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Real Property Seizure
And Disposal Program
Improvements Needed

Statement of
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Before the
Subcommittee on Federal Spending,
Budget and Accounting, U.S. Senate



134014

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss our review of the Department of Justice's management of seized and forfeited real property. The Subcommittee requested that we examine the program to determine whether the government was receiving as much for the properties as it reasonably could.

Justice reported a real property inventory of 866 properties valued at about \$170 million when we began our detailed review in January 1987. We reviewed 110 of these properties, appraised at \$59 million, which represented 35 percent of the nationwide value. In addition, we reviewed 47 properties, appraised at \$19.7 million, that were sold or otherwise disposed of between October 1984 and May 1987, including 18 of the 110 inventory properties in our sample. The 47 disposals represented 40 percent of the \$50 million in properties disposed of nationwide during that time. Our review was conducted primarily in the Marshals Service districts of Miami, Dallas, and Houston. Appendix I contains a detailed description of our review objectives, scope, and methodology.

SUMMARY RESULTS

Justice's policies and procedures make it clear that although the primary objective of real property forfeiture is to economically punish criminals and destroy the economic power of criminal enterprises, the program must employ sound business practices to maximize the economic return to the government and

protect the valid interests of innocent parties. Justice realized a net economic return¹ of \$2.1 million on 47 real properties disposed of that we reviewed. However, no net economic return was realized on 26 of the 47 properties. Additionally, these disposals sometimes resulted in innocent mortgage holders incurring losses. Properties with marginal prospects for realizing a net economic return are being unnecessarily processed through lengthy forfeiture and disposition processes because Justice is not properly identifying and considering the defendant's equity in the property. The defendant's equity is the only property interest that is forfeitable to the government.

Justice also experienced substantial problems in selling the real property we reviewed. Properties offered for sale were withdrawn or, if sold, usually the sales were cancelled or significantly delayed before going to settlement. These problems occurred because Justice had not complied with all forfeiture requirements, such as holding a court hearing to resolve the interests others have in the property or because buyers could not obtain the title insurance which financial institutions require before they will finance the buyer's purchase. Title insurance companies were reluctant to insure title on forfeited properties because Justice could not satisfactorily demonstrate that all

¹The "profit" made on a property after its expenses have been offset against its sale proceeds.

forfeiture requirements were complied with or because the companies had serious reservations regarding the constitutionality of the forfeiture process.

Finally, the problems identified in our review and statements by some Justice staff indicate that the U.S. Attorneys and Marshals Service may lack enough staff who are sufficiently knowledgeable and experienced in real property law and management to adequately deal with the many complex issues which routinely arise in the transfer of title for forfeited properties. Additionally, (1) the lower priority that real property management has among the U.S. Attorneys and Marshals relative to their law enforcement activities, (2) the Marshals Service's increasing workload, and (3) the lack of accurate management information are factors which contribute to unprofitable and untimely property disposals.

As we will outline later, substantive actions can be taken to improve the real property program's economic effectiveness.

REAL PROPERTY FORFEITURES

ARE INCREASING

The Comprehensive Crime Control Act of 1984 (P.L. 98-473) increased federal law enforcement agencies' authority to seize and obtain forfeiture of assets, particularly real estate, that were illegally used or acquired. The act provides that, after

complying with the specified forfeiture requirements, including the disposition of all petitions filed with the relevant federal court, the United States shall have clear title to the forfeited property and may warrant good title to any subsequent purchaser. Since passage of the act, Justice's real property forfeitures have steadily increased. As of June 30, 1987, Justice had 1,073 real properties appraised at \$186 million as compared to 209 properties valued at \$76 million in October 1984.

Real property seizures are made on the basis of information developed by Justice's Drug Enforcement Administration, Federal Bureau of Investigation and the Organized Crime Drug Enforcement Task Force. Justice's Marshals Service is responsible for managing and disposing forfeited real estate through its 94 districts. Within the Marshals Service, 13 regional National Asset Seizure and Forfeiture Offices provide guidance and technical assistance to the Marshals. U.S. Attorneys in 94 districts decide whether properties are to be seized for forfeiture and they prosecute the cases through the federal courts.

Justice's policies, manuals, and procedures recognize that there are occasions when it will be in the government's law enforcement interest to seize and forfeit real property that will not provide an economic return to the government. Such seizures, however, should be made as a result of a conscious decision after

consideration of the circumstances. The presumption is that seizures of unprofitable real properties will not routinely be made. As specified in Justice's guidance to the U.S. Attorneys, Justice has

"a responsibility to operate the asset forfeiture program in a way that maximizes the collateral economic return to the government and recognizes the interests of innocent third parties."

Justice's manuals identify numerous actions that must be taken to fulfill the legal requirements of forfeiture and recognize the interests of innocent third parties before property title will be transferred to the government. These include filing an order of forfeiture in a federal court, determining the defendant's equity in the property and liens and interests of innocent third parties, notifying all persons with an interest in the property either personally or through newspaper publication, holding a court hearing to resolve third party interests, and obtaining a court-issued final order of forfeiture.

