

[Directives Home Page](#) >> [Topics](#) >> [Asset Forfeiture](#)



**ASSET FORFEITURE**

**13.4 Businesses, Commercial Real Property, and Financial Instruments**

**PERFORMANCE MANAGEMENT**

1. **Scope:** This manual covers policies and procedures for the management and disposal of businesses, commercial real property,<sup>1</sup> and financial instruments subject to forfeiture. It is intended to guide all U.S. Marshals Service (USMS)<sup>2</sup> personnel, including the personnel of the District U.S. Marshal Offices (USMOs), who are involved in the asset forfeiture program; and provide information regarding the roles of the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS), the Asset Forfeiture Management Staff (AFMS), the U.S. Attorney's Office (USAO), and the investigative agencies in the forfeiture process.
  
2. **Program Goals:** Goals of the Program: The goals of the program are to:
  - a. ~~Oversee or manage seized businesses (including commercial real properties) and financial instruments subject to forfeiture to ensure their security and availability upon forfeiture.~~
  
  - b. Dispose of such assets after forfeiture within the time periods called for in the performance standards.
  
  - c. Achieve proceeds from the sale of the asset consistent with the law enforcement objectives of the program.

**3. Delivery Standard**

- a. **Sale Standards:** To the extent possible, the assets are to be sold at or above minimum acceptable percentages of the appraised market value, as shown in the following table:

Type of Property	Minimum Percentage of Market Value
Businesses (including commercial real properties)	[REDACTED] b2, b7E
Financial instruments	[REDACTED] b2, b7E
Public stocks and bonds and other readily negotiable financial instruments	
Promissory notes	

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- b. **Disposal Standard:** Generally, businesses (including commercial real properties) and financial instruments will be available for sale when the USMS receives a final order of forfeiture in a criminal case or a judgment of forfeiture in a civil forfeiture case.

Type of Property	When to Dispose
Businesses (including commercial real properties)	The USMS shall dispose of all property within 12 months after it becomes available for sale.
Financial instruments	<p>The USMO shall dispose of:</p> <p>Readily negotiable financial instruments within 120 days after they become available for liquidation or sale.</p> <p>Certificates of deposit (CDs) maturing within 120 days after forfeiture, upon their maturity.</p> <p>CDs maturing more than 120 days after forfeiture may be liquidated prior to the maturity date. If liquidation penalty of 20 percent or more would be incurred, the USMO must notify the USMS's Asset Forfeiture Office (AFO) and obtain the AFO's concurrence.</p> <p>Negotiable instruments and promissory notes within 180 days after they are available for liquidation or sale.</p>

4. **USMS Responsibilities:** The following table lists the responsibilities of the AFO and the 94 district USMOs:

Office	Is Responsible For
AFO	<p>Overseeing the asset forfeiture program</p> <p>Providing policy and procedure for the pre-seizure, seizure, acceptance, management and disposal of businesses (including commercial real properties) and financial instruments.</p> <p>Providing contracting assistance, asset forfeiture assistance, financial management, and technical support as needed to the USMOs.</p> <p>Overseeing USMS actions related to forfeiture actions against businesses.</p> <p>Developing a business plan for the management and disposal of such businesses. The business plan sets for the</p>

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	responsibilities of the AFO and the individual USMO, which vary depending on the requirements and complexity of that particular forfeiture case and the resources available to the individual USMO.
USMOs	<p>Notifying the AFO regarding the targeting of any business (including commercial real property) for forfeiture.</p> <p>Coordinating all significant seizure, management, and disposition decisions regarding financial instruments with the AFO.</p> <p>Carrying out the duties that are set forth in the business plan issued by the AFO regarding a forfeiture action against a business enterprise.</p>

5. **Policy Authorization Review (PAR) Decision Procedure:** This decision procedure provides a mechanism through which USMOs can obtain approval for a management or disposal action from the AFO. It supersedes the Significant Seized Property Decisions (SSPDs) procedure [also referred to as "Significant Property Decisions" in the U.S. Department of Justice (DOJ) Asset Forfeiture Policy Manual (AFPM)].

In This Situation	USMO Is Responsible For
When a PAR decision package is required by this manual	Preparing the PAR decision package and submitting it to the AFO for approval a minimum of 7 working days before a response is required.
Additional actions where the USMO desires the AFO's approval	Seeking advance approval, through the PAR decision procedure.
In cases involving forfeiture actions against businesses (including commercial real properties)	Notifying the AFO immediately by telephone or e-mail.
In cases of emergency	Notifying the AFO immediately by telephone or e-mail.

6. **CONTENTS OF PAR DECISION PACKAGE.**<sup>3</sup> Each PAR decision package will contain:

a. Relevant, pertinent case and net equity information, including:

- (1) The Consolidated Asset Tracking System asset identification number (CASTS asset ID).
- (2) A description of the assets.
- (3) The type of forfeiture (i.e., criminal or civil).
- (4) Relevant court orders that have been issued in the forfeiture case.
- (5) Date of seizure, if applicable.
- (6) Date of forfeiture or an estimate of the time until forfeiture, if known.

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- (7) Market value appraisals (including appraisal date)
  - (8) Outstanding liens and secured debts.

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  - ~~(9) USMS expenses.~~
  - (10) Net equity (for assets and financial instruments).
  - (11) Projected profitability and cash flow (for businesses).
  - (12) Offers(s), if any.
  - (13) Equitable sharing information, if known.
  - (14) Recent publicity concerning the asset.
  - (15) The name and telephone number of the Assistant U.S. Attorney (AUSA) responsible for the forfeiture action.
  - (16) The name and telephone number of the lead agent.
- b. A clear statement of the approval being requested from the AFO.
  - c. Any additional relevant information regarding the case that the USMO feels will be useful to the decision making process.
  - d. The signature of the U.S. Marshal or the Chief Deputy U.S. Marshal or their designee.
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## BACKGROUND

1. **Purposes of Forfeiture of Businesses (Including Commercial Real Properties) and Financial Instruments:** The primary purpose of forfeiture is to terminate an illegal activity, confiscate items that were used to violate the law, or remove the profits of illegal activity that may have been used to purchase businesses (including commercial real properties) or financial instruments. The forfeiture action may be civil in nature (directed against the asset) or may be part of a criminal prosecution.<sup>4</sup>
2. **Regulations that Govern the Forfeiture of Assets**
  - a. Code of Federal Regulations (CFR) 274
  - b. 21 CFR 1316
  - c. 28 CFR 0.111(i)

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  - d. 28 CFR 0.156
  - e. 28 CFR 9
3. **Policies Governing the DOJ Asset Forfeiture Program**

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- a. Attorney General's Guidelines on Seized and Forfeited Property (1990).
- b. A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (1994).

