



Using Forfeited Assets to Compensate Victims of Federal Crimes

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What We Will Cover

- Brief Overview of Federal Forfeiture and Restitution
- How Federally-Forfeited Assets Flow Back to Victims
- What This Process Means for You and Your Clients
- Takeaway



Federal Asset Forfeiture and Restitution

What is Asset Forfeiture?



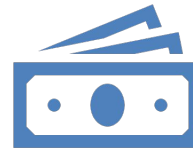
Asset Forfeiture is:



The taking of property



by the government



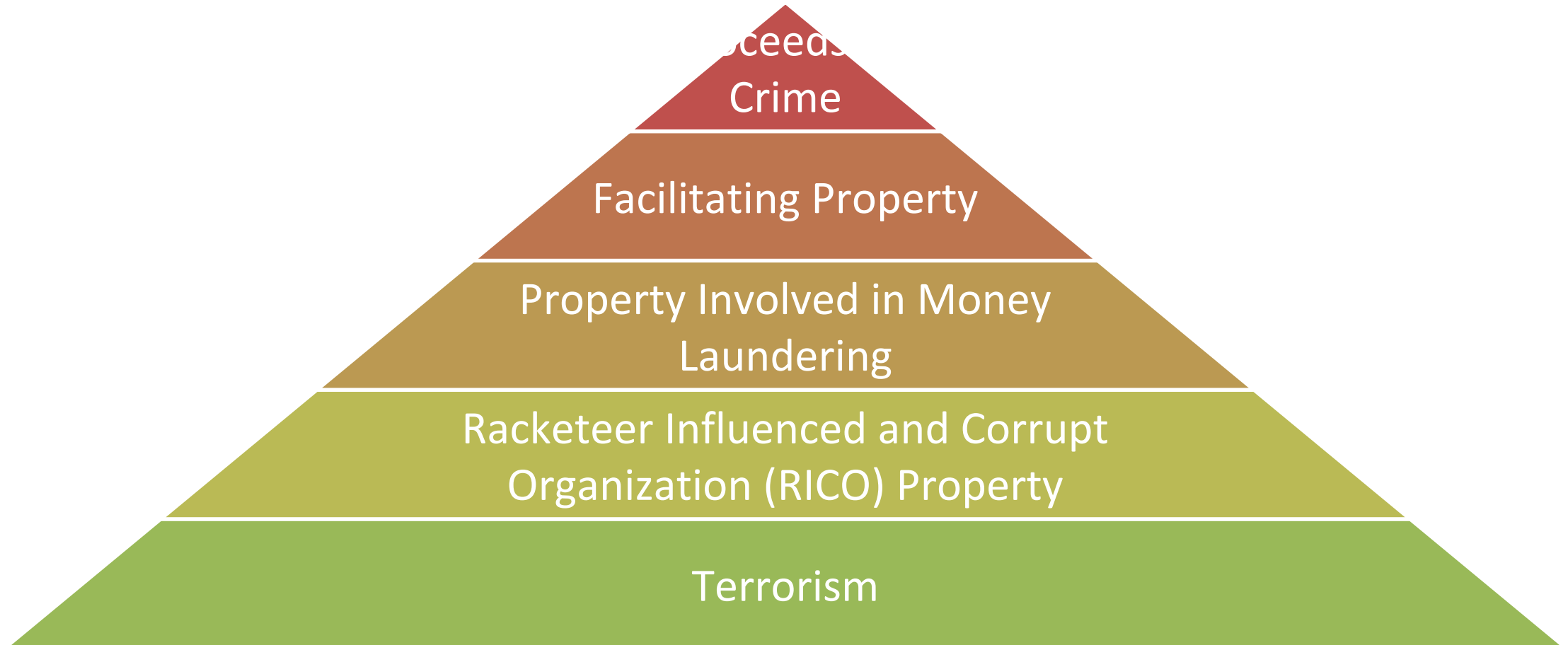
without compensation



because it was obtained
or used in a manner
contrary to the law.



What Property is Subject to Forfeiture?