PROPERTIES WITH MARGINAL ECONOMIC PROSPECTS

ARE BEING SEIZED AND FORFEITED

Justice realized a net economic return of \$2.1 million on the 47 property disposals we reviewed.² Twenty-six of the disposals, however, realized no net returns and incurred losses totaling \$83,200. The unprofitable disposals are occurring because Justice is seizing and forfeiting real properties through lengthy forfeiture and disposal processes without adequately identifying and considering how much of the property -- the defendant's equity -- is forfeitable to the government. Also, Justice's criteria for determining whether it would be economically worthwhile to seize and forfeit properties is too low to prevent seizing unprofitable properties.

Most real property disposals

were unprofitable

As shown in Table 1, 20 disposals realized a net economic return of \$2.1 million. However, 26 of the disposed properties realized no net return or incurred a loss. We could not determine profit or loss for one property because of insufficient file documentation.

²Direct costs, such as those incurred in managing, maintaining, and disposing of real properties are included in our computation of net economic return. Undeterminable personnel costs of U.S. Attorneys, U.S. Marshals and other agency personnel are not included.

Table 1

<u>Description</u>	<u>No. Of Properties</u>	<u>Net Return Or <Loss>³</u>
Sold at a profit	20	\$2,219,900
Sold at a loss	5	<35,000>
Returned to lienholder or defendant	21	<48,200>
Unknown	<u>1</u>	<u>-</u>
Totals	<u>47</u>	<u>\$2,136,700</u>

The 20 profitable properties included eight houses with values ranging from \$33,500 to \$265,000, six businesses with values ranging from \$184,000 to \$3.5 million, five parcels of land valued from \$10,000 to \$185,000, and a leasehold interest appraised at \$35,000.

The remaining 26 properties either broke even or incurred a loss. A loss of \$ 48,200 was sustained on 21 of the properties which were returned to lienholders or defendants because the defendant's equity was insufficient to justify the government's efforts to sell the property. The 21 properties consisted of 19 houses valued between \$30,000 and \$973,000 and two commercial enterprises valued at \$425,000 and \$3.5 million. Twenty of these

³Direct costs such as those incurred in managing, maintaining, and disposing of real properties are included in our computation of net economic return. Undetermined personnel costs of U.S. Attorneys, U.S. Marshals and other agency personnel are not included.

properties were held in Justice's inventory an average of 12 months ranging from a low of 17 days to a high of 31 months.⁴

Five of the 26 properties were sold at a loss of \$35,000. These properties were held in Justice's inventory an average of 17 months, ranging from a low of 5 months to a high of 27 months. The properties included five houses with values ranging from \$31,500 to \$250,000. Appendix II lists the period of time the properties disposed of spent in Justice's inventory.

Seizures of unprofitable properties create an unnecessary management and administrative burden for U.S. Attorneys and Marshals and detracts from their ability to effectively process profitable properties. Also, because Justice generally recovers its costs before the liens and mortgages are paid, holding properties with marginal prospects for economic return for long periods of time could unnecessarily penalize innocent third parties. Because of incomplete information, we could not determine how many of the unprofitable disposals resulted in mortgage holders incurring losses. We did note two instances where mortgage holders incurred losses of over \$117,000.

The extent to which unprofitable disposals will continue is unknown. Justice does not know how much of its real property

⁴Information was lacking to enable us to determine how long one property was held.

inventory is encumbered by valid liens and mortgages and such information is needed to determine the defendant's equity in the property. For example, of the 83 inventory properties that we reviewed, 63 property files lacked the debt information necessary to identify the defendant's equity. Therefore, neither we nor Justice can estimate how many of the inventory properties have marginal prospects for realizing net economic return upon disposal. Despite the lack of information, we did identify several examples of such marginal properties.

For example, as shown in Appendix III, seven properties are projected to realize a loss of \$668,000. The projected loss will likely be greater because the government is required by court order to pay a \$3 million mortgage plus accumulating 11 percent interest on one of the properties. Additionally, in August 1987, the Deputy Marshal told us that one of the properties was sold and the lienholder was not paid \$100,000 because the sale proceeds were not sufficient to pay all valid liens.

Criteria for determining whether
property should be seized is inadequate

Justice's criteria for determining whether it would be economically worthwhile to seize real property is too low to prevent seizure of unprofitable properties. The U.S. Marshals Service manual specifies that the National Asset Seizure and Forfeiture regional office should be requested for guidance before assets with excessive liens or encumbrances are seized. Liens or encumbrances are defined as excessive if they approach, equal, or exceed the appraised value of the property. The U.S. Attorneys' manual states that it may be ill-advised or wasteful to seize and forfeit real property of low monetary value. The guidance does not define low monetary value, however. The Drug Enforcement Administration's guidance states that property of \$10,000 or less should not be seized. The Federal Bureau of Investigation specifies that real property with an appraised value less liens of \$10,000 or less should not be seized.

The above criteria fails to recognize the lengthy periods of time required to forfeit and dispose of real property. It allows for seizure of property when costs can easily exceed the defendant's equity. This is particularly true as the value of the property increases because the selling commission is a percentage of the sales price. For example, on September 29,

1986, Justice seized farmland in Lakeland, Florida, which was appraised at \$575,000 with liens of \$531,481. This seizure meets the established criteria because the unencumbered balance totals \$43,519. However, the incurrence of a six percent selling commission, which is normal for the industry, would reduce the projected return to about \$9,000, even without the incurrence of additional mortgage interest and other management expenses. In August 1987, the Assistant U.S. Attorney handling this case told us that the farmland is being returned to the lienholder because accumulating mortgage interest and anticipated selling expenses will exceed sales proceeds.