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- c. Asset Forfeiture Policy Manual (AFPM) (July 1996).<sup>5</sup>
- d. Criminal Division Policy Directive 97-1 titled Monetary Thresholds for Adopted Forfeitures (March 17, 1997).
- e. Criminal Division Policy Directive 98-2 titled Department of Justice Policy: Trustees and Monitors in Forfeiture Cases (November 2, 1998).<sup>6</sup>

4. **U.S. Investigative Agencies that have Authority to Initiate Forfeiture Actions against Businesses (including Commercial Real Properties) or Financial Instruments**

- a. Judicial Forfeiture Actions Only:
  1. Department of Agriculture, Office of the Inspector General
  2. Food and Drug Administration (FDA)
  3. Park Police
  4. Postal Inspection Service
  5. Other Federal entities, as appropriate

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6. Administrative and Judicial Forfeiture Actions:
  7. Drug Enforcement Administration (DEA)
  8. Federal Bureau of Investigation (FBI)
  9. Bureau of Alcohol, Tobacco, Firearms and Explosives

**A. TARGETING BUSINESSES (INCLUDING COMMERCIAL-REAL PROPERTIES) FOR CRIMINAL FORFEITURE**

1. **CRIMINAL PROSECUTIONS INCLUDING FORFEITURE COUNTS.**

Criminal forfeiture actions are part of the criminal prosecution against a person and are, therefore, in personam. These actions require:

  - a. An indictment of or information against the person.
  - b. A separate count in the indictment or information that lists the assets subject forfeiture upon the conviction of the person charged.<sup>7</sup>

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  - c. The conviction of the person charged.
  - d. A separate verdict (the special verdict of forfeiture) that finds the assets subject to forfeiture.<sup>8</sup>

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- e. A preliminary order of forfeiture that authorizes the physical seizure of the property.
  - f. Ancillary proceedings after forfeiture.
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- g. A final order of forfeiture.

**2. Actions when Businesses (Including Commercial Real Properties) are Targeted for Forfeiture**

**a. USMO actions:**

When	This Occurs
Immediately upon receiving information regarding the targeting of such property for forfeiture	<p>The USMO:</p> <p>Shall notify the AFO within 24 hours by telephone or e-mail</p> <p>Shall forward any written information or documentation (including descriptions of the property and court orders) to the AFO as soon as possible.</p> <p>Shall complete a pre-seizure questionnaire,<sup>9</sup> and send a copy to the AFO.</p> <p>Shall provide support to the AFO regarding the AFO's actions in the forfeiture action against such property.</p> <p>May be assigned additional duties and responsibilities in the business plan issued by the AFO.</p>
Additional duties and responsibilities are assigned to a USMO.	The USMO shall perform these duties and responsibilities in accordance with the general instructions contained in this manual.

- b. **AFO Actions:** The AFO shall review the complexity of each business and, when appropriate, shall develop and issue a business plan for the management and disposal of such property.

The business plan shall:

- (1) Set forth the responsibilities of the AFO and of any individual USMO.
- (2) Include a financial assessment of the operating business targeted for forfeiture.
- (3) Include a determination of whether it is in the Government's best interest to continue the operation of the business.

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- (4) Clarify the role and responsibilities of each member of the business review team.<sup>10</sup>
- (5) Provide a plan for the management of a business targeted for forfeiture (phase one of the business plan).
- (6) Determine if adequate resources are available to the USMS to address the property management and disposal requirements relating to the forfeiture of the business or its assets.
- (7) Indicate, when necessary, the resources required to manage a business targeted for forfeiture.

### 3. Business Review

a. **Before a Business Review Is Conducted:** The following questions must be answered by the AFO or the USMO (depending on who has been assigned the responsibility under the business plan) before a business review is conducted.

(1) **What is the legal entity targeted for forfeiture?** Determine the name of the specific legal entity and the type of the entity [e.g., holding company, affiliated companies, subsidiary companies, partnership, joint venture, or noncorporate "doing business as" (DBA)].

(2) **What ownership interest in the business is targeted for forfeiture?** Determine if a substantial and/or significant ownership interest in the business enterprise is subject to forfeiture. This interest includes:

- The interest of a privately owned business (e.g., a sole proprietorship)
- The interest of a general or managing partner.
- A controlling interest in a partnership, joint venture, or corporation.
- The corporate interest of a major shareholder, corporate board chair or member, chief executive officer, general manager, or head of a major subdivision.

(3) **Should business assets be targeted for forfeiture?** Consider whether business assets, rather than the business itself, could be subject to seizure. Such assets would be treated in accordance with the appropriate USMS procedures for the specific type of asset.<sup>11</sup> These assets may include:

- Cash on hand or in banks.
- Securities.
- Stock-in-trade.
- Equipment.
- Ownership or leasehold interests in real property.
- Franchise licenses.

(4) **Is the business bankrupt?**

- Consider whether the business, or the owner(s) of the business

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if it is a partnership or sole proprietorship, has filed for bankruptcy and, if so, the type of bankruptcy filed.

- Determine if the Government should contest the bankruptcy filing and/or if the forfeiture action should proceed notwithstanding the bankruptcy.

b. **Business Review Team:** A business review team should be formed, consisting of:

- (1) Personnel from the USAO, the lead investigative agency, the USMO, the AFO, and the AFMLS.
- (2) Other personnel knowledgeable in disciplines such as finance, legal matters, human resources, engineering, operations, and computer systems.
- (3) An AUSA, who will normally be designated to lead the team.

Consultants (e.g., outside legal counsel, appraisers, investment bankers, real estate brokers, certified public accountants, marketing consultants, and management consultants) may be engaged to support the team.

c. **Evaluation of the Targeted Business:**

Action	Description
<p>The nature and extent of the business should be determined.</p>	<p>For example, a business may be:</p> <p>An enterprise that operates for commercial purpose out of real property (e.g., a grocery, a pharmacy, or a warehouse).</p> <p>An apartment complex consisting of five or more unites that is operated as a business and that has the same ownership and management characteristics as a business.</p>
<p>A financial assessment of an operating business that is subject to forfeiture should be performed to determine whether it is in the best interest of the Government to:</p> <p>Pursue the forfeiture, and</p> <p>Continue operation of the business.</p>	<p>The financial assessment should include an estimate of the:</p> <p>Net worth of the business that is subject to forfeiture.</p> <p>Cash flow of the business.</p> <p>Fees and other costs of the trustee; monitor; and other business managers, auditors, and brokers.</p> <p>Likely duration of time required for the disposal of the business.</p>

