

Department of Treasury Equitable Sharing Program Revised Interim Policy Guidance – 2018

April 3, 2018

NOTE: Previous version dated November 1, 2015 has been revised to remove ONLY references to Executive Order 13688. No other changes have been made to this document. On Aug. 28, 2017, the anti-militarization policy (EO13688) was revoked, with these instructions: “All executive departments and agencies are directed, as of the date of this order and consistent with Federal law, to cease implementing those recommendations and, if necessary, to take prompt action to rescind any rules, regulations, guidelines, or policies implementing them.” As such, any reference to Executive Order 13688 has been deleted from this document.

Effective immediately, the policies below supersede and replace the policies included in the named sections of the Department of Treasury Guide to Equitable Sharing for Foreign Countries and Federal, State and Local Law Enforcement Agencies (2004) (Guide): These policies will be incorporated into the next edition of the Guide.

Uses of Equitably Shared Funds and Property

General Guidance Concerning Use

Asset forfeiture is a powerful tool that provides valuable resources to state and local law enforcement that may not have otherwise been available. Equitably shared funds must be used in accordance with this Guide for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency. Sharing will be withheld from any state or local law enforcement agency where the governing body, state or local law, regulation, or policy requires or directs 1) specific expenditures of shared funds in a manner contrary to Treasury policy, 2) the transfer of federal equitable sharing funds to non-law enforcement agencies, or 3) expenditures for non-law enforcement purposes.

To avoid a conflict of interest or the appearance of a conflict of interest, any person or members of his or her immediate family who was involved in an investigation which led to the forfeiture of property to be sold is prohibited from purchasing, either directly or indirectly, that forfeited property.

Equitable Sharing Funds Should Not be Anticipated

Anticipated shared property should not be budgeted—Agencies should not “spend it before you get it” or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing funds for a certain purpose in advance. For example, if a local law enforcement agency files a Form TDF 92-22.46 and anticipates a 50 percent share of \$100,000, the anticipated \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the

sharing that will ultimately be approved is also uncertain. However, agencies may earmark or budget sharing funds already received.

Increase and Not Replace (Supplement vs. Supplant)

Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Shared funds shall not be used to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Treasury will examine the law enforcement agency's budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds increase the entire law enforcement budget. The Department of Treasury may terminate sharing with law enforcement agencies that are not permitted by their governing body to benefit directly from equitable sharing.

Example of Improper Supplantation: A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

Use of Interest Income

Interest on forfeited cash or proceeds must be used for law enforcement purposes and is subject to the same restrictions as the shared cash or proceeds.

Timely Use of Shared Monies [UPDATED]

Shared monies normally should be expended for their designated law enforcement purpose as they are received. However, these funds may be retained in a holding account for a reasonable period of time, generally no longer than three years, to satisfy a future need, such as a capital expenditure.

Use of Proceeds from the Sale of Shared Property

Proceeds from the sale of shared property, facilities, equipment, or other items acquired with shared funds, must be deposited into the recipient's forfeiture account and are subject to the same restrictions as shared cash.

Prohibited Sharing

Forfeited firearms may not be shared with foreign countries or state or local enforcement agencies.

Bookkeeping Procedures and Internal Controls

Establish a separate revenue account or accounting code through the agency's finance department for the proceeds from the Department of the Treasury Equitable Sharing Program. This account or accounting code will be used solely for funds from the Department of the Treasury Equitable Sharing Program. No other funds may be included in this account or with this account code.

Federal Equitable Sharing Agreement and Certification Form

As a prerequisite to participating in the Department of the Treasury Equitable Sharing Program, a state or local law enforcement agency must annually submit a signed Equitable Sharing Agreement and Certification Form (form collected by the Department of Justice). The form can be found at the following website:

<http://www.justice.gov/criminal-afmls/equitable-sharing-program>

Uses of Equitably Shared Funds

Except as noted in this Guide, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. The uses outlined below are examples of permissible and impermissible expenditures. If an agency is unsure whether a proposed expenditure is permissible, it should contact the TEOAF equitable sharing team.

Shared funds may be used for any permissible agency expenditure and may be used by both sworn and non-sworn law enforcement personnel, except as noted in salaries. The fact that shared property was forfeited by a particular unit or as a result of a particular federal violation does not limit its use to purchases only for that unit or to further investigations only for that particular federal violation. If an agency wishes to support a multi-agency expenditure, such as a new payroll system or city municipal building, with a non-law enforcement agency, the law enforcement agency's costs based on its use may be calculated on a pro-rata basis.

