

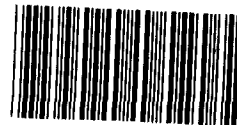
GAO

Report to the Chairman, Government  
Information, Justice, and Agriculture  
Subcommittee, Committee on Government  
Operations, House of Representatives

May 1992

# ASSET FORFEITURE

## U.S. Marshals Service Internal Control Weaknesses Over Cash Distributions



146645

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**General Government Division**

B-246679.1

May 8, 1992

The Honorable Robert E. Wise, Jr.  
Chairman, Government Information, Justice,  
and Agriculture Subcommittee  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

At your request, we are reviewing various aspects of the Department of Justice's asset forfeiture program. In reviewing Justice's Equitable Sharing Program, in which forfeited assets are shared with state and local law enforcement agencies, we examined the internal controls at two districts of the U.S. Marshals Service—the Central and Southern Districts of California.<sup>1</sup> This report discusses the results of our internal control examination over the disbursement of sharing payments to state and local law enforcement agencies by these two districts. At a future date, we will report the results of our work on state and local law enforcement agency use of shared assets.

The Executive Office for Asset Forfeiture (EOAF) directs Justice's asset forfeiture program.<sup>2</sup> The U.S. Marshals Service is the key Justice agency responsible for the day-to-day management and disposal of assets forfeited through the program.

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**Results in Brief**

Internal control weaknesses at the Marshals Service Central and Southern Districts of California make cash obtained from asset forfeitures vulnerable to loss and misuse. We observed weaknesses in district procedures for preparing and distributing checks to state and local law enforcement agencies. Each district followed its own locally established procedures that were based on Marshals Service and Justice guidance. In both districts, erroneous or fraudulent payments might not have been detected because key duties were inadequately separated among staff and because payment vouchers were not properly certified as correct. The risk of loss or unauthorized use of forfeited cash was further increased at both districts because checks were not forwarded directly to the recipient state or local

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<sup>1</sup>Internal controls are methods and procedures adopted by management to ensure that resources are safeguarded against fraud, waste, and misuse.

<sup>2</sup>EOAF sets policies for and coordinates activities of the various Justice agencies involved in the forfeiture program.

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agency. Moreover, one district made checks payable to state and local officials rather than to the government entities they represented.

Although our review was limited to two districts, Justice's Inspector General in 1990 found similar problems in a representative sample of districts. We did not determine the cause of the weaknesses; however, the observed weaknesses and the differences between procedures at the two districts demonstrate that district level interpretations of Marshals Service and Justice guidance can result in procedures that do not adequately safeguard forfeited assets.

We believe that the Marshals Service should provide clear, specific internal control guidance for making sharing payments to all its districts. Such guidance should include explanations of conditions that do and do not create adequate internal controls. The Marshals Service should also monitor districts to ensure that the new guidance is implemented and followed at the local level. In addition, the Marshals Service should clarify and reemphasize the rule that checks be made payable to recipient agencies and not to individuals. Finally, EOAF should change program policy to require that checks be sent directly from the Marshals Service to the recipient state or local agency.

In commenting on a draft of this report, Justice agreed with our recommendations involving Marshals Service guidance, procedures, and monitoring and said it will take steps that we believe should be responsive to our recommendations.

Justice did not agree with our recommendation that sharing checks be routed directly to state and local agencies without going through federal investigative agencies or U.S. Attorneys. Justice said that having genuine checks hand-delivered by federal officials to state and local law enforcement agencies is important to enhance law enforcement cooperation. We believe that such cooperation could be as effectively encouraged by directly forwarding sharing checks from the Marshals Service and using letters or facsimile checks in any presentation ceremonies.

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## Background

The asset forfeiture program was intended to punish and deter criminal activity by depriving criminals of property used or acquired through illegal activities and to use this property to produce revenues to strengthen law enforcement. To enhance cooperation among federal, state, and local law enforcement agencies—especially in deterring drug trafficking—Congress created the asset forfeiture sharing program. As part of the Comprehensive Crime Control Act of 1984, Justice gained authority to transfer forfeited property and cash to state and local agencies that directly participate in law enforcement efforts leading to seizures and forfeitures.

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## Hundreds of Millions of Dollars Shared

