

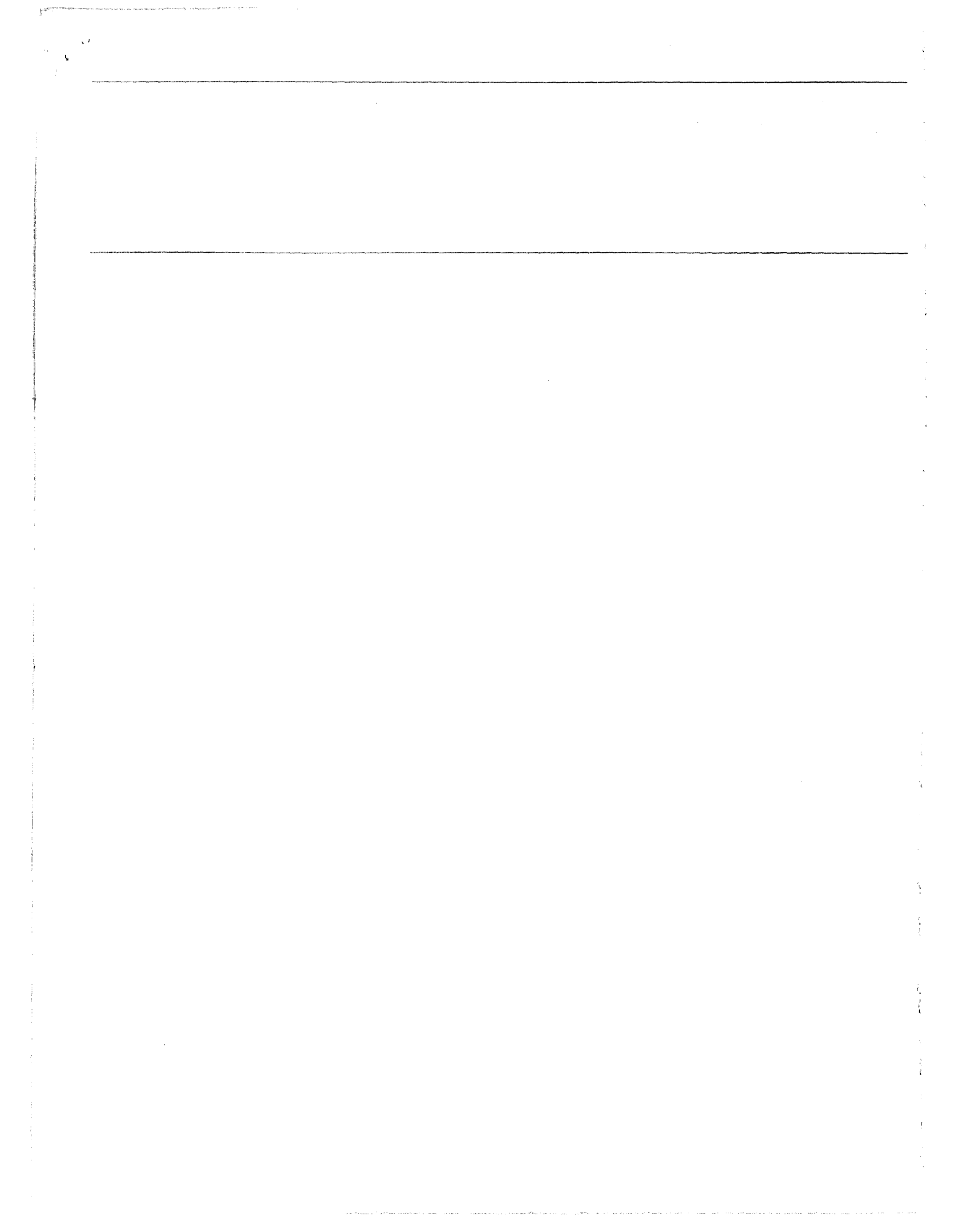
May 1991

ASSET FORFEITURE

Need for Stronger Marshals Service Oversight of Commercial Real Property



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The Honorable John Glenn
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United States Senate

The Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate

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The Honorable Dan Rostenkowski
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The Honorable Charles E. Schumer
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Committee on the Judiciary
House of Representatives

The Honorable William J. Hughes
Chairman, Subcommittee on Intellectual Property
and Judicial Administration
Committee on the Judiciary
House of Representatives

The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight

Committee on Ways and Means
House of Representatives

This report is one in a series addressing various aspects of the Department of Justice's and the U.S. Customs Service's asset forfeiture programs.¹ The Comptroller General has designated the asset forfeiture programs as high-risk areas warranting special audit effort because of their vulnerability to fraud, waste, and mismanagement. Both programs deal with hundreds of millions of dollars of seized property annually and have been identified by their agencies as having significant internal control problems.

The Executive Office for Asset Forfeiture (EOAF) directs Justice's Asset Forfeiture Program. The U.S. Marshals Service (USMS) is the key Justice agency responsible for the day-to-day management and disposal of the properties seized and forfeited by this program. This report addresses key USMS property management activities and USMS district compliance with policies and procedures in managing high value commercial real properties—those valued at \$1 million or more at the time of seizure.

Background

The asset forfeiture program has a unique blend of law enforcement and economic goals. Forfeiture law allows the government to seize property that has been illegally used or acquired. After property is seized, the government seeks ownership through the forfeiture process, and once forfeited, the property generally is sold. The program's goals are to deprive criminals of their illegal assets and maximize the return to the government. Revenue generated from the asset forfeiture program is used to help fight the war on drugs. In fiscal year 1989, \$311 million in revenue generated by the program was transferred for prison construction and to hire additional U.S. Attorneys.