Types of Federal Forfeiture

Criminal

- Federal criminal case, must have a conviction before forfeiting
- Can only forfeit defendant's interest

Civil

- Judicial
 - Civil case filed against the asset itself
 - Extinguishes interests of non-innocent third-parties (straw owners, nominees, spouses)
- Administrative
 - Summary procedure, only for uncontested cases
 - Due Process: If claim is filed, a judicial case must be initiated or settled pre-complaint
 - Only cash, vehicles, and certain other kinds of property – no real property

What is Restitution?

- Independent of asset forfeiture
- A financial penalty imposed upon a criminal defendant at sentencing
- Calculated differently from forfeiture
 - Focused on victim losses, not defendant gain
 - Calculated with input from victims, prosecutors, agents, and probation
 - Focuses on losses suffered as a result of the crime of conviction, unless defendant otherwise agrees
- Collected and enforced by the US Attorney's Office and probation officers
- Paid out by the Clerk of Court

Mandatory Victims Restitution Act (MVRA) and Other Restitution Statutes

Until the early 1990s, there were no mandatory federal restitution statutes.

MVRA Mandate: “the court shall order that the defendant make restitution to the victim of the offense.”

- 18 USC § 3663A (mandatory)
- 18 USC § 3663 (discretionary)

Other Restitution statutes

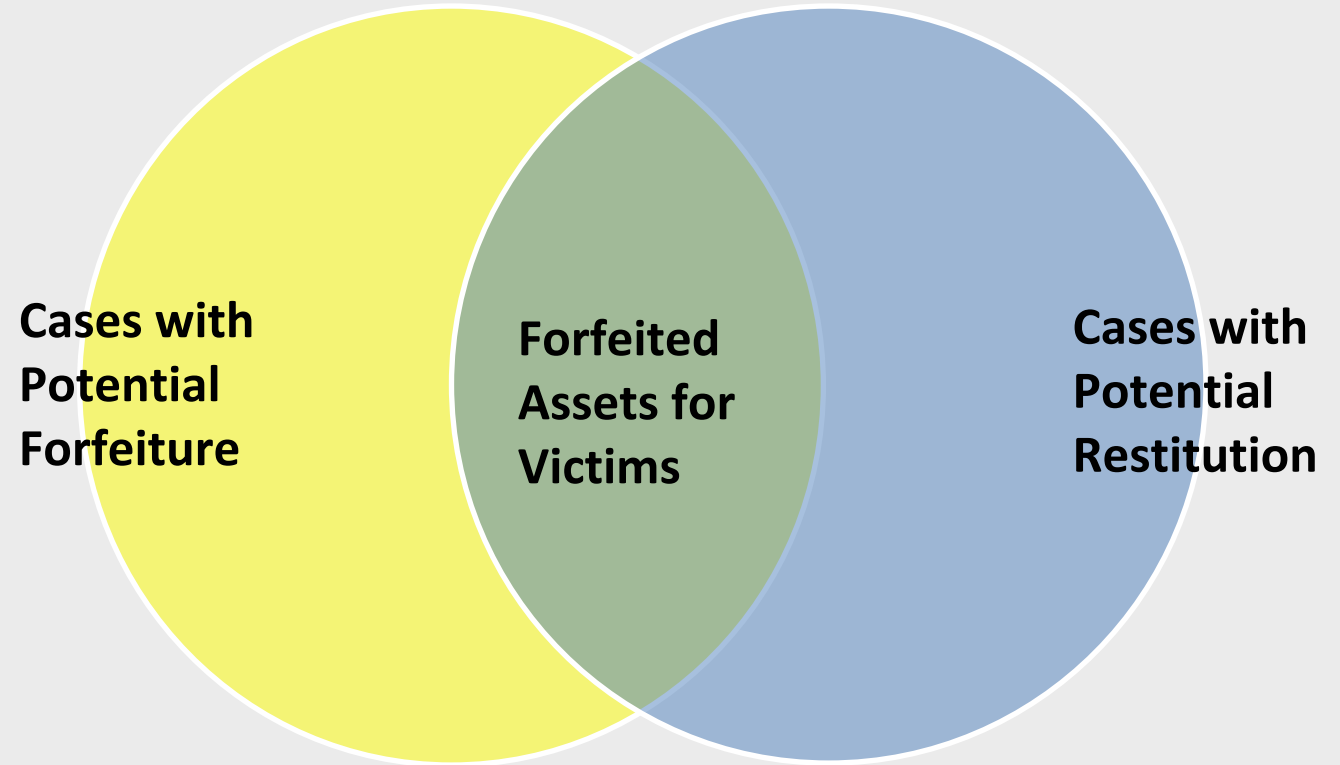
- Violence Against Women Act (VAWA) (mandatory)
- Justice for Victims of Trafficking Act (JVTA) (mandatory, plus mandatory restoration of forfeited assets)
- Other non-T18 offenses (discretionary condition of supervision)