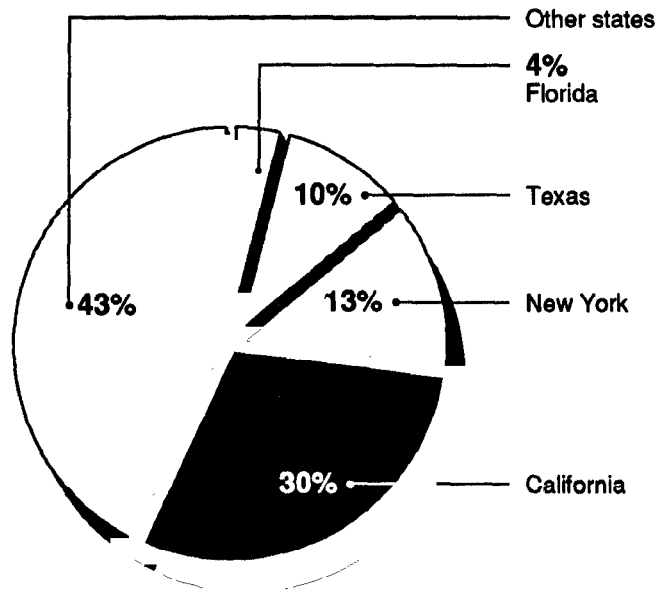
As of July 1991, the Marshals Service had made over \$671 million in asset sharing payments to state and local law enforcement agencies since the program started in fiscal year 1986. Each year, the total amount of sharing payments has increased. In fiscal year 1989, total payments were over \$155 million; in fiscal year 1990, the total exceeded \$179 million.

Sharing payments are made by the Marshals Service office located in the district in which the assets were seized.<sup>3</sup> As shown in figure 1, since the start of the sharing program, districts in the states of California, New York, Florida, and Texas have distributed about 57 percent of total sharing payments.

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<sup>3</sup>Law enforcement agencies receiving sharing payments for participating in investigations leading to seizures may be located in other districts.

**Figure 1: Top Four States for Cash Disbursements to Participating Agencies**



Source: EOAF.

More than 3,000 state and local law enforcement agencies nationwide have received sharing payments. The amount of sharing payments an agency receives will vary. For example, total cash payments to a single agency in New York for fiscal years 1989 and 1990 were \$14.2 million, while an agency in Texas received a total of \$60.00 in the same time period. Twenty-three agencies in the states of California, New York, and Texas each received more than \$1 million in fiscal years 1989 and 1990.

### Asset Sharing Process

Asset sharing returns a portion of the assets seized and forfeited under various federal statutes to state or local law enforcement agencies that participate in criminal investigations leading to forfeitures. State or local agencies request asset sharing through the local field office of the federal investigative agency, usually the Drug Enforcement Agency or the Federal Bureau of Investigation, that participated in or adopted the seizure.<sup>4</sup> Sharing payments are supposed to be made in proportion to the state or

<sup>4</sup>A state or local agency that seizes cash or property may request that a federal agency "adopt" the seizure for forfeiture under federal law. In these cases, the state or local agency's share is 80 to 85 percent of the amount forfeited.

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local agencies' direct participation in the investigations leading to the forfeitures.

The federal investigative agency field office recommends sharing percentages for the agencies involved. On the basis of this recommendation, the investigative agency head, a U.S. Attorney or other Justice official (depending on the size and type of forfeiture) makes the final sharing decision. The forfeiture documents authorizing the sharing are then forwarded to one of three Marshals Service regional offices. The regional office prepares an "Equitable Sharing Decision Memorandum," which summarizes the amount seized, the case number, the percentage to be shared, the agency to which the check should be made payable, and the party to whom the check should be delivered. This document is signed by a regional certifying officer and becomes the voucher authorizing the district to make sharing payments. The regional office forwards the voucher and forfeiture documents to the appropriate Marshals Service district.

Pending completion of forfeiture proceedings, seized funds are placed in the custody of the Marshals Service in the Seized Asset Deposit Fund (SADF). At this point, the funds are not available for sharing. When forfeiture is completed and the district receives the forfeiture documents, the district transfers the forfeited funds from the SADF to the Assets Forfeiture Fund (AFF). The AFF also receives cash proceeds from the sale of forfeited property. Both seized cash and cash proceeds can be paid out from the AFF as sharing disbursements to state and local agencies.

The district calculates the amount to be shared, prepares the sharing checks, and sends them to the federal investigative agency or the U.S. Attorney, depending on who made the sharing decision.<sup>5</sup> The federal investigative agency or U.S. Attorney transfers sharing checks to the state or local law enforcement agency.

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## Objective, Scope, and Methodology

Our objective in examining internal controls at the two Marshals Service districts was to evaluate the adequacy of the controls over the disbursement of asset sharing payments to state and local law enforcement agencies. Specifically, we identified the control techniques in place and evaluated whether the controls as established were adequate to safeguard

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<sup>5</sup>The amount to be shared is calculated as the sharing percentage times the amount available for sharing, which is the amount from forfeiture less case expenses.

forfeited assets against waste, loss, unauthorized use, and misappropriation.

To identify control techniques in place we reviewed The Attorney General's Guidelines on Seized and Forfeited Property,<sup>6</sup> EOAF policies, the U.S. Marshals Service Manual, Marshals Service headquarters and regional office policies and directives, and Marshals Service district procedures. We observed payment processing at the Marshals Service districts from receipt of the payment voucher from the region to the forwarding of the check to the U.S. Attorney or investigative agency. We also reviewed documents related to payment processing, including (1) sharing requests, (2) sharing decisions, (3) declarations of forfeiture, (4) payment vouchers, (5) accounting entries and reports, and (6) sharing checks.

