

# **EXHIBIT 9**



Act and Freedom of Information Act administration, logistics and facilities management, procurement, training and travel. As Senior Resource Manager, I have gained a high knowledge level about the financial operations and policy objectives of the Treasury Department as a whole, and with the Treasury forfeiture program in particular.

2. In my current position as Director of the Executive Office for Asset Forfeiture, I have been delegated the authority over the operations and management of the Treasury Forfeiture Fund (TFF) and TEOAF. My responsibilities as TEOAF's Director include developing and implementing policies and procedures concerning asset forfeiture for all Treasury law enforcement organizations; administering the forfeiture fund for all non-Treasury contributors or participants in the Fund; ensuring efficient use of asset forfeiture against crime and in support of law enforcement; ensuring compliance with the Financial Recordkeeping and Reporting Regulations (Part 103, Title 31, Code of Federal Regulations) and Chief Financial Officer (CFO) legislation reporting and audit requirements; development, implementation and maintenance of an auditable database for effective asset management; and coordinating the efforts and procedures of the TFF member agencies with the Justice Department and participating agencies in the Department of Justice asset forfeiture fund to ensure effective and uniform criminal enforcement and asset forfeiture policies and procedures. I am responsible for overseeing operations to ensure compliance with TEOAF policies, guidelines, and directives; reviewing and approving equitable sharing above certain monetary thresholds; developing, monitoring, and maintaining a system of internal controls to ensure the participating agencies operate within asset forfeiture program financial constraints, budget and policy guidance; and ensuring that TFF monies are used only for authorized purposes. I am also responsible for determining distributions from the TFF, including amounts to be distributed and the purposes for

which distributed amounts may be used by any TFF participating law enforcement organization, the Coast Guard, the Office of Terrorism and Financial Intelligence (TFI), the Department of Justice, State and local organizations, and any other entity; and authorizing obligations and expenditures within the budgetary resources available to the TFF.

3. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.

4. The purpose of this declaration is to explain how the TFF operates and the manner in which TFF allocates money to its equitable sharing and strategic support programs. As explained in more detail below, equitable sharing is a payment a state or local law enforcement agency receives from the TFF for that agency's contribution to the total law enforcement effort that results in the federal forfeiture of a specific asset. Strategic Support is an amount of unobligated funds at the end of the fiscal year, after accounting for equitable sharing and other mandatory expenses, that I, as Director, determine may be used in connection with the law enforcement activities of any Federal agency.

5. TEOAF is an office of the United States Department of the Treasury (hereinafter "Treasury"). TEOAF administers the TFF. The TFF is the receipt account for deposit of non-tax forfeitures made pursuant to laws enforced or administered by participating Treasury and Department of Homeland Security agencies. The TFF was established in 1992 as the successor to what was then the Customs Forfeiture Fund. As the administrator for the TFF, TEOAF performs the following functions: (1) manages TFF revenues to cover the cost of asset forfeiture program; (2) promotes financial stability and vitality of the TFF; (3) promotes the use of proceeds from forfeitures to fund programs and activities aimed at disrupting criminal enterprises and enhancing forfeiture capabilities; (4) identifies and addresses program risks; and (5) sets

overarching policy for the Treasury forfeiture program and for the TFF, and coordinates forfeiture program activity with the Department of Justice. The program policies include the tracking of forfeiture revenue and associated liabilities to ensure the program's expenses are covered.

6. TEOAF's functions also include providing support to our member federal law enforcement agencies concerning the seizure of items in the course of their law enforcement activities. The primary TFF member agencies are: (1) Internal Revenue Service - Criminal Investigations, U.S. Department of the Treasury; and, from the Department of Homeland Security (DHS): (2) Homeland Security Investigations; (3) U.S. Customs and Border Protection; (4) U.S. Secret Service; and (5) U.S. Coast Guard.<sup>1</sup>

#### **Overview of the TFF's Authorizing Legislation and Funding Authorities**

7. The authorizing legislation of the Treasury Forfeiture Fund, 31 U.S.C. § 9705, defines the purposes for which the TFF revenue may be used. It is a permanent, indefinite appropriation available to the Secretary of the Treasury without fiscal year limitation. The TFF does not receive annual appropriations from Congress.

