MANUAL TRANSMITTAL

9.7.8

Department of the Treasury
Internal Revenue Service

JULY 16, 2014

EFFECTIVE DATE

(07-16-2014)

PURPOSE

(1) This transmits revised IRM 9.7.8, Disposition of Seized and Forfeited Property.

MATERIAL CHANGES

(1) Subsection 9.7.8.2(3) is revised to indicate that Form 5914, Release and Receipt of Property can be found in Document Manager.

(2) Subsection 9.7.8.3 is updated to reflect that the Customs Suspense Account has been changed to the Treasury Suspense Account. All subsequent references to the Customs Suspense Account are changed to the Treasury Suspense Account.

(3) Subsection 9.7.8.3(1) the Executive Office for Asset Forfeiture (EOAF) is changed to the Treasury Executive Office for Asset Forfeiture (TEOAF). All subsequent references to EOAF are changed to TEOAF.

(4) Subsection 9.7.8.5.1is updated to change the reference to the Contracting Officer's Technical Representative (COTR) to the Asset Forfeiture Coordinator/Designated Area Representative (AFC/DAR). All subsequent references to COTR are changed to AFC/DAR.

(5) Subsection 9.7.8.6.4 is updated to include online auction as a method of sale.

(6) Subsections 9.7.8.14(1) and 9.7.8.14.6(1) are updated to indicate the location of the Guidelines for Seized and Forfeited Property.

(7) Additional revisions, deletions, and grammatical changes are made throughout the section that did not result in substantive changes but contributed to procedural clarity of the subject matter.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.7.8 dated September 20, 2007.

AUDIENCE

CI

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9.7.8
Disposition of Seized and Forfeited Property

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9.7.8.1
(09-20-2007)
OVERVIEW

(1) The disposition of forfeited property plays an integral part in fulfilling the goals of the Department of the Treasury's Asset Forfeiture Program. This section addresses both the disposition of forfeited property and situations where seized property is returned without forfeiture. In addition, this section discusses the Treasury Forfeiture Fund and its uses.

(2) Property forfeited (currency, proceeds of any financial account, financial instruments, or proceeds from the sale of seized property) under 18 USC §981, 18 USC §982, and/or 31 USC §5317(c) may be:

a. deposited into the Treasury Forfeiture Fund
b. returned to an owner, claimant, or petitioner
c. placed into official use by Criminal Investigation (CI)
d. transferred to a Federal, state, or local law enforcement agency through the equitable sharing program
e. transferred under the Weed and Seed Initiative
f. destroyed pursuant to court order
g. donated

9.7.8.2
(07-16-2014)
Return of Seized Property

(1) There are instances when seized property is disposed without forfeiture. Where the forfeiture proceedings are administrative, the Special Agent in Charge (SAC) is authorized to release property seized for forfeiture to an innocent owner. The process is referred to as quick release and is covered in IRM 9.7.7, Claims and Petitions. Seized property may also be returned upon a declination to pursue forfeiture by Division Counsel/Associate Chief Counsel or by the United States Attorney's Office (USAO) in connection with a settlement agreement or where a claimant prevails in a forfeiture action.

(2) Special attention should be given when contemplating the return of contraband, weapons, or other dangerous items. Close coordination with the Asset Forfeiture Coordinator (AFC) is required.

(3) The processes for disposing of seized property depend on the type of property and where it is stored. When seized property is returned, an attempt should be made to secure a Release of Claim also known as a "hold harmless" agreement, Form 5914, Release and Receipt of Property, located in Document Manager. The AFC should be involved and assist in the return of all seized property.

9.7.8.3
(07-16-2014)
Disposition of Funds on Deposit in the United States Treasury Suspense Account or Treasury Forfeiture Fund

(1) The Treasury Executive Office for Asset Forfeiture (TEOAF), issued TEOAF Directive Number 4, Seized Cash Management Policy, to allow the Treasury Forfeiture Fund to more efficiently and effectively control the disposition of funds deposited into the Treasury Suspense Account and/or the Treasury Forfeiture Fund. Directive Number 4 instructs all participating Treasury Forfeiture Fund law enforcement agencies to use standard forms to initiate the disposition of funds held in the Treasury Suspense Account, request post forfeiture refunds, and issue instructions for the disposition of cost bonds where there are outstanding cost bonds from forfeitures prior to the Civil Asset Forfeiture Reform Act of 2000. These forms serve as authorizing and control documents to effect the required action.

9.7.8.3.1
(07-16-2014)
Disposition Instructions for Currency Held in the Treasury Suspense Account

(1) Seized currency, financial accounts, and financial instruments deposited into the Treasury Suspense Account must be transferred to the Treasury Forfeiture Fund upon forfeiture. The TEOAF Form #2, Disposition Instructions for Currency Held in Customs Suspense Account , is used to initiate the transfer of funds that have been forfeited from the Customs Suspense Account to the Treasury Forfeiture Fund (must be signed by the Asset Forfeiture Coordinator along with Form 1570, Declaration of Forfeiture, located in Document Manager. The Final Judgment or Final Order of Forfeiture must be sent by e-mail to the CI Headquarters (HQ)-Warrants and Forfeiture mailbox.

(2) The number of equitable sharing requests filed that relate to the forfeited funds must be included on the form in addition to seizure and forfeiture related expenses (e.g., advertising and any other specific asset related costs), award payments made to Treasury, and prior reimbursements.

(3) The Treasury Executive Office for Asset Forfeiture Form #2 is also used to instruct TEOAF to release funds on deposit in the Treasury Suspense Account to the owner or third parties. A court order generally must accompany instructions to release these funds. If the funds are to be released because of a declination by Division Counsel/Associate Chief Counsel to pursue forfeiture or pursuant to a quick release or through the petition for remission or mitigation process, the associated letter and/or memorandum from Division Counsel/ Associate Chief Counsel and/or the AUSA must accompany a concurrence memo from the SAC through the Director, Warrants & Forfeiture to the Director, TEOAF. These documents along with TEOAF Form #2 must be sent by e-mail to the HQ-Warrants and Forfeiture mailbox.

9.7.8.3.2
(07-16-2014)
Request for Post Forfeiture Refund

(1) The TEOAF Form #7, Request for Post Forfeiture Refund is used to request a refund of monies that were previously forfeited and deposited into the Treasury Forfeiture Fund. The Treasury Executive Office for Asset Forfeiture Form #7 must be sent by e-mail to the HQ-Warrants and Forfeiture mailbox. Supporting documentation for the request must be included with the instructions.