To evaluate the adequacy of controls, we compared control techniques in place to internal control standards in GAO's Policy and Procedures Manual for Guidance of Federal Agencies, titles 2 and 7.

Our work was done at EOAF, U.S. Marshals Service headquarters, the Marshals Service regional office in San Diego, Calif., and two districts: the Central and Southern Districts of California. We selected these two districts because together they have paid out about 24 percent of total sharing payments for all 94 districts since fiscal year 1986.

We did this evaluation between August 1990 and September 1991 as part of our ongoing work on the use of forfeited assets. It was done in accordance with generally accepted government auditing standards. Justice provided written comments on a draft of this report. The comments are discussed on pages 17-18 and are included in appendix I.

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## Internal Control Weaknesses in Preparing and Distributing Equitable Sharing Checks

During our review at the Marshals Service Central and Southern Districts of California, we observed weaknesses in internal controls that could (1) reduce the likelihood that erroneous or fraudulent transactions would be detected and (2) fail to provide reasonable assurance that government resources are safeguarded against loss or misuse. These controls for distributing asset sharing funds were part of local procedures that each district developed on the basis of the Marshals Service and Justice guidance. Although procedures at the districts differed from each other in

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<sup>6</sup>The Attorney General's Guidelines on Seized and Forfeited Property, Department of Justice (Washington, D.C. 1990)—distributed by EOAF—outlines the rules for the asset sharing process.



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several aspects, the controls did not meet internal control standards contained in GAO's Policy and Procedures Manual for Guidance of Federal Agencies in either case.

The Federal Managers' Financial Integrity Act (31 U.S.C. 3512) requires that all federal agencies follow internal control and accounting standards that are consistent with those prescribed by the Comptroller General. These broad standards, which are set forth in the Policy and Procedures Manual for Guidance of Federal Agencies, establish the essential elements of accounting and internal control systems to provide reasonable assurance that funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation.<sup>7</sup>

The act also requires that federal agencies report annually to the President and Congress on whether their internal control systems conform to GAO standards and on their actions to correct identified weaknesses. The weaknesses we observed have not been identified in either the Marshals Service or Justice reports on internal control and accounting systems as required under the act. We discuss these weaknesses and the related control standards and requirements next.

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## Local Processing Procedures Varied

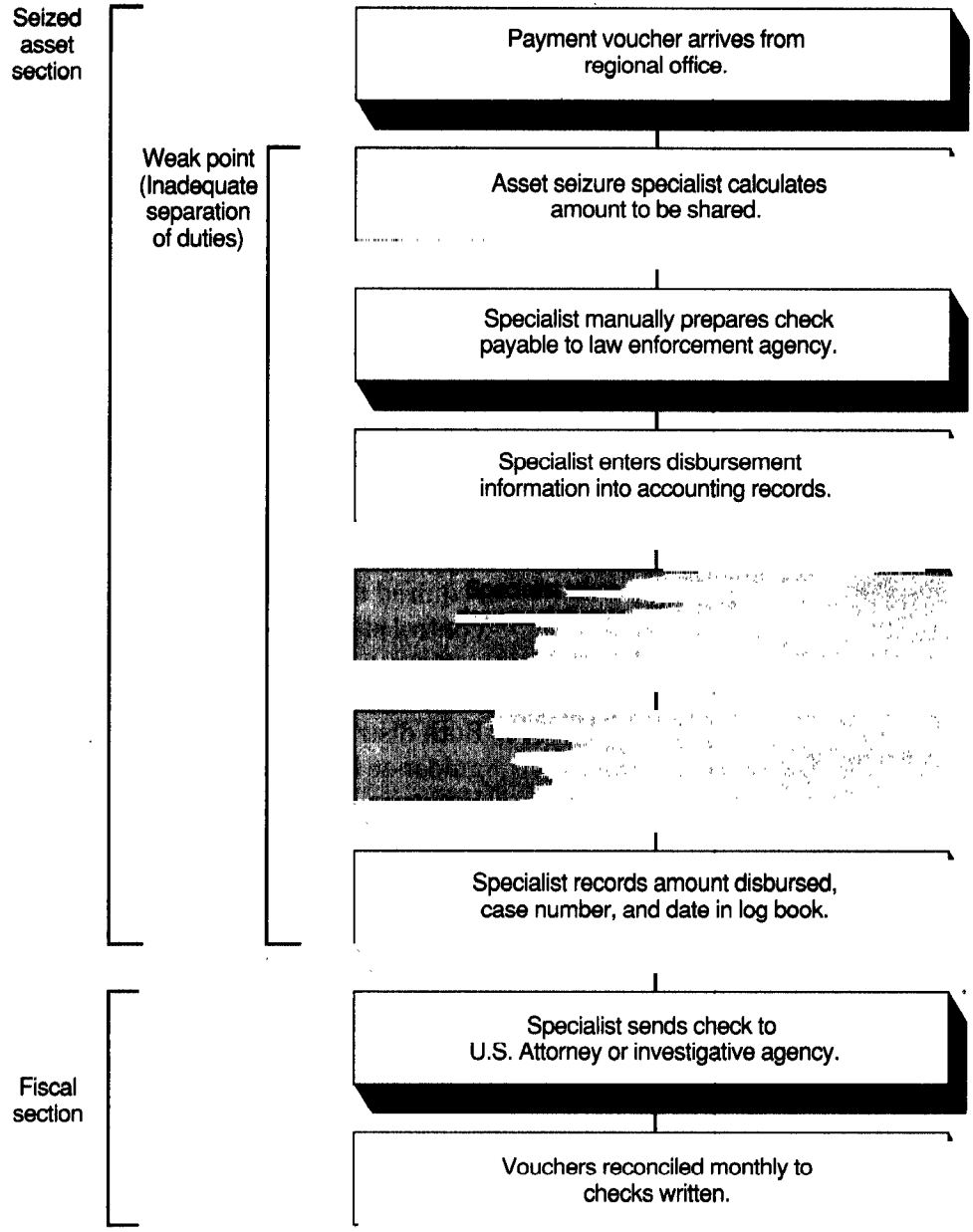
Both districts we reviewed followed U.S. Marshals Service and Justice guidance in establishing processing procedures for sharing disbursements. However, each district differed in its interpretation of this guidance. Although individual steps in the process were similar, varying district interpretation resulted in differences in how key duties were assigned, how and if payment vouchers were certified, and how checks were made out.