USMS has traditionally been responsible for executing court orders for seizure. Because property must be forfeited through legal procedures before it can be sold, USMS was given primary responsibility in Justice for the maintenance, protection, and disposal of seized property. Historically, USMS has been a decentralized organization with 94 district offices. Each district is headed by a presidentially appointed Marshal. The

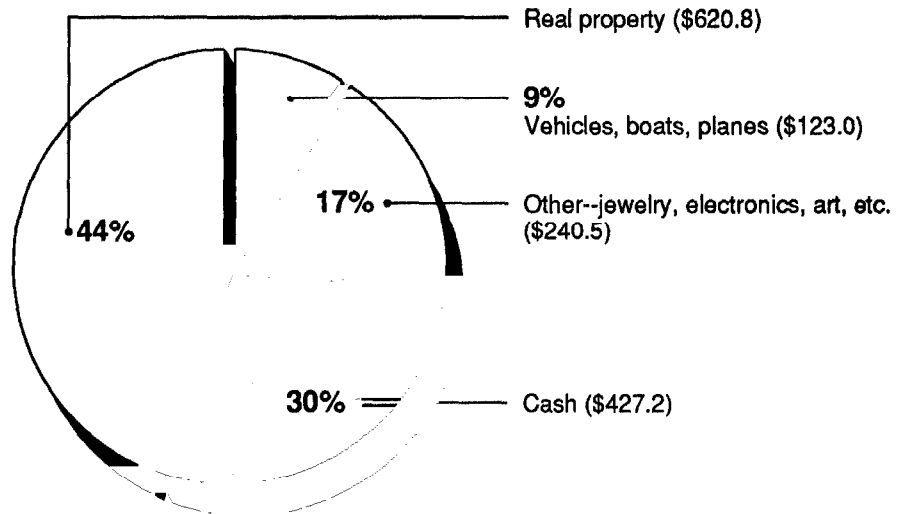
¹On June 19, 1990, we issued a report entitled Asset Forfeiture: Legislation Needed to Improve Cash Processing and Financial Reporting (GAO/GGD-90-94); soon we expect to issue a report on consolidating the management of Justice's and Customs' noncash property under the Marshals Service.

extent to which seizure activities receive attention is primarily the decision of each Marshal.

When the USMS National Asset Seizure and Forfeiture (NASAF) program was created in 1984, 14 regional offices were established to help administer the program in the field because districts had little program expertise. As the program and volume of seizures have grown, the roles of the districts and regions have changed. Today, the 94 district offices are responsible for managing and disposing of seized property. The 8 regional offices, reduced from 14, provide technical assistance and are responsible for overseeing the districts' programs.

As of December 31, 1990, USMS had custodial responsibility for an estimated \$1.4 billion worth of seized property. At that time, the real property component of the inventory, consisting of commercial and residential property, accounted for 44 percent of the inventory by value (see fig. 1).

Figure 1: Composition of Justice's \$1.4 Billion Seized Asset Inventory as of December 31, 1990 (Dollars in Millions)



USMS does not keep separate overall statistics on commercial and non-commercial property. The 42 high value commercial properties we reviewed accounted for about 1 percent of the properties by number and 25 percent by value. Over the last few years, the number of high value commercial properties under USMS control has grown.

Commercial real property is inherently more difficult to manage than other types of assets because (1) there is often an ongoing business that must be managed, (2) there is a potential for fraud and waste given the large amount of money involved, and (3) often complex ownership issues arise. Given the high values of commercial properties, they need to be well managed to maximize their return to the government.

Results in Brief

Commercial properties, by their very nature, are extremely vulnerable to fraud, waste, and mismanagement. Because of these risks, critical management and internal control responsibilities related to such assets must be effectively carried out nationwide. However, we found that for the high value properties we reviewed, USMS districts did not always adhere to key property management policies and procedures and that internal control practices varied.

Failure of districts to follow policy in performing key program activities on high value commercial real properties resulted in a weakened internal control environment. USMS districts did not always (1) document title search information, (2) maintain up-to-date and accurate property information, (3) prepare decision documents on significant properties, (4) obtain property appraisals, and (5) provide effective oversight of property managers. The districts' failure to always carry out these activities for high value commercial properties led to situations in which the government lost or was at risk of losing money on properties worth millions of dollars. For example, according to officials of one district, the government should have realized about \$1.5 million above the management costs on the sale of one property. However, the property manager's failure to maintain the property resulted in USMS breaking even when the property was sold. Inadequate USMS oversight of the property manager allowed this situation to occur.

Failure of the districts' to always perform key program activities was caused by several interrelated factors, including

- inadequate staffing in the NASAF program in USMS district offices,
- inadequate training of NASAF personnel,
- inadequate NASAF guidance regarding roles and responsibilities for seizure and management of commercial real property, and
- insufficient NASAF regional oversight of district offices to ensure that districts complied with the program's policies and procedures.

USMS has made progress in improving its seized assets program by revising its seized asset handbook, updating its management information system, and developing a structured oversight system. However, more remains to be done to better assure that these new initiatives will be implemented.

Objectives, Scope, and Methodology

Our objectives were to evaluate USMS activities related to seizing, managing, and disposing of high value commercial real property. High value commercial property was defined as nonresidential property having an initial value of \$1 million or more. The USMS Seized Asset Division supplied us with a list of all commercial properties initially valued at \$1 million or more that were in inventory as of May 25, 1990, or disposed of between September 1988 and May 1990.

This list consisted of 42 seized commercial real properties valued at \$156.4 million and located in 10 states and Puerto Rico. Of the 42 properties, 26 were in inventory at the time of our review and 16 had been disposed of; of these 16, 8 had been sold and 8 had been returned either to the owner or lienholder. We obtained financial and background information on the status and management of all 42 properties from USMS officials in the 17 district offices responsible for the properties.