9.7.8.3.3
(07-16-2014)
Cost Bond Disposition Instructions

(1) The TEOAF Form #3, Cost Bond Disposition Instructions, is used to initiate the disposition of a cost bond held in the Treasury Suspense Account . The Treasury Executive Office for Asset Forfeiture Form #3 must be sent by e-mail to the HQ-Warrant and Forfeiture mailbox with the court order providing instructions for the disposition of the cost bond (a current copy of this form is located on the CI Web on the Warrants and Forfeiture Web page).

9.7.8.4
(07-16-2014)
Disposition Instructions for Assets other than Currency

(1) The TEOAF Form #1, Disposition Instructions for Assets Other Than Currency, is used to dispose of seized or forfeited property held by the seized property contractor. The TEOAF Form #1 must be signed by the AFC and forwarded by e-mail to the HQ-Warrants and Forfeiture mailbox along with the Declaration of Forfeiture, Final Judgment, or Final Order of Forfeiture.

(2) If a court or petition decision requires payments to secured creditors such as lien holders or payments to owners or third parties, the names and addresses of the parties must be designated on TEOAF Form #1. The applicable court order must be included with TEOAF Form #1.

(3) The number of equitable sharing requests filed that relate to the forfeited funds must be included on TEOAF Form #1 in addition to seizure and forfeiture related expenses (e.g., advertising and any other specific asset related costs),

award payments made to informants and prior reimbursements to the requesting agencies (if any equitable sharing requests were filed).

9.7.8.4.1
(07-16-2014)
Disposition of Seized and Forfeited United States Savings Bonds

(1) The TEOAF Directive Number 31, Policy for the Liquidation of Seized and Forfeited United States Savings Bonds, sets forth procedures developed by Department of the Treasury and Department of Justice, the Bureau of the Public Debt, and the US Marshals Service to liquidate seized and forfeited US Savings Bonds (see Directive Number 31 on the CI Web on the Warrants and Forfeiture Web page).

(2) After forfeiture, the US Savings Bond shall be hand delivered to TEOAF or sent by registered mail, return receipt requested, with the documentation required by TEOAF Directive Number 31. The TEOAF will process redemption of the bonds with the Bureau of the Public Debt. Upon receipt of payment from the Bureau of the Public Debt, TEOAF will deposit the funds into the Treasury Forfeiture Fund.

9.7.8.5
(11-08-2005)
Disposition of Seized Property and/or Forfeited Property by the Seized Property Contractor

(1) The seized property contractor is authorized to sell or otherwise dispose of property forfeited by CI and other participating Treasury Forfeiture Fund law enforcement agencies.

(2) Criminal Investigation maintains authority over all seized property transferred to the seized property contractor. The seized property contractor maintains seized property until CI directs its disposition.

(3) The following subsections are excerpted from the Seized Property Management Services Statements of Work (SOW). The SOW should be referred to as needed for additional or more detailed information.

9.7.8.5.1
(07-16-2014)
Disposition Procedures

(1) Criminal Investigation initiates the disposition of seized and/or forfeited property by furnishing the seized property contractor with a US Customs Disposition Form (Disposition Orders/Instructions) signed by the responsible AFC who is trained and certified as a field Designated Areal Representative (AFC/DAR). The seized property contractor will not act upon disposition orders received from any other entity. When directed by the AFC/DAR, the seized property contractor will perform a disposition analysis to determine and recommend the most cost-effective disposition available to CI.

9.7.8.5.2
(07-16-2014)
Disposition Services by the Seized Property Contractor

(1) The AFC/DAR may request that the seized property contractor dispose of seized property in one of the following ways:

a. remittance
b. retention by CI for official use
c. transfer to another Federal, state, or local agency
d. destruction
e. donation
f. sale

9.7.8.5.3
(07-16-2014)
Remittance of Seized Property

(1) The seized property contractor will remit seized property to the party designated, i.e., owner or third party, by the AFC/DAR on the Disposition Order/Instructions.

(2) The seized property contractor will collect all associated costs including holding or direct costs. Direct costs include contracting fees, cost of transportation, storage, security, maintenance, and other miscellaneous charges attributable to a particular seizure. Approval to waive these direct costs is obtained in writing from the Director, Warrants and Forfeiture on the Disposition Order/ Instructions. Approval from the Director, Warrants and Forfeiture is necessary to waive the direct costs. The AFC/DAR may not waive direct costs. The Disposition Order/Instructions with the Director's signature, approving waiver of the direct costs, will be sent to the seized property contractor.

(3) The seized property contractor will:

a. notify the designated party in writing or by phone regarding the amount due, the date by which the seized property must be retrieved before the seized property contractor costs increase, and the acceptable forms of payment
b. prepare the seized property for release if needed or according to special instructions
c. verify that person receiving seized property is person specified on the Disposition Order/Instructions and have all persons sign access control log
d. obtain total payment for all seized property contractor costs prior to release
e. obtain signature of recipient on the original Form 9573, Custody Receipt for Retained or Seized Property

(4) Original Form 9573 must be returned to the AFC/DAR upon disposition of the seized property.

9.7.8.5.4
(07-16-2014)
Retention by Criminal Investigation

(1) The seized property contractor will release seized or forfeited property to CI when designated on the Disposition Order/Instructions by the AFC/DAR. The seized property contractor will obtain the signature on the Form 9573 of the individual designated on the Disposition Order/Instructions. The original Form 9573 will be returned to the AFC/DAR upon disposition of the property.

(2) For forfeited property retained by CI or other participating Treasury Forfeiture Fund law enforcement agency, the seized property contractor will not collect associated costs.

(3) The seized property contractor, upon request, will arrange for packing, crating, and shipment of forfeited property designated for official use.

9.7.8.5.5
(07-16-2014)
Transfer to Other Federal, State, or Local Agencies

(1) The seized property contractor will release property to other (non-Treasury) Federal, state, or local agencies designated on the Disposition Order/ Instructions by the AFC/DAR. The seized property contractor will collect from the recipient agency all associated costs including holding costs (direct costs of transportation, storage, security, maintenance, and other miscellaneous charges attributable to the particular seizure) as established by CI, before releasing the property unless approval to waive these costs is obtained by the AFC/DAR from Warrants and Forfeiture in writing on the Disposition Order/ Instructions. Approval from Warrants and Forfeiture is necessary to waive the holding costs. The AFC/DAR may not waive the holding costs.