Our analysis of real property disposals and discussions with agency officials indicate that more specific criteria is needed to minimize the seizure of unprofitable properties. For example, attorneys in the Criminal Division's Asset Forfeiture Office note that properties with marginal equity, which they characterize as 20 percent or less of the property value, need to be thoroughly reviewed to justify seizure.

JUSTICE IS EXPERIENCING SUBSTANTIAL
PROBLEMS IN SELLING REAL PROPERTY

Properties offered for sale that we reviewed were withdrawn or, if sold, the sales were usually cancelled or significantly delayed before going to settlement. These problems occurred because Justice had not complied with all forfeiture requirements

or because buyers could not obtain the title insurance which financial institutions require before they will finance the buyer's purchase.

We analyzed Justice's efforts to sell 46 properties through one auction company in Miami, Florida, during November 1986 and January 1987. The auction company offering represented the largest Justice effort to sell real property nationwide. Twelve properties valued at \$6.1 million were subsequently withdrawn from the proposed sale. Because the records were incomplete, we could not determine why each property had been withdrawn; however, at least five properties were withdrawn because court hearings required to resolve third party interests had not been held.

For example, two of the 12 properties appraised at \$4 million and \$1 million respectively, were withdrawn from the November 1986 sale in October because Justice had not notified third parties with interests in the properties as required. District personnel told us that, as of September 1987, the required hearing had not yet been held for the \$4 million property. District personnel could not explain why the hearing had not been held.

In another instance, Justice told the auction company in September 1986 to include three forfeited Florida condominiums

valued at \$40,300 each, in the planned November auction. Memoranda and the record of title searches in the case file clearly reveal that the properties were originally titled in both the defendant's and his father's names. Although the government obtained forfeiture of the defendant's interest in August 1984, a required hearing had not been held to resolve other third parties' interest, including the father's. The hearing has now been scheduled for September 1987, more than 39 months after it should have been held.

Neither the regulations nor the U.S. Attorney's manual require that hearings on third parties be held within specified time frames; however, Justice officials in the Criminal Division and the U.S. Attorney's office in Houston stated that within 30 days after forfeiture, steps should be taken to initiate the hearing process by notifying parties with interest in the property of the forfeiture. The U.S. Attorneys' manual specifies that hearings should then be held within 60 days after notification.

Of the 34 properties (valued at \$11.4 million) actually offered for sale, all but one had sale offers accepted at the auction. Of the 33 properties for which offers were accepted, only two went to settlement within the 60 days specified by the sales contract; a third property closed within 75 days. As of August 28, 1987, ten sales had been settled, nine had been

cancelled (including three where the properties were returned to the lienholder and six where the deposits were returned at the buyer's request) and 15 were still pending 9 months after the auction.

The problems in finalizing the sales resulted from unresolved questions and issues concerning the government's ability to demonstrate it had good title to the property. For example, 26 of the 30 properties included in the Miami auction lacked title abstracts and opinions which the auction company determined were needed to identify valid interests of third party claimants and resolve other title questions. In other cases, Justice had been made aware of potential problems but had not taken action to resolve the issues. In still other instances, Justice officials did not realize the actions they had taken were inadequate to convey good title. To illustrate:

-- The \$195,000 sale on a house in Florida could not be settled because a court hearing had not been held to resolve third party claims against the property. The U.S. Attorney is currently clearing the government's title in the Florida state court.

-- One residence in Miami, Florida, was sold three times before it was disposed. The first sale in October 1984 was cancelled because the property had not yet been

forfeited. The property was resold in June 1985 but the buyer cancelled the sale in May 1986 because Justice could not provide a general warranty deed which conveys clear title to the property. The third sale in November 1986 was not settled until May 4, 1987 when the buyer used private financing and the title was conveyed by a Marshals Deed which conveys whatever interest, if any, the government has in the property. A Marshals Deed is a quit claim deed that conveys title "as is"; the government does not warrant clear title to the property.

-- Another of the properties sold in November 1986 could not go to settlement because the property had been owned by a corporation in the Grand Cayman Islands. The actions taken by Justice to obtain title to the property did not comply with Grand Cayman law for transfer of corporate property. The sale was finally settled in May 1987 under a Marshals Deed and with private financing.

TITLE SEARCHES ARE INADEQUATE

Justice's policies and procedures require agency personnel to make a title search before or immediately after seizure of the property. The title search is intended to determine whether the defendant has a financial interest in the property and any outstanding liens and mortgages. Our review reveals, however, these type searches are often not done or, when done, they do not

adequately identify issues that must be resolved to convey clear title to the government. We also noted instances when the searches identified issues needing resolution but no action was taken.

Our review of 83 properties in the Miami, Dallas, and Houston districts' inventories indicates that title issues have not been resolved for at least 45 of the properties. Also, 26 of the properties did not have any title search in the file. Therefore, Justice does not know whether those properties have title issues which must be resolved before the government has clear title to them. The following examples illustrate the problems which occur when title searches are not done or when title issues are not resolved before selling the property.

