

Department of Justice's Asset Forfeiture Program Takes Huge Hit as Congress Eliminates Funding

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The ***Department of Justice*** is suspending a program allowing local police departments to keep a large portion of assets seized under federal law, the Department announced December 21.

This "equitable sharing" program has allowed liquidated assets seized in asset forfeiture cases to be shared between state and federal law enforcement authorities with local agencies receiving up to 80 percent of the asset value of items forfeited. In 2010, more than \$500 million was distributed to state law enforcement; over \$5 billion was distributed since the program was enacted in 1984.

Recently, public scrutiny and criticism of the program has increased. Critics of the program allege that because of this program, local police departments focused on crimes that generated money for the departments themselves, rather than those directly related to danger to the community. Critics maintain, for example, that local police departments were more likely to pursue a bank fraud case against a company where money can be seized in a bank account, rather than pursue cases where no assets can be seized. Critics point out that in 2008, there were less than \$1.5 billion in the combined asset forfeiture funds of the Department of Justice and the United States Treasury, but by 2014, that number had tripled to approximately \$4.5 billion. Lastly, critics correctly point out that many of these seizures occur in the absence of a conviction through administrative forfeiture where the agency forfeits the property outside the judicial process.

The ***Bipartisan Budget Act of 2015*** (PL 114-74) enacted in November included a \$756 million permanent reduction, or "rescission," of Asset Forfeiture Program Funds. As a result of that reduction, the Department of Justice continued to make equitable sharing payments, but at a reduced amount. However, the ***Consolidated Appropriations Act of 2016***, which was signed into law on December 18, 2015, includes an additional \$458 million rescission in the Fiscal Year 2016 budget. In order to absorb the combined \$1.2 billion rescission, the Department of Justice announced it will immediately defer all equitable sharing payments to state, local, and tribal law enforcement and transfers of any items for official use.

This immediate suspension will greatly benefit companies who seek restitution from employees who have committed crimes. Rather than seek to forfeit assets, the Department of Justice may allow those assets to be used to make a victimized company whole. Jackson Lewis attorneys are experienced in white collar criminal matters, including issues pertaining to asset forfeiture, and are

available to advise companies on government forfeiture, seizure of assets, and the Mandatory Victims Restitution Act.

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