We reviewed recent Department of Justice audit reports on the Asset Forfeiture Program. We also interviewed agency officials and examined documents to obtain additional information on the 42 properties, district operations, overall program statistics, and future plans. This work was done at USMS headquarters; six USMS district offices located in Los Angeles, Miami, Tampa, Atlanta, Dallas, and Houston; and two NASAF regional offices in San Diego and Houston. We selected the USMS district and NASAF regional offices on the basis of geographical diversity and high volume and high dollar value of seized commercial property. We also spoke with officials in 11 other USMS district offices, the remaining 6 NASAF regional offices, and 10 of the U.S. Attorney offices responsible for high value commercial properties.

We did our work between June 1990 and October 1990 in accordance with generally accepted government auditing standards. The Department of Justice provided written comments on a draft of this report. Their comments are contained in appendix I and have been incorporated in the report when appropriate.

Stronger Management Needed for Commercial Real Property Activities

USMS districts were not always performing key program activities for commercial real properties as USMS policy requires. Specifically, districts were not always (1) documenting title search information, (2) maintaining up-to-date and accurate property information, (3) preparing decision documents on significant properties, (4) obtaining property appraisals, and (5) providing effective oversight of property managers. This situation has resulted in a weakened internal control environment.

Lack of Title Information Results in Uninformed Seizure Decisions

Obtaining title search information is a key step in the pre-seizure planning process because it identifies the legal owner(s) and encumbrances against a property. Justice and USMS policies state that information on encumbrances and legal owners of a property must be obtained before seizure, except when obtaining a title search could jeopardize the case. Failure to do a thorough title search before seizure may result in (1) obtaining properties with encumbrances high enough to make the properties liabilities to the government or (2) seizures from an innocent third party. While it might be desirable for law enforcement purposes to seize a property with high liens, and therefore little potential for financial recovery, to do so should be a conscious and informed decision.

Our analysis of 42 USMS commercial properties showed that in 16 cases, USMS did not have any information on whether a title search had been done before seizing the property.² In these cases, neither case records nor USMS district officials identified any instances in which doing a title search would have jeopardized the case. Some districts told us that they were not always notified of upcoming seizures on a timely basis. This untimeliness hindered their efforts to ensure that critical information was obtained before a seizure. In one case, which resulted in embarrassment to the government, USMS was ordered to seize property from an innocent third party because it was thought the property belonged to a drug trafficker/money launderer. It turned out this individual only had an option to buy the property from the legal owner.

The U.S. Attorney's Office, which makes the final decision on seizures, also conducts some pre-seizure planning activities. To see if the Assistant U.S. Attorney (AUSA) had documentation of the title information before seizure, we followed up with the responsible AUSA in the 16 cases in which USMS had no pre-seizure title information. For 7 of the 16 cases,

²In eight cases, USMS district offices could not document that a title search had been done on the property pre- or postseizure.

the AUSA also could provide no documentation that title information had been obtained before seizure.

Managers Lack Property Information Necessary for Effective Management

The lack of an adequate management information system for seized and forfeited assets has been a long-standing problem for Justice and USMS. As far back as 1983, Justice was acknowledging in its reports prepared under the Federal Managers' Financial Integrity Act that it had information system weaknesses. In September 1987, we testified that USMS information systems were inadequate to enable proper management or monitoring of the real property program.

A September 1990 Justice Inspector General (IG) report indicated that serious problems still existed.³ The IG reviewed seized and forfeited assets and reported that accurate and consolidated information on these assets is still lacking. For example, the report cited numerous omissions and inaccuracies in the NASAF database, including errors in asset values and status.

Our review of commercial real properties also found problems with management information. We requested data on commercial real property cases from both the districts and NASAF headquarters. However, the data received from the two sources did not correspond in 29 of 42 cases. For example, NASAF reported liens on a seized condominium complex to be more than \$9 million, while the district reported no liens. A review of documents obtained from the districts' property case files indicated that in some cases (1) the district information was incorrect, (2) information from headquarters was incorrect, or (3) both were incorrect.

The lack of timely and accurate information inhibits effective management and oversight of high value commercial properties. The recent Justice IG report highlights some of the problems that can occur when property management information is unreliable:

- Decisionmakers do not have the tools necessary to identify problems, analyze the causes, and allocate resources effectively.
- The accuracy of statistical data generated by Justice is questionable as a basis for requesting resources for the program.
- Assets cannot be tracked through the program, and asset-specific costs and revenues cannot be identified, making it impossible to determine

³Management of Seized and Forfeited Assets in the Department of Justice, Office of the Inspector General Audit Division (Washington, D.C.: Sept. 1990).

whether any given class of forfeitures produces net revenues or net losses for the government.

In recognition of the information problems, at the time of this report, Justice was in the process of developing and implementing an integrated asset forfeiture information system. Justice estimated that implementation of the system will be complete by the middle of fiscal year 1993. USMS was also updating its Seized Assets Management System to allow regions computer access to district records and to ensure accurate data are available at USMS headquarters.

Lack of Decision Documents Reduces Accountability

A Significant Seized Property Decision (SSPD) document is a management tool used by USMS to promote increased uniformity and efficiency in the management and disposal of very valuable and complex assets subject to forfeiture. USMS policy requires that an SSPD be written for significant seizures valued at \$200,000 or more to outline the district's plan of action for managing and disposing of the property. For significant seizures of high value commercial businesses, the districts should outline the nature of the business, evaluate its general state, anticipate problem areas, and assess the potential viability of the business (if ongoing at time of seizure) in developing the plan of action. The SSPD is to be forwarded to the NASAF regional office within 10 days after a commercial property seizure for their recommendation to accept, reject or modify the plan of action. Then the SSPD is sent to NASAF headquarters for review and approval of the district's decision on the operation of the business.