(2) The recipient agency will be required to pay all existing liens identified on the Disposition Order/Instructions and show proof of payment before the property is released directly to the recipient agency.

(3) The seized property contractor will arrange for packing, crating, and shipment of forfeited property designated for official use. The receiving Federal, state, or local agency will pay transportation and packing costs unless otherwise directed by the AFC/COTR.

9.7.8.5.6
(07-16-2014)
Destruction

(1) The seized property contractor will destroy seized and/or forfeited property as prescribed and directed by the AFC/DAR on the Disposition Order/Instructions. Property to be destroyed includes items unlawful to sell, items which constitute a safety hazard to the public, and forfeited items for which the seized property contractor's holding cost plus sales costs and overhead would exceed expected revenue.

(2) Refer to the SOW for additional information regarding the destruction of property.

9.7.8.6
(07-16-2014)
Sale of Forfeited Property by the Seized Property Contractor

(1) Proceeds from the sale of forfeited real and personal property sold by the seized property contractor are deposited into the Treasury Forfeiture Fund.

(2) The seized property contractor will arrange and conduct the sale of forfeited property designated for sale by CI at public auction using the methods outlined in subsection IRM 9.7.8.6.4 below. The sale of forfeited property will be in accordance with provisions of the law and the SOW. The seized property contractor will be provided with the Disposition Order/Instructions, signed by the AFC/DAR, for forfeited property designated for sale. The forfeited property must be offered for sale no later than specified in the SOW, unless otherwise agreed to by the AFC/DAR.

(3) Authorization to sell a specific item or lot may be withdrawn by CI at any time before being sold.

(4) The seized property contractor will repair, refurbish, rehabilitate, modify, or upgrade forfeited property designated for sale when it would significantly enhance its value over and above the cost to accomplish such action in accordance with the threshold levels established in the SOW.

(5) The seized property contractor is authorized to move forfeited property to another location when it will enhance revenue gained from the sale, provided that such a move is cost effective.

9.7.8.6.1
(07-16-2014)
Disposition of Property Restrictions

(1) To ensure forfeited property is not sold to a criminal defendant or his/her agent, prospective bidders must complete and submit a bidder registration form to the seized property contractor. Completion of this form represents the bidder's certification that the bidder and/or the parties that the bidder is representing are not the individuals from whom the property was forfeited and the bidder is not bidding for or on behalf of those individuals.

(2) When selling property forfeited by CI, the seized property contractor may hold the purchased property for three days after providing the name of the purchaser to CI. The seized property contractor may release the forfeited property to the purchaser at the close of business on the third day following the sale if no further instructions have been received from CI.

(3) The TEOAF Directive Number 1, Purchase or Personal Use of Forfeited Property by Treasury Employees, prohibits employees and any members of their immediate family from purchasing property that has been forfeited and is

being sold by the Department of the Treasury or its agents. This policy is intended to ensure that there is no actual or apparent use of inside information by employees wishing to purchase such property. The purpose of this policy is to protect the integrity of the asset forfeiture program.

9.7.8.6.2
(07-16-2014)
Pre-Forfeiture or Interlocutory Sales

(1) If seized property is liable to perish, waste, or greatly depreciate in value during pendency of the forfeiture proceedings or if the expenses of keeping the property are excessive, the property may be sold and the proceeds of the sale treated as a substitute for the original property in the ensuing forfeiture.

(2) As a general rule, seized property may be sold before forfeiture in two circumstances: a stipulated sale and an interlocutory sale. A stipulated sale occurs when all interested parties agree to the terms of sale and a district court approves the transaction. An interlocutory sale is ordered by the court and does not require agreement by all interested parties. This type of sale occurs when the seized property is “liable to perish or waste,” is likely “to be greatly reduced in value by keeping” or “the expense of keeping the seized property is disproportionate to its value.”

(3) The TEOAF Directive Number 27, Processing Interlocutory Sales, provides policy guidance to law enforcement agencies and the seized property contractor for interlocutory sales.

(4) The seized property contractor may sell seized property pursuant to an interlocutory sale. The AFC/DAR will provide the seized property contractor with the Disposition Order/Instructions, along with a copy of the interlocutory sale order from the court.

(5) The seized property contractor will clearly identify any deposit and full payment for seized property from the stipulated or interlocutory sale to be deposited into the Treasury Suspense Account.

(6) The seized property contractor will, upon receipt of the total net balance of the sale, and after deducting any payments for approved liens, taxes, mortgages, costs and legal fees associated with the closing, notify CI of the total net amount, identified as the “substitute res,” so that the AFC/DAR can notify the court and update AFTRAK. The seized property contractor will deposit the total net balance of the sale into the Treasury Suspense Account .

9.7.8.6.3
(07-16-2014)
Planning and Scheduling

(1) The seized property contractor will plan sales on a continuing basis. Sale planning is designed to maximize net revenue by conducting timely sales, effectively managing the cost of sales, and by the use of other market techniques as needed. Pre-sale planning includes the evaluation of forfeited property for sale, selection of the most appropriate method and location for sale, and identification of actions needed to conduct a sale.

(2) The seized property contractor will analyze forfeited property available for sale, schedule, market, advertise, and conduct sales in a way that maximizes and secures the greatest return to the government. The seized property contractor will operate a sales information program that provides accurate, timely sales information, including responses to all public inquires concerning the time, place, and nature of all sales.

(3) The seized property contractor will provide the catalogs describing the forfeited property to be sold to the AFC/DAR prior to the sale.

9.7.8.6.4
(07-16-2014)
Methods of Sale

(1) Forfeited property is to be sold by the seized property contractor at public auction using competitive methods. Public auctions can be opened to prospective bidders in locations outside the local sale site by means of telecommunication or audio/visual networks.

(2) The seized property contractor may use the following methods, further defined in the SOW, to sell forfeited property at public auction:

a. oral progressive bid public auction
b. sealed bid
c. open bid sale (or spot bid)
d. negotiated sale
e. quick sale or summary sale
f. online auction

9.7.8.6.5
(11-08-2005)
Advertising

(1) The seized property contractor will publicly advertise the sale of forfeited property in order to generate maximum competition and fulfill the legal requirements of 19 CFR 127.25.