-- The sale of a \$4.1 million estate had not been settled a year after its sale because the defendant wife's claims to the property had not been resolved before offering the property for sale. While the courts have since resolved that issue in the government's favor, the latest question concerns whether the government can convey the property without the deed restrictions required by the state because it is a registered historical landmark. As of September 21, 1987, the Marshals Service told us that the

buyer will likely cancel the sale because of the state's restrictions.

- In Texas, a title search done by the seizing agency did not identify the owner of record for a \$158,000 residence. The owner had properly recorded her ownership in the property with the applicable county clerk office about 2 years before it was seized. As a result, the property was tied up in the court for about 2 1/2 years resolving the title questions.

- In Texas, 14.9 acres of land valued at \$15,000 was seized and forfeited before the government determined who was the owner of record. According to the firm hired to do the title search, the owner of the property is not the defendant and the government has no defensible claim to the property.

- Because a title search had not been done when the property was seized, the defendant sister's interest in a \$33,500 Texas property was not identified until 5 months after the defendant's interest in the property was ordered forfeited.

-- In Texas, 40 acres of land, appraised at \$38,500, were seized. Although official records showed that the defendant's child acquired the property as a gift from her grandparents, the property was forfeited and arrangements made to sell the property without a court hearing to resolve her interest in the property. An attorney for the child instituted legal action and the forfeiture was overturned. A court hearing to resolve her interest in the property was subsequently scheduled for September 1986; almost 4 months after the property had been seized.

Title companies are reluctant
to insure forfeited property

Title companies have been reluctant to insure forfeited property because they lacked assurance that Justice had (1) identified all parties with an interest in the properties, (2) notified those parties of the government's intention to forfeit the property, and (3) provided those parties with an opportunity to present their claims against the property. Justice recognizes that these issues are of major concern to the title insurance companies. Therefore, Justice issued more specific procedures for identifying and notifying third party claimants to enable Justice to satisfactorily document that reasonable efforts were made to resolve third party interests. According to a May 1987

memorandum to all U.S. Attorneys, these procedures provide for, among other things,

- obtaining title abstracts before or immediately after initiation of the forfeiture action;
- notifying the registered agent as well as any other party that the government has reason to believe is a corporate owner, even if not so designated;
- obtaining an affidavit outlining efforts made to notify the defendant if he is a fugitive; and
- writing the order of forfeiture to address all liens and how the proceeds from disposal should be distributed.

We discussed these changes with the American Land Title Association, a Washington, D.C., based group that represents U.S. title companies. According to the Association's counsel, the new procedures represent substantive improvements over Justice's prior practices. However, he believed that they would not substantially increase the insuring of title on forfeited properties. As he and other title company officials explained to us, they have reservations about the constitutionality of real property forfeitures. The officials told us they are concerned that if real property forfeitures are declared unconstitutional, the insured property will (1) become an instant liability that must be paid by the industry, and (2) the government will not reimburse the companies for the claims paid even though the title

companies insured the property on the government's warranting of good title.

Justice Criminal Division officials told us that the title companies' fears are without merit. They have attempted to persuade the companies that the constitutionality issue has no merit through discussions and informing company officials of Justice's forfeiture policies and procedures. However, the title companies' position has not substantially changed as a result of these efforts.

According to the American Land Title Association's counsel, insuring title to forfeited properties has higher risks than insuring title to properties usually insured by title companies -- the normal, every-day sales and purchases of real estate. He said that given the higher risks, and the small number of forfeited property sales annually in comparison to the overall number of properties insured by the title companies each year, it is unlikely that companies will be eager to insure title to forfeited real property. He said that as long as the government is unwilling to guarantee that it will reimburse the companies for any claims arising from deficiencies in the forfeiture process, the title companies will continue to insure forfeited properties on a case-by-case basis when they consider the property to be of low risk.

ADDITIONAL REAL ESTATE EXPERTISE

MAY BE NEEDED TO IMPROVE ASSET

SEIZURE MANAGEMENT

The problems we identified and statements by some Justice staff indicate that the U.S. Attorneys and Marshals Service may lack enough staff who are sufficiently knowledgeable and experienced in real property law and management to adequately deal with the many complex issues that routinely arise in the transfer of title for forfeited properties. Attorneys and program managers appear to be learning real property management through trial and error experiences. Additionally, the lower priority that real property management has relative to law enforcement activities, the Marshals Service's increasing workload, and the lack of accurate management information are contributing factors to the unprofitable and untimely disposals we identified.

Complexity of real estate issues

requires specialized legal assistance

Generally, treatises on real estate law identify issues relating to the transfer of title as the most complex aspect of real estate transactions. They advise that untrained persons should avoid attempting to perfect title-related issues because of the potential for hidden risks involved in the purchase of real property. Although attorneys are required as part of their law school curriculum to take a general course in real property

law, an attorney generally needs to work in the area for some time to become knowledgeable in real property law.