The September 1990 IG report noted that USMS districts were not processing required SSPDs on seized properties. We reviewed those properties designated by the district offices as seized businesses valued at \$1 million or more to determine if an SSPD documenting continued commercial property operations was prepared. In 18 of the cases we reviewed, an SSPD was not prepared. These properties were located in 10 different districts.

If SSPDs are not prepared as required, the most effective property management/disposal strategy may not be identified, poor management decisions may result and go undetected, and accountability for decisions is lost. For example, one district was providing no oversight of the manager of a seized shopping center appraised at \$1.4 million. An official of this district told us that the district did not routinely prepare SSPDs for continued operation of a business. In addition, the official said the AUSA

was handling this case. According to the AUSA, her office had no responsibility to oversee the management of this business. Because no SSPD was written or processed, the NASAF region was unaware of the lack of oversight.

Lack of Professional Appraisals Inhibits Effective Disposal Decisions

USMS policy states that a professional appraisal should be obtained at the time of seizure and annually thereafter to ensure that the current and accurate market value of the property is available. Appraised values and lien information should periodically be compared to determine whether sufficient net equity exists in properties for the government to continue to retain them. Knowing the accurate market value of a property is important because (1) a property can be listed for sale in a timely manner and at an accurate price, (2) quick disposal options can be considered if expenses on the property start to exceed the government's potential revenue, and (3) Justice must annually report to Congress the value of its seized assets inventory.

Our analysis of the information provided on the 42 properties disclosed 5 cases in which USMS districts had never obtained a professional appraisal and an additional 15 cases in which districts had not obtained annual updates. Obtaining professional appraisals on commercial properties at seizure is important because initial valuations typically are made by the investigative agency before all business records are available and are therefore based on incomplete information. We found that the initial values, when compared with professional appraisals made after seizure, ranged from being understated by 36 percent to being overstated by 700 percent. Attempting to manage these properties with inaccurate property values in today's volatile real estate market could lead to questionable management decisions.

Uneven Oversight Leaves the Government Vulnerable to Mismanagement

USMS districts contracted with private sector individuals to manage hundreds of millions of dollars worth of seized property. In this type of environment, an effective property management oversight program is essential to prevent or quickly identify and resolve instances of fraud, waste, or mismanagement. We believe such a program should rest on sound contract management principles, which include

- timely review/reconciliation of invoices by district personnel to ensure they are within the scope of the contract and reasonable for that geographical area,

- preapproval by district office of expenses that exceed authorized amounts,
- periodic visitation of properties by district personnel to ensure properties are maintained and that services stated as rendered were actually provided,
- preparation of monthly reports on the management of the property,
- incentives that directly tie contractor profit with performance, and
- periodic audits of the management company by independent auditors using generally accepted auditing standards.

Most USMS district offices used at least some of these oversight techniques in supervising their property managers. For the 33 properties that were managed by private property managers,⁴ the district personnel reported their oversight activities as follows:

- reviewing management reports from property manager (22 cases),
- periodic visitation of properties (20 cases),
- approving expenditures (19 cases),
- performing periodic audits (10 cases),
- meeting and discussing properties with manager (5 cases), and
- reviewing/reconciling invoices (3 cases).

However, as shown above, important control techniques, such as the review and reconciliation of invoices, were not always done. In addition, written contracts were not always used. In 8 of our 33 cases, the districts did not have written contracts with the property managers.

Our review identified four real property cases, valued collectively at \$14 million, in which districts performed no oversight of the property managers for 1 to 2 years. In one of these cases, valued at \$8.4 million, the manager at the time of seizure was allowed to continue operating the business after signing an agreement with USMS to maintain the property and pay the bills. While the agreement recognized USMS oversight authority, no oversight was provided. This property manager did not continue to pay utility bills or maintain the business's books and records. The utility company notified USMS that the bills were not being paid, yet USMS did not take any action. This situation continued for over a year before the court, at the request of the lienholder, ordered USMS to install its own manager. According to USMS district officials, the government should have realized about \$1.5 million above its costs on the sale

⁴Of the 42 properties, 9 properties consisted of vacant property and therefore were managed by USMS employees.

of the property. However, the property manager's failure to maintain the property resulted in USMS breaking even when the property was sold. Inadequate USMS oversight of the property manager resulted in the loss of this potential income.

In some cases, even though some oversight was provided, it was inadequate to fully address operational risks. For example, officials from one district paid for a limited audit of the books of a \$3.4 million apartment complex. The audit consisted of comparing the value of checks written by the manager with the value recorded on the checks' stubs by the same manager. This audit was clearly an inadequate means of identifying waste or mismanagement. The accounting firm that did the work also stated that this audit did not constitute an audit made in accordance with generally accepted auditing standards.

Interrelated Causes Lead to Inconsistencies in USMS NASAF Activities

The inconsistent application of USMS NASAF policies was linked to several interrelated factors including that (1) districts' NASAF programs were understaffed and employees were undertrained, (2) districts lacked adequate guidance on important program-related activities, and (3) NASAF regions were not providing sufficient oversight of the districts.

District NASAF Program Understaffed and Employees Undertrained

Competing demands and a heavy work load strained NASAF employees' ability to effectively carry out program operations. The staff resources USMS devoted to its seized property program remained constant from fiscal year 1985 to fiscal year 1988 at 177 full-time equivalent (FTE) positions and then increased to 240 FTEs in fiscal year 1989. The end-of-year seized property inventory, which must be managed and disposed of, grew from 3,664 items in fiscal year 1985 to 35,737 in fiscal year 1990. The number of real properties on hand, which USMS officials say are the most time consuming to manage, increased eightfold during this same period. In contrast, the number of staff positions dedicated to the program increased by 36 percent since 1985. These conditions inhibited the performance of key program activities discussed earlier.