Figures 2 and 3 illustrate the processing procedures and internal control weakness that we found at the two districts.

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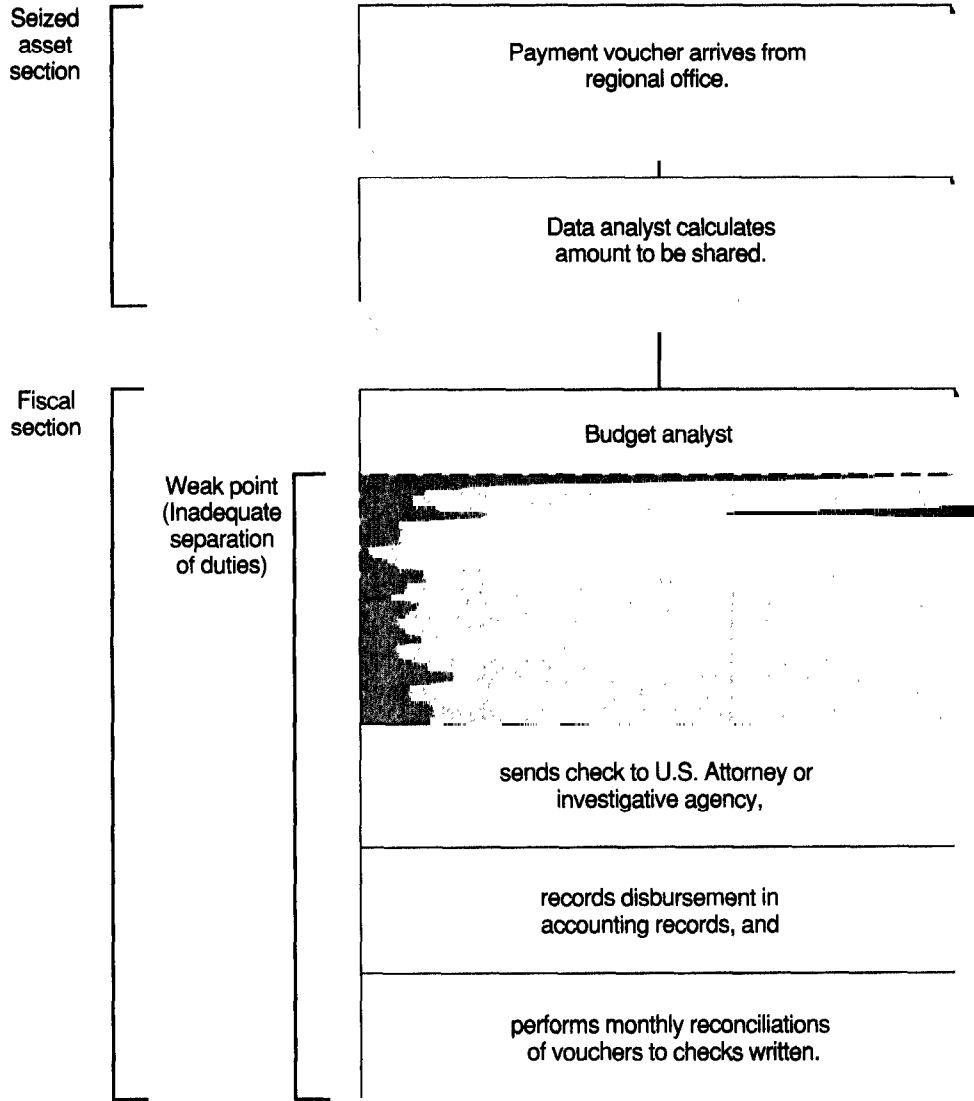
<sup>7</sup>These standards are currently under review by the Federal Accounting Standards Advisory Board. The board was established by the Comptroller General, the Director of the Office of Management and Budget, and the Secretary of the Treasury as part of a continuous program to improve federal accounting and financial reporting. The board will make recommendations for the joint issuance of standards by the three agencies. The effect that any recommendations, when complete, will have on existing standards is not now known.