In attempting to resolve some of the seized property title problems, case attorneys often failed to recognize that a title abstract and opinion was needed for many of the properties and tried to sell properties without clearing the title problems. Title abstracts consist of a condensed statement of the key facts in each transfer. Normally, the abstracter express no opinion as to the legal significance of the instruments but simply analyzes them and assures that all time periods are accounted for. In an opinion, the lawyer examines the abstract, interprets the relevant documents and then renders his opinion as to the state of the title.

Our review results indicate U.S. Attorneys often were unaware of the need for specialized legal expertise in processing real estate forfeitures and subsequent real property disposals. Generally, U.S. Attorneys' lack of understanding of title issues resulted in little or no action being taken to correct title problems until the buyers of the forfeited properties attempted and failed to obtain title insurance.

For example, a U.S. Attorney in Miami told us that the attorneys initially forfeited and disposed of real property in the same manner as personal properties. Personal property (cars,

jewelry, furniture) are more easily forfeited than real property because the owners and parties having interest in the property are easier to determine, the requirements for notifying parties of the forfeiture are less stringent, and personal property is usually not considered to be unique whereas real property is.

In another instance, an attorney did not understand the title abstract and opinion which had been contracted for from an experienced real estate law specialist for one residential property. The attorney did not follow the specialist's instructions on clearing the title's deficiencies. Therefore, the title is taking longer to clear because numerous items have to be redone.

In another instance, title insurance companies refused to issue title insurance on a residence in Texas because they concluded that, even after the forfeiture proceedings were completed, the government did not have title to the property. The property, which was appraised at \$204,500, was seized in March 1986, and forfeited in June 1987. According to court records, the seizure and forfeiture documents for the property have the incorrect legal description and street address. A NASAF official told us that the Marshals Service is considering (1) instituting proceedings to forfeit the property, or (2) advertising the property at about 75 percent of its fair market value with the understanding that the buyer may have to seek a

warranty deed from the defendant to qualify for title insurance. However, he also said the federal government may not have a claim to the sales proceeds because the defendant's equity has not been forfeited. Thus, the defendant may be entitled to the sale proceeds.

Heavy workload and low priority
hamper effective real property
management

Within the Marshals Service's district offices that we reviewed, no unit is dedicated full-time to the asset seizure program. While each district has people designated to work on the program, this is only one of the many duties that they perform. For example, Marshals are responsible for providing support and protection to the federal courts, including judges, attorneys and jurors, apprehending most federal fugitives, operating the witness security program, custody and transportation of thousands of federal prisoners annually, serving notices of civil and criminal proceedings on a daily basis, executing arrest warrants, preventing civil disturbances, and restoring order in riot or mob-violence situations.

The Marshal Service's significantly increasing workload is of concern to Justice. In complying with the requirements of the Federal Managers' Financial Integrity Act, the Attorney General

reported to the Congress and the President on December 31, 1986, that

"Increased levels of activity generated by the Comprehensive Crime Control Act of 1984 have put considerable workload pressure on the USMS [Marshals Service], especially in the areas of the protection of the Judiciary and Federal property, the handling of Federal detainees, and witness security. There is a potential that, if unattended, the workload could impair the fulfillment of significant portions of the USMS' mission."

The Marshal in Miami told us he plans to establish an Asset Seizure Unit but he currently does not have the personnel to do so. He said the unit will eventually consist of six people: a supervisor, two clerks, two full-time deputies, and a position which will be filled on a rotating basis for 6-month periods by a deputy. In Miami, the property managers were Deputy Marshals who had been operating as managers less than a year. They told us their training and expertise in real estate matters was limited. The Marshal stated that while he recognized the importance of the Asset Seizure Program, it has a lower priority than the Marshals Service's primary mission of protecting federal judges and transporting prisoners.

The NASAF offices were established within the Marshals Service to provide technical assistance and guidance to the districts. In Miami and Houston, the people hired to fill the NASAF technical position told us they had contracting,

procurement, or administration backgrounds, but not the broad real property knowledge needed to adequately address the complex real estate issues which arose. Also, an auction company official expressed his opinion that NASAF staff are operating as real estate brokers without obtaining the training or the state license required for private brokers.

In June 1987, the Marshals Service reported difficulties in getting U.S. Attorneys' offices to devote time to civil forfeiture-related matters, such as actions to clear title, and other real property legal matters. The Marshals Service would like authority to contract for legal assistance in these matters. As of September 1987, Department management was considering this request.

BETTER MANAGEMENT DATA WOULD IMPROVE
PROGRAM AND PROPERTY MONITORING

Marshals Service management data is inadequate to properly manage or monitor the real property program. Specifically (1) information system data, including inventory data were inaccurate and incomplete; (2) legal documents and other file documentation on the individual properties were missing; and (3) internal controls over properties' expenses and income were inadequate. These inadequacies hamper the making of informed decisions on the management and disposal of seized properties and contribute to

seizing properties with low defendant's equity and delays in disposing of properties.

Information system data inaccurate and incomplete

The district Marshals Service manual requires that an inventory log be maintained, listing each item of property seized. These logs list the type of property seized (real property, cash, conveyance, personal property) the case number, seizure date, appraised value, and disposition. The log is to be kept current.