Permissible Uses

- a. Law enforcement operations and investigations**—the support of investigations and operations that further the law enforcement goals or missions. For example, payments to informants, purchase of evidence, buy-back programs, “buy” money, reward money (annual dues paid to a crime tip organization or payment for a specific reward for information in a specific case), recruitment and advertisement costs, and translation and interpretation services. [See **exception under Impermissible Uses, Item k.**]

- b. Law enforcement training and education**—the training of investigators, prosecutors, and sworn and non-sworn law enforcement personnel in any area that is necessary to perform official law enforcement duties. For example, training and conference registration fees, speaker fees, or costs to produce training curriculum. This provision does not permit donations or the transfer of funds to associations or organizations providing training.

Tuition for law enforcement classes necessary to the performance of sworn or non-sworn personnel's official duties is also permitted. For example, criminal justice, language, constitutional law, accounting/finance, or forensics classes could be permissible provided that the employee's regular duties require knowledge of such topics.

- c. Law enforcement, public safety, and detention facilities**—the costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement or detention facilities used or managed by the recipient agency. For example, the costs of leasing, operating, and furnishing an off-site undercover narcotics facility. Capital improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease.

Approval from TEOAF is required prior to building new facilities or making structural changes to existing facilities. Approval is not required for cosmetic or non-structural improvements such as cabling, electrical, interior walls, carpeting, or furniture costs.

- d. Law enforcement equipment**—the costs associated with the purchase, lease, maintenance, or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. For example, furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, vehicles (e.g., patrol and unmarked vehicles), animals and animal-related expenses. [See exceptions under **Impermissible Uses, item I.**]

- e. Joint law enforcement/public safety operations** – the costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel. For example, 911 call center equipment, defibrillators, search and rescue boats, aircraft, and diving equipment. These expenditures are exempt from the prorata calculation. This provision does not include equipment to be used solely by non-law enforcement personnel, such as fire and EMS vehicles.

- f. Contracting for services** – the costs associated with a contract for a specific service that supports or enhances law enforcement is permitted. For example, helicopter services, feasibility studies, forensic accountant for a specific case, auditor to perform an audit of equitable sharing funds, subject matter expert, grant writer, software developer. Contracts for long-term and/or full-time employment services or services that should be provided by an agency employee are not permitted.

- g. Law enforcement travel and per diem**—the costs associated with travel and transportation to perform or in support of law enforcement duties and activities. All related costs must be in accordance with the agency’s per diem policy and must not create the appearance of extravagance or impropriety.
- h. Law enforcement awards and memorials**—the costs associated with the purchase of plaques and certificates for law enforcement personnel in recognition of a law enforcement achievement, activity, or training. Shared funds may not be used to pay awards in the form of cash or cash equivalents such as stored value cards.

Shared funds may be used to pay the costs for commemorative plaques, displays, or memorials on law enforcement property that serve to recognize or memorialize a law enforcement officer’s contributions, such as a memorial plaque or stone in honor of an agency’s officers killed in the line of duty. The plaque, display, or memorial must not create the appearance of extravagance.

- i. Drug and gang education and other awareness programs**—the costs associated with conducting awareness programs by law enforcement agencies. For example, meeting costs, motivational speakers, child identification kits, and anti-crime literature or software.
- j. Matching funds**—the costs associated with paying a state or local law enforcement agency’s matching contribution or share in a state or federal grant program for items other than salaries, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this Guide.
- k. Transfers to other law enforcement agencies**—cash transfers of shared funds from one state or local law enforcement agency to another. In order to receive a cash transfer of shared funds, the law enforcement agency must be compliant with the Agreement, Certification, and Audit provisions of this Guide. All cash transfers must be used in accordance with the permissible use provisions of this Guide. The agency transferring funds is responsible for verifying that the recipient agency is eligible to receive sharing. The transfer must be reported on the Equitable Sharing Agreement and Certification form filed by both the transferring and recipient agencies. Transferring agencies must verify the recipient agency’s compliance at the time of transfer.

[NEW] Any agency that is terminating its participation in the Treasury Forfeiture Fund is prohibited from transferring any unspent funds to another agency. Absent written approval from TEOAF to the contrary, all such unspent funds must be returned to the Treasury Forfeiture Fund **[See Impermissible Uses, Item n.]**.

I. Salaries [UPDATED]

Generally, equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel.¹ The purpose of this rule is to protect the integrity of the Asset Forfeiture and Equitable Sharing Programs so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, law enforcement decisions.