**Figure 2: Asset Sharing Cash Distribution Process and Internal Control Weaknesses at the Central District of California**




 Payment voucher not properly certified

**Figure 3: Asset Sharing Cash Distribution Process and Internal Control Weaknesses at the Southern District of California**



 Payment voucher not properly certified

 Checks payable to state and local officials and payment voucher not properly certified

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**Inadequate Separation of Duties**

GAO's Policy and Procedures Manual for Guidance of Federal Agencies requires that key duties in authorizing, processing, recording, and reviewing transactions be separated among individuals. To reduce the risk of error, waste, or wrongful acts or to reduce the risk of their going undetected, no individual should control all key duties of a transaction or event.<sup>8</sup> Systematic assignment of duties to a number of individuals helps ensure that effective checks and balances exist. For example, a person who writes checks and enters the transactions in the accounting records should not also sign and mail the checks to reduce the risk that unauthorized checks could be written and diverted.

Procedures at both of the districts we visited provided inadequate separation of key duties among the staff processing sharing checks. At the Central District, one person received documents authorizing payments, prepared the checks, recorded the checks in the accounting records, presented the checks for signature (without supporting documentation, such as payment authorization vouchers), and sent the checks to the U.S. Attorney or federal investigative agency for forwarding to the state or local agency. At the Southern District, one person prepared and signed the sharing checks, recorded the payments, forwarded the checks to the U.S. Attorney or federal investigative agency, and performed monthly reconciliations of vouchers to checks written.

Officials at both districts said that they considered sharing duties to be adequately separated and that staffing limitations prevented them from assigning duties differently. However, Marshals Service headquarters and regional officials agreed that duties, as shown in figures 2 and 3, are not adequately separated.

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**Payment Vouchers Not Properly Certified**

According to title 7 of GAO's Policy and Procedures Manual for Guidance of Federal Agencies, all payment vouchers must be certified by an authorized certifying officer as legal, proper, and correct for payment. Before certification, vouchers must be reviewed to verify that

- the payment has been properly authorized and approved,
- the payment is supported by payment documents,
- the amount of the payment and the name of the payee are correct,

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<sup>8</sup>Key duties include authorizing, approving, and recording transactions; issuing and receiving assets; making payments; and reviewing or auditing transactions.

- the calculations are accurate, and
- the funds are available.

Disbursing officers who sign checks must ensure that the payment vouchers have been certified.

At both districts, asset sharing payment vouchers were not properly certified. At the Central District, a certifying officer reviewed the vouchers but did not sign the vouchers to document the certification. As a result, the check signer could not be assured that the certification had been completed. At the Southern District, these vouchers were not reviewed and certified by a certifying officer.

Staff at both districts said that because a regional office certifying officer had signed the payment vouchers to authorize the sharing payments before sending them to the district—where the actual sharing amount was to be calculated—district level certification was not necessary. However, Marshals Service headquarters and regional officials said that despite the regional certification, district staff should have been certifying the vouchers because regional staff could not certify the correctness of district calculations or the availability of funds for disbursement at the district.

For sharing decisions made after September 1991, the district rather than regional offices are to prepare the payment vouchers. This change eliminates the regional certification. Marshals Service officials said that the change should also eliminate any confusion in districts over the need to certify vouchers. Although this change may eliminate confusion over certification, the differences in perception of correct procedure among district, regional office, and headquarters officials point out the need for clearly communicated guidance.

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## Checks Made Payable to State and Local Officials

GAO's Policy and Procedures Manual for Guidance of Federal Agencies requires that access to resources is to be limited to help reduce the risk of loss or unauthorized use. The degree of access limitation depends on the cost, portability, exchangeability, and the perceived risk of loss or improper use of the resource. Access limitation involves controlling resource custody and use. For example, endorsing a check upon receipt "for deposit only" with a bank account number restricts the negotiability of the check.