(2) The seized property contractor is required to respond by telephone or in writing to public inquiries regarding time, place, and nature of all sales.

(3) The seized property contractor provides a subscription service whereby the public may purchase subscriptions to notices of all public sales.

9.7.8.6.6
(11-08-2005)
Inspection and Viewing of Items

(1) The seized property contractor will ensure that all prospective bidders are given the opportunity to view, handle, and inspect all items designated for sale prior to any scheduled sale held at the contractor operated facilities and subcontractors' and vendors' facilities.

9.7.8.6.7
(07-16-2014)
Minimum Bid Amount

(1) The AFC/DAR must place a minimum bid or reserve bid amount on the Disposition Order/Instructions directing the seized property contractor to sell the forfeited asset. The AFC/DAR should consult with the seized property contractor who will provide their recommendations prior to setting a minimum bid on forfeited property. After obtaining input from the seized property contractor, the AFC/DAR will indicate the minimum bid on the Disposition Order/Instructions provided to the seized property contractor prior to sale or auction of the property.

(2) The seized property contractor will not schedule a sale until the AFC/DAR sets a minimum bid for the forfeited property.

9.7.8.6.8
(12-03-2002)
Conduct of Sale

(1) For specific information regarding conduct of sale, refer to the SOW which contains several pages of requirements for the seized property contractor.

9.7.8.6.9
(07-16-2014)
Disposition of Unsold Items

(1) Forfeited property offered for sale and not sold will be re-offered for sale at the seized property contractor's next regularly scheduled auction. The AFC/DAR need not re-issue the Disposition Order/Instructions for resale of unsold items. However, the AFC/DAR needs to consider whether the minimum bid needs to be altered in consultation with the seized property contractor and/or Warrants and Forfeiture.

9.7.8.6.10
(07-16-2014)
Transfer of Items to Purchaser

(1) The seized property contractor will prepare the formal transfer of documents for all conveyances sold to the public and forward the documents to the AFC/DAR for approval. These documents, issued to the purchaser at the time of sale, will enable the seized property contractor to transfer title to the property from the government to a private entity.

(2) The SAC has the authority to sign government title transfer documents (Delegation Order Number 9-2).

9.7.8.6.11
(07-16-2014)
Sale/Disposition of Real Property

(1) Upon receipt of the Disposition Order/Instructions along with a judgment or Final Order of Forfeiture from the AFC/DAR to sell real property, the seized property contractor will evaluate the property, analyze variables, and determine the appropriate method of sale (e.g., sell by auction or list with a local real estate broker and sell through usual real estate marketing procedures).

9.7.8.6.12
(07-16-2014)
Recording of the Final Judgment or Order of Forfeiture

(1) The seized property contractor will record the Final Order of Forfeiture with the appropriate authorities when requested by the AFC/DAR. The AFC/DAR will provide the seized property contractor with the Disposition Order/Instructions, and a certified copy of the final recorded order of forfeiture from the court.

9.7.8.6.13
(07-16-2014)
Special Problems in Disposing of Forfeited Real Property

(1) It is the policy of the Department of the Treasury to sell forfeited real properties with title insurance to maximize the revenue from the sale. On occasion, some real properties are held for long periods of time while CI and the seized property contractor attempt to clear a “clouded” title to the property as interpreted by the title company. This results in increased property management costs and the inherent liabilities of maintaining vacant real properties in inventory for long periods of time.

(2) Real property forfeited to the government in a judicial proceeding vests title in the United States. On occasion, title companies challenge the government’s title for title insurance purposes because of perceived defects in notice, in the satisfaction of lienholder interest, or in the forfeiture process. As a result, these title companies will not issue title insurance for the property.

(3) In order to expedite the disposition of properties with “clouded” titles, it is the policy of the Department of the Treasury to dispose of the property using a Special Warranty Deed and, if necessary, an Indemnification Agreement. This procedure, as detailed in TEOAF Directive Number 32, Use of Special Warranty Deed and Indemnification Agreement for the Sale of Real Property, should expedite the sale of such properties, but may not encourage a title company to issue title insurance (see TEOAF Directive Number 32 on the CI Web on the Warrants and Forfeiture Web page).

(4) For guidance in disposing of real property contaminated with hazardous substances or lead based paint, or real property included in or eligible for the National Register of Historic Places, refer to TEOAF Directive Number 7, Seizure and Forfeiture of Real Property that is Potentially Contaminated or is Contaminated with Hazardous Substances; TEOAF Directive Number 25, Departmental Policy Regarding the Seizure and Forfeiture of Real Property that is Included in or Eligible for the National Register of Historic Places; and TEOAF Directive Number 30, Interim Guidelines re: Lead-Based Paint in Residential Property Built Prior to 1978 (see these Policy Directives on the CI Web on the Warrants and Forfeiture Web page).

9.7.8.7
(07-16-2014)
Payment of State and Local Taxes on Seized and Forfeited Property

(1) The TEOAF Directive Number 12, Liability of the United States and Local Taxes on Seized and Forfeited Property, establishes Department of the Treasury policy on the payment of state and local taxes by the Treasury Forfeiture Fund on seized and forfeited property (see TEOAF Directive Number 12 on the CI Web on the Warrants and Forfeiture Web page).

(2) The Treasury Executive Office for Asset Forfeiture Directive Number 12 permits the payment of taxes upon forfeited properties that:

a. have not yet been sold
b. are the subject of pending litigation regarding payment of taxes, provided, however, that a tax claim was filed with the Federal district court prior to entry of the Order of Forfeiture or that a valid lien was recorded among pertinent land records giving the Federal district court notice of the tax claim prior to entry of the Order of Forfeiture

(3) The United States will pay interest but not penalties on overdue taxes pursuant to TEOAF Directive Number 28, Payment of Interest and Penalties on Taxes on Real Property Forfeitures (see TEOAF Directive Number 28 on the CI Web on the Warrants and Forfeiture Web page).

9.7.8.8
(07-16-2014)
Payments of Liens, Mortgages and Taxes

(1) Pursuant to 31 USC §9703, Department of the Treasury Forfeiture Fund, any payment made for valid liens and mortgages against property that has been forfeited shall not exceed the value of the property at the time of seizure.