Likewise, each NASAF regional office maintains a record for every property seized by the district offices within its region. The NASAF regional system is automated and can communicate with NASAF headquarters while the districts' inventory logs are generally manual systems. A few districts, such as Miami, Florida, have automated their inventory logs; however, in such cases the information cannot be transmitted directly from system to system because, at least in Miami's case, the systems are not compatible. NASAF's automated inventory and information system was designed to collect the kinds of information needed for management and oversight of the program, such as (1) the type, volume and value of the property being seized, and (2) the costs of seizures and resources needed to support property seizure efforts.

Our review and reconciliation of the logs in the Miami, Houston, and Dallas districts disclosed that all real property shown on the district's log was not shown on the NASAF log or vice versa and that all real properties on-hand were not shown on either the NASAF or the district's log. Specifically,

- 16 out of 167 properties on-hand were not listed on either the district's or NASAF's log. District personnel stated that these properties were from cases originating outside the district and, when the program first started in 1984, NASAF had managed these properties. The Deputy Marshal suspected that when the district took over management of the property from NASAF, the out-of-district properties had not been added to the inventory log.
- Of the remaining 151 real property files, 15 were shown only on NASAF's log and not on the district's log while 14 were shown on the district's log and not on NASAF's. District office personnel stated that they do not receive copies of the NASAF log on a regular basis, therefore, they do not know whether the information can be reconciled.

The NASAF manual requires the district to submit numerous documents for each seizure to NASAF. The documents, which are used in entering data into NASAF's automated system, essentially

include all documents except expense and income vouchers.

Specifically, the documents are:

- Marshals Service Process Receipt and Return (Notice);
- Complaint for forfeiture;
- Arrest warrant for property;
- Seized Property and Evidence Control Record; and
- All associated orders.

This creates a very paper-intensive system and results in duplicate files. In Miami, the information is entered into the district's system and entered a second time into NASAF's system. The NASAF clerk in Miami estimated that 75 percent of his time is spent entering data on the NASAF system and maintaining the resultant files. We believe the value of such a duplicate system is questionable when (1) higher priority tasks such as obtaining title searches or identifying the amount of defendant's equity are not being done; (2) the information in the system is inaccurate; and (3) the NASAF information is not shared with the districts managing the property to reconcile any discrepancies. As of August 1987, the Marshals Service was evaluating contractor proposals for a system to resolve its management information problems. We believe consideration should be given to procuring computer terminals that will allow communication among the districts and the regions so data can be inputted once and the paper flow among the districts and the regions can be reduced.

We also noted that the inventory log in Miami was maintained in a 3-ring binder with a separate sheet for each property. The sheets were not numbered sequentially. Therefore, without a complete reconciliation of the files on hand or checking the computer data base, it was not possible to tell if all property was accounted for. While the attempt made by Miami to computerize their inventory is laudable, we believe steps should be taken to assure inventory sheets account for all property.

Neither the regional nor district systems produce aggregate or summary data. Therefore, local personnel were not able to identify the numbers and value of real property on-hand. They also could not identify the number of seized properties that had been disposed. Without such aggregate information, it is difficult for the regions or districts to assess program performance. We obtained the information for our analyses by counting the number of properties recorded individually in the district inventory log, adding the values shown in the log for the properties, and identifying properties that had been disposed of by studying the annotations in the log.

File documentation is incomplete

Our review also disclosed that all files reviewed were missing important legal or other documents necessary to adequately manage the property. Specifically, 5 files did not have appraisals; 26 did not have title searches; 75 did not have

the notice of seizure and forfeiture; 63 were missing information on current debts; and 31 had no indication that a lis pendens⁵ had been filed; and none contained a running record showing the status of the property. Oral communications with attorneys, realtors, management firms, third party owners, and others, which significantly affect the management of the property were not recorded in the file. The missing documentation occurs because (1) there is no system for assuring that the Marshals Service receives all seized property documents from the clerk of the courts, (2) the Marshals heavy workload makes it difficult to keep the files up-to-date, and (3) the use of loose-leaf files contributes to the disorganization of files and loss of documents.

We also noted instances when the payment of expenses and collecting of income were not in compliance with Marshal Service requirements. Expenses of properties pending forfeiture are to be paid from the Asset Forfeiture Fund whereas income from such properties are to be deposited into the Seized Asset Deposit Account -- a holding account which is used until all property litigation is completed. District office personnel are required to fully account for all payments and income by recording them on

⁵ A lis pendens is a notice filed to warn all persons that the title to the property is in litigation.

the case file folder cover. Also, invoices, vouchers, and all necessary documentation are to be filed in the folder. We noted the following instances when these requirements were not complied with.

-- In Florida, the defendant's wife was receiving \$1,000 per month from persons who were renting space in an airplane hangar which had been seized by the government. This income should have been collected by the Marshals Service but they had not done so. We brought the non-collection of rental income to the Deputy Marshal's attention in February 1987 who informed us that it had been an oversight. However, as of July 1987, the Marshals had not collected any rental income which we estimated to be \$14,000.

-- Association dues plus interest of \$15,511 had not been paid by the Marshals Service on a Miami, Florida, property for 38 months. The homeowner association threatened to sue the Marshals Service before they were finally paid.