At the Southern District, access to forfeited cash was not adequately restricted because as a matter of district policy, sharing checks were made payable to state or local law enforcement agency heads rather than to the government entities or agencies they represented. This practice does not adequately restrict the negotiability of the checks and could allow for the checks to be negotiated at a commercial financial institution rather than through the city or county treasury. For example, a chief of police or county sheriff could place forfeited cash in a commercial bank account under the payee's exclusive access and control. We found many instances at the Southern District in which checks were made payable to the individual agency head when the payment voucher showed the agency name as the proper payee.

The U.S. Marshal for the Southern District said that the policy of making the checks payable to an individual, such as the head of the law enforcement agency, was to achieve his interpretation of The Attorney General's Guidelines—that funds should go to the law enforcement agency.<sup>9</sup> He also said that he had not received any Marshals Service guidance on this issue and that he will not change this policy unless Marshals Service headquarters directs him to do so, regardless of the payee named on the payment voucher.

Marshals Service headquarters and regional officials said that making a check payable to a payee other than the one named on the payment voucher is an improper accounting practice and does not follow Marshals Service procedures. A Marshals Service headquarters official said that he plans to emphasize in future training of district staff that checks should be made payable as shown on the vouchers.

In the Central District, checks were made payable to the payee shown on the payment voucher.

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### Checks Not Forwarded Directly to Recipient Agencies

As discussed earlier, access to vulnerable resources should be restricted to reduce the risk of loss or unauthorized use. In addition, by definition, proper separation of duties calls for the approval and payment functions to be separate. For example, to reduce the risk that an employee could authorize a payment to a fictitious party and then fraudulently divert the

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<sup>9</sup>For asset sharing, The Attorney General's Guidelines address use of shared assets, amounts shared, how sharing percentages are determined, and decision-making authority. This guidance does not establish procedures for making payments.

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payment, the person who authorizes a payment should not also receive the signed check for distribution.

At both districts we visited, access to forfeited cash was not adequately restricted because sharing checks were sent to the state or local agency through the U.S. Attorney or federal investigative agency rather than directly from the Marshals Service. This practice allowed custody of the sharing checks—which, as discussed earlier, may be payable to individuals—to the federal officials who may have also recommended or approved the asset sharing decision.

This increased risk of loss or misuse may be unnecessary because, according to Marshals Service and Justice officials, the primary purpose of routing the checks through the U.S. Attorney or investigative agency is to allow for congratulatory presentation ceremonies. Congratulating law enforcement agencies on their accomplishments and thanking them for their cooperation could be as effectively achieved by using a letter or facsimile check in the ceremony.

EOAF policy is to route sharing checks through the U.S. Attorney or investigative agency. However, the policy is flexible and in some cases, when all federal, state, and local agencies involved agree, checks may be sent directly to the law enforcement agency head. Because of this flexibility, other districts may or may not forward checks directly to the law enforcement agency.

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## Similar Control Problems Identified by Justice Inspector General

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### Inadequate Separation of Duties

For the fiscal year ending September 30, 1989, the Justice's Inspector General completed a financial statement audit of AFF and SADF.<sup>10</sup> The audit report cited many instances of inadequate separation of duties related to

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<sup>10</sup>Audited financial statements for fiscal years ending September 30, 1990, and September 30, 1991, were not available at the time of our review.

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seized assets at a representative sample of districts. The audit report stated:

We encountered situations where one or two staff members would engage outside vendors to perform services, receive and approve for payment vendor invoices, prepare checks for vendor payments, mail the signed checks, post the transactions to the financial records, and file the documentation to support the payments. In some districts, the persons processing and recording the transactions were also authorized to certify payments and/or sign checks.

To correct the situation, the report recommended that

- the disbursement function be totally separated from the procurement and recording functions,
- the check signer should control distribution of signed checks, and
- signed checks should not be returned for distribution to the individual who procured the service or would record the transaction in the financial records.

The Marshals Service written response acknowledged that the inadequate separation of duties described in the Inspector General's audit report violates a fundamental principle of internal control. However, the Marshals Service added that in many offices, without additional staffing resources, it would be impossible to correct the situation. The Marshals Service will include general instructions on assigning different personnel to successive aspects of the same transaction in a revision to the U.S. Marshals Service Manual that is currently being prepared. The inadequate separation of duties described in the Justice audit report relates to services to maintain seized assets; however, the conditions are very similar to those we observed for the processing of sharing payments.

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## Payment Invoices Not Properly Verified

In addition to the financial statement audit, the Inspector General completed an audit of how Justice managed, seized, and forfeited assets. For the period October 1, 1988, to March 31, 1990, the audit report—Management of Seized and Forfeited Assets in the Department of Justice—identified inadequate internal controls over the processing of invoices at four U.S. Marshals Service districts.<sup>11</sup> Deficiencies identified included

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<sup>11</sup>Title 7 states that agencies may use invoices as payment vouchers when the invoices show all needed payment information. The invoices must be certified for payment in the same manner as any payment voucher.



