

**US Immigration and Customs Enforcement
OFFICE OF TRAINING AND TACTICAL PROGRAMS**

ICE Academy



**TRACING OF ASSETS AND FORFEITURES
11085**

Student Guide

HSI Special Agent Training

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Tracing of Assets and Forfeitures

Motivation

Seizures and forfeitures are some of the most powerful tools we have in the HSI arsenal. Asset forfeiture financially hurts the violator. Over the years, the emphasis has been shifting from merely putting the violator in jail to putting the violator in jail with no assets.

Ultimately the financial investigation should lead the Agent to locating assets derived from illegal activity. Subsequently, the assets should be seized and forfeited in concurrence with applicable forfeiture laws.

Objectives

Terminal Performance Objective (TPO)

Conditions: Given case-related facts that indicate illicit assets and an example of a forfeiture proceeding (administrative, civil, or criminal),
Behavior: determine the appropriate seizure/forfeiture procedure and asset tracing method,
Criterion: to locate illicit proceeds and assets according to HSI guidelines in the Asset Forfeiture Handbook.

Enabling Performance Objectives (EPOs)

EPO #1: Explain methods of proving income.
EPO #2: Identify sources of information to locate illicit proceeds and assets.
EPO #3: Determine the difference between evidence and intelligence gathering.
EPO #4: Describe terms, utilization of AIRG, and HSI policy/guidelines related to seizures and forfeitures.

Review of the Past

You have had the Financial Investigations lesson and have conducted some preliminary financial investigations. Also, in CITP training, you received instruction about using the determining net-worth method of tracing illicit income. Legal lessons provided the statutory basis for seizing and forfeiting assets.

Advance Organizer of Main Ideas

The HSI Asset Forfeiture Program exemplifies HSI's efforts to seize and forfeit assets that are associated with violations of federal law under HSI's investigative jurisdiction. This lesson provides a foundational understanding of the considerations pertaining to the seizing of tangible and nontangible assets and following the processes to ultimate forfeiture.



Agenda

In this lesson, we will:

- Explain:
 - Methods of proving income
 - Sources of information to locate illicit proceeds and assets
 - Difference between evidence and intelligence gathering
 - Terms, utilization of AIRG, and HSI policies and guidelines related to seizures and forfeitures
- Demonstrate and practice identifying methods of tracing illicit income and procedures for conducting an investigation involving seizures and forfeitures.

INSTRUCTION

Explanation

A. EPO #1: Explain methods of proving income.

1. *Direct* – known and full documentation of specific transactional amounts are readily available

a. (b)(7)(E)

b. (b)(7)(E)

2. *Indirect methods* – Used when defendant has an unexplained display of wealth

a. Unexplained display of wealth – when there is:



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1)

2)

b. SA must determine if the defendant derived the unexplained wealth through illegal, income-producing activities – contraband smuggling, ID and benefit fraud, export violations, etc.

c. Indirect tracing of illicit income

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1)

2)

d. *Indirect tracing* – used for decades – for example, Al Capone’s conviction in the 1930s

1)

2)

3)

4)

e. How indirect methods prove illegal income

1) Three ways to dispose of income, both legal and illegal: (b)(7)(E)

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- f. Three indirect methods of tracing illicit income – selection of particular method depends primarily on what would be easiest and clearest to use in a courtroom presentation to emphasize the major means of funds disposition.

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Page 2370

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Page 2371

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Page 2372

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Page 2373

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2. (b)(7)(E)

3. Asset Identification Removal Groups (AIRGs)
- a. Expertise enabling HSI to identify, seize, and forfeit major violators' illegally derived assets, in concert with criminal investigations and prosecutions
 - 1) Primary mission to support asset removal of real property.
 - 2) Assist agents in asset identification and subsequent forfeiture.
 - b. AIRGs have expertise to:
 - 1) Identify assets with forfeiture potential
 - 2) Establish forfeiture provisions (civil/criminal)
 - 3) Establish probable cause for seizure

Notes:

C. EPO #3: Determine the difference between evidence and intelligence gathering.

1. There are many considerations concerning which assets to forfeit, and when to forfeit. During the course of an investigation, the case agent may obtain information that is only suitable as intelligence, instead of actionable information because of:

- a. (b)(7)(E)
- b.