USMS received congressional approval for an additional 132 positions for the NASAF program in fiscal year 1991. A total of 372 FTEs have been devoted to the NASAF program for fiscal year 1991. According to NASAF officials, the positions will be allocated as follows: 57 for headquarters

and regional offices and 315 divided among the 94 district offices. How these additional staff positions are allocated to the districts and how they are used will influence their impact on the program.

A key factor influencing staff use was the competing priorities that shaped USMS's work environment. For example, one of USMS's primary missions is to protect and serve the court. This mission includes guarding judges, courtrooms, and juries; transporting prisoners; and serving papers. According to USMS officials, when judges asked for personnel to cover these functions, the districts had to provide them. One way the districts provided staff was to temporarily assign seized asset staff to accomplish these tasks. In one district, USMS officials said NASAF operations were hampered by staff being pulled about twice a week for this type of court duty. In responding to a draft of this report, Justice recognized these problems and said it was addressing them by designating two-thirds of its new positions as administrative staff. Justice noted that administrative staff are less likely to be affected by competing priorities (see app. I).

According to NASAF officials at all levels, the lack of adequate staff limited the districts' ability to ensure that program activities were completed in a timely manner. One official said understaffing resulted in poor management and cases falling through the cracks. In another district, the Marshal told us he had one part-time person handling about 300 pieces of real property. Our review of commercial properties valued at \$1 million and up suggested that staffing shortages contributed to several problems, including a lack of monthly property inspections, uneven oversight of managers, inaccurate management information systems, and noncompliance with USMS policies. The September 1990 IG report found one of the most serious problems caused by lack of staffing to be that the NASAF database was full of errors. Sufficient staff were not available to input and verify case information.

NASAF officials said they plan to hire more property management specialists for the districts. Many of the district staff working in the NASAF program at the time of this report were law enforcement officers called deputy marshals. Deputy marshals that we spoke with indicated that current NASAF training does not provide them with the skills and knowledge necessary to ensure quality implementation of the NASAF program. District personnel have stated that their lack of property management knowledge often puts them at a disadvantage when dealing with management companies.

USMS did not offer individual courses on commercial property management or on property management in general. These topics instead were incorporated into an introductory, week-long NASAF training course designed to cover real property management in 2 hours. Program personnel told us that more in-depth courses on property management are needed. In responding to a draft of this report, Justice said it was developing a specialized real property management course that would be available in Spring 1991 (see app. I).

Districts Lack Adequate Policy and Procedural Guidance

Another cause of inconsistent performance of program activities was inadequate policy and procedural guidance regarding the seizure and management of commercial real property. District officials said that it is much more complicated to seize and manage commercial property than other property, and good guidance is essential.

A key to an effective seizure is good preseizure planning because subsequent management and disposal decisions will be based on the information obtained in the planning phase. Preseizure planning should include obtaining title search information on legal owners and encumbrances, estimating the market value of the asset to be seized, calculating the potential revenue to the government, and making arrangements for the actual seizure and management of the property. Justice has stressed the importance of preseizure planning; it even issued a video in 1990 on the topic. However, as discussed earlier, we found that certain critical aspects of preseizure planning, such as obtaining title searches, were not always done. This inconsistency was due in part to unclear guidance regarding preseizure planning and coordination between agencies involved in the seizure and forfeiture process.

Justice policy states that the Assistant U.S. Attorney, investigative agencies, and USMS all have responsibility for developing asset-related information during preseizure planning. However, confusion can result because no one agency is accountable when preseizure information is not obtained. Furthermore, there are no procedural safeguards to ensure that real property is not seized until necessary information, such as information on ownership and encumbrances, is obtained. Some districts told us that their preseizure planning is inhibited because they are not always told of upcoming seizures. Justice guidance does not address at what point in the preseizure planning process the USMS should be notified of an upcoming seizure, nor does the guidance explicitly state who is responsible for notifying USMS.

In January 1984, a Memorandum of Understanding between USMS and other Justice agencies gave USMS custodial responsibility for seized assets. While it defined some of the administrative and custodial responsibilities of the various agencies in the forfeiture process, it did not mention preseizure planning. Also, no agreement outlining roles and responsibilities existed with the other major players in the forfeiture process—specifically, the U.S. Attorney's office that makes the final decisions on seizure.

As we highlighted earlier, another key to effective management is adequate oversight of contractors. NASAF policy states that the districts are to conduct periodic reviews of contracts to prevent the possibility of fraud. At the time of our review, no NASAF procedures had been issued to the districts to guide them in fulfilling this policy. For example, there were no standards for what should be included in the review or how often a review should be done, nor were there standards for reporting and oversight mechanisms to be incorporated into commercial property management contracts.

The absence of detailed procedures for management of real property has created an environment in which potential problems may go undetected and result in losses to the government. Good policies and procedures result in a strong internal control structure that reduces the program's vulnerability to mismanagement.

Regional Oversight Currently Inadequate to Ensure Districts' Compliance With USMS Policies

The rapidly growing NASAF program functions in a highly decentralized environment that requires strong oversight. Historically, USMS districts have been under the control of politically appointed U.S. Marshals.