Role of Federal Prosecutors: Crime Victims Rights Act (CVRA)

- Remember: AUSAs represent the federal government, not the individual victims. But, they have certain obligations towards victims of crime.
 - 18 USC § 3771(a), enacted in 2004
 - Provides victims with the right to “full and timely” restitution as provided by law.

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a). (18 USC 3771(c)(1))

Forfeiture and Restitution Overlapping Goals: Return Assets to Victims



These processes are complementary to one another, and work best when both are ordered.

Federal Forfeiture is Not...

- Not a general victim compensation fund.
 - State victim compensation offices receive federal grants from the Crime Victims Fund (CVF)
- Not applicable to criminal cases brought under state law.
 - A federal crime must have occurred, and the assets must have been forfeited federally.



How Federally-Forfeited Assets Flow Back to Victims

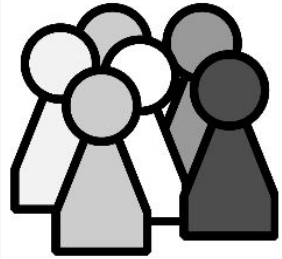
Restoration



Restoration

- Forfeited proceeds are sent to the Clerk of Court to be applied to the restitution order in the federal criminal case
- Most common method of transfer
- Happens behind-the-scenes, victims often don't know restoration has occurred until they receive a check
- Transfer must comply with 28 C.F.R. Part 9 (Remission) and the Restoration Policy

Restoration



Remission



Petition for Remission

28 C.F.R. Part 9 allows DOJ to pay petitioners with forfeited assets

Attorney General can remit forfeited money and property to:

Often used when:

Which Victims Can Receive Federally Forfeited Funds in Remission or Restoration?

Victims of federal crimes

1. There must be a **federal forfeiture**
2. There must be **net proceeds available**
3. Must be a **victim of the crime underlying the forfeiture**, or a related offense; restitution order not required
4. The victim **losses must be compensable** under 28 C.F.R. Section 9.8

Remission: Who is a Victim under DOJ Regulations?

28 C.F.R. § 9.2 - “A person who has incurred a *pecuniary loss* as a direct result of the commission of the offense underlying a forfeiture”, or a related offense.

- Expansive definition of “person” includes individual, business, insurer, estate, and federal agency victims

Losses in Restoration and Remission

Examples of Permissible Losses	Examples of Impermissible Losses
Documented, out-of-pocket pecuniary losses incurred at the time of the offense	Losses that the victim has already recouped
Funds or property stolen through fraud, embezzlement, or force	Losses not supported by documentary evidence
Minimum wage in a forced labor or human trafficking case	Interest forgone, lost profits, and lost income
Documented, out-of-pocket medical expenses in some cases	Collateral expenses, such as attorney's fees and investigative expenses
	Tort losses, such as pain and suffering
	Property damage
	Physical injuries (documented, out-of-pocket medical expenses OK)
	Funeral expenses

Petition Example/Online Filing

PETITION FOR REMISSION OR MITIGATION OF A CRIMINAL OR CIVIL FORFEITURE ACTION BY THE UNITED STATES DEPARTMENT OF JUSTICE

Note: This is a sample to assist potential petitioners. There is no legal form or format required for filing a petition. For more specific guidance on filing your petition, please consult Title 28, Code of Federal Regulations (C.F.R.) Section 9.4, which can be found at www.GPOaccess.gov.

