




U.S. Immigration  
and Customs  
Enforcement

MAY 05 2009

MEMORANDUM FOR: All Special Agents in Charge

FROM: Marcy M. Forman   
Director, Office of Investigations

SUBJECT: Processing Mandatory Returns of Funds from  
the Treasury Forfeiture Fund

The Treasury Executive Office for Asset Forfeiture (TEOAF) has published the Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests (July 2008), also known as the "Blue Book," to provide guidance on the proper procedures for handling these matters. It contains a mandate that ICE post an **obligation on forfeited funds for all victim cases and for any case in which a petition may be filed or in which a restitution order may be entered by the court.** Victims who are qualified to petition are further identified in 28 CFR Part 9.8. It is the responsibility of each SAC to ensure that an appropriate obligation of funds be made for any ICE seizure as soon as it appears that a return might occur in an investigation.

ICE investigations in all case categories offer a variety of circumstances under which seized and forfeited funds may be returned to a victim or claimant. These returns may take one of several forms, such as a court-ordered restitution, a remission, a mitigation or others. In FY 2008, TEOAF returned more than \$112 million on behalf of ICE, and while this is an atypical year, it serves to demonstrate how prevalent these returns are in our investigations. The nature of each of these types of returns varies, but they are the same in two ways: these returns are paid directly from the amounts seized and forfeited, and it is critically important that a sufficient amount of the seizure be obligated as early as possible to cover the payment. These returns take priority over any other use for forfeitures, whether to pay equitable sharing to a participating agency, to fund the ICE financial plan or to be retained for official use.

A brief reminder of how the Treasury Forfeiture Fund operates will help explain the importance of these obligations. As seizures are forfeited, the proceeds are deposited incrementally into the Fund throughout the year. These deposits form a pool of funds that comprise the monies that are reimbursed to ICE pursuant to our annual financial plan. At the time of deposit, some funds are obligated by ICE to pay equitable sharing, some are obligated

for informant payments, et cetera, but unobligated funds are paid against enforcement initiatives in the Super Surplus, or against other budget lines, such as Title III expenses and investigative expense reimbursement. There is a danger that if funds that are required to pay a return are not obligated, those funds might be used in another way, and would not be available for return. If ICE has not made an appropriate obligation, it is likely that ICE would have to make up the missing funds through a reduction in another part of our financial plan or might have to seek return of the funds from another agency.

Field offices should be aware of victims or claimants early in the normal flow of an investigation and have the best opportunity to establish proper obligations for them, in accordance with the guidance in the Blue Book. Prior to forfeiture, the obligation should be coordinated with the CBP Fines, Penalties and Forfeitures Office having control of the seizure. After forfeiture and deposit, the obligation is coordinated with TEOAF through the HQ Asset Forfeiture Unit, as are all obligations related to ICE real property forfeitures.

TEOAF provided training on the guidelines for mandatory returns for all SAC offices in August and November 2008, and March 2009, and the Blue Book was distributed to all attendees. It is also available on the Internet at [www.ustreas.gov/offices/enforcement/teof](http://www.ustreas.gov/offices/enforcement/teof) under "Guidelines," and is attached for reference. SACs are encouraged to distribute this memorandum and the Blue Book to all ICE Special Agents and Victim/Witness Coordinators in each AOR. The Asset Forfeiture Unit can advise on these guidelines, and will assist any office having difficulty in posting these obligations. For assistance or for any questions regarding the TEOAF guidelines, please contact (b)(6),(b)(7)(C) Chief, Asset Forfeiture Unit at 202-732-(b)(6),(b)(7)(C) or (b)(6),(b)(7)(C)@dhs.gov.

Attachment