At the time of this report, program oversight responsibilities were divided among several units, including district offices, regional offices, the Office of Inspections, the NASAF Seized Asset Division Enforcement and Compliance Branch, and Justice's IG. Regional offices played a key role within this framework in that they were responsible for overseeing the districts. This responsibility consisted of providing technical assistance, explaining policies and procedures, and conducting program management reviews at the district level.⁵ In addition, USMS said their

⁵Program management reviews are intended to ensure that districts are in compliance with Justice and USMS program policies, procedures, and practices.

criminal investigators in the regions will conduct contract compliance reviews.⁶

At the time we did our work, regional program oversight was weak and inconsistent. According to the September 1990 Justice IG Audit Report, NASAF regional office oversight of district offices' seized asset activities has been ineffective. The report found that NASAF regions were not systematically monitoring or even influencing district office seized asset operations. The report concluded that as a result of these inadequacies, assets worth millions of dollars were at risk. Specifically, the report found that regions were not

- conducting regular, structured monitoring reviews of district office operations;
- monitoring the accuracy of data entered into the NASAF system;
- systematically monitoring district office case management activity; and
- ensuring that such procedures as conducting an annual physical inventory of seized assets were followed.

The report contained 14 recommendations to the Director of USMS. These recommendations included conducting regular and systematic monitoring of district office operations with specific standards, requirements, and written reports.

An April 1990 Justice Inspection Report, which contained 15 recommendations on USMS' NASAF program, also identified a lack of written guidelines describing the regional offices' duties and responsibilities.⁷ According to Marshal Service officials, the role of the regional office has changed since the start of the NASAF program, and current policies and procedures do not clearly define their role. These problems have resulted in a lack of consistency in how regional staff use their time and have thus created an imbalance in overall program performance. For example, three regional managers spent the majority of their time supporting NASAF headquarters rather than providing assistance to their districts.

⁶Contract compliance reviews are designed to ensure that contractors are providing services in accordance with terms and conditions of the contracts. USMS was in the process of developing guidelines for these reviews.

⁷Inspection Report: United States Marshals Service National Asset Seizure and Forfeiture Program, U.S. Department of Justice Office of the Inspector General (Washington, D.C.: Apr. 1990).

Our review of NASAF regional oversight activities confirms that regional evaluations of district operations have been informal and ad hoc. Until October 1990, no standardized guidelines or reporting requirements were available for program management or contract compliance reviews. As a result, the regions' perception of a program management review and the review process varied in both the scope and the number of reviews conducted each year. For example, according to one region, 24 reviews had been conducted since January 1989, while an official in another region—which holds about one-third of NASAF's total assets and consists of 12 states and 19 districts—stated that no program management reviews were conducted during fiscal year 1990.

The nature and scope of these reviews also varied. Four of the five regions that conducted reviews used some type of written guidelines, but only two prepared a written report. The comprehensiveness of the guidelines used also varied among regions. One region used a 12-page guideline that covered all aspects of the program, and another used a brief one-page checklist restricting the review to what was in the district files.

USMS has recognized the need to strengthen NASAF regional oversight. To promote consistent and thorough evaluations, USMS has prepared new standardized guidelines for program management reviews. These guidelines cover many important areas, such as the management and disposition of seized property, internal controls, preseizure planning, and procurement. The guidelines require a written assessment of specific program activity areas upon the completion of a review. Review procedures are included in the guidelines. USMS has also prepared a fiscal year 1991 schedule for program management reviews of the district operations of the asset forfeiture program. Regional managers formulated the program review schedule on the basis of the size of the district, volume and dollar amount of assets, and their experience with districts' past practices regarding compliance with program policies. According to NASAF officials, NASAF has also started to develop contract compliance review guidelines that will be available in early 1991.

While USMS has started to improve the oversight of the NASAF program, several outstanding implementation issues remain. These issues include the following:

- How well will USMS implement the recommendations made by the IG?
- Will annual program review coverage by regional offices be based on a USMS-wide systematic assessment of program risk?

- How will any recommendations for corrective actions resulting from these reviews be formulated and implemented?
- Do specific nationwide evaluation criteria need to be established to better ensure that top USMS and EOAF officials will be able to compare and/or combine individual district assessments to obtain a nationwide picture of program performance?
- Will draft contract compliance review guidelines ensure that (1) contractor audits use generally accepted auditing standards and cover all critical internal control areas and (2) reviews include commercial property management contracts (e.g., hotel and store managers)?

Efforts to Consolidate Management of Noncash Seizures Should Continue

Notwithstanding the management problems discussed in this report, we continue to support consolidation of postseizure management and disposal activities for all noncash properties seized by Justice and the U.S. Customs Service under USMS. We believe resolution of the program issues identified in this report should be addressed in a consolidation plan.⁸ We also believe that USMS has overall mechanisms in place to address these issues and an infrastructure capable of managing the consolidated properties. For example, at the time we did our work, USMS already

- managed a program three times the size of Customs',
- had a regional structure capable of offering stronger oversight of the daily management of the program,
- had managed other agencies' seizures since 1984, and
- had a staff of 240 persons with more on the way.

The asset forfeiture program is also a high priority within Justice. For example, the Attorney General created the Executive Office for Asset Forfeiture in October 1989 to coordinate and oversee Justice's forfeiture program. Additionally, Justice's IG has taken an active interest in the NASAF program.

Conclusions

Since its inception in 1984, the NASAF program has grown and changed substantially and has experienced many of the problems such growth can entail. Internal control problems, such as insufficient and poorly trained staff, lack of sufficient and clear policies and procedures, and an absence of strong regional oversight of district activities, have led to a fragmented program that may not adequately ensure that seized high

⁸We discuss this issue in our soon to be issued report on the consolidation of Justice's and Customs' management of noncash property under the Marshals Service.

value commercial properties are being managed in the best interest of the government.