Exceptions: Equitable sharing funds may be used to pay the salaries and benefits of law enforcement personnel in the limited situations listed below:

- (1) Matching federal grants—Shared funds may be used to pay the match requirement for the salaries and benefits of current law enforcement personnel funded by federal grant programs.
- (2) Overtime of officers, prosecutors, and investigators—Shared funds may be used to pay the overtime and benefits of current law enforcement personnel involved in law enforcement operations.
- (3) Salary of an officer hired to replace an officer assigned to a task force—Shared funds may be used to pay the salary and benefits of law enforcement officers hired to fill vacancies created when a law enforcement agency assigns officers to a task force. The replacement officer cannot engage in the seizure of assets or narcotics law enforcement as a principal duty. A principal duty is a duty that the officer is expected to perform regularly.

In order to pay the replacement officer's salary with equitably shared funds, the task force to which the agency assigned an officer must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the chief law enforcement officer of the agency assigning an officer must not maintain direct day-to-day operational control of the task force although he or she may participate in the policy-level control of such task force.

When a law enforcement agency has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.

- (4) Specialized programs—Shared funds may be used pay the salary and benefits of current, sworn law enforcement officers assigned to specialized programs which do not

¹ For the purposes of this provision, employees of a state or local prosecutor's office and members of the National Guard are considered law enforcement personnel.

generally involve traditional law enforcement functions. For example, School Resource Officers (SRO) or officers assigned to programs such as DARE. SROs and other officers assigned to specialized programs must be employed by the law enforcement agency. If the officer does not serve in this position on a full time basis, only the pro rata portion of the salary and benefits covering the time worked in the specialized position may be paid with shared funds.

- (5) Temporary or contractual appointments that do not exceed one year – Salaries or wages and related benefits paid to intern or temporary employees with a term of employment of one year or less may be paid with equitably shared funds.

Impermissible uses

- a. **Use of forfeited property by non-law enforcement personnel**—Personnel from non-law enforcement agencies are not permitted to use shared vehicles, forfeited property, or items taken for official use or purchased with shared funds.
- b. **Creation of endowments or scholarships**—Shared funds may not be used to create or establish endowments or scholarships.
- c. **Uses contrary to the laws of the state or local jurisdiction**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
- d. **Personal or political use of shared assets**—Shared funds may not be used for any use that creates the appearance that shared funds are being used for political gain or personal benefit. For example, campaign paraphernalia, gym memberships, bar, union, or other individual dues.
- e. **Purchase of food and beverages**—Shared funds may not be used to pay for food and beverages (alcoholic and non-alcoholic) except for meals during local operations. Shared funds may be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses. For example, meals purchased for officers engaged in a disaster operation, such as earthquake or hurricane relief, or per diem for meals while an officer is on official travel.
- f. **Extravagant expenditures**—Recipient agencies should use federal sharing funds prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals or travel in excess of the per diem.

- g. **Petty cash, secondary/sub accounts, and stored value cards [UPDATED]** – Shared funds may not be used to establish petty cash accounts, maintain secondary or sub-accounts to pay informants or maintain flash or buy money, purchase stored value cards (e.g. prepaid debit/credit cards), or engage in any other type of transaction where expenditures are not monitored and tracked to ensure permissibility in accordance with this Guide.

Agencies wanting to use equitable sharing fund for informant payments, flash or buy money must use appropriated or other funding sources that are subject to the agency's jurisdictional policies. Agencies may reimburse the jurisdiction with equitable sharing funds once all reimbursements have been reviewed with supporting documentation and approved by the agency head. Further, all equitable sharing funds must be maintained by the entity that maintains the agency's appropriated funds in one account and must not be commingled with any other funds. Agencies are required to follow its jurisdiction's approval and procurement policies for all expenditures. This provision prohibits an individual other than the jurisdiction's financial manager from maintaining a checkbook or other financial instruments related to equitable sharing.

- h. **Purchase of items for other law enforcement agencies** – Shared funds may not be used to purchase equipment or other permissible items for other law enforcement agencies. To ensure proper tracking and accounting of funds, agencies wishing to support other participating law enforcement agencies must transfer the cash required for such purchases to the recipient law enforcement agency. The recipient law enforcement agency must report the receipt of funds and the expenditure on its annual Equitable Sharing Agreement and Certification form.
- i. **Costs related to lawsuits** – Shared funds may not be used to pay attorney fees, settlement payments, or any other related costs of lawsuits involving the agency or its employees.
- j. **Loans** – Shared funds may not be used as advance payment for expenditures being reimbursed or paid by other funds. For example, OCDETF overtime reimbursements and appropriated funds.
- k. **Money laundering operations [NEW]** – Shared funds may not be used to support state and local “pickup” undercover money laundering operations.