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<p>Although detailed information about the targeted business may be limited during the pre-indictment phase, the USMS<sup>12</sup> should begin evaluation and appraise the investigative agents and the USAO regarding the purpose of the business review and what information is required.</p>	<p>Disposal options.</p> <p>Critical information may be obtained through records subpoenaed for the grand jury.</p> <p>Once the Government obtains access to business records and other information, the business review should specifically identify the problems faced by the business and the requirements for it to succeed.</p> <p>Projections should include best- and worst-case scenarios for the operation of the business, as well as exit strategies.</p> <p>If the business is likely to lose money or to be sold at a loss, the business review should include a plan to mitigate the loss or a plan for liquidation.</p>
<p>All relevant information concerning the business and its financial and operating conditions should be investigated</p>	<p>The information investigated should include the business review<sup>13</sup>, which is not just an audit of the target business but also a comprehensive analysis of the business affairs, such as the following:</p> <ul style="list-style-type: none"> <li>Ownership</li> <li>Organization</li> <li>Business components</li> <li>Management and administrative systems operations (e.g., facilities and equipment, staffing, suppliers, customers, competition, strengths and weaknesses, and internal controls, and infrastructure).</li> <li>Financial strength (e.g., assets and liabilities)</li> <li>Human resources</li> <li>Marketing and advertising</li> <li>Compliance (e.g., regulatory, environmental, taxes, licenses, and other).</li> </ul>

4. Criminal Indictment or Information

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If	Then
Assets are named in a criminal indictment or information.	These assets normally will not be seized prior to the issuance of a preliminary order of forfeiture.
Assets are not named in a criminal indictment or information	These assets <b>cannot be forfeited</b> through a plea agreement. <sup>14</sup>
Assets are substitute assets.	<p>These assets may only be forfeited:</p> <p>When permitted by the specific forfeiture statute and</p> <p>If there was a provision for substitute assets included in the indictment or information.</p>
Assets are to be restrained or seized under the provisions of a criminal forfeiture statute.	The USMOs will execute the orders of the district court that were issued as part of the criminal prosecution.

a. **Court Orders:** Whenever a business is targeted for forfeiture, a court order should be obtained and entered at the earliest practicable time (upon the commencement of the forfeiture action) to protect the business' assets (e.g., bank accounts, stocks, liquid or portable assets, and business records) from being dissipated or other-wise disposed of without the prior approval of the district court.

(1) Court orders may be necessary either before or after a preliminary order of forfeiture in a criminal case to protect the interests of the United States and third parties.<sup>15</sup>

(2) The USMO must advise the AFO immediately upon becoming aware of the institution of a criminal forfeiture action involving the forfeiture of a business, especially if the prosecuting AUSA has failed to consider obtaining the appropriate court orders. The USMO must serve such orders as may be issued by the district court.<sup>16</sup>

b. **Restraining Orders:** Restraining orders may be issued by the district court and served by the USMO either before or after an indictment.

Pre-Indictment <sup>17</sup>	Post-Indictment
<p>A restraining order may be issued following notice and opportunity for a hearing. It is effective for not more than 90 days unless:</p> <p>It is extended at the request of the AUSA for a good cause.</p> <p>An indictment or information is filed charging the defendant with the underlying offense and alleging that the property named is subject to forfeiture upon conviction.</p>	<p>Before a restraining order can be issued a full evidentiary hearing on the probable success of the United States may be required</p> <p>The AUSA should consult with the AFMLS regarding whether a post-indictment restraining order should be sought.</p>

62

<p>An ex parte restraining order may be issued and executed by the USMO following:</p>	
<p>The AUSA's application to the district court</p>	
<p>A demonstration of probable cause that the property at issued is subject to criminal forfeiture and the provision of notice would jeopardize the availability of the property.</p>	

- c. **Protective Orders:** In some jurisdictions, orders to protect the business' assets from being dissipated are referred to as protective orders.<sup>18</sup>
- d. **Seizure Warrants:** A seizure warrant may be sought before or after an indictment under certain forfeiture statutes.<sup>19</sup>

Authority	Responsibility
Investigative agency	Serves seizure warrants. <sup>20</sup>
USMO	Stores assets seized pursuant to a criminal seizure warrant.

**5. Overseeing Businesses (Including Commercial Real Properties) Subject to Criminal Forfeiture**

- a. **Goals of the Forfeiture Proceeding:** The goals of the forfeiture proceeding dictate the strategy to be used upon indictment and takedown.<sup>21</sup>

(1) For example, if the objective is to maintain business activity at a profitable level for future resale, care should be taken to preserve critical records of the business at takedown.

(2) A sealed indictment may be prudent, or at least a low-profile takedown should be considered.

The owner(s) and management of an ongoing business will often continue to operate the business, subject to protective orders issued by the district court to preserve the business assets, until forfeiture unless there is probable cause to believe that the owner(s) or management has been or is involved in criminal conduct in operating the business.

(1) In most cases, the value of an ongoing business can be preserved without the appointment of a monitor/trustee.

(2) However, a protective order<sup>22</sup> should routinely be sought to guard against the dissipation of the business' assets (e.g., bank accounts, stock, and liquid or portable assets).

- b. **Oversight of Businesses in Forfeiture Proceedings:**

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When	Action to be taken
Under normal circumstances, property has been restrained or seized pursuant to a criminal seizure warrant.	The USMS <sup>23</sup> may oversee or manage a business using its own resources or a business services contract.
<p>Under certain circumstances, depending on the nature of the criminal conduct, the complexity of the business, or to prevent the dissipation of assets. These circumstances include when:</p> <p>The forfeiture case involves complex business enterprises and/or complex assets.</p> <p>The forfeiture case involves small business enterprises conducting one line of business (e.g., a gas station or a convenience store).</p> <p>The present management will continue to operate the business.</p> <p>The cash flow produced by the business is sufficient to ensure that the Government will recoup its expenses.</p> <p>Other means of protecting the Government's interest are inadequate or inappropriate.</p>	A monitor or trustee may be appointed during the pendency of a forfeiture action. <sup>24</sup>
After a preliminary order of forfeiture or final order of forfeiture is entered.	The USMS <sup>25</sup> can preserve, protect, and operate the business using its own resources or a business services contract.
The USMS determines that it cannot manage the asset through its own or contractor resources.	The USAO may request that the district court appoint a trustee.
Before the forfeiture, court-ordered appointment of a trustee is requested.	<p>The AFO must approve the request.</p> <p>If the USMO has been assigned responsibility for the business under a business plan, then it shall submit a PAR decision package to the AFO.</p>

c. **Level of Oversight:** The level of the Government's oversight of a business depends on:

- (1) The stage of the case.
- (2) The extent of the ownership interest subject to forfeiture.
- (3) Considerations of any other majority or minority interest in the forfeited business.