We found that basic responsibilities, such as ensuring a property is seized from the correct party or overseeing the managers of federally seized high value commercial properties, have not always been implemented. This problem has led to situations in which the government was at risk of losing or actually did lose money on properties worth millions of dollars.

While USMS has made progress in addressing concerns brought to their attention by us and Justice's IG more remains to be done. Resolution of current problems becomes more imperative as the seized asset inventory grows and includes more properties that are valuable and complicated to manage.

Recommendations

To improve operations of the asset forfeiture program and better ensure USMS district office compliance with policies and procedures, we recommend that the Attorney General

- Direct the Executive Office for Asset Forfeiture to meet with officials of all components participating in the Justice asset forfeiture program to update and expand the 1984 Memorandum of Understanding to clarify the roles of the investigative agencies, USMS, and AUSAS in pre-seizure planning. The updated Memorandum should clearly delineate who is to obtain title search information and notify the USMS of upcoming seizures; and
- Ensure that information such as title search reports, estimated market value, and potential government revenue be available for consideration in making the decision to seize property and be included on the order for seizure.

In addition, we recommend that the Director of the Marshals Service

- develop a training program for NASAF personnel with real property management responsibilities to address duties and responsibilities, including commercial property management and oversight of property managers;
- link annual program review coverage to the USMS annual agencywide assessment of program risk;
- direct U.S. Marshals to (1) make a formal written response to findings and recommendations contained in program management reviews and

- specify what recommendations will be implemented, and how, and (2) set up a timetable for implementing the recommendations;
- direct NASAF regions to follow up periodically on the progress of districts in implementing program review recommendations and report the progress to the Chief of USMS Seized Asset Division;
 - develop contract compliance review guidelines, which include commercial property management contracts;
 - develop standards for the oversight of property managers by districts and require districts to perform oversight activities; and
 - require that all property managers have contracts and that all contracts incorporate an effective oversight strategy.

Agency Comments and Our Evaluation

In commenting on a draft of this report, Justice agreed that the Asset Forfeiture Program has experienced problems. Justice also generally agreed with our recommendations and said that our efforts should prove helpful to the Department in moving forward with improvements. (See app. I.)

The Marshals Service recently testified before the Subcommittee on Intellectual Property and Judicial Administration that it had implemented or was in the process of implementing all of our recommendations. These actions include, among other things, developing a specialized real property management course, establishing a schedule of systematic program management reviews of district seized property operations and updating the Seized Asset Management System.

In its comments on the draft report, Justice identified other actions it has taken to improve the program. While our report recognizes many of these actions, several were implemented after our audit work was complete. Thus, we had no basis for evaluating the effect of these actions on the program and, specifically, on commercial property management.

Justice did not, however, agree with all of our findings and conclusions. First, Justice pointed out that the cases we reviewed were of a diverse nature—businesses, real property, vacant land—and therefore require different management procedures. We agree. We recognized these differences during our work and applied USMS policies as appropriate in each instance. Thus, generalizations are not an issue.

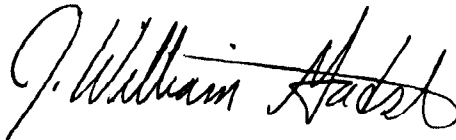
Second, Justice expressed concern on two specific points in the report. First, Justice said that the number of properties we reported as lacking adequate title information was “almost double what it should be,” and

that three cases did not require a title search because of "the circumstances surrounding the seizure." In making this comment, Justice used different criteria than we used in the report. Because it is critical to have title information before a property is seized, we reported all cases in which districts lacked title information before seizure. Justice included properties that had a title search "soon after seizure." Justice also stated that three properties did not need a title search. We agree and our data has been revised to reflect only those properties for which pre-seizure title searches should have been made. However, even with this reconciliation, our point remains valid in that districts did not have title information before seizure on a large percentage of properties—about 38 percent of the cases we reviewed.

Finally, Justice believes that we misstated its requirement for preparing SSPDs. It said an SSPD is not required for all properties over a specific dollar value, but rather when an action is deemed significant by the district. We have clarified the policy requirements in the text. We did not, however, misapply the requirement in doing our work. We believe that seized businesses valued at \$1 million or more meet the USMS criteria for "significant."

We are sending copies of this report to the Attorney General; the Director Executive Office for Asset Forfeiture; and the Director, U.S. Marshals Service. We will provide copies to other parties upon request.

Major contributors to this report are listed in appendix II. If you have questions about this report, please call me on (202) 275-8387.



J. William Gadsby
Director, Federal Management
Issues

Comments From the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

APR - 1 1991

Richard L. Fogel
Assistant Comptroller General
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The following information is being provided in response to your request to the Attorney General, dated February 11, 1991, for comments on the General Accounting Office (GAO) draft report entitled, "Asset Forfeiture: Need for Stronger Marshals Service Oversight of Commercial Real Property Seizures." The Department generally agrees with GAO's recommendations as stated in its report. However, we do not agree with all of GAO's findings and conclusions. Our disagreement stems from: some instances of incorrect characterizations of the facts; broad generalizations from specific cases; and use of old cases to represent current program activities.

GAO's generalizations are the major source of our disagreement. GAO forms generalizations about program management based on its review of disparate situations in the Department's real property management. GAO reviewed 42 commercial properties valued at \$1,000,000 or more held by the Department as part of its Asset Forfeiture program. The threshold values are the extent of commonality among the properties. The properties within GAO's study sample include five undeveloped plots of land; twelve properties in which the government's interest was in the real estate only and did not extend to the business operation; and six rental business properties which do not require the planning and expertise required to manage other commercial properties. The need for different management procedures to respond to the diverse circumstances the properties present (e.g., the extent of management required and the extent of the government's interest) should be clear from this partial listing of the properties. As a result, the generalizations are of minimal value.

