

APPENDIX F

GUIDELINES FOR THE CONTROL AND USE OF CONFIDENTIAL FUNDS

This Guideline articulates procedures for the use and control of confidential funds by projects funded by the GRANTOR AGENCY (NYS Division of Criminal Justice Services). The provisions in this Guideline apply to all GRANTOR AGENCY professional personnel and grantees/subgrantees involved in the administration of grants containing confidential funds.

DEFINITIONS FOR TYPES OF SPECIAL LAW ENFORCEMENT OPERATIONS

1. Purchase of Services (P/S). This category includes travel or transportation of a non-federal officer or an informant; the lease of an apartment, business front, luxury-type automobiles, aircraft or boat or similar effects to create or establish the appearance of affluence; and/or meals, beverages, entertainment and similar expenses for undercover purposes, within reasonable limits.
2. Purchase of Evidence (P/E). This category is for the purchase of evidence and/or contraband such as narcotics and dangerous drugs, firearms, stolen property, counterfeit tax stamps, etc., required to determine the existence of a crime or to establish the identity of a participant in a crime.
3. Purchase of Specific Information (P/I). This category includes the payment of monies to an informant for specific information. All other informant expenses would be classified under P/S and charged accordingly.

POLICY

Confidential funds are those monies allocated to purchase of services, purchase of evidence and purchase of specific information. These funds should only be allocated:

1. When the particular merits of a program/investigation warrant the expenditure of these funds.
2. When requesting agencies are unable to obtain these funds from other sources.

Use of confidential funds is subject to prior approval based on a finding that they are a reasonable and necessary element of project operations. The approving agency must also ensure that the controls over disbursement of confidential funds are adequate to safeguard against the misuse of such funds.

- The APPROVING AUTHORITY for the ALLOCATION of confidential funds is GRANTOR AGENCY for block/formula/project grantees.
 - The PRIOR APPROVAL AUTHORITY for the disbursement and expenditure of confidential funds will be as follows:
 - a. Department head (e.g., Chief of Police, District Attorney, etc.) for grant agencies for any individual payment in excess of \$2,000.
 - b. Supervisor of Investigative Unit/Division to which funds are assigned for any individual payment of \$2,000 or less.
1. Imprest Fund. The funds authorized will be established in an imprest fund which is controlled by a bonded cashier.
 2. Advance of Fund. The supervisor of the unit to which the imprest fund is assigned must authorize all advances of funds for the purchase of information. Such authorization must specify the information to be received, the amount of expenditures, and assumed name of informant.
 3. Informant Files. Informant files are confidential files of the true names, assumed names, and signature of all informants to whom payments of confidential expenditures have been made. To the extent possible, pictures and/or fingerprints of the informant payee should also be maintained. Refer to the "Documentation" paragraph for a list of required documents for the informant files.
 4. Cash Receipts.
 - a. The cashier shall receive from the agent or officer authorized to make a confidential payment, receipt for cash advanced to him/her for such purposes.
 - b. The agent or officer shall receive from the informant payee a receipt for cash paid to him/her.

FIGURE 1. SAMPLE RECEIPT OF INFORMANT PAYEE

RECEIPT

For and in consideration of the sale and delivery to the State, County, or City of _____ of information or evidence identified as follows:

_____ I hereby acknowledge receipt of \$
(numerical and word amount entered by payee) Paid to me by the State, County, or City of
_____.

Date: _____

Payee:
(Signature)

Case Agent/Officer:
(Signature)

Witness:
(Signature)