8. Section 9705 sets forth the expenses that the TFF is authorized to pay. They are set out in a priority order. Section 9705(a)(1)(A) sets forth the "mandatory" (meaning priority) category of expenses. These are expenses that the TFF is statutorily required to cover first from forfeited revenue; these are priority expenses. These are the costs of running the program and the costs associated with particular seizure and forfeiture cases. They are essentially all of the costs associated with federal asset forfeiture cases, including investigative costs of the federal member agencies, costs associated with seizure and forfeiture, payments to third parties pursuant

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<sup>1</sup> Other Federal agencies not relevant here are statutory members of the TFF, such as FinCEN, the Tax and Trade Bureau, and the Office of Terrorism and Financial Intelligence.

to a court order or settlement agreement; valid liens on forfeited property; remission to victims and owners; equitable sharing payments to state and local enforcement agencies; reimbursements to state and local law enforcement for overtime and other expenses incurred in joint operations with our federal member agencies; payments of bills and expenses incurred related to contracts for managing seized and forfeited property; and other expenses of the Treasury forfeiture program.

9. With respect to forfeiture cases, the TFF member agencies and TEOAF staff work closely to track anticipated and current forfeiture cases and liabilities that may be associated with such cases, particularly victim or other remission payments or equitable sharing payments. This enables the program to accurately estimate its revenue and liabilities. TEOAF has been doing this since the program's creation in 1992; since then, TFF has remained financially solvent and maintained adequate funds in its accounts to meet all of its expenses.

10. Prior to beginning the next fiscal year, the statute requires an amount of funds to be reserved to meet the priority category of expenses for that next fiscal year. 31 U.S.C. §§ 9705(g)(1); (g)(3)(C) and (g)(4)(B). In practice, we account for known anticipated liabilities and reserve sufficient funding for our expenses to cover the first quarter of the next fiscal year. When the new fiscal year begins and is underway, as new revenue comes in, those funds are also used for priority expenses. Forfeited revenue from cases that have anticipated liabilities (such as likely remission or equitable sharing payments) are set aside for those future expenses.

11. After these priority expenses are accounted for in the current fiscal year, including any equitable sharing payments to state and local entities, and after an amount is set aside for priority fund operations to start the next fiscal year,<sup>2</sup> unobligated balances may be used “in

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<sup>2</sup> In practice, Treasury must now also factor in any possible rescission amounts being proposed by Congress as well.

connection with the law enforcement activities of any Federal agency.” 31 U.S.C.

§ 9705(g)(4)(B). This is what we refer to as “Strategic Support”.<sup>3</sup>

12. These expenses do not have to be related to seizure and forfeiture; they simply have to be a law enforcement-related expense of the Federal agency requesting the funds. The list of forfeiture-related expenses in section 9705(a)(1) is not applicable or relevant to section 9705(g)(4)(B). Rather, Congress has given Treasury broad discretion in determining what constitutes a law enforcement activity for strategic support funding purposes. The requesting federal agency is generally responsible for determining what activities constitute “law enforcement”. TEOAF normally defers to the law enforcement agency, but would have authority to decline to fund an activity that clearly was not law enforcement.

13. The decision to authorize Strategic Support funding at the end of a fiscal year has already included consideration of the necessity of reserving sufficient funds for making equitable sharing payments, which, as a priority TFF expense, is always a higher priority for funding than Strategic Support funding.<sup>4</sup> Therefore, the decision to make Strategic Support funding available in fiscal year 2019 will have no impact on the amount of money state and local entities receive through equitable sharing.

14. To determine what Strategic Support initiatives will be funded from the TFF, TEOAF and the federal member agencies engage in a collaborative process that results in the agencies submitting written funding requests to TEOAF. Once the initiatives are selected for funding and approved by Treasury, TEOAF and Treasury’s Budget Office inform the Office of

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<sup>3</sup> This was previously referred to as “Super Surplus” funding until approximately 2017.

<sup>4</sup> Additionally, as part of TEOAF’s monthly reporting to our appropriations committees, known liabilities for sharing and remission payments are included. This further ensures availability of funds for those purposes as the amounts available for Strategic Support or for rescission are determined.

Management and Budget. After receiving concurrence from OMB, Treasury then notifies the Appropriations Committees of both Houses of Congress in writing as required by section 9705(g)(4)(B) (“any obligation of expenditure in excess of \$500,000 with respect to [Strategic Support] may not be made by the Secretary unless the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of such obligation or expenditure.”) In practice, TEOAF has sent the entire Strategic Support plan to the Hill in its notification letters, not just those expenses exceeding over \$500,000. After the 15 days pass, Treasury and the agencies may enter into Inter Agency Agreements (IAA) for the initiatives. The receiving agencies may then begin incurring expenses and submitting invoices to the TFF for reimbursement, which the TFF would then pay.