To: The Attorney General of the United States

From: _____

(Name and address of petitioner or petitioner's attorney or representative)

(Social Security Number / Taxpayer Identification Number of Petitioner)

Phone Number

Email Address

I am petitioning for the remission of the property described below because I am (check all that apply):

- ☐ a victim of the crime underlying the forfeiture of the forfeited property, or related offense (complete Sections I, III, and V);
- ☐ an owner of the forfeited property (complete Sections I, II and V); and/or
- ☐ a lienholder of the forfeited property (complete Sections I, II, and V).



FORFEITURE.GOV

THE UNITED STATES DEPARTMENT of JUSTICE

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Petitions

The petitions process referenced below was developed for Department of Justice agencies (ATF, DEA, FBI) and the U.S. Postal Inspection Service. To submit petitions to Department of Homeland Security agencies (CBP, USSS), please reference the petition submission instructions within those agencies' official notification.

THE GOVERNMENT MAY CONSIDER GRANTING PETITIONS FOR REMISSION OR MITIGATION WHICH PARTIALLY OR PART OF THE PROPERTY FROM THE FORFEITURE.

[File Your Petition Online](#)

A. **What to File:** You may file both a claim (see [Claims](#) section) and a Petition for Remission or Mitigation (Petition). If you file only a petition, and no one else files a claim, your petition will be decided by the seizing agency.

B. **To File a Petition:** The petition can be filed online or in writing and sent to the official address provided in the notice of seizure within thirty (30) days of the last date of publication on the forfeiture.gov website, or the deadline set forth in the personal notice letter. If no address is provided in the notice, then the petition should be sent to the appropriate address listed below. A petition need not be made in any particular form. For USPIIS, see [39 C.F.R. § 233.7](#). For other agencies, see [28 C.F.R. § 9.3\(a\)](#).

[Blank Petition Form](#)

[Microsoft Word File](#)

[PDF File](#)

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**What Does This Mean
for Me and My Clients?**

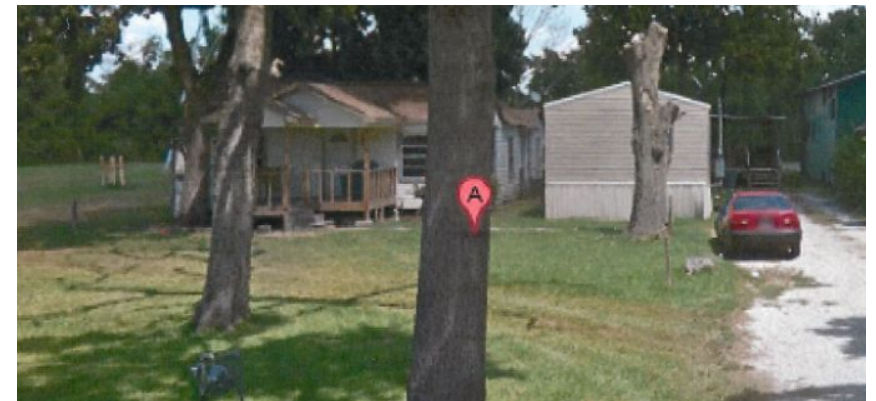
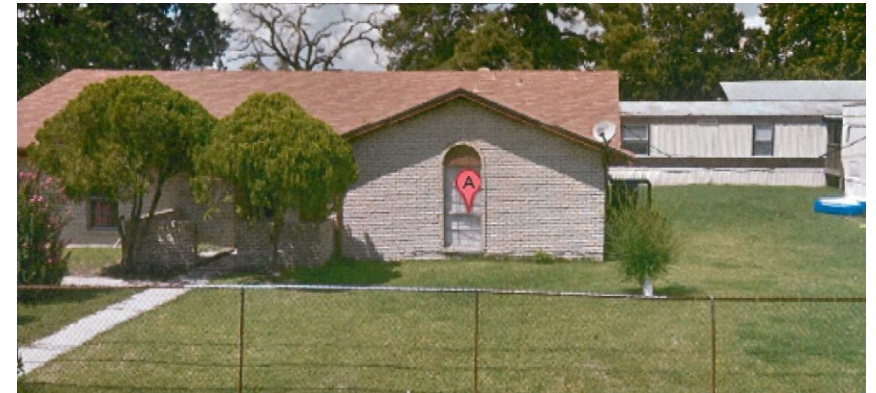
I Work With Victims of Fraud and Financial Crimes