(2) The payment of liens, mortgages, and taxes is governed by TEOAF Directive Number 14, Expeditious Payment of Liens, Mortgages and Taxes by the Department of the Treasury. The purpose of TEOAF Directive Number 14 is to treat the payment of perfected liens, taxes, and mortgages in an expeditious manner to ensure a timely closing on property, particularly real property, and ensure a clear title for the transfer of the property.

(3) The Treasury Executive Office for Asset Forfeiture Directive Number 14 lists five TEOAF policy goals:

a. Liens, mortgages, taxes and other liabilities are paid as soon as practical after forfeiture.
b. Property taxes shall be paid only up to the date of forfeiture unless statements to the contrary are contained in the court order.
c. Sales of real property should occur within three months of the date that all liens and taxes are satisfied.
d. Closing should occur within 45 days of the date of sale.
e. Gross revenues from the closing of the property should be provided to National Finance Center (NFC) within five days of the date the seized property contractor receives the funds from the escrow agent.

(4) The AFC/DAR will ensure that the Disposition Order/Instructions, copies of court documents (Final Judgment, Final Order of Forfeiture or Declaration of Forfeiture), and instructions are provided to the seized property contractor within three business days of receipt of the documents in accordance with the SOW and TEOAF Directive 14. The seized property contractor will verify lien, mortgage, and tax information, conduct appropriate title and appraisal actions, and advise CI of any discrepancies that may require resolution by CI.

(5) If the seized property contractor does not find any discrepancy that may delay the sale and closing of the property, the contractor will send a letter to the AFC/DAR requesting concurrence for payment of liabilities and the initiation of sale.

(6) The AFC/DAR will return the letter of concurrence to the seized property contractor within ten calendar days. If objections or concerns about the letter occur, the AFC/DAR will contact the appropriate seized property contractor's office to resolve the issue.

(7) If the seized property contractor receives no objections to the letter of concurrence, the seized property contractor will send copies of the signed concurrence document, as well as final tax and lien payoff information to the Director, TEOAF, for review and funding approval.

9.7.8.8.1
(07-16-2014)
Payment of Liens on Motor Vehicles to be Sold

(1) The Department of the Treasury's policy on the payment of liens on forfeited motor vehicles is contained in TEOAF Directive Number 33, Seizure of Motor Vehicles, Payments of Liens and Official Use Requirements (see TEOAF Directive Number 33 on the CI Web on the Warrants and Forfeiture Web page).

(2) Once a forfeited vehicle is sold, the AFC/DAR must forward, to the HQ-Warrants and Forfeiture e-mail box, a written request from the SAC; through the Director, Warrants and Forfeiture; to the Director, TEOAF: a copy of the Disposition Order/Instructions signed by the seized property contractor stating the gross sales proceeds; a statement indicating the appraised value at the time of seizure; and any other required information and documentation specified on the Lien Payment Checklist in TEOAF Directive Number 33.

(3) It is the responsibility of the AFC/DAR to notify Warrants and Forfeiture when expedited action is required to comply with the terms of a court order. Criminal Investigation must communicate to the involved AUSA the need to include reasonable time limits for the accomplishment of lien payments in court orders. A 90 day time period from the date of issuance of a forfeiture order or from the date of sale is the recommended standard.

(4) It is the responsibility of CI to ensure that requests for payment of liens do not occur until the subject vehicles are forfeited and that the amount of the payment requests do not exceed the lesser of the appraised value, net proceeds of sale, or the unpaid loan principal balance.

(5) The TEOAF will be responsible for expeditiously approving all properly documented lien payment requests and ensuring that the approved requests are timely forwarded to NFC for payment processing.

9.7.8.8.2
(07-16-2014)
Disposition of Properties Subject to Title Restrictions

(1) There have been a number of situations where forfeited property was sold and the purchaser learned that the property was reported stolen or has a "salvage" title. This results in considerable difficulties for the purchaser and negative publicity for the asset forfeiture program.

(2) The Treasury Executive Office for Asset Forfeiture Directive Number 29, Seizure and Disposition of Properties Subject to Title Restrictions, requires participating Treasury Forfeiture Fund law enforcement agencies to determine at the time property is seized for forfeiture whether or not a particular seized property was reported as "stolen" in situations involving vehicles, vessels, and

aircraft or as salvage in cases involving conveyances. The Treasury Executive Office for Asset Forfeiture Directive Number 29 requires that the status of these properties be checked again at the time of disposition to ensure that no reports identifying these properties as "stolen" or as "salvage" were reported to law enforcement, licensing, or titling agencies after seizure.

(3) Any properties identified as "stolen" or "salvage" will not be sold, retained for official use, or transferred to another Federal, state, or local law enforcement agency through equitable sharing without a written request for approval from the SAC; through the Director, Warrants and Forfeiture; to the Director, TEOAF.

9.7.8.9
(07-16-2014)
Settlement of Forfeiture Actions

(1) Settlements over forfeited property are encouraged to conserve the resources of both the United States and claimants in situations where justice will be served. The TEOAF, through TEOAF Directive Number 17, Policy Regarding Plea Bargaining and Forfeiture by Settlement, has established policies for forfeiture settlements. The policies in TEOAF Directive Number 17 mirror those in the Department of Justice (DOJ) Policy Regarding Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions (Policy). Highlights of the policies are detailed below.

9.7.8.9.1
(07-16-2014)
General Forfeiture Settlement Policies

(1) Both TEOAF Directive Number 17 and the DOJ Policy set forth nine general policies. Highlights of four of those policies are listed below:

a. There must be a statutory basis for the forfeiture of the property and sufficient facts to satisfy the elements of the statute.
b. All settlements must be negotiated in concert with the seizing agency.
c. Civil forfeiture, whether judicial or administrative, should not be used to gain an advantage in a criminal investigation. The government may conclude a civil and criminal forfeiture action with criminal charges against the defendant, which provided the cause of action against the property. However, the government should not agree to release property which was subject to either criminal or civil forfeiture to coerce a guilty plea on the substantive charges nor should the government agree to dismiss criminal charges to coerce a forfeiture settlement.
d. Settlements should not provide for unsecured partial payments except with the approval of TEOAF in consultation with Warrants and Forfeiture and the AUSA.