15. The amount of Strategic Support has varied over the years, and in some years<sup>5</sup>, there were no funds at the end of the fiscal year from which to declare Strategic Support funding due to large rescissions enacted into law during those years. *See, e.g.*, Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. E (rescinding \$769 million in unobligated balances from TFF); Consolidated Appropriations Act, 2017, Pub. L. 115-31, Div. E, Tit. 1 (rescinding \$988 million and permanently cancelling \$314 million); *but see* Consolidated Appropriations Act, 2019, Pub. L. 116-6, Div. A, Title V, Sec. 540 (rescinding just \$200 million in unobligated balances from the TFF).

16. The list of forfeiture-related expenses in section 9705(a)(1) does not limit or restrict the permissible uses of Strategic Support funding under section 9705(g)(4)(B). Rather, Strategic Support expenses simply have to be “in connection with the law enforcement activities

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<sup>5</sup> In Fiscal Years 2015 and 2016, as a result of rescissions enacted in the Congressional Appropriations, zero funds were available for strategic support.



of any Federal agency or of a Department of the Treasury law enforcement organization.” Over the years, Strategic Support funding has been used to support various law enforcement activities related to border security initiatives. A few examples are: (1) Vault Construction and Renovations for High Risk Property and Illicit Narcotics (nationwide); (2) Border Patrol Special Equipment and Operations; (3) Specialized Vehicles, Equipment, and Operations; (4) Outbound Infrastructure Improvement Program; (5) Field Detection Equipment; (6) Full Motion Video Downlink Receivers; (7) Strengthened Outbound Processing Capabilities; (8) Border Patrol Security Camera Systems in the Rio Grande Valley; and (9) Forensic Lab Renovations and Equipment Enhancements. Treasury notified Congress of these various border security projects funded by Strategic Support and Congress did not object. In fact, from fiscal years 2009 to 2014, in accordance with the requirements of the DHS Appropriations Acts, the DHS Appropriations Committees were required to, and did, affirmatively concur with use of Strategic Support funding for DHS initiatives, including several of the ones listed here.<sup>6</sup> Further, in fiscal year 2010, Congress specifically approved use of \$15 million in Strategic Support funding to construct and equip a Border Patrol Station Forward Operating Base in Animas Valley, New Mexico, and to expand the Border Patrol Station in Nogales, Arizona.

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<sup>6</sup> See e.g., DHS Appropriations Act, 2010, Pub. L. No. 111-83, § 536 (Oct., 28, 2009) (“The Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall notify the Committees on Appropriations of the Senate and the House of Representatives of any proposed transfers of funds available under subsection (g)(4)(B) of title 31, Unites States Code (as added by Public Law 102-393) from the Department of the Treasury Forfeiture Fund to any agency within the Department of Homeland Security: *Provided*, That none of the funds identified for such a transfer may be obligated until the Committees on Appropriations of the Senate and the House of Representatives approve the proposed transfers.”).

## Overview of Equitable Sharing<sup>7</sup>

17. The primary purpose of federal asset forfeiture is to remove the tools of crime from criminal organizations, deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, and deter crime. One of the ancillary benefits of asset forfeiture is the potential to share federal forfeiture proceeds with cooperating state and local law enforcement agencies through equitable sharing.<sup>8</sup> Equitable sharing is essentially a payment a state or local agency receives from the TFF for that agency's contribution to the total law enforcement effort that results in the federal forfeiture of a specific asset. The sharing payment cannot exceed the value of that asset at time of forfeiture or sale. 31 U.S.C. § 9705(b)(2).

18. State and local law enforcement agencies often work on investigations with the TFF member federal agencies. Where a federal forfeiture then results, that state or local law enforcement agency may request an equitable share<sup>9</sup> of the amount forfeited from that asset, in an amount commensurate with their participation to the total law enforcement effort that resulted in the forfeiture. Equitable sharing payments are authorized by 31 U.S.C. § 9705(a)(1)(G). Treasury must ensure that the amount of the sharing payment "bears a reasonable relationship to the degree of participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law

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<sup>7</sup> The policies for the equitable sharing program are set forth in the Joint Department of Justice/Department of Treasury *Guide to Equitable Sharing* (Joint Guide) (July 2018) (available at <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/2018-Justice-Treasury-Joint-EQS-Guide-final-equitable-sharing.pdf>). General information on Treasury's equitable sharing program is found here: <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Equitable-Sharing.aspx>.

<sup>8</sup> *Joint Guide*, pp. 1-2

<sup>9</sup> Some states, under state law, have limited the types of cases for which their state and local agencies may request a federal equitable share.

enforcement effort with respect to the violation of law on which the forfeiture is based” and that the payment “will serve to encourage further cooperation between the recipient State or local agency and the Federal law enforcement agencies.” 31 U.S.C. § 9705(b)(4).