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(4) The decision of whether to continue the operation of the business.

Authority	Responsibility
USMS	<p>Shall not become involved in the ongoing operation of a business if the nature of the business would subject the USMS to contempt, derision, or ridicule. Such types of businesses include:</p> <p>Sexually oriented businesses (e.g., hourly motels, pornographic enterprises of any type, and topless bars).</p> <p>Gambling operations.</p> <p>Establishments whose primary business is the sale of alcohol (not including restaurants that serve alcoholic beverages as an adjunct to food sales).</p>
USMO	<p>Shall notify the AFO immediately if such a business is targeted for forfeiture with the intention of continuing its operation</p>
USAO or the USMO through the AFO	<p>Must notify the AFMS when it becomes aware that a business is losing money.</p>
USMS personnel	<p>Must not gain a special advantage (e.g., free or discounted lodging, meals, or merchandise) as a consequence of the oversight or management of a business that is the subject of a forfeiture action.</p>
AUSA	<p>To prevent the dissipation of the business' assets:</p> <p>Should obtain a protective order from the district court.<sup>26</sup></p> <p>May request that the district court appoint a monitor or trustee<sup>27</sup> who will either provide the district court and the Government with some control over the business activities of the defendants or run the business during the pendency of the forfeiture action.</p> <p>If a protective order or the engagement of a monitor/trustee is not appropriate:</p> <p>A seizure warrant may be requested</p>

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	from the district court if circumstances require such a warrant to secure the business assets.
	The USMS <sup>28</sup> may run the business using its own resources or through a business services contract.
District court	May appoint a trustee upon the issuance of a preliminary order of forfeiture if the appointment is requested by the United States. <sup>29</sup>

d. **Roles and Responsibilities of Government Officials for Business Services Contracts:** Under a business services contract, the roles and responsibilities of various Government officials in operating a business are different from those of a monitor or trustee. The following table provides a brief overview of the Government's roles and responsibilities:

Authority To	Responsible Person Under a Court-Ordered Appointment <sup>30</sup>	Responsible Person Under a USMS Service Contract
Establish parameters of functions and duties	U.S. district judge <sup>31</sup>	Contracting Officer (CO) <sup>32</sup>
Authorize key decisions or services	Responsible AUSA or responsible USMS official <sup>33</sup>	Ordering Officer <sup>34</sup>
Obtain technical assistance	Authorized Government officials	Authorized Government officials
Oversee the services of the contractor or monitor/trustee	USMO or AFO staff person <sup>35</sup>	Contracting Officer's Technical Representative (COTR) <sup>36</sup>
Coordinate routine issues		
Certify services for payment		

e. **Use of USMS Business Services Contract:**

If	Then
The USMS has indefinite delivery contracts for business services in place and a USMO has a requirement for a business.	Service orders may be placed under such contracts. The AFO can advise the USMO on whether such a contract is available to obtain business services.
An award of a business services contract by the USMS is required.	The CO:  Appoints a technical evaluation panel to rate the applicants in terms of cost or compensation factors.

62

<p>Is responsible for the overall award of the contract.</p>
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f. **DOJ Policy on Monitors and Trustees:**<sup>37</sup> DOJ policy provides guidance for the appointment of monitors and trustees in DOJ forfeiture cases that involve business enterprises.

- (1) The USAO must consult with the AFMLS before seeking the appointment of a monitor and trustee.
- (2) The USMO must immediately notify the AFO when it becomes aware that the appointment of a monitor or trustee is being considered.

g. **Selection and Appointment of Monitors and Trustees:**<sup>38</sup> Contracts for monitors and trustees are subject to the Federal Acquisition Regulations when payment is to be made from the Assets Forfeiture Fund.

- (1) Except in extraordinary circumstances, the contract will not provide for the indemnification of trustees. A monitor will not be indemnified.<sup>39</sup>
- (2) Although the selection and appointment of a monitor or trustee will always be a joint decision of the USAO and the USMS:<sup>40</sup>
- (3) Prior to the entry of a final order of forfeiture, the USAO will have final decision making authority over the selection and scope of the appointment
- (4) Following the entry of a final order of forfeiture, the USMS will have final decision making authority over the selection and scope of the appointment

When to Appoint a Monitor or Trustee <sup>41</sup>	Why to Appoint a Monitor or Trustee
<p>Normally, only when:</p> <p>Other alternatives have been considered and rejected.</p> <p>There is clearly sufficient cash flow in the asset to cover the cost of the monitor or trustee.</p> <p>If mandated under compelling law enforcement considerations or policy concerns when:</p> <p>There is not sufficient cash flow in the enterprise to cover the cost of the monitor or trustee.</p> <p>The management of the business requires aggressive action, capital investment to remain competitive,</p>	<p>A monitor is appointed to prevent the dissipation of assets without the approval of the district court, the USAO, and the USMS.</p> <p>A trustee is appointed to provide for the continued, normal management of the business and to prevent the assets from being dissipated.</p>

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or the assumption of considerable risk.	
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The USMO must not take any action on the appointment of a monitor or trustee without the approval of the AFO. The following table describes the roles of monitors and trustees and why one should be appointed versus the other.

Type	Function
Monitor	<p>Preserves, protects, and controls to the extent allowed by the district court.</p> <p>A monitor <b>does not</b> make business decisions or perform any operating functions for the business.</p> <p>A monitor's role is primarily one of oversight, analysis, and reporting.</p>
Trustee	<p>Preserves, protects, controls, and operates the business and makes management decisions (e.g., hiring and firing employees; setting salaries; purchasing; paying bills; filing compliance reports; managing assets; negotiating deals; executing legal documents in the name of the business; and reporting progress to the district court, the USAO, and the USMS).</p> <p>Note: The trustee cannot warrant the success of the business.</p>

h. **Appointment of Monitors and Trustees by Court Order:** The court order or other order appointing a monitor or trustee shall define his or her duties and responsibilities.<sup>42</sup>

- Prior to the appointment, an initial assessment must be made to determine the purpose of the monitorship or the trusteeship (i.e., to prevent the dissipation of assets, to prevent the enterprise from engaging in illegal activity, or both).
- Upon the appointment or selection, the monitor or trustee is to receive written guidance from either the USAO or the USMS<sup>43</sup> (depending on whether a final order of forfeiture has been issued).
- The guidance will identify key AUSAs, USMS officials, and other individuals from whom the monitor or trustee is to receive direction.

i. **Payment of Fees and Expenses Charged by Monitors and Trustees:**<sup>44</sup> Payment of such fees and expenses are ordinarily made from the proceeds of the business. However, payment may also be made from the DOJ's Assets Forfeiture Fund if:

- (1) Compelling law enforcement or policy considerations warrant it.