9.7.8.10
(07-16-2014)
Settlement Agreements through Administrative Forfeiture

(1) The Treasury Executive Office for Asset Forfeiture Directive Number 17 and DOJ Policy have established procedures that apply to settlement agreements in civil judicial forfeiture cases and to criminal forfeiture plea agreements where an administrative forfeiture is necessary to accomplish the agreement. In such cases, the AUSA must consult with the AFC/DAR to finalize an agreement in order to ensure CI can accommodate the terms of the agreement.

(2) The Department of the Treasury policy is to pursue an agreed upon administrative forfeiture where it is possible and economically efficient to do so.

(3) See TEOAF Directive 17 for detailed administrative forfeiture settlement policy and procedures for:

a. civil judicial forfeitures stemming from the filing of a claim before a civil judicial complaint has been filed; where the claim to all property is withdrawn; or where the claim to only part of the property is withdrawn

b. civil judicial forfeiture without prior administrative action
c. criminal forfeiture action

9.7.8.11
(12-03-2002)
Judicial Forfeiture by Settlement

(1) No agreement, whether a settlement in a civil judicial action or a plea agreement resolving both criminal charges and the forfeiture of assets, may contain any provision binding CI to a particular decision on a petition for remission or mitigation of forfeiture or otherwise contain terms whose effectiveness is contingent upon such a decision. The remission and mitigation process is a matter of executive discretion and is completely independent of the litigation and investigation settlement process.

9.7.8.11.1
(09-20-2007)
Civil Judicial Forfeiture by Settlement

(1) A settlement that purports to "forfeit" property only binds the parties to that agreement; therefore, it is necessary to complete the forfeiture action so that a forfeiture of the property occurs. In civil forfeiture cases, the AUSA must assure that a valid and complete forfeiture occurs by:

a. filing a verified civil complaint for forfeiture with the district court having jurisdiction over the property
b. ensuring that a warrant of arrest in rem has been executed against the property
c. providing notice to all known parties personally and noticing other parties by publication as required by the Supplemental Rules
d. seeking a default judgement pursuant to Rule 55 of the Federal Rules of Civil Procedure (Fed. R. Crim. P. 55) if no claim is filed within ten days after process has been executed as required by Rule C (6) of the Supplemental Rules
e. filing with the court proposed orders of forfeiture which includes a copy of the settlement agreement

9.7.8.11.2
(12-03-2002)
Criminal Forfeiture by Settlement

(1) If the settlement occurs in the context of a criminal investigation by way of a plea agreement, the AUSA must remember that a defendant can agree to forfeit only that interest in the property that belongs to him/her. Any settlement in the context of a plea agreement technically results in a forfeiture of only the defendant's interest in the property with the interests of third parties to be resolved in an ancillary proceeding. Accordingly, the AUSA must ensure that a valid forfeiture results through a plea agreement by:

a. including a forfeiture count in the indictment or information, otherwise forfeiture is legally impossible
b. complying with the requirements applicable to third party interests, including notice of the forfeiture and the right of third parties to obtain an adjudication of their interest in the property
c. reducing the entire settlement agreement to writing and requiring that the defendant concede facts supporting the forfeiture
d. including a "hold harmless" provision
e. ensuring that the court issues a Final Order of Forfeiture that incorporates the settlement and, if necessary, addresses all third-party claims
f. whenever possible, accepting only unencumbered property with the exception of valid financial institution liens to avoid protracted litigation of ownership issues

9.7.8.12
(12-03-2002)
Acceptance of a Monetary Amount in Lieu of Forfeiture

(1) In certain instances, the settlement of a forfeiture may provide for the acceptance of a monetary amount instead of forfeiture of the specific property. For example, if the settlement is within the context of an existing judicial proceeding, or in a criminal forfeiture investigation where the requirements for forfeiture of substitute assets are satisfied.

9.7.8.13
(12-03-2002)
Remission of Forfeited Property to Owners, Lienholders or Victims

(1) The Deputy Director, Operations Policy and Support, has the authority to grant petitions for remission or mitigation of forfeited property filed with CI in administrative forfeiture actions. The Attorney General has the authority to grant petitions for remission or mitigation of forfeited property submitted in civil judicial and criminal forfeiture actions. The remission or mitigation of forfeited property and quick release of seized property is covered in IRM 9.7.7, Claims and Petitions.

9.7.8.14
(07-16-2014)
Retention and Use of Forfeited Property

(1) The Secretary of the Treasury has the authority to retain or transfer any forfeited property for official use by any Federal agency. The Department of the Treasury Guidelines for Seized and Forfeited Property (Revised 7/2001), establishes procedures and criteria governing participating Treasury Forfeiture Fund law enforcement agencies' official use policies. A copy of the Guidelines for Seized and Forfeited Property is available on TEOAF's web site in the Red Book.

(2) The National Code of Professional Conduct for Asset Forfeiture (Exhibit 9.7.1–1 paragraph VII) states that "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."

9.7.8.14.1
(07-16-2014)
Forfeited Property Subject to Federal Official Use

(1) Criminal Investigation may place forfeited property that has a law enforcement purpose into official use. Neither cash nor proceeds from the sale of forfeited property may be transferred to or retained by the participating Treasury Forfeiture Fund enforcement agency. Cash and proceeds must be deposited into the Treasury Forfeiture Fund.

(2) Requests to retain or transfer real property to other Federal agencies may be considered if such transfers will serve a significant and continuing Federal purpose. Requests to place real property into official use must be submitted by memorandum from the SAC; through the Director, Warrants and Forfeiture; to the Director, TEOAF.

(3) No seized property will be placed into official use until a final judgment or Final Order of Forfeiture has been entered and the request to place the property into official use has been approved by the appropriate official. Likewise, other Federal, state, or local law enforcement agencies acting in the capacity of a substitute custodian may not use such property for any purpose before completion of the forfeiture. However, the Director, TEOAF, may grant exceptions in certain situations, such as the seizure of a ranch or business where continued operation of the enterprise is necessary to maintain the value of property.

9.7.8.14.2
(09-20-2007)
Participating Treasury Forfeiture Fund Enforcement Official Use Policies

(1) The TEOAF requires each participating Treasury Forfeiture Fund enforcement agency to establish internal guidelines consistent with the following guidelines governing the placement of property into official use.