2. To avoid common pitfalls:

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Notes:

D. EPO #4: Describe terms, utilization of AIRG, and HSI policy/guidelines related to seizures and forfeitures.



1. Background of asset forfeiture
 - a. Asset forfeiture has become one of the most powerful and important tools used against all manner of criminals and criminal organizations from drug dealers to terrorists to white-collar criminals who prey on the vulnerable for financial gain.
 - b. Derived from the ancient practice of forfeiting vessels and contraband in Customs and Admiralty cases, forfeiture statutes found throughout the federal criminal code.
 - c. Forfeiture used to abate nuisances and to take the instrumentalities of crime out of circulation.
 - 1) Example: a boat or truck is used to smuggle illegal aliens across the border – we can forfeit the vessel or vehicle to prevent its use repeatedly for the same purpose
 - 2) Example: same is true for an airplane used to fly cocaine from Peru into Southern California
 - 3) Example: a printing press used to mint phony \$100 bills
 - d. Forfeiture takes the profit out of crime, and returns the property to the victims.
 - e. With forfeiture laws, SAs can separate the criminal from his profits, and any property traceable to it – remove the incentive others may have to commit similar crimes.
 - f. If the crime is one that has victims, SAs can use the forfeiture laws to recover the property and restore it to the owners far more effectively than restitution.
 - g. Forfeiture provides both a deterrent against crime and a measure of punishment for the criminal.
 - 1) Many criminals fear the loss of their vacation homes, fancy cars, businesses, and bloated bank accounts far more than the prospect of a jail sentence.
 - 2) In many cases, prosecution and incarceration are not needed to achieve the ends of justice – sometimes, return of the property to the victim and forfeiture of the means by which the crime was committed will suffice to ensure the criminal is punished.
2. Forfeiture
 - a. Divestiture of the illicit assets without compensation of property used in a manner contrary to the laws of the sovereign.
 - b. Merely illegal use alone does not automatically give government right to seize and forfeit.
 - c. Only if property forfeiture is specifically authorized by statute.
 - d. Must have express statutory authority before seizing or proceeding against property for forfeiture.



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3. Forfeiture definitions

Terms and Definitions can be found at the end of the Student Guide.

4. Role of AIRG

- a. Has expertise in identifying and tracking assets in all HSI case categories.
- b. Identifies assets and investments that have been illegally acquired by individuals and criminal organizations.
- c. Establishes probable cause to seize and forfeit all property, real and personal, used and/or acquired as a result of criminal activity.
- d. Identifies, analyzes, traces, seizes, and forfeits criminal proceeds deposited into traditional and non-traditional financial institutions; traces and forfeits stocks, bank accounts, bonds, and other investments related to criminal activity.
- e. Dismantles known criminal organizations by targeting their financial infrastructure and seeking criminal, civil, or administrative actions to accomplish that mission.
- f. Develops sources of information that can provide leads and intelligence on criminal groups and how they attempt to legitimize their wealth.
- g. Collects and assesses intelligence on investment trends, modus operandi, and financial structures favored by criminal organizations.

AIRG help is requested as a (b)(7)(E) (b)(7)(E). This is important to the setup of who gets stats later.

5. Collaboration on search warrants

- a. During drafting of any search warrant affidavits, AIRG SA and criminal case SA should coordinate efforts and be certain to include the authority to search for and seize financial documents.
 - 1) AIRG SAs should assist in the execution of all search warrants so that the AIRG can search for and obtain specific information pertaining to the location of assets and the monies/proceeds generated by the particular SUA being investigated.
- b. Since financial records are frequently stored as electronic media, AIRG SAs, in cooperation with the criminal case SA, should request the assistance of a Computer Forensics Agent (CFA) during the planning and execution of any search warrant.

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

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- d. Constant coordination and communication between the criminal case SA, the AIRG SA, the criminal AUSA, and the asset forfeiture AUSA is extremely important.
- 1) No decisions should be made arbitrarily by a single SA or other entity.
 - 2) AIRG SAs should inform and seek the advice of all parties.

6. General guidelines

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- h. Document all stages of the investigation in a detailed ROI.

Notes:

7. Evaluation of a property independent of a pre-seizure analysis

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8. Pre-seizure planning

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While in the planning stages, HQ AFU Chief has to approve seized property. When the property is valued over \$1million, the EAD has to approve the seizure. ***These guidelines do not include monetary instruments (HSI YHB 10-04,10.7.***

9. What is being seized?

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Notes:



10. Calculating net equity

- a. SAs must obtain net equity information prior to seizing real property and businesses.

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11. Seizure thresholds

- a. Pursuant to DOJ Asset Forfeiture Policy Manual Section D.1, dated 2016, and barring an overriding law enforcement purpose, net equity must exceed the following thresholds in order to justify a seizure:

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- b. The USAO in the SA's district may require net equity amounts greater than the national thresholds.



- 1) It is the responsibility of each AIRG to know the local prosecutorial guidelines.