-- In Miami, Florida, the Marshals Service was allowing a firm which was managing six properties to net monthly rental income against monthly expenses for items such as pool and lawn maintenance. As a result, the income was

not deposited into the holding account nor were expenses paid out of the Asset Forfeiture Fund as required. About \$111,600 of monthly income and expenses was involved. Also, the Marshals Service's accountant did not review the management firms' income and expense reports on these properties because he did not have to issue any checks to reimburse them for expenses incurred. The accountant stated that he did not have time to write separate checks for the expenses on each property; therefore, he believed that netting the expenses and income was appropriate even though they involved different Fund accounts. The "netting" of receipts and expenses does not provide a complete or adequate record of financial transactions nor does it comply with the Comptroller General's accounting and reporting standards⁶, as required by the Federal Managers' Financial Integrity Act.

Marshals Service's inspection reports
identify internal control weaknesses

Marshals Service inspection reports issued during the 3-year period ending July 1987 identified numerous internal control weaknesses in the districts accounting for and managing seized assets. We reviewed all reports that were issued during the period covering 45 of the 94 Districts. The following table

⁶GAO Policy and Procedures Manual For Guidance of Federal Agencies, Title 2 - Accounting and Other Related Comptroller General's Requirements.

summarizes the type and frequency of control weaknesses and deficiencies reported.

TABLE 3
SEIZED PROPERTY INSPECTION FINDINGS
FOR THE PERIOD JULY 1984 THROUGH JULY 1987

<u>INTERNAL CONTROL WEAKNESSES</u>	<u>NUMBER OF DISTRICTS</u>	<u>PERCENTAGE OF DISTRICTS WITH WEAKNESSES</u>
Inaccurate/Incomplete Inventory	19	42
Inaccurate/Incomplete Case Files	25	56
Inaccurate Property Cost Records	5	11
Inadequate Property Security	9	20
Inefficient/Ineffective Disposal of Seized Property	12	27
Improper Retention of Seized Property By Federal Agencies	5	11
Other	7	16

The following examples illustrate several of these weaknesses

-- Inaccurate/Incomplete Inventory

A July 22, 1987, report revealed that the Seized Property and Evidence Register had 625 open cases when only 393 cases were actually open.

-- Inaccurate/Incomplete Case Files

A June 1, 1987, report stated that, because of the lack

of file information, a determination could not be made that property disbursements were authorized and legal, services were procured at a reasonable price and that all services paid for were received.

-- Inaccurate Property Cost Records

An October 29, 1986, report stated that a review of seized property files revealed that all expenses were not being recorded in the individual case folders. As a result, the Marshals Service would not be accurately reimbursed for incurred expenses.

-- Inefficient/Ineffective Disposal of Seized Property

A July 22, 1987, report stated that the district (one of the largest in seizures) had not applied sufficient resources or management emphasis to the program and that,

"As a result, the seized property records are not accurate complete or up-to-date and cannot be relied upon to determine the number of open cases or the quantities and locations of seized assets on hand. Sales of seized property have been unnecessarily delayed possibly diminishing the return from their sale".

RECOMMENDATIONS TO THE

ATTORNEY GENERAL

We recognize that the primary purpose of seizing assets is to economically punish criminals. Within that law enforcement context, however, we recommend the following actions to improve the economic effectiveness of real property seizures and forfeitures. Specifically, we recommend that the Attorney General

- Revise agency criteria for determining whether it is economically worthwhile to seize real property to recognize the defendant's equity and costs anticipated to be incurred during forfeiture of the property.
- Improve the adequacy and accuracy of real property information, including the reporting of defendant equity represented in the real property inventory.
- Ensure that Justice agencies comply with the recently established requirement for title abstracts and opinions before or immediately after seizure.
- Assess the extent to which legal and management real estate knowledge and expertise is needed within Justice and make arrangements to obtain this knowledge and expertise in-house or through contracting. This will

help Justice to assure that (1) the seizure of unprofitable properties can be avoided or quickly returned to the owner, or (2) title issues on profitable properties can be resolved while the property is being processed for forfeiture.

- Consider alternative measures for resolving title insurance companies' reluctance to insure forfeited real properties.
- Establish specified time frames for initiating the third party hearing process.

RECOMMENDATIONS TO THE
U.S. MARSHALS SERVICE DIRECTOR

To correct the administrative and management information problems, we recommend that the U.S. Marshals Service Director:

- Develop a system with the court clerk to assure receipt of all legal seizure documents;
- Devise a less paper-intensive, and compatible system between NASAF and the districts;
- Provide NASAF program and district summary and individual property data to all districts for review,

reconciliation, and correction;

- Require, where computerized inventory logs are used, an index of properties to assure that all are accurately accounted for;

- Require important oral communications affecting the status and management of the property, whether they be with the case attorney, realtor, management firm, third party owners, or other, to be recorded in the file.

- Assure that expenses and income are supported by appropriate documentation and comply with Marshals Service requirements; including periodically reviewing management firm reports to assure that expenses are not netted against income.

OBJECTIVES, SCOPE, and METHODOLOGY

The Subcommittee on Federal Spending, Budget and Accounting, U.S. Senate, requested us to examine the Department of Justice's management of seized and forfeited real property to determine whether the government was receiving as much for the properties as it reasonably could.