(2) All official use guidelines shall:

a. require the entry of a final determination of forfeiture and the appropriate approval to place the property into official use prior to the use of the seized property
b. require that a written justification be prepared in each instance detailing the reasons why the forfeited property should be placed into official use and that these documents be retained for three years
c. require that a specific supervisory level be responsible and accountable for the decision to place each item of forfeited property into official use and ensure appropriate official use of such property following its transfer
d. require that property placed into official use be identified and tracked in an accountable property system
e. state that the property may be retained if it is primarily for purposes of exchange/sale or other uses not expressly authorized for property acquired through the expenditure of appropriated funds and is intended for an official use purpose for at least one year

9.7.8.14.3
(07-16-2014)
Decision-Making Authority and Official Use Approval

(1) The Secretary of the Treasury has delegated the authority to place real property into official use to the Under Secretary (Terrorism and Financial Intelligence). The Under Secretary (Terrorism and Financial Intelligence) has delegated this authority to the Director, TEOAF.

(2) The Secretary of the Treasury has delegated the authority to place non-cash personal property into official use to the head of the participating Treasury Forfeiture Fund law enforcement agency responsible for the seizure.

(3) Requests to place non-cash personal property into official use in CI must be submitted by memorandum from the SAC of the field office responsible for the forfeiture to the Director, Field Operations, with the concurrence of the CI Headquarters Section responsible for that program area (i.e., undercover assets through Special Investigative Techniques, equipment and vehicles through Investigative Equipment Section, justifying and detailing the reasons why the forfeited property should be placed into official use.

9.7.8.14.4
(07-16-2014)
Forfeited Vehicles Placed into Official Use

(1) The TEOAF Directive Number 33, Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements, permits participating Treasury Forfeiture Fund enforcement agencies to determine whether a forfeited vehicle is suitable for retention for official use based on the agencies' internal guidelines.

(2) The year, mileage, and the effect on the field office fleet are criteria that should be considered before placing a forfeited vehicle into official use. In addition, a cost benefit analysis will be performed by the Finance and Investigative Equipment sections to determine if it is appropriate to place the specific vehicle into official use.

(3) Luxury vehicles will not be placed into official use except for specific unique use such as undercover operations. See IRM 9.11.3, Investigative Property, for more information about luxury vehicles.

9.7.8.14.5
(07-16-2014)
Payment of Liens on Forfeited Vehicles Placed into Official Use

(1) When the established criteria in Directive Number 33, Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements, is met, TEOAF will pay liens on forfeited vehicles to be placed in official use by CI. The Director, TEOAF, will not authorize payment of liens to retain vehicles for official use when net equity is less than $5,000.

(2) A request to pay a lien to retain a forfeited vehicle for official use should be sent by memorandum from the SAC, through the Director, Warrants and Forfeiture, to the Director, TEOAF. The request should include a copy of the request and approval to place the vehicle into official use signed by the Director, Field Operations, which certifies that the vehicle is suitable for official use. A detailed memorandum that articulates the justification for the request must accompany any request for payment of a lien for more than $25,000.

(3) Once a vehicle designated for official use is forfeited, CI must obtain a written agreement from the lienholder to accept payment of the lesser amount of the unpaid principal balance or the appraised value before submitting a request for payment of the lien to TEOAF. If the lienholder refuses to provide such an agreement, they should be notified that the vehicle will be sold at auction and that the lien will be satisfied from the net proceeds of the sale.

(4) If the lienholder agrees to accept payment of the lesser of the unpaid principle balance or appraised value to satisfy the lien, then CI should forward that agreement along with the required documentation and information specified on the Lien Payment Checklist to the Warrants and Forfeiture mailbox for review. The request should specify to whom to make the check or Electronic Funds Transfer payable and to what address or account the payment is to be sent.

9.7.8.14.6
(07-16-2014)
Competing Requests for Official Use and Equitable Sharing

(1) When CI seeks to place forfeited property into official use and another Federal, state, local agency, or foreign country has filed a request for an equitable share of the property, the SAC, with assistance from the AFC/DAR and investigating agent, may refer to the Guidelines for Seized and Forfeited Property located on TEOAF's Web site in the Red Book, for factors to consider in making a determination regarding the disposition of the property.

9.7.8.15
(12-03-2002)
Equitable Sharing with Participating Federal, State and Local Law Enforcement Agencies

(1) Any Federal, state, or local law enforcement agency, as well as foreign countries that directly participate in an investigation or prosecution that results in a Federal forfeiture by CI may request an equitable share of the net proceeds of the forfeiture. Equitable sharing is covered in IRM 9.7.9, Equitable Sharing and Reverse Asset Sharing.

9.7.8.16
(07-16-2014)
Property Transferred Pursuant to the "WEED AND SEED" Initiative

(1) The TEOAF Directive Number 9, Weed and Seed Initiative; Transfers of Real Property, describes the Weed and Seed Initiative and explains how Federally forfeited real property may be transferred to state and local public agencies and private non-profit organizations for use in support of the Weed and Seed Initiative.

(2) Weed and Seed is an initiative designed to reclaim and rejuvenate embattled neighborhoods and communities. Weed and Seed uses a neighborhood focused two-part strategy to control violent crime and to provide social and economic support to communities where high crime rates and social ills are prevalent. The initiative first removes or "weeds" out violent criminals and drug dealers from the neighborhoods. Second, the initiative prevents a re-infestation

of criminal activity by "seeding" the neighborhoods with public and private-services, community-based policing, and incentives for new businesses.

(3) Since the process for transferring real property through the Weed and Seed Initiative parallels the equitable sharing process, it is covered further in IRM 9.7.9, Equitable Sharing and Reverse Asset Sharing.

9.7.8.17
(09-20-2007)
Department of the Treasury Forfeiture Fund

(1) The Department of the Treasury Forfeiture Fund was created by Section 638 of Public Law 102–393 (1992), which is codified at 31 USC §9703. This law transformed what had been the United States Custom Service (USCS) Forfeiture Fund into a new Treasury-wide forfeiture fund, into which forfeited cash and proceeds from the sale of forfeited property are to be deposited.

