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ASSET FORFEITURE

13.4 Businesses, Commercial Real Property, and Financial Instruments

FINANCIAL INSTRUMENTS

1. PRE-SEIZURE PLANNING.¹¹⁰

- a. **Description:** Often, there will be no opportunity for pre-seizure planning when financial instruments—such as bank instruments, equity instruments, or airline tickets—are seized by an investigative agency upon an arrest. However, these instruments should be examined as soon as practicable to determine if they have value and if action must be taken to ensure that they are not redeemed by the original owner or other unauthorized persons.
- b. **Bail Collateral:** Seized financial instruments should not be used as collateral for bail.

If	Then
There are or will be criminal charges filed (as verified by the USMO with the investigative agency) and the defendant identifies seized financial instruments for bail collateral.	<p>The USMO advises the AUSA in the criminal case to:</p> <p>Request a hearing where the defendant must identify other assets that may be used for bail collateral.</p> <p>Petition the district court to prevent its use.</p>

2. **FORFEITURE:**¹¹¹ This section applies to administrative forfeiture, civil judicial forfeiture, and criminal forfeiture of the following types of financial instruments:

- a. Personal and cashier's checks
- b. Certificates of deposit (CDs)
- c. Postal and commercial money orders
- d. Traveler's checks
- e. U.S. savings bonds
- f. Airline tickets
- g. Stocks and bonds
- h. Promissory notes

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a. **Civil Judicial Forfeiture:** The procedures required to institute a civil judicial forfeiture action¹¹² against financial instruments are the same as for other types of personal property.

b. **Administrative Forfeiture:** The procedures required to institute an administrative forfeiture action¹¹³ against financial instruments are the same as for other types of personal property.

(1) This type of administrative forfeiture is a non-judicial form of civil forfeiture.

(2) However, the actions listed below for handling financial instruments subject to civil judicial forfeiture are applicable to financial instruments undergoing administrative forfeiture.

Authority	Procedure
Investigative agency	<p>Immediately after the seizure, should:</p> <p>Give written notification to the financial institution, company, or business entity that issued the financial instruments that the instruments have been seized for forfeiture.</p> <p>Instruct the organization to take necessary steps to freeze the funds covered by the financial instruments so the instruments can be redeemed or negotiated after forfeiture.</p>
USMO	<p>Upon being apprised of the seizure, should:</p> <p>Advise the investigative agency to notify the financial institution, company, or business entity if it has not already been done.</p> <p>Request a copy of the notification when the financial instruments are transferred to its custody.</p> <p>Upon commencement of the judicial forfeiture action, should:</p> <p>Serve notice of the forfeiture, together with the warrant of arrest in rem prepared by the AUSA, on the financial institution, company, or business entity.</p> <p>Upon receiving custody of financial instruments that cannot be redeemed until after forfeiture, should:</p> <p>Place the items in a sealed container within a safe-deposit box or vault.</p>

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- c. **Criminal Forfeiture:** The procedures required to institute a criminal forfeiture action¹¹⁴ against financial instruments are the same as for other types of personal property.

Authority	Procedure
USMO	<p>Generally seizes financial instruments after the district court has issued a preliminary order of forfeiture.</p> <p>Handles such financial instruments in the same manner as those seized for civil forfeiture.</p>
Investigative agency or the USMO	<p>May seize financial instruments before forfeiture if the district court issues a seizure warrant.</p> <p>May request that the AUSA seek restraining orders from the district court against financial instruments subject to criminal forfeiture to prevent their liquidation.</p>
Investigative agency or the USMO, depending on which agency executed the order of the district court	<p>Will notify the issuing financial institution, company, or business entity if financial instruments are seized pursuant to a seizure warrant or are subject to a restraining order. The notification should be in the same manner as when such instruments are seized for civil forfeiture.</p>

3. ADDITIONAL DUTIES AND RESPONSIBILITIES REGARDING SPECIFIC FINANCIAL INSTRUMENTS

- a. **Personal and Cashier's Checks:** It is the responsibility of the USMO to:

- (1) Seek advice and assistance from the AFO before accepting custody of "stale-dated" personal checks.¹¹⁵
- (2) Serve the warrant of arrest in rem or seize the checks pursuant to a preliminary order of forfeiture.
- (3) Provide written notification to the financial institution stating that:
 - (a) The checks are subject to forfeiture.
 - (b) The financial institution should freeze the funds.
 - (c) Upon civil forfeiture, or the entry of a final order of forfeiture in a criminal

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case, the financial institution will be required to turn the funds over to the USMO for disposal in accordance with law.