- no verification that invoice was for services received,
- no verification that invoice had not already been paid,
- supervisory review not documented, and
- mathematical accuracy of invoice not verified.

The report concluded that “these conditions do not provide assurance that invoices with errors or intentional irregularities are not being paid by district offices.”

U.S. Marshals Service personnel attributed these deficiencies to a lack of written procedures addressing invoice processing, insufficient staffing, and a lack of staff awareness of the importance of documenting procedures performed in invoice processing. To correct the deficiencies, the report recommended that the Director of the Marshals Service develop and implement procedures to assure that invoices are properly verified and reviewed before payment.

The Marshals Service responded that procedures for verification and review of invoices are contained in the U.S. Marshals Service Manual. The Marshals Service said that it would send a memorandum concerning the audit findings to the U.S. Marshals in the districts and remind them to comply with these procedures.

As with inadequate separation of duties, the deficiencies in invoice processing cited in the Inspector General’s report are similar to the internal control weaknesses we observed.

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## Conclusions

In operating the asset forfeiture sharing program, the Marshals Service processes payments totalling hundreds of millions of dollars annually to state and local law enforcement agencies. We believe that this responsibility requires the highest vigilance to ensure that the assets are adequately safeguarded from loss, unauthorized use, and misappropriation. In several instances, the districts that we visited did not have adequate internal controls over sharing payments to reasonably assure that the assets were adequately protected.

Justice guidance over asset sharing payment processing is subject to interpretation by individual Marshals Service districts. At the districts we visited, such individual interpretation led to differences in procedures between districts and to procedures that did not adequately safeguard forfeited funds. For districts visited by the Inspector General, audit reports

cited many instances of inadequate separation of duties and many invoices that were not properly processed. Marshals Service staff cited a lack of procedures addressing invoice processing despite existing Marshals Service guidance.

On the basis of differences in the perceptions of district, regional, and headquarters officials as to correct procedures and the findings of the Inspector General audits, it appears likely that similar conditions exist at other districts as well.

We believe that the Central and Southern Districts should be directed to strengthen their internal controls and the Southern District directed to change its policy over how sharing checks are made payable. Further, because existing guidance has not produced adequate internal controls, clear and specific guidance based on established internal control standards should be developed and distributed to all Marshals Service districts processing sharing payments. We do not believe that general instructions or reminders to follow existing guidance will prevent staff interpretations, such as those resulting in inadequately safeguarded cash at the Central and Southern Districts of California.

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## Recommendations

To better ensure that forfeited cash is adequately protected, we recommend that the Attorney General direct EOAF to change its policy on routing sharing checks through federal investigative agencies or the U.S. Attorney before delivery to the recipient state or local agencies. The revised policy should require that checks go directly from the Marshals Service to the recipient agency. The policy could also suggest using letters or facsimile checks in congratulatory ceremonies.

In addition, we recommend that the Director of the Marshals Service develop clear, specific servicewide guidance and procedures for making asset sharing cash distributions. The guidance should include explanations of what conditions do and do not create proper separation of duties as well as specifics on how vouchers should be certified. It should be emphasized that checks should be made payable to recipient agencies and not to individual parties. This internal control guidance should be based on standards contained in GAO's Policy and Procedures Manual for Guidance of Federal Agencies.

We also recommend that the Director of the Marshals Service direct regional offices to monitor districts periodically to ensure that the

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guidance results in procedures that adequately safeguard forfeited cash. The results of this monitoring should be included in the reports required under the Federal Managers Financial Integrity Act.

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## Agency Comments

In commenting on a draft of this report, Justice agreed with our recommendations involving Marshals Service guidance, procedures, and monitoring and will take steps in response to these recommendations. However, Justice did not agree with our recommendation that sharing checks should not be routed through federal investigative agencies or the U.S. Attorney.

Justice agreed with our recommendation that more specific guidance on proper procedures for making asset sharing cash distributions is needed. Justice said that guidance is to be incorporated in a revised version of the U.S. Marshals Service Manual scheduled for publication in early summer, with a detailed instructional memorandum to be sent to all Marshals in the interim. This guidance is responsive to our recommendation.

Justice also agreed that Marshals Service regional offices should monitor district asset sharing procedures. To accomplish this in the future, Justice said that regional office program management reviews of district operations will include verification that proper disbursement procedures are being followed. This is also responsive to our recommendation.

Justice did not agree with our recommendation that sharing checks be sent directly to recipient agencies from the Marshals Service rather than through the federal investigative agencies or the U.S. Attorney. In its comments, Justice said that having genuine checks hand-delivered by federal officials to state and local law enforcement agencies is important to enhanced law enforcement cooperation, the encouragement of which is part of Justice's statutory mandate. However, we believe that cooperation could be as effectively encouraged by directly forwarding sharing checks from the Marshals Service and using letters or facsimile checks in any presentation ceremonies. Not only would this practice improve internal controls, but it would also provide use of funds to the agencies without delay. We believe hand delivery by the federal investigative agency or U.S. Attorney should be the exception, not the rule, with control further enhanced by ensuring that checks are made out to recipient agencies and not individual officials. Justice did agree to review the routing of sharing checks to determine if safeguards could be developed to ensure the integrity of the disbursement process.