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- (2) The district court orders the Government to bear the expense.
- (3) The business' cash flow is not sufficient to cover the payment.

When	Action
Before pre-forfeiture fees and expenses are paid from the Assets Forfeiture Fund.	The responsible AUSA must certify that the charges are correct and that they may be paid under DOJ policy. <sup>45</sup>
There are proceeds from a sale.	Charges to the Assets Forfeiture Fund for a monitor or trustee are to be recovered from the sale proceeds as a first priority.
Any portion of the monitor or trustee fees and expenses is deemed to benefit co-owners, shareholders, or limited or full partners of the enterprise.	The court order appointing the monitor or trustee should provide a pro rata division of these fees and expenses.

**j. Accountability of Monitors and Trustees:**<sup>46</sup> Monitors and trustees must report to the district court.

- (1) Oversight of a monitor is the responsibility of the USAO, unless the USAO and the USMS agree that the USMS<sup>47</sup> should have the oversight responsibility.
- (2) Oversight of a trustee is the responsibility of the USAO before a final order of forfeiture is entered and the USMS after a final order of forfeiture has been entered.
  - As appropriate, the USAO and the USMS<sup>48</sup> will provide oversight, management, review, and approval of trustee fees, expenses, activities, and operations.
  - These offices will consult with one another and may modify these activities upon mutual agreement.
  - The office that directs the work is responsible for approving the payment of fees and costs, although the USMS will arrange for payment.
- (3) The court order appointing the monitor or trustee should state that the monitor or trustee must submit his or her budgets and billing in accordance with the USMS billing guidelines.<sup>49</sup>

**k. Dispute Resolution:**<sup>50</sup> The USAO and the USMS<sup>51</sup> should consult each other and work closely together to address issues related to the propriety of engaging a monitor or trustee and issues related to the use, duties, and oversight of a monitor or trustee.

- (1) When the USAO and the USMS cannot agree on a course of action, dispute resolution may be sought from the AFMLS through the AFO.
- (2) Timely resolution of disputes is critical.

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- l. USMS<sup>52</sup> Primary Responsibility for Selection of Monitors and Trustees:**<sup>53</sup> No U.S. Marshal or USMS employee should be appointed as a monitor or trustee to preclude the possibility of being subject to State regulations related to the business.

When	This Occurs
<p>A determination to seek the court appointment of a monitor or trustee is made</p>	<p>The USMS works with the USAO to draft a statement of work,<sup>54</sup> which is to be incorporated by reference into the court order appointing the monitor or trustee. The statement of work:</p> <p>Describes with particularity the duties of the monitor or trustee and the staff authorized to achieve those duties.</p> <p>Establishes fees and costs, including hourly rates, a monthly estimate of costs and hours expected to be worked, and cost caps.</p> <p>Describes the specific reporting obligations of the monitor or trustee.<sup>55</sup></p>
<p>Contract actions are involved.</p>	<p>The CO of the USMS should coordinate the selection process through the technical evaluation board. The CO should:</p> <p>Use specific criteria that are based on the knowledge, skills, and abilities required to manage or oversee the management of a specific asset or assets.</p> <p>Obtain identical information from all applicants.</p> <p>The Personnel Qualifications Statement should be part of the request for proposals that is disseminated by the CO.</p>

- m. Appointment of Monitors and Trustees:** One or two USMS staff members (usually one from the USMO and one from the AFO, unless the business plan assigns primary responsibility to the USMO) and the AUSA responsible for the forfeiture case normally compose a technical evaluation board and are responsible for evaluating applicants for the monitor and trustee positions.

(1) The technical evaluation board utilizes specific evaluation criteria and the information provided in the Personnel Qualifications Statement to rate each applicant.

b2

- (2) Applicants are to be interviewed.
- (3) If the USAO has a demonstrated basis for believing that the use of a specific contractor would not be in the best interest of the United States, the CO should give appropriate consideration to these concerns.
- (4) The CO rates the applicants in terms of cost or compensation factors and is responsible for the overall award of the contract.
- (5) The contract award must be based on the judgment of the CO as informed by the views of members of the technical evaluation panel.

When	This Occurs
A monitor or trustee is appointed by a court order.	The USMS should provide the monitor or trustee with written guidance <sup>56</sup> that identifies key Government officials in the USAO and/or the USMS:  With whom the monitor or trustee will interact.  Who will oversee the monitor's or trustee's activities.
The monitor or trustee is to be paid from the Assets Forfeiture Fund.	A contract for monitor or trustee services must be executed through the Federal acquisition process for a negotiated procurement.

n. **Contract Development:**

Authority	Action
AFO	Coordinates contract development.
USAO and USMS	Draft the statement of work.
CO from the USMS	Coordinates the selection process using the guidance and recommendations obtained from a technical evaluation board that comprises USMS and USAO staff members (if appropriate).
District court	Executes a court order appointing the monitor or trustee.  The order should refer to or incorporate the contract.

o. **Selection Criteria:** If the selection and appointment process has been assigned to the USMS in a particular case, the following guidelines should be followed. To be eligible for the appointment, an individual must possess specific qualifications in addition to any other specialized skills or experience that is required for particular cases or assets. The individual must:

- (1) Possess integrity and good character.

b2

- (2) Be physically and mentally able to satisfactorily perform prescribed duties
- (3) Be free of prejudices against individuals, entities, or groups of individuals or entities, because such prejudices would interfere with the unbiased performance of the monitor's or trustee's duties.
- (4) Not be related by affinity or consanguinity within the degree of first cousin to any employee of the DOJ or the U.S. Federal court system within the judicial district where the case is being tried or where the asset or assets are located.
- (5) Not be related by affinity or consanguinity within the degree of first cousin to any individual that has an interest in the asset or assets to be monitored or in the judicial case in which the asset or assets have been restrained, seized, or forfeited.
- (6) Possess management and administrative skills and have demonstrated his or her experience in managing or overseeing the management of human and material resources in various organizational contexts.
- (7) Have demonstrated his or her experience to be deemed acceptable by the USMS.
- (8) Be willing to provide reports as deemed acceptable by the USMS and the district court and to adhere to pre-scribed USMS and court procedures.

