

Asset Forfeiture's Use in Corporate Fraud Cases By Sheila May, CPA

Asset forfeiture is not only used in cases involving narcotics trafficking, money laundering and organized crime, but corporate fraud. Forfeiture allows the government to seize or restrain the property acquired with fraud proceeds before trial, dispose of any third party claims, reduce real and personal property to a liquid form, and then remits or restore the forfeited proceeds to the victims of the underlying fraud offense. The Asset Forfeiture Program (AFP) run by the Department of Justice has thirteen participating organizations.

Table 1. Asset Forfeiture Program Participants by Function¹

Function	AFMLS	OCDETF	AFMS	ATF	DCIS	DEA	DS	EOUSA	FBI	FDA	USDA	USMS	USPS
Investigation		X		X	X	X	X		X	X	X		X
Litigation	X							X					
Custody of Assets				X		X			X			X	
Management	X		X										

Illustration from page 3 Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal year 2011

The AFP is comprised of two funds, the AFF (Assets Forfeiture Fund), and the SADF (Seized Asset Deposit Fund). The AFF is the repository for forfeited currency and the proceeds arising from the sale of forfeited property. It also serves as the operating fund for specified program expenditures. The interest earned on the AFF balances is the property of the United States Government.

The SADF serves as a repository for seized currency and specified deposits. The SADF holds seized cash, the proceeds of any pre-forfeiture sale of seized property, and forfeited cash not yet transferred to the AFF. Most funds held in the SADF are not Government property and therefore monies in the SADF cannot be

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spent. If the forfeiture action is successful, SADF balances are transferred to the AFF.

According to the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal year 2011, "In FY 2011, ten major fraud cases resulted in extraordinary forfeiture income of \$733.6 million."

	2011	2010
Income:	\$733.6 million	\$630.3 million
Assets:	\$6869.6 million	\$3, 999.8 million
Assets owned by government in reporting year:	\$2852.8 million	\$2, 575.0 million

Asset forfeiture's strengths or dangers (or dangers depending on your side of the argument) include:

1. The sanctioned seizure and restraint powers of the Asset Forfeiture and Money Laundering Section (AFMLS),
2. The sharing of information between criminal and civil forfeiture prosecutors (13 agencies listed above),
3. The array of law enforcement agents and property-management specialists available (funded with forfeiture monies), and
4. The fact that at little cost to the victims, the government can market and sell assets and pass the proceeds to the victims.

But there are weaknesses of using forfeiture as a means of making restitution to crime victims. First is the issue of that the forfeiture focuses on assets

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linked to the crime. Except in one circuit, before trial, the government cannot restrain "substitute" assets, assets not linked to the crime. The "substitute" assets can be used by the prosecution to pay for court costs. This may mean there will be a significant amount of money to launch a defense. Additionally, assets potentially acquired with the use of forfeited assets may be depleted since they are not restricted in any way. This increases the likelihood the full monetary amount of damages may not be available to the victims.

Second, in a forfeiture case, victims have no active role to play in the claims process unless and until the government succeeds in forfeiting property. Forfeiture law does not approach the defendant as a debtor whose assets must be brought within an all-encompassing estate. The decision about who is a victim and how much the victim should receive from the forfeited assets is not the Court's decision or of the prosecutor handling the case, but a decision typically made by an Executive Branch official.