To address the Subcommittee's concern, our review focused primarily on real property located in three of Justice's Marshals Service districts: Miami, Florida; Houston, Texas; and Dallas, Texas. These three districts had 167 real properties, appraised at \$36.6 million as of January 31, 1987. At that time, Justice's nationwide real property inventory was 866 properties appraised at \$170 million. Therefore, these three districts represented 19 percent of the nationwide on-hand properties and 22 percent of Justice's appraised value.

We selected the districts of Miami, Houston, and Dallas because

-- Miami had the largest real property inventory with the

highest appraised value within all Marshals Service districts;

• -- Houston had the largest real property inventory in number and value within the third largest Marshals Service region; and

-- Dallas had the second largest real property inventory within the third largest region. In addition, survey work was conducted in Dallas.

To accomplish our objective, we reviewed all properties disposed of in these three districts between October 1984 and May 1987. We also randomly sampled on-hand properties of January 31, 1987,⁷ to determine whether properties in inventory had problems similar to those we identified with the disposals.

Nationwide, we reviewed four properties valued at more than \$1 million that had been disposed of since January 1987 as well as 15 of the 22 properties appraised at \$1 million or more that were on-hand as of May 1987. We reviewed these properties to

⁷ January 31, 1987, was selected as our cut-off date for the sample because often the property file lacks such information as title search, notice of seizure, and appraisal, until several months after the property is seized. Therefore, by reviewing properties in inventory as of January 31, 1987, the Marshals Service had possession of the property for a minimum of 4 months, which was sufficient time for some type of activity, whether legal or operational, to have occurred before we reviewed the file.

determine whether these high-value properties also had problems similar to those identified in our random review of disposals and inventoried properties. Specifically, we reviewed both the million dollar properties on-hand and those disposed in the Miami, Houston, and Dallas districts. The other \$1 million properties we selected to review included

- all nine such properties (one which had been disposed of and eight on-hand) located in the Tampa, Florida, district. The Tampa district had the most high-value properties;
- an on-hand property in Virginia with the highest appraised value of all real property in inventory; and
- one property disposed of in each the Grand Rapids, Michigan, and Milwaukee, Wisconsin, districts. These properties were reviewed at the suggestion of Marshals Service officials to aid in our understanding of the complexity of real property management and disposal.

In reviewing the files in Miami, Houston, and Dallas, we used a uniform data collection instrument to collect information, including (1) dates of seizure, forfeiture, and disposal, (2) appraisal, notice, and title information, and (3) income, expense, and other cost data.

We performed work at and discussed program and property management with officials in the following Justice agencies: Office of Associate Attorney General, Criminal Division, Justice Management Division, Marshals Service, U.S. Attorney, the Drug Enforcement Agency, and the Federal Bureau of Investigation. We also interviewed knowledgeable officials with the auction company that handled the November 1986 and January 1987 sales, the American Land Title Association, and title underwriting companies.

Our review, completed between January 1987 and August 1987, was conducted in accordance with generally accepted government auditing standards.

Aging of Real Property DisposalsMiami, Dallas, HoustonOctober 1984 to May 1987

<u>Description</u>	Net \$ Amount Realized or <Loss>	<u>Days in inventory</u>				
		<u>0-60</u>	<u>61-180</u>	<u>181-365</u>	<u>366-730</u>	<u>Over 731</u>
Returned to Lienholder ¹	<\$48,200>	3	5	4	5	3
Sold at Profit	\$2,219,900	1	1	7	4 ²	7
Sold at Loss	<\$35,000>	0	1	0	3	1
Unknown	<u>-</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
Total	<u>\$2,136,700</u>	<u>4</u>	<u>7</u>	<u>11</u>	<u>13</u>	<u>11</u>

¹ Seizure date and date returned to lienholder was not available for one property.

² Sales information was not available for one property; therefore only 46 of the 47 properties are shown in the schedule.

Examples of Inventoried Properties With Marginal
Prospects For Realizing Net Economic Return
As of May 1987

<u>Description</u>	<u>Value</u>	<u>Liens and costs</u>	<u>Projected Net Return or <loss>¹</u>
Motel, Daytona Beach, FL	\$702,000	\$842,000	<\$40,000> ²
Mobile home park Lakeland, FL	3,020,000	3,600,000	<580,000>
Farmland, Lakeland, FL	575,000	531,481	-0- ³
House Miami, FL	225,000 ⁴	238,000	<13,000> ⁵
Land parcels, Starr County, TX	82,700	100,000	<17,300>
House Irving, TX	138,500	151,200	<12,700>
House Houston, TX	<u>44,000</u>	<u>49,000</u>	<u><5,000></u>
Totals	<u>\$4,787,200</u>	<u>\$5,550,181</u>	<u><\$668,000></u>

¹Direct costs, such as those incurred in managing, maintaining, and disposing of real properties are included in our computation of net economic return. Undeterminable personnel costs of U.S. Attorneys, U.S. Marshals and other agency personnel are not included.

²Government did not pay valid lien of \$100,000 because of insufficient sale proceeds.

³To be returned to lienholder because accumulating interest and anticipated selling expenses would exceed sale price.

⁴Sale price but sale had not yet gone to settlement.

⁵Projected \$13,000 loss as of May 31, 1987, is based on the likelihood that the circuit court will order the Marshals Service to pay the mortgagee post-seizure interest at \$49 per day.