**p. Application Requirements:** Depending on the exigency for the appointment, applicants may be:

- (1) Subject to a background check, which is to be conducted by the USMS or any Federal investigative agency.
- (2) Subject to a credit history report, which is to be conducted by a local credit bureau.
- (3) Required to complete a Personnel Qualifications Statement.<sup>57</sup>

**q. Conflict of Interest and Statement of Intent:** A monitor or trustee and his or her staff may be required to sign a certification and statement of intent stating that there are no conflicts of interest.<sup>58</sup>

During the tenure of a monitor or trustee or his or her staff, the appointee's immediate family (including family related by affinity or consanguinity within the degree of first cousin) and any person acting on behalf of the monitor or trustee and his or her respective immediate family are prohibited from purchasing, renting, or leasing any personal and/or real property associated with either the DOJ or the U.S. Department of Treasury's Asset Forfeiture Program as a result of a case in which the monitor or trustee or his or her staff are involved.

When	Action To Be Taken
Immediately after the appointment.	The monitor or trustee is expected to conduct a thorough conflict of interest review and to disclose to the USMS all actual and any potential conflicts of interest.

b2

	Through the course of performing monitor- or trustee-related duties, the monitor or trustee and his or her staff are obligated to institute and maintain internal controls that will avoid or detect actual or potential conflicts of interest.
It is determined that:  The monitor or trustee is not disinterested, or  An actual or potential conflict otherwise exists.	The monitor or trustee is obligated to immediately notify the USMS.  The monitor or trustee will be given an opportunity to explain the actual or potential conflict of interest and to provide recommended actions to resolve the conflict of interest.  Any conflict of interest must be resolved to the USMS's satisfaction.
The stated circumstances are severe and the issues cannot be resolved.	The monitor or trustee may need to resign from the case, and a successor monitor or trustee will be appointed.
A gratuity, gift, or other remuneration or thing of value is offered, solicited, or accepted in relation to the official actions of the monitor's or trustee's office.	The party (i.e., the monitor, trustee, or USMS employee) who obtains information regarding such gratuity, gift, or other remuneration shall report the matter to the proper authorities.

f. **Duties and Responsibilities of Monitors and Trustees:**<sup>59</sup> A general overview of the duties and responsibilities of monitors and trustees is provided in the table below.<sup>60</sup>

Monitor Duties	Trustee Duties
Identify, locate, and report all business assets and liabilities.	Identify, locate, report, and establish control over all business assets and liabilities.
Control liquid assets to the extent that the district court allows.	
Analyze and report on the management and operations of the business.	Manage and operate the business.  Report on the progress of business operations.
Develop a business forecast.	Develop a business forecast.
Provide periodic financial and operating analyses of the business.	Provide continuous financial and operating analyses of the business.
Provide expert testimony at hearings.	Provide expert testimony at hearings.
Prepare a budget and billings in accordance with USMS guidelines.	Prepare a budget and billings in accordance with USMSs guidelines.

- (1) The duties and responsibilities of a monitor or trustee invariably result in the development of a complex web of working relationships with the district court, Government officials, shareholders and partners of seized or forfeited businesses, business managers and staff, community officials, industry officials, customers and other individuals.

b2

- (2) It is imperative for the monitor or trustee to confer with a variety of Government officials so that he or she can effectively perform his or her duties.

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- (3) The monitor's or trustee's reporting relationships:
  - (a) Depend on the status of the case and the agreed-on assignment of responsibilities between the USAO and the USMS.
  - (b) Should identify the AUSA,<sup>61</sup> USMS official,<sup>62</sup> or other individuals to whom the monitor or trustee should report and from whom he or she should receive direction.
  - (c) May need to be set forth by the USAO or the USMS (depending on who has agreed to take the responsibility) in writing that is provided as guidance to the monitor or trustee upon his or her appointment.

When	This Occurs
Before the entry of a final order of forfeiture	<p>The monitor reports to the district court<sup>63</sup> and confers with the USAO.</p> <p>The USAO and the USMS may agree to have the monitor confer with the USMS.</p> <p>The trustee generally reports to the district court and confers with the USAO.</p>
	<p>The USAO and the USMS may agree to have the trustee confer with the USMS on a day-to-day basis and to have the USMS review the fees and expenses.</p> <p>The USAO retains the final approval authority prior to the entry of a final order of forfeiture.</p>
After the entry of a final order of forfeiture	<p>The trustee reports to the district court and confers with the USMS.</p> <p>The USMS and the USAO may agree to give the USAO a more active role in overseeing the trustee, including the approval of payment for the trustee's fees and expenses.</p>

**s. Performance Evaluation of Monitors and Trustees:**

- (1) A team consisting of an AUSA and a USMS-designated representative should meet on a regular basis to discuss and analyze the performance of the monitor or trustee.
- (2) Based on the evaluation, the USMS should determine the feasibility

b2

of maintaining the appointment, request a successor monitor or trustee as a replacement, or under-take other performance-based efforts.

- If the evaluation indicates that action needs to be taken on the appointment prior to forfeiture, the USMS must consult with the USAO.
- The USMS should maintain the evaluation team's written reviews and the monitor's or trustee's responses to reviews in the case files.

(3) The review process enables the Government to:

- Identify performance problems at an early stage.
- Evaluate the ability of the monitor or trustee to execute his or her duties.
- Determine a practical application for the knowledge of managing, or overseeing the management of, a particular asset.
- Address any concerns and/or questions that the monitor or trustee may have.

When	This Occurs
At the onset of the appointment of a monitor or trustee	The responsible USMS official and the responsible AUSA should schedule a meeting with the monitor or trustee to discuss DOJ policy and procedures that affect the performance standards, duties, and responsibilities, all of which are delineated in either the court order or statement of work of the service contract.
Six months after the appointment of a monitor or trustee	A formal performance review should be completed through a scheduled meeting between the monitor or trustee and an AFO representative.  A summary report that contains specific recommendations for issues requiring resolution or remedial action should be produced based on the results of the meeting.

t. **Performance Evaluation Criteria:** In concert with the responsible AUSA, the responsible USMS official should establish monitor or trustee performance criteria to be used for the evaluation of the monitor's or trustee's performance. These criteria should link performance with oversight responsibilities and the functioning of the business or revenue-producing asset.