- Since these types of crimes are driven by profit, these types of crimes often involve forfeitable property.
- Losses are easier to calculate and audit
 - Supported by receipts, wire transfer records, etc.
- Victims are often individuals, but can also be governments, federal agencies, and other countries



I Work With Victims of Human Trafficking

- Human trafficking is also motivated by profit and power, and some defendants may have significant forfeitable assets
- 18 USC 1594 was amended in 2015
 - Alternative to remission and restoration - requires that the government transfer forfeited proceeds to victims named in a restitution order
- If there is no restitution order, victims may file petitions for remission
 - Pecuniary loss = Minimum wage calculation



I Work With Child Victims

- In many cases, the defendant has not acquired substantial assets, but sometimes the defendant may be required to forfeit property
 - Often: computer equipment and phones that will be destroyed, no net proceeds available
 - Occasionally: proceeds of the crime, or things that made the crime easier, such as a home used to produce or distribute CP



I Work With Child Victims

- A defendant may be required to pay restitution to a victim of a child pornography or exploitation offense, including medical and counseling expenses if there is bodily injury
- If the government has proceeds from forfeited assets, restoration or remission may be available if the victims have documented pecuniary losses
 - Usually these include out-of-pocket counseling and medical expenses
- In some cases, a USAO may decide to discontinue forfeiture and transfer liquid assets to the Clerk of Court

I Work With Victims of Violent Crime, Organized Crime, and Drug-Related Crimes

- A defendant may be required to pay restitution to a victim of a robbery or funeral expenses in the case of bodily injury leading to death
- Defendants may forfeit a variety of assets in these cases, but they can only be transferred to victims whose losses comport with 28 CFR Part 9



I Work With Elder Victims

- DOJ is committed to combatting all forms of elder abuse and financial exploitation through enforcement actions, training and resources, research, victim services, and public awareness.
- <https://www.justice.gov/elderjustice>

I Work With Victims of Terrorism

- Congress authorized the use of forfeiture funds for the establishment and administration of the USVSST Fund to provide compensation to certain U.S. persons who were injured in acts of international state sponsored terrorism



Home

Relevant Laws and Regulations

File an Application Form Online

Obtain a PDF Application Form

FAQs

Important Dates



U.S. VICTIMS OF STATE SPONSORED TERRORISM FUND

www.usvsst.com

WELCOME TO THE U.S. VICTIMS OF STATE SPONSORED TERRORISM FUND WEBSITE

Important Notice from the Special Master

The Special Master will authorize second round payment amounts for all eligible claims as of January 4, 2010. Claimants who were eligible for initial payments are also eligible.

My Clients Are Part of a Large, Multi-Victim Case

- These cases may involve parallel proceedings, like SEC, FTC, bankruptcy, receivership, and class action cases
- DOJ will coordinate with regulators and class attorneys to preserve assets for victims
- In some cases, DOJ may hire its own claims administrator to solicit, receive, and process petitions for remission
- <https://www.justice.gov/criminal-mlars/remission>





Takeaway



Takeaway

- Defendants must forfeit the proceeds of their crimes
- Those proceeds may be used to compensate the defendant's victims
- Federal regulations govern eligibility and compensable losses
- This process is separate from state Victim Compensation Funds

Questions?

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