Richard L. Fogel

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See p. 6

Development and Use of Title and Value Information. GAO noted that the Department did not have adequate title information on 20 of the 42 properties reviewed. We believe that this figure is almost double what it should be. Our review of those same properties showed that title searches for 28 properties had been performed before, or soon after, the seizure. In an additional three properties, the circumstances surrounding the seizure made a title search unnecessary. Thus, only 11 of the 42 properties may not have had timely title searches. With the exception of instances where, for security reasons title searches and appraisals can not precede seizure, it has been, and is, the policy of the Department to have title search and financial information available to assist in making seizure decisions.

See p. 7

Availability of Accurate Property Information. GAO found disparities between the data maintained by headquarters and the districts on 29 of the 42 properties. The report provides insufficient information for the Department to confirm GAO's finding. However, the finding fails to note that the Department has updated its Seized Asset Management System (SAMS). As part of the new SAMS, the districts now input all data; the data is then uploaded to headquarters once a month. This change will result in identical data in both systems and will ensure that SAMS provides adequate and accurate information to the U.S. Marshals.

See p. 8

Frequency of the Preparation of Decision Documents. GAO found that for 18 of the 42 properties it reviewed, the districts did not prepare documentation for continued commercial property operations. GAO also noted that the Department's Inspector General found that U.S. Marshals' district offices were not processing required Significant Seized Property Decision (SSPD) documents on initial seizures. GAO misunderstands and has misstated the Department's requirements with respect to when a SSPD is necessary. The Department does not require a SSPD for all actions affecting properties over any specific dollar value, but rather when there is a significant seizure, management, or disposal decision or action for properties valued in excess of \$200,000. Thus, SSPDs are only required when an action is deemed significant by the reporting district and the property meets dollar value thresholds. Further, we believe that GAO may have inappropriately applied its standard to properties where the government seized the real estate only; the government seized less than a majority interest in the business; or the court did not place the property into USMS custody.

Richard L. Fogel

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Allocation of Personnel Increases and Staff Training. GAO states that the USMS received an additional 132 positions for the National Asset Seizure and Forfeiture (NASAF) program in fiscal year 1991, and notes that the positions' influence on the program will be dependent upon their allocation. The Department recognizes that both the mix of personnel and the allocation of staff are important to the program's effective performance. Given that the majority of the weaknesses identified by GAO are in administrative activities and based on the fact that competing priorities are more likely to affect the availability of law enforcement rather than administrative personnel, the Department is designating two-thirds of the new positions as administrative staff. Further, the allocation of these positions among U.S. Marshals' Offices will be based on seized asset workloads.

See p. 12

GAO is correct in noting that the Department does not currently offer specific training courses on property management to its U.S. Marshals Service personnel. However, GAO fails to mention that the Department is developing a specialized real property management course. This course will be available for the first time this spring and will be routinely available thereafter. Further, a substantially revised and updated policy and procedure handbook was issued in October 1990 providing comprehensive guidance for property management, including real estate seizures.

See p. 13

Pre-seizure Planning. The Department agrees that pre-seizure planning is essential, and is continually taking steps to ensure that such planning is performed. The Executive Office for Asset Forfeiture (EOAF) issued a video tape on pre-seizure planning in 1990. This tape has been widely circulated.¹ The Department continues to stress this requirement to the U.S. Attorneys' offices and investigative agencies. A major vehicle for disseminating information on pre-seizure planning and its importance to the entire seizure process is the component training seminars sponsored by EOAF. Pre-seizure planning is a major topic of discussion at these seminars.

See p. 13

Regional Oversight of District Compliance. GAO identifies the steps the Department has taken to enhance its oversight of district compliance with program policies which should address the weaknesses GAO noted in the Department's oversight activities. However, GAO leaves open the question of the effectiveness of the Department's actions to enhance oversight. We believe that indications of their effectiveness already exist.

¹ GAO was provided a copy of this video tape by transmittal letter dated February 25, 1991.

Appendix I
Comments From the Department of Justice

Richard L. Fogel

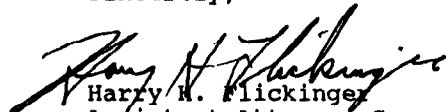
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To date, implementation of program management and contract reviews has resulted in the modification of statements of work and actual contractor repayments to the government for non-performance and overcharges. Deficiencies noted in district operations related to the Asset Forfeiture program have been corrected with the assistance of the Seized Asset Division regional offices.

Although the Department has taken exception to several of the findings in this report, we do agree that the Asset Forfeiture program has experienced problems caused by substantial growth and change. We believe, however, that the actions taken by the Department in response to these problems noted above reflect our on-going commitment to continued improvement. The Department is pleased with the U.S. Marshals Service's overall performance in managing real properties and commercial enterprises. Last year, its efforts surpassed the President's Budget Projection of a \$109 million Assets Forfeiture Fund surplus by almost \$10 million. We believe that this figure is indicative of the manner in which the Marshals Service performs its responsibilities under this program.

As I have already noted, the Department generally agrees with GAO's recommendations as stated in its report. The efforts of GAO, therefore, should prove very helpful to the Department as we move forward with further program improvements. We also appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,


Harry M. Flickinger
Assistant Attorney General
for Administration

Major Contributors to This Report

**General Government
Division, Washington,
D.C.**

John Stahl, Assistant Director, Federal Management Issues
James Black, Advisor
Maria Edelstein, Evaluator

Dallas Regional Office

Frank Joshua, Site Senior
Ellen Thompson, Evaluator

**Los Angeles Regional
Office**

Michael Golichnik, Evaluator-in-Charge
Aleta Hancock, Site Senior
Susan Spitzer, Evaluator

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