Suggested Performance Criteria	Can be Used to
Provision of financial and organizational information regarding the seized or forfeited asset	Assess the degree to which the information is timely, reliable, pertinent, and useful for the Government in assessing the condition and viability of

60

	the asset and in formulating sound strategy based on the information provided by the monitor or trustee.
Review and analysis of court-ordered and USMS-required reports	Assess the accuracy, timeliness, and quality of required reports.
The performance measures that are standard within the industry	Measure the performance of the seized or forfeited business.
Management of human and material resources	Assess the ability to control costs and to effectively manage a budget
Organizational representation and liaison	Assess the ability to communicate and advocate the Government's position and to negotiate with individuals and groups internally and externally.

u. **Sources of Information for Performance Evaluations:** An effective monitor or trustee evaluation system collects, integrates, and analyzes information from a variety of sources to evaluate competency, commitment, and integrity in the discharge of duties and fiduciary obligations. Sources of information include:

- (1) Scheduled and unannounced cash management reviews, organizational and internal control reviews, and audits.
- (2) Court pleadings, general correspondence, evaluations of subordinate staff, and other written material.
- (3) Results of the analysis of the monitor's or trustee's expenditures as compared with budget estimates.
- (4) Interviews of business managers, staff, and other individuals who do business with the seized/forfeited asset
- (5) Periodic discussions of the monitor's or trustee's performance with key personnel in the seized or forfeited business, other Government officials, and individuals who conduct business with the monitor or trustee.

v. **Maintenance of Performance Records:**

- (1) A file on the monitor's or trustee's performance should be maintained by the USMS.
  - Access to the file should be restricted to designated USMS and DOJ personnel.
- (2) All complaints concerning the monitor's or trustee's performance should be in writing.
  - Written complaints should be sent to the monitor or trustee along with a request for a response within a reasonable time.
  - If the response is not considered satisfactory, the monitor or trustee should be requested to provide additional information.
- (3) The AFO or the USMS Office of General Counsel should investigate each complaint and rely on other sources to evaluate the complaint's merits.

- If the criticism appears to be valid, appropriate action should be taken.
- (4) All complaints and the monitor's or trustee's responses should be maintained in the performance file and considered when evaluating general performance.

**w. Monitor's or Trustee's Employment of Staff:**

Who can be employed	Conditions
<p>Professionals (e.g., attorneys, accountants, and other professionals) to assist the monitor or trustee with the performance of duties</p> <p>Administrative staff if sufficient justification is provided</p>	<p>Employment must be pursuant to:</p> <p>The court order that authorized the appointment of the monitor or trustee.</p> <p>Any USMS contract, if applicable.</p> <p>Staff:</p> <p>Must be disinterested from the operations of the seized or forfeited asset or assets that the monitor/trustee is authorized to manage, maintain, preserve, and/or protect on behalf of the Government.</p> <p>Can have been regularly employed by the seized or forfeited enterprise if they have unique knowledge or experience of the operating business or revenue-generating asset.</p>

- (1) The USMS must review and authorize the selection process, specific selections of staff, and the terms of their employment and compensation before professional or administrative staff are retained.
- (2) Guidelines from the "Monitor/Trustees Guide to Applications for Professional Compensation ('Fee Guide')"<sup>64</sup> may be used by the monitor or trustee in the selection process for retaining professional services or staff.
- (a) Due to the wide range of work requirements that may be involved for professional staff, it is recommended that these guidelines be used in conjunction with a letter of engagement, which should:
- List the specific services requested and appropriate fee and billing arrangements.
  - Be issued subsequent to the USMS' review of recommended selections for designated positions.
- (b) During the selection process, the "Fee Guide" and a cover letter outlining the scope of requested professional services should be distributed to potential firms or targeted professionals so that they can submit bids under established guidelines.

- (c) Utilizing these guidelines will allow the Government to maintain control over professional service costs while allowing the flexibility of requesting specific services through a letter of engagement.

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**X. Determination of Cost and Need for Professional Services:**

- (1) A monitor or trustee must determine whether the need and cost warrant use of outside professional assistance.
- (2) A monitor or trustee may only act as his or her own attorney or accountant with the concurrence of the USMS or the AUSA and must evaluate potential conflicts of interest that could arise.
  - Routine matters may be handled quickly and economically by such representation.

A monitor or trustee who acts as an attorney or accountant can receive compensation only for services as a monitor or trustee and not for the added performance as an attorney or an accountant.

- (3)
  - If a monitor or trustee acts as his or her own attorney or accountant, he or she must maintain detailed records of the tasks performed as an attorney or accountant
- (4) In more complex matters, the monitor or trustee may be required to be a witness in various disputes and may need the arm's-length legal advice provided by separate counsel.

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- (5) It may be possible to recover reasonable and necessary costs of preserving or disposing of seized or forfeited asset(s) from a secured party, partner, shareholders, or co-owners of the enterprise.

- (6) If any portion of the professional expenses are deemed to benefit co-owners, shareholders, or limited or full partners of the enterprise, the monitor or trustee should seek reimbursement through the USMS from the benefitted parties for their proportionate share of such expenses.<sup>65</sup>

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- (7) Fixed-fee arrangements should be considered for professional services that provide repetitive forms of service or products (e.g., the production of monthly business, budget, or accounting reports).

**y. Financial Reporting:** A major responsibility of the monitor or trustee is providing pertinent, accurate, and timely management and financial information on a recurrent basis to the Government for assessing the viability of the seized or forfeited business or assets.

- (1) This information should be provided within 30 days of the appointment of the monitor or trustee or, with the approval of the USMS, as soon as possible thereafter.

- (2) The initial monitor's or trustee's report<sup>66</sup> to the district court, the USAO, and the USMS should:

- (a) Cover all areas detailed on the statement of work.

b2

- (b) Cover all aspects related to the business, including ownership, asset identification, liability identification, financial position, management, business infrastructure, internal controls and reliability of financial information, personnel and other employee concerns, the risks to the government of operating the business, and general operations (e.g., the ability to provide goods and/or services to customers).
- (c) Include a financial forecast for the next two years of operation.
- (d) Be thorough enough to give the government some idea of the financial feasibility of operating the business for two years.
- (3) Complete financial reports should be furnished either monthly or quarterly as provided in the court order or in the monitor's or trustee's contract.

The forecast included in the initial report should be updated quarterly as more information is discovered and as operating performance changes.

**z. Budget Formulation and Execution:**

- a. The district court's approval and oversight of the monitor's or trustee's administrative budget is not required by the court appointment of a monitor or trustee.
- b. The AUSA should develop appointment orders that propose separating the authorization of the monitor's or trustee's budgets from the district court's reporting requirements.<sup>67</sup>

Budget preparation and ratification can then be accomplished between the monitor or trustee, on the one side, and the USAO and the USMS, on the other.

- c. Court intervention may be necessary and required for situations that involve budgetary disputes between the government and the monitor or trustee.