- (d) Because the forfeiture may not be accomplished within the six-month period specified under the Uniform Commercial Code (UCC), the financial institution should provide specific guidance on the procedures it will require for the USMO to redeem the checks after forfeiture.

b. Certificates of Deposit: It is the responsibility of the USMO to:

- (1) Serve the warrant of arrest in rem or seize the CDs pursuant to a preliminary order of forfeiture.
- (2) Provide written notification to the financial institution stating that:
 - (a) The CDs are subject to forfeiture.
 - (b) The financial institution should freeze the funds.
 - (c) Upon civil forfeiture, or the entry of a final order of forfeiture in a criminal case, the financial institution will be required to turn the funds over to the USMO for disposal in accordance with the law.
 - (d) If the CD itself is not taken into custody, the financial institution should give the USMO a copy of the CD for its case file.
 - (e) The CD should not be liquidated prior to maturity, even after forfeiture, without the approval of a PAR decision package by the AFO unless the maturity date is more than 120 days in the future.
 - (f) Upon maturity, the CD should be liquidated and the proceeds deposited:

Into the seized assets deposit fund (15X6874) if the CD has not been forfeited.

Into the asset forfeiture fund if the CD has been forfeited or upon its forfeiture.

c. Postal and Commercial Money Orders:

Type	Procedure
Postal money order	Immediately after the seizure of the money order, the investigative agency should send a certified letter ¹¹⁶ to the U.S. Postal Service containing:

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	<p>A list of the serial numbers and the amount of each money order, and</p> <p>A statement that the Government has recovered the money order(s) and is entitled to it (them) under forfeiture laws.</p> <p>Upon accepting custody of the money order, the USMO should complete the payee line (if it is blank) by inserting "U.S. Marshals Service."</p>
Western Union money order	<p>Immediately after the seizure of the money order, the investigative agency should send a certified letter to Western Union containing:</p> <p>A list of the serial numbers and the amount of each money order, and</p> <p>A statement that the Government has recovered the money order(s) and is entitled to it (them) under forfeiture laws.</p> <p>Upon accepting custody of the money order, the USMO should mark each order "void" if it has not already been done.</p>
All other commercial money orders	<p>Immediately after the seizure of the money order, the investigative agency should contact the issuing company regarding its procedures for handling and redemption.</p>

d. **Traveler's Checks:** The investigative agency should determine what procedures will be required to redeem traveler's checks.¹¹⁷

If	Then
<p>The traveler's check can be redeemed prior to forfeiture.</p>	<p>The investigative agency should:</p> <p>Take appropriate steps to liquidate the check.</p> <p>Ask the issuing company to provide a cashier's check made payable to the USMS.</p>
<p>Liquidation cannot occur until after forfeiture.</p>	<p>The investigative agency should:</p> <p>Notify the issuing company of the seizure.</p> <p>Give the USMO the check and verification that the issuing company has been notified.</p>

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Certain traveler's checks, such as those issued by American Express, are liquidated prior to forfeiture.	The backs of the checks should be endorsed by the USMO with the words "The U.S. Marshals Service agrees to hold harmless American Express from loss."
	The checks may be sent via certified mail or a private delivery service to American Express. ¹¹⁸

- e. **U.S. Savings Bonds:** Immediately after the seizure of U.S. savings bonds, the investigative agency should send a certified letter¹¹⁹ containing a list of the serial number(s), the denomination(s) of each savings bond, to whom it (they) is (are) payable, and the reason for the seizure.
- f. **Airline Tickets:** Immediately after the seizure of airline tickets, the investigative agency should notify the issuing carrier of the government's intention to forfeit the tickets and determine what procedures will be required to redeem the tickets.

If	Then
The tickets can be redeemed prior to forfeiture.	The investigative agency should take appropriate steps to: Liquidate the tickets. Have the issuing carrier provide a cashier's check made payable to the USMS.
Liquidation cannot occur until after forfeiture.	The investigative agency should: Turn the tickets over to the USMO, along with written verification that the issuing carrier was notified of the forfeiture action.

- g. **Stocks and Bonds:** Immediately after the seizure of stocks and bonds, the investigative agency should contact a certified stockbroker who will:
 - (1) Establish the fair market value of the asset.
 - (2) Determine how the instrument is traded.

If	Then
Financial instruments have a fair market value equal to \$0. Stocks or bonds that are not traded on the open market:	They should not be forfeited. They should be quick released or otherwise disposed of in accordance with the investigative agency's procedures for abandoned property.

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Are privately or closely held, or	
Were issued by a "shell corporation."	
The investigative agency can document that closely held stocks or bonds have significant value.	Forfeiture action may continue.