Case or Reference: _____

Signature

5. Review and Certification. The signed receipt from the informant payee with a memorandum detailing the information received shall be forwarded to the agent or officer in charge. The agent or officer in charge shall compare the signatures. He/she shall also evaluate the information received in relation to the expense incurred, and add his/her evaluation remarks to the report of the agent or officer who made the expenditure from the imprest fund. The certification will be witnessed by the agent or officer in charge on the basis of the report and informant payee's receipt.
6. Reporting of Funds. Each project shall prepare a reconciliation report on the imprest fund on a quarterly basis. Information to be included in the reconciliation report will be the assumed name of the informant payee, the amount received, the nature of the information given, and to what extent this information contributed to the investigation. Grantees shall retain the reconciliation report in their files and available for review. Subgrantees shall retain the reconciliation report in their files and available for review unless the state agency requests that the report be submitted to them on a quarterly basis.
7. Record and Audit Provisions. Each project and member agency must maintain specific records of each confidential fund transaction. At a minimum, these records must consist of all documentation concerning the request for funds, processing (to include the review and approval/disapproval), modifications, closure or impact material, and receipts and/or other documentation necessary to justify and track all expenditures. Refer to Documentation, Item 1, for a list of documents which should be in the informant files. In projects where grant funds are used for confidential expenditures, it will be understood

that all of the above records, except the true name of the informant, are subject to the record and audit provisions of the GRANTOR AGENCY legislation.

DOCUMENTATION.

1. Informant File Security and Contents.
 - a. For each informant a separate file should be established for accounting purposes. Informant files should be kept in a separate and secure storage facility, segregated from any other files, and under the exclusive control of the office head or an employee designated by him/her. The facility should be locked at all times when unattended. Access to these files should be limited to those employees who have a necessary legitimate need. An informant file should not leave the immediate area except for review by a management official or the handling agent, and should be returned prior to the close of business hours. Sign-out logs should be kept indicating the date, informant number, time in and out, and the signature of the person reviewing the file.
 - b. Each file should contain the following documents:
 1. Informant Payment Record, kept on top of the file. This record provides a summary of informant payments.
 2. Informant Establishment Report, including complete identifying and locating data, plus any other documents connected with the informant's establishment.
 3. Current photograph and fingerprint card (or FBI/State Criminal Identification Number).
 4. Cooperating Individual Agreement.
 5. Receipt for Purchase of Information.
 6. Copies of all debriefing reports.
 7. Copies of case initiation reports bearing on the utilization of the informant.
 8. Copies of statements signed by the informant (unsigned copies will be placed in appropriate investigative files).
 9. Any administrative correspondence pertaining to the informant, including documentation of any representations made on his/her behalf or any other nonmonetary considerations furnished.

10. Any deactivation report or declaration of an unsatisfactory informant.
2. Receipt for Purchase of Information. An informant payee receipt shall identify the exact amount paid to and received by the informant payee on the date executed. Cumulative or anticipatory receipts are not permitted. Once the receipt has been completed no alteration is allowed. The agent shall prepare an informant payee receipt containing the following information:
 - a. The jurisdiction initiating the payment.
 - b. A description of the information/evidence received.
 - c. The amount of payment, both in numerical and word form.
 - d. The date on which the payment was made.
 - e. The signature of the informant payee.
 - f. The signature of the case agent or officer making payment.
 - g. The signature of at least one other officer witnessing the payment.
 - h. The signature of the first line supervisor authorizing and certifying payment.

INFORMANT MANAGEMENT AND UTILIZATION

All persons who will be utilized as informants should be established as such. The specific procedures required in establishing a person as an informant may vary from jurisdiction to jurisdiction but, at a minimum, should include the following:

1. Assignment of an informant code name to protect the informant's identity.
2. An informant code book controlled by the office head or his/her designee containing:
 - a. Informant's code name.
 - b. Type of informant (i.e., informant, defendant/informant, restricted-use/informant).
 - c. Informant's true name.
 - d. Name of establishing law enforcement officer.
 - e. Date the establishment is approved.

- f. Date of deactivation.
3. Establish each informant file in accordance with Documentation, Item 1.
4. For each informant in an active status, the agent should review the informant file on a quarterly basis to assure it contains all relevant and current information. Where a MATERIAL fact that was earlier reported on the Establishment Report is no longer correct (e.g., a change in criminal status, means of locating him/her, etc.), a supplemental establishing report should be submitted with the correct entry.
5. All informants being established should be checked in all available criminal indices. If a verified FBI or NYSID number is available, request a copy of the criminal records from the FBI or DCJS. Where a verified FBI or NYSID number is not available, the informant should be fingerprinted with a copy sent to the FBI and DCJS for analysis. The informant may be utilized on a provisional basis while awaiting a response from the FBI/DCJS.