19. The Treasury Department’s Equitable Sharing Program enhances cooperation amongst federal, state, local, and tribal law enforcement by providing additional resources, in the form of these sharing payments, to state and local law enforcement agencies; the funds must be used for law enforcement purposes. *Joint Guide*, p. 1. However, the Program is designed to supplement and enhance, not supplant, appropriated agency resources – meaning that by policy a state or local law enforcement agency should not plan to use anticipated equitable sharing payments to cover their agency’s daily operating expenses, nor should state or local governments reduce an agency’s budget in anticipation of sharing, or because of sharing already received. Not all law enforcement efforts will result in equitable sharing. Specifically, compensating victims remains a top priority of the forfeiture program. Pursuant to the Crime Victims’ Rights Act, the Mandatory Victims Restitution Act, and Department of Justice and Department of the Treasury policies, victim compensation always takes priority over equitable sharing. Government agencies are at times victims entitled to compensation prior to equitable sharing. *Id.* at 1.

20. Generally, when it is decided that equitable sharing is appropriate from a specific asset, the decision-maker would be the federal seizing agency for assets valued at less than \$1 million. The Secretary reserved and delegated to me the decision-making authority on assets valued at \$1 million or more.

21. Several circumstances may result in the denial of equitable sharing. The case may have victims, and those payments take priority over sharing. The case may have an international component requiring sharing payments to be made to foreign countries for their law enforcement

cooperation; such payments are often governed by international agreements that take priority over domestic sharing. The asset (or sales proceeds of a tangible asset) may have costs or liens associated with it that leave insufficient funds to share from that asset. The recipient state or local agency may be out of compliance with the equitable sharing program policies (which may simply mean they have failed to file their annual certification and agreement required under program policy). The state or local agency may be prohibited under state law from requesting or receiving an equitable share of a particular asset.

22. Sharing payments made in prior years have no bearing on future sharing payments. Each sharing payment depends on the facts of the specific case and asset at issue; the level of effort from the state and local agency in that investigation that resulted in the federal forfeiture of the specific asset; whether the state law allows the state or local agency to request a share; and whether the asset may be shared according to federal program policy. Indeed, the amount of equitable sharing paid has varied every year.

23. Because of the statutory priority for equitable sharing payments and the requirement to reserve sufficient funds to make equitable sharing payments before utilizing Strategic Support, state and local law enforcement agencies will not lose any money they otherwise might receive as a result of Treasury's decision to fund Strategic Support projects. Future equitable sharing payments are not impacted by the \$601M that was declared as strategic support for FY 2019. Each new fiscal year, TEOAF creates new projections of income and liabilities to account for anticipated revenue and possible sharing (among other things). The \$601M simply represents an amount of excess funds in the TFF after accounting for priority expenses, including equitable sharing expenses, on September 30, 2018 (at the end of Fiscal Year 2018), and thus were able to be made available for FY 2019 Strategic Support.

## **The FY 2019 Strategic Support Plan**

24. On December 29, 2018, DHS submitted to the TFF a request for \$681 million of strategic support funding for border security, pursuant to 31 U.S.C § 9705(g)(4)(B). The DHS request explains that the law enforcement efforts for which the TFF funds will be used are necessary to achieve and maintain operational control of the Southwest border and to successfully execute U.S. Border Patrol's law enforcement mission. As with any request for Strategic Support, the appropriate program managers and budget officials then carefully reviewed the TFF fund balances and anticipated liabilities to determine the amount of unobligated balance in the TFF that would be available. Treasury determined that, of the amount requested, the TFF could allocate up to \$601 million, as reflected in our February 15, 2019 notification to Congress.

25. The allocation of up to \$601 million to DHS has been separated into two tranches. The first consisted of unobligated balances of \$242 million. An interagency agreement between Treasury and DHS was entered into on March 13, 2019, and thus this tranche was available to reimburse DHS for the contemplated obligation as early as March 13, 2019.

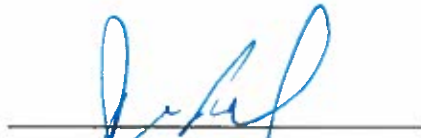
26. Because of the statutory requirement to reserve sufficient funds to cover priority expenses, including any equitable sharing payments, the vitality of the Treasury Forfeiture Fund, along with its ability to make equitable sharing and remission payments in 2019 and future years, are not at risk because of the \$601M that is being made available for border security purposes. As of April 15, 2019, TEOAF estimates that after meeting its mandatory predicted expenses for fiscal year 2019 and the \$601 million declared in Strategic Support, the projected unobligated balance carry-over to fiscal year 2020 will be approximately \$507 million.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

24 Apr 19

Date



**JOHN M. FARLEY**  
**DIRECTOR**  
Executive Office for Asset Forfeiture  
United States Department of the Treasury