(2) Although some former Treasury bureaus were subsequently transferred to the Department of Homeland Security by the Homeland Security Act of 2002 (Public Law No. 107-196), the following agencies remain participants of the Treasury Forfeiture Fund:

- Internal Revenue Service Criminal Investigation (IRS-CI), US Department of the Treasury
- US Department of Homeland Security (DHS)
- US Immigration and Customs Enforcement (US ICE), Department of Homeland Security
- US Customs and Border Protection (US CBP), Department of Homeland Security
- US Secret Service (USSS), Department of Homeland Security
- US Coast Guard (USCG), Department of Homeland Security

9.7.8.17.1
(07-16-2014)
Administration of the Treasury Forfeiture Fund

(1) The Secretary of the Treasury has delegated responsibility for the operation and administration of the Treasury Forfeiture Fund to the Under Secretary (Terrorism and Financial Intelligence) who has re-delegated these functions and duties to the Director, TEOAF.

(2) The Under Secretary (Terrorism and Financial Intelligence), or designee, makes all determinations regarding distributions from the Treasury Forfeiture Fund. As part of this process, TEOAF prepares annual budget estimates for the Treasury Forfeiture Fund based on information submitted by participating Treasury Forfeiture Fund law enforcement agencies.

(3) The TEOAF is responsible for preparing and submitting to Congress annual budgets and reports on the Treasury Forfeiture Fund. The participating Treasury Forfeiture Fund law enforcement agencies, including CI, provide the necessary information to TEOAF for preparation of these reports.

9.7.8.17.2
(11-08-2005)
Spending Authority of the Treasury Forfeiture Fund

(1) The Treasury Forfeiture Fund is a special fund. Special funds are Federal fund collections that are earmarked by law for specific purposes. Title 31 USC §9703 defines the purposes for which revenue forfeited by the Department of the Treasury may be used.

(2) The three types of spending authority of the Treasury Forfeiture Fund are:

a. The **Mandatory Authority** items are used to meet business expenses of the Treasury Forfeiture Fund.
b. The **Secretary's Enforcement Fund** is derived from equitable shares received from DOJ or the United States Postal Inspection Service

(USPIS), and is available for the Federal law enforcement related purposes of participating Treasury Forfeiture Fund law enforcement agencies.

c. The **Super Surplus** represents the remaining unobligated balance after an amount is reserved for Treasury Forfeiture Fund operations in the next fiscal year and is available for the law enforcement activities of any Federal agency.

9.7.8.18
(11-08-2005)
Payments and Reimbursements from the Treasury Forfeiture Fund

(1) Title 31 USC §9703 states that "the Fund shall be available to the Secretary... with respect to seizures and forfeitures made pursuant to any law (other than IRC §7301 or §7302 of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes..."

(2) In other words, 31 USC §9703 requires that any payments and reimbursements for allowable expenses from the Treasury Forfeiture Fund to CI be made only when CI, or another participating Treasury Forfeiture Fund law enforcement agency is the agency responsible for effecting the seizure and forfeiture.

(3) Payments and reimbursements to CI are not payable from the Treasury Forfeiture Fund when CI assists a DOJ law enforcement agency or the USPIS in effecting a seizure and forfeiture.

9.7.8.18.1
(11-08-2005)
Mandatory Authority Expenses

(1) The following is a summarized list of mandatory authority expenses that qualify for reimbursement from the Treasury Forfeiture Fund with respect to seizures and forfeitures effected by CI or another participating Treasury Forfeiture Fund law enforcement agency:

a. payment of all proper expenses of seizure and forfeiture
b. payment for contract services, the employment of outside contractors, and the reimbursement of any Federal, state, or local agency
c. awards of compensation to informers
d. satisfaction of liens and mortgages
e. payment of amounts authorized by law with respect to remission and mitigation
f. payment of claims
g. equitable sharing payments
h. payment for services of experts and consultants
i. payment of costs of state or local law enforcement that are incurred in joint operations
j. payments necessary and directly related to seizure and forfeiture program expenses

(2) For a detailed list of the expenses and whether they qualify, refer to the Guidelines for Seized and Forfeited Property and 31 USC §9703(a)(1) or consult Warrants and Forfeiture.

9.7.8.18.2
(11-08-2005)
Limitations on the Mandatory Spending Authority

(1) In addition to payments and reimbursements for expenses of a seizure and forfeiture not effected by CI or another participating Treasury Forfeiture Fund law enforcement agency, expenses not payable from the Treasury Forfeiture Fund include, but are not limited to:

a. purchase of real property or any interest therein except to acquire full title to or to satisfy liens or mortgages
b. expenses of equipping or improving property transferred to non-Treasury agencies
c. reception and representation expenses
d. claims of unsecured creditors, particularly if such payment may jeopardize the claims of existing lienholders

9.7.8.18.3
(12-03-2002)
Discretionary Category Expenses

(1) The Secretary of the Treasury has the discretion to make payments from the Treasury Forfeiture Fund for other specifically authorized expenses (see 31 USC §9703(a)(2)) when funds are appropriated for that purpose. Congress has not appropriated funds for such purpose since fiscal year 1997. Should funds be appropriated for this purpose, those funds shall be made available to meet authorized expenses identified by the law.

9.7.8.18.4
(07-16-2014)
Reporting Seizure and Forfeiture Expenses

(1) The field office program analyst and the AFC/DAR will coordinate the monthly reporting of seizure and forfeiture expenses that qualify for reimbursement from the Treasury Forfeiture Fund for preparation of the Treasury Forfeiture Fund-Reimbursement Report (see the CI Web on the Warrants and Forfeiture Web page for a current copy of the report). This report, approved by the SAC, is submitted monthly to Warrants and Forfeiture. For a detailed list of the expenses and whether they qualify, refer to the Guidelines for Seized and Forfeited Property and 31 USC §9703(a)(1) or consult Warrants and Forfeiture.

9.7.8.19
(11-08-2005)
Department of Justice Asset Forfeiture Fund

(1) As part of the Comprehensive Crime Control Act of 1984, Congress established the Department of Justice Asset Forfeiture Fund, into which forfeited cash and proceeds from the sale of property forfeited by a Justice agency are to be deposited. The Department of Justice Asset Forfeiture Fund is subject to most of the same restrictions as the Treasury Forfeiture Fund. Refer to the Department of Justice Asset Forfeiture Policy Manuals at www.usdoj.gov/criminal/publicdocs/11-1prior/crm04.pdf.