- (3) Upon being apprised of the seizure of such instruments, the USMO should:
- (a) Advise the investigative agency of the necessity to determine the market value of the instruments and how they are traded, if it has not been done.
 - (b) Request that the investigative agency provide documentation to the USMO when the instruments are transferred to its custody verifying that the instruments have significant value.
- (4) Upon receiving custody of such instruments, the USMO should ensure that the instruments are properly secured.
- h. **Promissory Notes:** Promissory notes may have been seized by an investigative agency or may result from an order issued by the district court as a consequence of a civil action or criminal prosecution. The following procedures are applicable for promissory notes.

- (1) The USMO should make every effort to convert such notes into cash as soon as legally permissible (e.g., pursuant to an interlocutory sales order or an order of forfeiture). These efforts include:
- (a) Contacting the note's maker and informing him or her of the seizure of the note.
 - (b) Directing that payments be made to the order of the USMS.
 - (c) Arranging to have any monthly or periodic payments sent to a specified USMS address.
- (2) If the note is secured by real property or other collateral, the USMO should arrange for an appraisal to determine the value of the collateral, unless the cost of such an appraisal is too high when compared with the balance owed on the note.
- (3) Before a final order of forfeiture is issued, any payments received should be deposited in the seized assets deposit fund (15X6874).
- (4) The USMO should:
- (a) Monitor the payment record monthly.

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(b) Contact the note's maker and seek payment if any of the payments have not been made.

(c) Contact the AUSA if foreclosure action is necessary due to nonpayment.

4. **DISPOSAL AFTER FORFEITURE:**¹²⁰ After forfeiture, the USMO shall:

- a. Contact the issuing financial institution, company, or business entity to obtain information on the appropriate procedure for liquidation.
- b. Retain a legible photocopy record, front and back, of all financial instruments liquidated.

The following additional procedures are applicable to the specified financial instruments

a. **Personal and Cashier's Check(s):** The USMO must:

(1) Inform the financial institution that issued the check(s) that:

(a) The check(s) has been forfeited to the United States.

(b) The financial institution is required by law to turn funds represented by the check(s) over to the USMS for disposal.

(c) The financial institution needs to provide specific guidance on the procedures necessary for the USMS to redeem the check(s).

(2) Contact the AFO for advice and assistance if difficulty is encountered by the USMO in negotiating a forfeited check.

b. **Certificates of Deposit:** The USMO must:

(1) Provide the financial institution with the appropriate administrative declaration of Forfeiture, civil order of forfeiture, or final order of forfeiture (in a criminal case) showing that the United States is entitled to receive the proceeds of the CD.

(2) Notify the financial institution that issued the CD that the CD has been forfeited to the United States; the financial institution is required to remit the funds represented by the CD to the USMS for disposal in accordance with law, and the financial institution should provide specific guidance on the procedures it will require for the USMS to redeem the CD.

(3) Contact the AFO for advice and assistance if difficulty is encountered by the

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USMO in negotiating a forfeited CD.

When	This Occurs
The maturity date is within 120 days after the forfeiture, or upon maturity (whichever is sooner).	The CD should be liquidated upon the maturity date and the proceeds deposited into the Assets Forfeiture Fund.
The maturity date is 120 days or more after the forfeiture.	The CD should be liquidated prior to the maturity date unless a liquidation penalty of 20 percent or more would be incurred.
A liquidation penalty of 20 percent or more would be incurred.	The USMO must notify the AFO and obtain the AFO's concurrence before the CD is liquidated.

c. Postal and Commercial Money Orders:

If	Then
Postal money order	<p>Upon forfeiture, the USMO will:</p> <p>Complete a Domestic Money Inquiry (U.S. Postal Service Form 6401) for each money order.</p> <p>Send the form; the original money order; and the appropriate administrative declaration of forfeiture, civil order of forfeiture, or final order of forfeiture (in a criminal case) showing that the Government is entitled to receive the proceeds to the St. Louis Postal Data Center¹²¹ via certified mail.</p>
Western Union money order	<p>Upon forfeiture, the USMO will:</p> <p>Mark "void" on the money order if this has not already been done.</p> <p>Send the original money order; written notification that identifies the name and address where the redemption check should be sent; and the appropriate administrative declaration of forfeiture, civil order of forfeiture, or final order of forfeiture (in a criminal case) to the First Data Corporation¹²² via certified mail.</p>
All other commercial money orders	The issuing company should be contacted regarding redemption procedures.

When the proceeds are received, the USMO should deposit them into the asset forfeiture fund.

