



## TOWN OF CARRBORO POLICE DEPARTMENT

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At the September 1, 2020 Town Council meeting, members of the council requested more information on the Federal Asset Forfeiture Program so they could consider continued participation in the program by the Carrboro Police Department (CPD). The information below will provide an overview of the asset forfeiture program.

### What is the Purpose of the Equitable Sharing Program?

The purpose of the program is to “enhance cooperation amongst federal, state, local, and tribal law enforcement by providing valuable additional resources to state and local law enforcement agencies.” While the program wants to provide additional resources to law enforcement agencies, the main purpose is to compensate victims of crimes. Victim compensation will always take priority when the program is determining funding.

For more information on the program, please refer to the below websites.

<https://www.justice.gov/criminal-afmls/file/794696/download>

<https://www.justice.gov/criminal-afmls/file/839521/download>

### Minimum Thresholds and Pre-Seizure Planning

Recently, minimum threshold values were raised in order to “decrease the number of federal seizures, thereby enhancing case quality and... to encourage state and local law enforcement agencies to use state forfeiture laws.” The minimum threshold for cash seizures is \$5,000.

Agents must complete a pre-seizure planning worksheet in order to ensure the forfeiture “is used as an efficient and cost-effective law enforcement tool consistent with the public interest.” The worksheet answers the following questions:

- What is being seized, who owns it, and what are the liabilities against it?
- Should the asset be seized or even identified for forfeiture?
- How and when is the asset going to be seized/forfeited?
- What management and disposition problems are anticipated, and how will they be resolved?
- If negative net equity, management, and disposition problems are identified, what are the alternatives to forfeiture?
- Is any negative publicity anticipated?

### Three Types of Federal Forfeiture

- **Criminal Forfeiture:** Criminal forfeiture is brought as part of a criminal prosecution of a defendant. It is an in personam (against the person) action and requires that the government indict the property used or derived from the crime along with the defendant.

In criminal forfeiture, an individual has the right to contest the seizure through trial proceedings.

- Civil Judicial Forfeiture: Civil judicial forfeiture is a judicial process that does not require a criminal conviction and is a legal tool that allows law enforcement to seize property that is involved in a crime. Referred to as an *in rem* (against the property) action, it is an action filed against the property itself, rather than a person. In civil judicial forfeiture, an individual has the right to contest the seizure through trial proceedings. The government then must prove that the property facilitated criminal activity or represents criminal proceeds.
  - While CPD is not usually involved in forfeitures from cases that do not involve narcotics, it can and does happen. CPD recently investigated someone for fraud related to general contract work. The suspect was investigated by agencies in numerous jurisdictions for the same offense. The federal government became involved and seized millions of dollars from the suspect, which was determined to be from his fraudulent activities. The Asset Forfeiture Program includes a program that returns funds to victims of crimes.
- Administrative Forfeiture: Most federal forfeiture cases are uncontested even if there is a related criminal case. Administrative forfeiture occurs when property that facilitated criminal activity or represents criminal proceeds is seized but no one files a claim to contest the seizure. Property that can be administratively forfeited includes merchandise prohibited from importation; a conveyance used to import, transport, or store a controlled substance; a monetary instrument; or other property that does not exceed \$500,000 in value. Houses and other real property may not be forfeited administratively. Federal law imposes strict deadlines and notification requirements in the administrative forfeiture process. If the seizure is contested, then the U.S. government is required to use either criminal or civil judicial forfeiture proceedings to gain title to the property.
  - Example: in 2012 CPD participated in a multijurisdictional investigation into illegal narcotic sales, which included the DEA. Multiple ounces of cocaine were purchased from a suspect and they were later charged with trafficking 50+ kilos of cocaine. A search warrant was executed at his residence and more than 1 million dollars cash was seized from his residence. The DEA conducted a probable cause seizure of the cash.
  - Example: if we execute a search warrant and find a sizable amount of narcotics and \$50,000 cash and there is a nexus between the cash and narcotics, we can ask the DEA to seize the cash. The DEA agent has to investigate the case and determine that the appropriate nexus exists.

### **How Does our Agency Receive a Share?**

Our agency will receive an equitable share when we are directly involved in an investigation leading to a federal forfeiture. The program takes into consideration many factors when making this decision to include:

- The inherent importance of the contributing activity
- Whether the agency otherwise entitled to an adjustment would have already received a comparatively large share based on reported work hours
- Whether the agency originated the information leading to the seizure
- Whether the agency provided and articulated specific unique or indispensable assistance
- Whether the agency seized one or more assets that were forfeited in non-federal proceedings during the same investigation

**Allocation of Funds** In the event of a completed forfeiture, 20% of the proceeds are directed to the DEA for maintenance of the Equitable Sharing Program, while 80% of the proceeds are directed to the law enforcement agencies responsible for the seizure. If multiple agencies are involved, each agency submits in writing how they participated in the case. The DEA determines the percentages of allocation based on agency participation.

**Permissible Uses of Shared Funds**

- Law enforcement operations and investigations
- Law enforcement training and education
- Law enforcement, public safety, and detention facilities
- Law enforcement equipment
- Joint law enforcement/public safety operations
- Contracts for services
- Law enforcement travel and per diem
- Law enforcement awards and memorials
- Drug, gang, and other prevention or awareness programs
- Matching grants
- Support of community-based organizations

**Reporting and Audit Requirements**

CPD must submit an Equitable Sharing Agreement and Certification form (ESAC) annually whether funds were received in order to maintain compliance. By participating in the program, CPD must comply with multiple audits to ensure that any seized funds were used appropriately. CPD must also retain all documents and records of our participation for at least 5 years.

**Reason for Continued Participation**

Participation in this program has allowed the police department to purchase much-needed equipment such as body-worn cameras, tasers, firearms training simulator, protective vests, in-car cameras, replacement firearms, an interview-recording system, as well as other equipment needs, all at little or no cost to the Town. Denying participation in the federal asset forfeiture program would either shift these expenses to the Town, or prevent their purchase entirely.