**a. Submission of Budgets:**

- (1) Within 1 month of appointment, the monitor or trustee should submit a proposed budget to the responsible USMS, official.<sup>68</sup>
  - (2) The monitor or trustee should submit budget requests based on specific activity code categories developed in the statement of work.<sup>69</sup>
  - (3) Specific line items will require additional backup documentation that supports the detailed activities to be performed under each activity code category contained in the statement of work.
  - (4) The responsible AUSA and the responsible USMS official should sign and date the approved budget and return copies of the budget to the monitor or trustee.
- b. Submission of Monthly Invoices:** The monitor or trustee should render monthly invoices for the reimbursement of allowable expenses to the COTR or to the DOJ official responsible for the oversight of the monitor or trustee.<sup>70</sup>

b2

- (1) Monthly invoices should be submitted by the 15th of the following month. Each invoice should:
  - (a) Be based on actual expenses.
  - (b) Reflect both monthly costs and cumulative expenses for the business year.
  - (c) Account for all billable hours in time segments no greater than tenths of hours for each category of professional service performed by the monitor or trustee and his or her staff.
  - (d) Contain a summary of the itemized expenses for the current month and a cumulative total for the business year. The itemized expenses should conform to the structure of the itemized costs contained in the monitor's or trustee's budget.
  - (e) Be submitted along with supporting documentation for itemized expenses.
  
- (2) The invoice should reflect:
  - (a) Reasonable, actual, and necessary administrative expenses supported by proper documentation.
  - (b) Property records maintained for depreciable assets purchased.
  - (c) Actual supporting expense documentation from staff and other professionals who are hired for professional services and who should submit documentation with the monthly invoices.
  
- (3) Prior to submitting any invoice, the monitor or trustee should review the compilation of time and expenses to ensure that all fees and expenses are reasonable, justified, and in compliance with these guidelines.

Any invoice that is not submitted in the format detailed in these guidelines (e.g., with appropriate documentation) should be returned to the monitor or trustee for appropriate revisions.

**c. Payment of Trustee Expenses:**

Type of expense	Condition
Purchases of capital assets (equipment, fixtures, furniture, and other fixed assets) or monthly lease obligations in excess of \$1,000 that are to be funded from the trustee's expense account (such purchases are beyond the scope of a monitor's duties)	The USAO and the USMS must provide prior written approval if such items were not previously approved as part of the current year's budget.
All fixed assets purchased with funds from the trustee's expense account	They are the property of the United States and are to be transferred from the incumbent trustee to any successor trustee or to the USMS at the time prescribed by the USMS or the district court and at no cost to the successor

b2

trustee.

(1) The income derived from the forfeited interest in the asset should be the first source of funding for these expenses.

(2) If the income is insufficient to pay these expenses, they may be paid from the asset forfeiture fund.

d. **Internal Controls:**<sup>71</sup> Each monitor/trustee must establish and maintain a system of internal controls that ensures:

(1) Accuracy of the accounting and financial records and procedures.

(2) Safeguarding of accounting and financial records, funds, and other assets.

(3) Effective management of human resources.

e. **USMS Inspection Rights and Audit of Performance:**

(1) The USMS should obtain inspection rights and privileges of access, either in the court order or in the contract, to the following documentation and information related to the official functions of a monitor or trustee:

(a) All books, records, and computer-automated data and systems

(b) Professional applications, contracts, employment agreements and leases

(c) Bank statements and other account documentation

(d) Documentation maintained by the monitor's or trustee's staff that was or is being utilized for monitor or trustee functions

(2) The monitor or trustee is subject to audits annually, or more frequently at the discretion of the USMS.

Responsible Action	Official
USMS or other designated government agency	Can request detailed auditing of any billing statement (invoices and supporting documentation) submitted to the Government.
USMS	Can use the services of an auditing firm to perform such audits.  Will pay for the audit using either the income of the forfeited asset or money from the Assets Forfeiture Fund.
Auditor and/or a USMS designee	Demand prompt and full cooperation from the monitor or trustee in providing any and all records relied upon to substantiate invoices for fees and services that are submitted for payment.
Monitor or trustee	Maintains accounting records in conformity with generally accepted

b2

	<p>accounting principles. These records must reflect:</p> <p>All payments received and disbursed.</p> <p>All expenses and compensation paid during the tenure of the appointment.</p> <p>Maintains all bank statements and/or other documentation relating to deposits and withdrawal of funds associated with his or her account.</p> <p>Makes arrangements with the depository to permit the USMS to examine or obtain copies of the depository's records of the monitor's or trustee's deposits and withdrawals at any time.</p>
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(3) The monitor or trustee may be required to maintain adequate insurance on the physical assets that are the property of the government as well as liability and workers' compensation insurance if the monitor or trustee has employees on his or her staff.

f. **USAO'S Primary Oversight Responsibility for Monitors and Trustees:**<sup>72</sup>

If	Then
<p>The selection and appointment process has been retained by the USAO in a particular case.</p>	<p>The USAO will:</p> <p>Exercise the primary oversight responsibility for the monitor or trustee.</p> <p>Follow the requirements of DOJ Policy Directive 98-2 regarding a monitor or trustee, together with any applicable USAO procedures.</p> <p>Consult with the USMS regarding the appointment of a monitor or trustee to ensure that the USMS contracting and billing requirements are met.</p>

9. **Payment of Pre-existing Business Debts**<sup>73</sup>

- (1) The USMO may pay specific documented claims of the general creditors of an ongoing business from the Assets Forfeiture Fund if:
  - (a) The business is seized.
  - (b) The business is to continue in operation.
  - (c) The payment of pre-existing debts is necessary to preserve the continued operation of the business.

b2

- (d) The payment would not jeopardize the legitimate claims of existing secured creditors.
- (e) The payment cannot be made from the business proceeds.

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(2) Such debts include:

(a) Reasonable salaries and benefits of employees who are believed not to have been involved in any unlawful activity giving rise to the forfeiture and do not have an ownership interest in the business.

(b) Third-party contractors (suppliers) for goods or services who:

Are essential to carry on the business

Continue to provide those goods or services as a regular matter

Bank payments

Rent

Taxes

Utilities

A PAR decision package, which includes the justification stated above, must be submitted to and approved by the AFO before the payment of pre-existing business debts higher than \$5,000 can be made.

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**h. Compliance with Laws and Regulations**

(1) A seized business that is operating under the control of the USMS must comply with all federal, state and local laws and regulations; be in possession of all required licenses and permits; and file all necessary reports required by law or regulations.

(2) If this business is generating business income, such business income must also be used to pay all lawful assessments for such items as:

(a) Payroll deductions (e.g., employees' income tax and Federal Insurance Contributions Act and Medicare withholdings).

(b) Any required employer's contributions and unemployment insurance.

(c) All lawful tax assessments.<sup>74</sup>

Ongoing Businesses

Appendices

Footnotes

b2