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d. Traveler's Checks:

When	This Occurs
Upon the forfeiture of a traveler's check	<p>If the check has not yet been redeemed, the USMO should:</p> <p>Contact the issuing company to obtain information on the appropriate procedures for liquidation.</p> <p>Provide the financial institution with the appropriate administrative declaration of forfeiture, civil order of forfeiture, or final order of forfeiture (in a criminal case) showing that the United States is entitled to receive the proceeds of the check.</p>
Upon receipt of the proceeds	The USMO shall deposit the proceeds into the asset forfeiture fund.

e. U.S. Savings Bonds:¹²³

When	This Occurs
After forfeiture.	<p>The USMO should:</p> <p>Complete U.S. Department of the Treasury, Bureau of Public Debt (BPD) Form 1522.¹²⁴</p> <p>Multiple bonds can be listed on one form, but a separate form must be completed for each case.</p> <p>Key fields of information required on the form include the issue dates and serial numbers of the bond, the name of the seizing agency, and the forfeiture date.</p> <p>On the form's check delivery line, the following text should be added: Justice Asset Forfeiture Fund, CS III, Washington D.C. 20530-1000.</p> <p>Attach the original savings bond(s) and a copy of the declaration or order of forfeiture to the completed Form 1522.</p> <p>Provide a contact name and address for where all correspondence pertaining to the forfeited savings bond(s) should be sent.</p>

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	Send the entire package via certified mail to the U.S. Marshals Service, Asset Forfeiture Office. ¹²⁵
The AFO receives the package from the USMO.	The AFO will forward the package to the BPD for processing.
The BPD issues a check for payment of the bond(s) and any applicable interest. ¹²⁶	The BPD will send the check to the AFO.
The AFO receives the check from the BPD.	The AFO will forward the check to the USMO.
The USMO receives the check from the AFO.	The USMO will deposit the check into the asset forfeiture fund.

f. **Airline Tickets:**

When	This Occurs
Upon forfeiture	<p>If an airline ticket was not redeemed prior to forfeiture, the USMO should:</p> <p>Provide the issuing carrier with the appropriate administrative declaration of forfeiture, civil order of forfeiture, or final order of forfeiture (in a criminal case) showing that the United States is entitled to receive the proceeds of the ticket.</p> <p>Request that the issuing carrier liquidate the ticket and provide a cashier's check made payable to the USMS.</p>
Upon receipt of the cashier's check	The USMO will deposit the check into the asset forfeiture fund.

g. **Stocks and Bonds:** Most stocks and bonds can be sold through a licensed stockbroker upon the presentation of the security certificates and the appropriate administrative declaration of forfeiture, civil order of forfeiture, or final order of forfeiture (in a criminal case) that provides for the transfer of the security to the USMS.

When	This Occurs
The certificates are lost or are not available	The USMO must provide the transfer agent ¹²⁷ with the forfeiture order so that a new certificate can be issued and registered in the name of the USMS.
A new certificate has been issued and registered (if necessary).	<p>The security can be sold through normal stockbroker channels.</p> <p>The USMO should deposit the proceeds into the asset forfeiture fund.</p>

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<p>An unusual circumstance arises, or A stockbroker is unable to sell a forfeited security.</p>	<p>The AFO can provide assistance.</p>
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h. Promissory Notes:

When	This Occurs
<p>As soon as it is legally permissible.</p>	<p>The promissory note should be turned into cash. Several methods may be used, including:</p> <ul style="list-style-type: none"> Obtaining an all-cash settlement at a discounted amount from the payer. Selling the note to an unaffiliated private party or business entity. Packaging the note with other promissory notes and selling the package at auction or through a sealed bid process.
<p>The USMO enters into negotiations to pay off a promissory note.</p>	<p>The note may be paid at a discount based on a calculation of the remaining term of the note, the interest rate, payment history, and the value of the security.</p> <p>The USMO must submit a PAR decision package to the AFO before concluding a final agreement to pay off the note at [REDACTED] of its outstanding principal balance.</p>
<p>The promissory note is to be sold.</p>	<p>The USMO must compile the following documentation:</p> <ul style="list-style-type: none"> A complete set of court orders (or an administrative declaration of forfeiture). The original, signed promissory note. A lost note affidavit if the original note is not available. A complete description of any collateral (or a copy of the deed if the note is secured by real estate). A supporting appraisal of the collateral. A record of payment history, including

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	principal, interest, and penalties (if any).
	The recent outstanding balance.
The promissory note has been turned into cash.	The USMO should deposit the cash into the asset forfeiture fund.

Appendices

Footnotes

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