination of whether a victim may receive remission is governed by regulation, 28 C.F.R. § 9.8. In administrative forfeitures, FP&F will issue a ruling. In judicial forfeiture, the authority has been delegated by the AG to the Chief of DOJ, MLARS, 28 C.F.R. § 9.1(b)(2), to issue a ruling. The remission regulations require the seizing agency, HSI, to report on the merits of the petition for remission or mitigation. The regulations governing petitions for remission or mitigation of judicial forfeitures are found at 28 C.F.R. Part 9.

#### B. Restoration

The restoration request is another mechanism for victim compensation. The AG has the authority to restore forfeited property to the victims of crimes underlying the

forfeiture or of related criminal offenses, in satisfaction of a restitution order in a criminal case related to the forfeiture.

In cases involving seizures forfeited administratively, the USAO must obtain written concurrence by HSI management to preserve the forfeited proceeds. A copy of the concurrence memorandum **must** be forwarded to AFU for proper notification to TEOAF.

### C. Court Order Refunds

The court may direct the U.S. Government to make a payment to a certain party. In cases where a court order is issued to return funds not forfeited and in seized status, SAs should contact FP&F for processing. If the funds are forfeited and a court order has been issued for a refund payment, SAs should contact AFU for processing. Examples include, but are not limited to, a forfeiture that has been vacated or an appeal is granted.

## 17.3 Liabilities and Obligations

HSI field offices are required to notify AFU on any cases that may have potential victims, including cases where:

- A. a petition for remission is filed by victims;
- B. restoration will be filed by the USAO;
- C. a restitution order is filed and there is a corresponding forfeiture case; or
- D. a potential forfeiture may be vacated.

AFU is required to notify the TEOAF Revenue Team of any anticipated payment to a victim or refund from the TFF.

## 17.4 Federal Agencies as Victims

A federal agency may qualify as a victim entitled to receive compensation through the petition for remission or restoration procedures. The federal agency must demonstrate that it suffered a pecuniary loss of a specific amount as a direct result of the commission of the offense, or a related offense, underlying the forfeiture. 28 C.F.R. §§ 9.2 and 9.8(b). Examples include crimes involving tax-payer funded programs, Medicare-Medicaid healthcare, Supplemental Nutrition Assistance Program benefits, and U.S. Department of Housing and Urban Development insured loans. HSI must coordinate with FP&F to ensure that proper notice is provided to the federal agency so that it may be given an opportunity to file a petition for remission.

(Note: See TEOAF Directive No. 39, Tax Refund Fraud Cases, dated May 29, 2014, for additional guidance on tax fraud cases.)

## **17.5 U.S. Victims of State Sponsored Terrorism Fund**

On September 28, 2016, the Director of TEAOF issued interim guidance on forfeitures that may be subject for deposit into the new U.S. Victims of State Sponsored Terrorism (USVSST) Fund. DOJ created the USVSST Fund in response to the United States Victims of State Sponsored Terrorism Act, 42 U.S.C. § 10609 (2015). All funds, and the net proceeds from the sale of property, forfeited or paid to the United States after December 18, 2015, as a criminal penalty or fine arising “from a violation of any license, order, regulation, or prohibition issued under the International Emergency Economic Powers Act or the Trading with the Enemy Act doing business with or acting on behalf of, a state sponsor of terrorism,” 34 U.S.C. § 20144(e)(2)(A)(ii) (internal citations omitted), may require deposit to the USVSST Fund. (Note: SAs can find additional information in DOJ’s “Asset Forfeiture Policy Manual,” dated 2009, or as updated.)

HSI field offices must notify AFU immediately if the above applies to a case.

ACRONYMS

AFF	Asset Forfeiture Fund
AFS	Asset Forfeiture Specialist
AFU	Asset Forfeiture Unit
AG	Attorney General
AIRG	Asset Identification and Removal Group
AOR	Area of Responsibility
ASAC	Assistant Special Agent in Charge
AUSA	Assistant United States Attorney
CAFRA	Civil Asset Forfeiture Reform Act
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations

**(b) (7)(E)**

DHS	Department of Homeland Security
DO	Delegation Order
DOJ	Department of Justice
FCF	Federal Contribution Form
FOUO	For Official Use Only
FP&F	Fines, Penalties and Forfeitures
GS	General Schedule
GS	Group Supervisor
HB	Handbook
HQ	Headquarters
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement

MLARS	Money Laundering and Asset Recovery Section
MOU	Memorandum of Understanding
O&E	Owner and Encumbrance
OI	Office of Investigations
OPLA	Office of the Principal Legal Advisor
RICO	Racketeer Influenced and Corrupt Organizations
ROI	Report of Investigation
RS	Release Substitution
SA	Special Agent
SAC	Special Agent in Charge
SAMEPH	Seized Asset Management and Enforcement Procedures Handbook
<b>(b) (7)(E)</b>	
SOW	Statement of Work
SPS	Seized Property Specialist

STL	State and Local Law Enforcement Agency
SUA	Specified Unlawful Activity
TD F	Treasury Department Form
TDY	Temporary Duty
TEOAF	Treasury Executive Office of Asset Forfeiture
TFF	Treasury Forfeiture Fund
USAO	U.S. Attorney's Office
U.S.C.	U.S. Code
USVSST	U.S. Victims of State Sponsored Terrorism