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Justice expressed concern that we did not adequately address the importance of the sharing program in encouraging cooperation between federal, state, and local law enforcement agencies. This report was, however, intended to address the disbursement of asset sharing payments and not the sharing program as a whole. We provided background information on the program, its scope, and its dollar volume. As Justice pointed out, the sharing program has grown twelvefold in the past 6 years, to \$289 million in fiscal year 1991 disbursements. We believe that such growth emphasizes the need for adequate internal controls.

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As agreed with the Subcommittee, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Attorney General; the Director, EOAF; and the Director, U.S. Marshals Service; and we will make copies available to others upon request.

Major contributors to this report are listed in appendix II. If you have questions about this report, please call me on (202) 275-8389.

Sincerely yours,



Lowell Dodge  
Director, Administration of  
Justice Issues



# Comments From the Department of Justice



U.S. Department of Justice

FEB - 4 1992

Washington, D.C. 20530

Richard L. Fogel  
Assistant Comptroller General  
General Government Division  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Fogel:

This is to provide the comments of the Department of Justice regarding the General Accounting Office's (GAO) draft report: "Asset Forfeiture: U.S. Marshals Service Internal Control Weaknesses Over Asset Sharing Cash Distributions."

At the outset, the draft report does not adequately address the importance of the equitable sharing of federal forfeiture proceeds with State and local law enforcement agencies which have participated in investigations resulting in forfeiture. In this regard, federal law provides that:

"The Attorney General shall assure that any [forfeited] property transferred to a State or local agency . . . will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies." (21 U.S.C. 881(e)(3))

In short, the primary purpose of equitable sharing is to foster improved cooperation among federal, State, and local law enforcement agencies. By all accounts, equitable sharing has been a dramatic success in achieving this end. Since sharing commenced in FY 1986, the Department of Justice has shared over \$850 million in cash and property with more than 3,000 State and local law enforcement agencies. Sharing has grown more than twelve-fold over the past six years, from \$22 million in FY 1986 to over \$289 million in FY 1991. Particularly in the drug enforcement area, equitable sharing has been the primary ingredient in establishing a truly national law enforcement effort directed at drug trafficking syndicates. Considering the relative infancy of the sharing program, the accomplishments to date are remarkable.

The draft report makes three primary recommendations. Two of these are directed to the U.S. Marshals Service (USMS). We agree with the recommendation regarding the need for more specific guidance on proper procedures for disbursing equitable sharing checks. Such guidance will be incorporated in the USMS Manual currently being revised and scheduled for official release early this summer. In the interim, a detailed instructional memorandum will be prepared and promptly disseminated to all Marshals.

Mr. Richard L. Fogal

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We also agree with the recommendation that USMS regional offices should monitor districts to ensure implementation of the disbursement procedures. More specifically, the USMS regional office program management reviews will now include a requirement to verify that proper procedures are being followed.

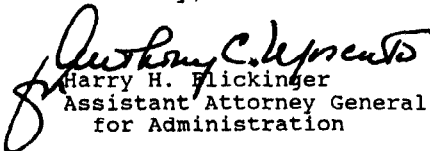
Regarding the recommendation that sharing checks be sent directly to recipient agencies from the USMS, we believe the GAO has failed to take into account our statutory mandate to conduct sharing in such a manner as to "encourage further cooperation between the recipient State or local agency and federal law enforcement agencies." Although many sharing presentations are attended by the news media (and often by Members of Congress), sharing presentations are not mere public relations opportunities. Rather, having genuine checks hand-delivered from high-level federal law enforcement authorities to top managers of the recipient State and local law enforcement agencies is extremely important in fostering the personal relationships which are the cornerstone of enhanced law enforcement cooperation. These presentations are particularly important given the relative infancy of the equitable sharing program. Such presentations often occur in conjunction with and add to the effectiveness of meetings of the Law Enforcement Coordinating Committees in the various federal judicial districts.

We believe that the GAO has exaggerated the potential for fraud in the sharing context. Unlike a banking transaction, equitable sharing payments are not based solely upon a written order. Rather, sharing can only occur based upon a federal forfeiture. The USMS requires, prior to disbursement, a completed Form DAG-72 supported by a copy of the pertinent declaration or judgment of forfeiture.

Given the concerns expressed by the GAO, we will review the routing of sharing checks further to determine whether additional safeguards can be developed to ensure the integrity of the disbursement process. We believe, however, that direct personal delivery of checks by federal law enforcement officials to their State and local counterparts is crucial to achieving the primary purpose of the sharing program.

We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,

  
Harry H. Flickinger  
Assistant Attorney General  
for Administration

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