

## Department of Justice Equitable Sharing Program

Interim policy guidance regarding the use of equitable sharing funds

Effective immediately, the policies outlined below replace the existing policies included in the Department of Justice *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (2009) (*Guide*) Section VIII.A.1 and 2. These policies will be incorporated into the next edition of the *Guide*.

### V. What Are the Uses of Equitably Shared Property?

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, 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.

#### A. General guidance on Supplantation and Budgeting

**1. Supplantation**—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 Justice 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 Justice 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.

2. **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 DAG-71 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.

## **B. Use of 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 email [afmls.aca@usdoj.gov](mailto:afmls.aca@usdoj.gov).

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.

### **1. 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.
- 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 AFMLS 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.
- 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 pro-rata 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*. For information regarding the use of equitable sharing funds to match federal salary grants, *see* Section V.B.3.
- 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* (*see* Section X). 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 on the agency compliance list found on AFMLS' public website.
- l. Support of community-based programs**—transfers of shared funds from a state or local law enforcement agency to a state, county, or local governmental agency or community non-profit organization (501(c)(3) or (4)). An agency may, at its discretion, transfer up to a total of \$25,000 of its shared funds annually to community-based programs whose missions are supportive of and consistent with a law enforcement effort, policy, and/or initiative. Examples include a drug

treatment facility, job skills program, or a youth program with drug and crime prevention education. The chief law enforcement officer must approve the transfer and must ensure the recipient is a qualified entity.

## 2. 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 accounts and stored value cards**—Shared funds may not be used to establish petty cash accounts, purchase prepaid credit cards (except for use as a form of payment for buy-back programs), or any other type of transaction where expenditures are not monitored and tracked to ensure permissibility in accordance with this *Guide*.

- 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. *See* Section V.B.1.k for inter-agency transfer of funds.
- 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** – Shared funds may not be used to support state and local undercover money laundering operations.

### 3. Salaries

**Equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel.** 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 current law enforcement officers and personnel in the limited situations listed below.<sup>1</sup>

Task force agencies may only pay salaries as a match to a federal grant or officer overtime. To avoid a conflict of interest, at no time can a task force member's full salary be paid with equitable sharing funds.

- (1) Matching federal grants**—Shared funds may be used to pay the match requirement for the salaries and benefits of current sworn and non-sworn law enforcement personnel funded by federal grant programs.

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<sup>1</sup> For the purposes of this provision, prosecutors and members of the National Guard are considered sworn law enforcement personnel.

- (2) **Overtime of officers and investigators**—Shared funds may be used to pay the overtime and benefits of current sworn and non-sworn 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 current, sworn 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 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.