PAYMENTS TO INFORMANTS

1. Any person who is to receive payments charged against PE/PI funds should be established as an informant. This includes persons who may otherwise be categorized as sources of information or informants under the control of another agency. The amount of payment should be commensurate with the value of services and/or information provided and should be based on the following factors:
 - a. The level of the targeted individual, organization, or operation.
 - b. The amount of the actual or potential seizure.
 - c. The significance of the contribution made by the informant to the desired objectives.
2. There are various circumstances in which payments to informants may be made:
 - a. Payments for Information and/or Active Participation. When an informant assists in developing an investigation, either through supplying information or actively participating in it, he/she may be paid for his/her service either in lump sum or in staggered payments. Payments for information leading to a seizure, with no defendants, should be held to a minimum.
 - b. Payment for Informant Protection. When an informant needs protection, law enforcement agencies may absorb the expenses of relocation. These expenses may include travel for the informant and his/her immediate family, movement and/or storage of household goods, and living expenses at the new location for a specific period of time (not to exceed 6 months). Payments for these expenses may be either

lump sum or as they occur, and should not exceed the amounts authorized law enforcement employees for these activities.

- c. Payments to Informants of Another Agency. To use or pay another agency's informant, he/she should be established as an informant. These payments should not be a duplication of a payment from another agency; however, sharing a payment is acceptable.
3. Documentation of payments to informants is critical and should be accomplished on a receipt for purchase of information. Payment should be made and witnessed by two law enforcement officers and authorized payment amounts should be established and reviewed by at least the firstline supervisory level. In unusual circumstances, a non-officer employee or an officer of another law enforcement agency may serve as witness. In all instances, the original signed receipt must be submitted to the project director for review and record keeping.

ACCOUNTING AND CONTROL PROCEDURES

Special accounting and control procedures should govern the use and handling of confidential expenditures, as described below:

1. It is important that expenditures which conceptually should be charged to PE/PI/PS are in fact so charged. It is only in this manner that these funds can be properly managed in all levels, and accurate forecasts of projected needs be made.
2. Each law enforcement entity should apportion its PE/PI/PS allowance throughout its jurisdiction and delegate authority to approve PE/PI/PS expenditures to those offices, as it deems appropriate.

3. Headquarters management should establish guidelines authorizing offices to spend up to a predetermined limit of their total allowance on any one buy or investigation.
4. In exercising his/her authority to approve these expenditures, the supervisor should consider: (1) the significance of the investigation; (2) the need for this expenditure to further that investigation; and (3) anticipated expenditures in other investigations. Funds for PE/PI/PS expenditures should be advanced to the officer for a specific purpose. If they are not expended for that purpose, they should be returned to the cashier. They should not be used for another purpose without first returning them and repeating the authorization and advance process based on the new purpose.
5. Funds for a PE/PI/PS expenditure should be advanced to the officer on a suitable receipt form. A receipt for purchase of information or a voucher for purchase of evidence should be completed to document funds used in the purchase of evidence or funds paid or advanced to an informant.
6. For security purposes there should be a 48-hour limit on the amount of time funds advanced for PE/PI/PS expenditure may be held outstanding. If it becomes apparent at any point within the 48-hour period that the expenditure will not materialize, then the funds should be returned to the advancing cashier as soon as possible. An extension to the 48-hour limit may be granted by the level of management that approved the advance. Factors to consider in granting such an extension are the amount of funds involved, the degree of security under which the funds are being held, how long an extension is required, and the significance of the expenditure. Such extensions should be limited to 48 hours. Beyond this, the funds should be returned and readvanced, if necessary. Regardless of circumstances, within 48 hours of the advance, the fund cashier should be presented with either the unexpended funds, an executed voucher for payment for information or purchase of evidence or written notification by management that an extension has been granted.
7. Purchase of Services expenditures, when not endangering the safety of the office or informant, need to be supported by canceled tickets, receipts, lease agreements, etc. If not available, the office head, or his/her immediate subordinate, must certify that the expenditures were necessary and justify why supporting documents were not obtained.