



LEXSTAT 28 CFR 9.2

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TITLE 28 -- JUDICIAL ADMINISTRATION
CHAPTER I -- DEPARTMENT OF JUSTICE
PART 9 -- REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL
FORFEITURES

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28 CFR 9.8

§ 9.8 Provisions applicable to victims.

The provisions of this section apply to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). The provisions of this section apply only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. Victims who have a superior present legally cognizable ownership interest in forfeited property may file petitions, as other owners, subject to the regulations set forth in § 9.7(a). The claims of such owner victims, like those of any other owners, shall have priority over the claims of any non-owner victims whose claims are recognized pursuant to this section.

(a) Qualification to file. A victim, as defined in § 9.2(v), of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property, if in addition to complying with the other applicable provisions of § 9.8, the victim satisfactorily demonstrates that:

(1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;

(2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;

(3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(b) Pecuniary loss. The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest foregone or for collateral expenses incurred to recover lost property or to seek other recompense.

(c) Torts. A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(d) Denial of petition. In the exercise of his or her discretion, the Ruling Official may decline to grant remission where:

(1) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(2) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the government in determining whether to grant remission; or

(3) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(e) Pro rata basis. In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(1) The specificity and reliability of the evidence establishing a loss;

(2) The fact that a particular victim is suffering an extreme financial hardship;

(3) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related persecution or civil action; and

(4) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(f) Reimbursement. Any petitioner granted remission pursuant to this part shall reimburse the Assets Forfeiture Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(g) Claims of financial institution regulatory agencies. In cases involving property forfeitable under *18 U.S.C. 981(a)(1)(C)* or *(a)(1)(D)*, the Ruling Official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to *18 U.S.C. 981(e)(3)* or *(7)*. Generally, claims of financial institution regulatory agencies pursuant to *18 U.S.C. 981(e)(3)* or *(7)* shall take priority over claims of victims.

HISTORY: [Order No. 2064-96, *62 FR 314, 321*, Jan. 3, 1997]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

28 U.S.C. 509, 510, 515-518, 524; 8 U.S.C. 1324; 15 U.S.C. 1177; 17 U.S.C. 509; 18 U.S.C. 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 U.S.C. 1613, 1618; 21 U.S.C. 853, 881; 22 U.S.C. 401.

NOTES: [EFFECTIVE DATE NOTE: *62 FR 314, 321*, Jan. 3, 1997, added this section as part of the revision of Part 9, effective Feb. 3, 1997.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS REFERENCES: Customs Service, Department of the Treasury: See Customs Duties, 19 CFR chapter I.
Internal Revenue Service, Department of the Treasury: See Internal Revenue Service, 26 CFR chapter I.
Employees' Benefits: See title 20.

Federal Trade Commission: See Commercial Practices, 16 CFR chapter I.

Other regulations issued by the Department of Justice appear in title 4; title 8; title 21; title 45; title 48.

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