12. Treasury Executive Office of Asset Forfeiture (TEOAF)

- a. Administers the Treasury Forfeiture Fund (TFF).
- b. TFF established in 1992 as the successor to what was then the U.S. Customs Service Forfeiture Fund.
- c. TFF is the receipt account for the deposit of non-tax forfeitures made by the following member agencies:
 - 1) Criminal Investigation Division, Internal Revenue Service
 - 2) ICE
 - 3) CBP
 - 4) U.S. Secret Service
 - 5) U.S. Coast Guard

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Page 2383

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Page 2384

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Page 2385

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CONCLUSION

Summary of Main Ideas

Greed and the acquisition of material goods motivate many criminals. Therefore, the government's ability to forfeit property connected with violations of federal law can be an effective tool to reduce the temptation to cross the legal line.

Using seizures and forfeitures aims to undermine the economic infrastructure of a criminal enterprise that, often times, mirrors legitimate businesses. Businesses need cash flow to operate; and they generate a profit from the sale of their "product" or "services." The obvious difference is use of illegal means to generate profits. Asset forfeiture can remove the tools, equipment, cash flow, profit, and, sometimes, the product itself, from these operations, leaving the criminal organization powerless.

Collaborate with AIRG, AUSA, CFAs, FP&F in planning seizures. Make sure that the affidavit

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Seizure value must meet threshold requirements.

Integration

For any case in which the subject may have financially benefitted from violations of federal law, Special Agents should proactively look for any indications of accumulated assets. The AIRG can provide assistance with more refined techniques that can be used to establish grounds for forfeiture of those assets.



Objectives

You are now able to:

- Explain methods of proving income.
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Motivation

Seizures and forfeitures are some of the most powerful tools we have in the HSI arsenal. Asset forfeiture financially hurts the violator. Over the years, the emphasis has been shifting from merely putting the violator in jail to putting the violator in jail with no assets.

Ultimately the financial investigation should lead the Agent to locating assets derived from illegal activity. Subsequently, the assets should be seized and forfeited in concurrence with applicable forfeiture laws.

Asset forfeiture is a powerful tool to combat criminal activity and other violations that threaten national security.

Test or Final Activity

The material in this lesson will be tested in PE 2 and in Comp 2 exam.



Term and Definitions

Equitable Sharing	Division and transfer of forfeited property, or proceeds from forfeited property, between government agencies, based on each agency's contributions to and participation in an investigation.
Encumbrance	Anything that affects or limits the title of a property, e.g., liens, mortgages, easements, leases, or restrictions.
Facilitation	Use of an asset in the commission of a crime or in furtherance of criminal or otherwise proscribed activity.
Final Order of Forfeiture	An order entered by the court in a criminal forfeiture proceeding, following the preliminary order of forfeiture and any ancillary proceedings, authorizing the Government to take ownership and dispose of a property. The final order takes into account any third-party rights, as well as the defendant's interest in the property – known in some judicial districts as an “amended order of forfeiture.”
Interlocutory Sale	The court-ordered sale of an asset prior to a final order or judgment of forfeiture. A court may authorize such an action in cases where loss of market value or physical deterioration of an asset has occurred or is imminent.
Lien	A legal claim against an asset, which is used to secure a loan and must be repaid if the asset is sold.
<i>Lis Pendens</i>	Latin for “suit pending.” A written notification, filed with a county recorder's office, indicating that a forfeiture action against the property is pending on behalf of the Government. The notice minimizes the potential for the transfer of ownership by alerting potential buyers or lenders that the title of the property is in question and any purchase of the property may result in the new owner being bound by the court decision.
Net Equity	The market value of an owner's unencumbered interest in an asset, i.e., the difference between the fair market value of an asset and the outstanding balance of liens against that asset.
Payment in Lieu of Forfeiture	A defendant's voluntary substitution of a monetary payment in place of the forfeiture of a particular asset.
Post- and-Walk	Process of delivering a warrant of arrest <i>in rem</i> to the owner of a real property and affixing a copy of the warrant to the property itself. Undertaken as part of a civil forfeiture action following the filing of a civil complaint for forfeiture.



Preliminary Order of Forfeiture	In criminal forfeiture proceedings, an order of the court, issued after the defendant is found guilty by a jury or enters a plea of guilty, which sets forth a money judgment or directs the defendant to surrender his or her interest in the property to the Government.
Pre-Seizure Analysis	A title search, appraisal, net equity analysis, cost/benefit analysis, and/or other services performed by the real property contractor at the request of an AIRG following the identification of a real property that may be subject to forfeiture.
Proceeds	Any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.
Seizure Threshold	The amount of net equity that a criminal must hold in an asset before an AIRG SA may contemplate the seizure and subsequent forfeiture of that asset.
Turnover Order	A turnover order is an authorization, obtained from the state court with jurisdiction over the seizure, which authorizes the state or local agency to turn the seizure over to HSI for adoption.