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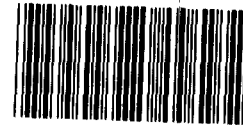
United States General Accounting Office

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

July 1992

ASSET FORFEITURE

Improved Guidance Needed for Use of Shared Assets



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-249267

July 16, 1992

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

Dear Mr. Chairman:

The Department of Justice and the U.S. Customs Service annually seize hundreds of millions of dollars in cash and property subject to forfeiture to the United States. Often, state and local law enforcement agencies cooperate with the federal government in seizures intended to deprive individuals of the assets used in or acquired through criminal activities. In return, the state and local agencies can receive a portion of forfeited assets in the form of cash or property—this is asset sharing. At your request, we reviewed how these agencies have used the shared assets.

The Executive Office for Asset Forfeiture (EOAF) directs Justice's asset forfeiture program.¹ 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. Customs administers its own forfeiture program.

During our work, we observed several internal control weaknesses in the Marshals Service distribution of forfeited cash shared with state and local agencies. We reported the results of our examination of two Marshals Service district offices to you on May 8, 1992.² This report discusses how state and local law enforcement agencies use shared assets, primarily cash.

Results in Brief

The 15 state and local law enforcement agencies that we visited used shared assets for a wide variety of purposes. Some agencies purchased weapons and vehicles; others bought computer equipment, helicopters, and crime laboratory equipment. Still others used shared cash to pay salaries of law enforcement personnel, such as narcotics enforcement teams and drug education officers.

¹The EOAF sets policies for and coordinates activities of the various Justice agencies involved in the forfeiture program.

²Asset Forfeiture: U.S. Marshals Service Internal Control Weaknesses Over Cash Distributions (GAO/GGD-92-59).

Justice and Customs program guidance requires that state and local agencies use shared assets for law enforcement purposes. The uses we reviewed appeared generally to comply with this aspect of the guidance. Shared assets must also increase and not supplant the resources otherwise available to the law enforcement agency. We found that acceptable uses under the guidance could be broadly interpreted. We noted instances in which it was unclear whether agencies used shared assets in accordance with the guidance.

Because of questions on interpretations of program guidance, we asked Justice and Customs whether the shared assets in cases we identified (1) were used for law enforcement purposes and (2) increased and did not supplant the agency's resources. Despite having similar program policies, in some cases Justice and Customs did not agree on whether a specific use was proper. For example, one police department used shared assets for city employee drug testing. Justice said this was an improper use of shared assets while Customs said this was a law enforcement purpose. Since the statutory bases of both programs are essentially identical and Customs' guidance closely corresponds to Justice's, we expected that Justice and Customs would be closer in agreement on the acceptable uses. Further, state and local agencies often did not distinguish between shared assets from Justice and those from Customs. In addition, officials at 7 out of 15 agencies found the guidance to be vague and confusing. Therefore, we believe that Justice and Customs program guidance should be revised, clarified, and interpreted consistently so that both programs operate under the same guidelines.

Justice is aware that existing guidance for the use of shared assets by state and local law enforcement agencies is vague and leads to confusion. Revising and clarifying guidance is one of the options EOAF is considering in a move to implement stronger oversight of asset sharing.

We believe that Justice's planned actions could result in significant progress toward ensuring state and local agency compliance with program policies. However, because agencies often see the Justice and Customs programs as one, such progress can only be achieved if changes are planned and taken jointly by the two federal agencies.

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

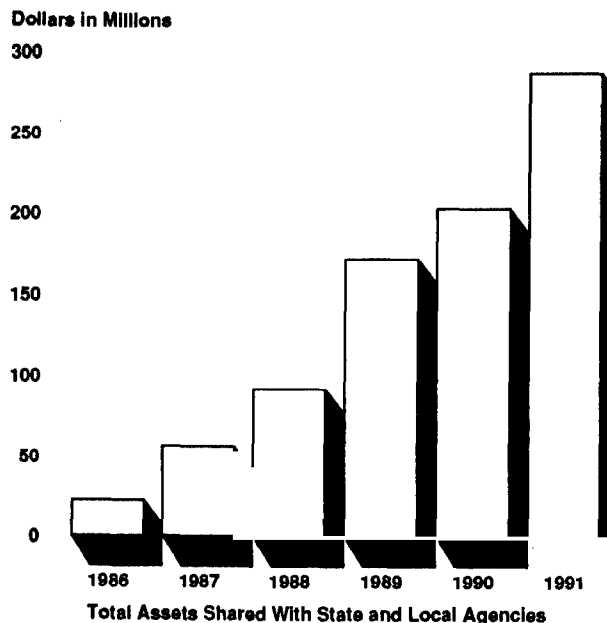
enforcement. To enhance cooperation among federal, state, and local law enforcement agencies—especially in deterring drug trafficking—Congress created the asset forfeiture sharing program. As part of the Comprehensive Crime Control Act of 1984, Justice gained authority to transfer forfeited property and cash to state and local agencies that directly participate in law enforcement efforts leading to seizures and forfeitures. Customs authority to share forfeited assets is contained in Title 19 U.S.C. Congress created asset forfeiture funds within both Justice and Customs that contain forfeited cash and cash proceeds from the sale of forfeited property; these funds are available for sharing with state and local law enforcement agencies. The applicable statutes do not address how state and local agencies are to use shared assets. Justice and Customs program guidance requires that state and local agencies use shared assets (1) for law enforcement purposes and (2) to increase and not supplant law enforcement resources.

Forfeited assets can be cash and bank accounts or property such as automobiles, boats, airplanes, jewelry, art objects, or real estate. Although state and local agencies requesting shares of forfeited assets may receive property, the shared distributions have mainly been asset sharing funds, that is, forfeited cash or the cash proceeds of forfeited property sold by the Marshals Service or Customs.³

The Justice asset sharing program shared over \$736 million in cash and \$90 million in property with state and local agencies from the start of the program in fiscal year 1986 through fiscal year 1991. Each year the total amount of asset sharing has increased (see fig. 1). In fiscal year 1990, the total was over \$203 million; in fiscal year 1991, the total exceeded \$287 million. Over 3,000 state and local agencies have participated in the Justice asset sharing program, and over 25 percent of these agencies are located in California, Florida, New York, and Texas.

³State and local law enforcement agencies request asset shares on Justice Form DAG-71, Application for Transfer of Federally Forfeited Property, or Customs Form 343, Application for Transfer of Federally Seized/Forfeited Property to State or Local Law Enforcement Agency.

**Figure 1: Total Justice Asset Sharing,
Fiscal Years 1986-1991**



Source: 1991 Annual Report, Department of Justice Asset Forfeiture Fund.

The Customs asset sharing program is much smaller than Justice's. Customs shared \$32.7 million in cash and property with state and local agencies in fiscal year 1989, \$29 million in fiscal year 1990, and \$95.2 million in fiscal year 1991. In fiscal year 1989, 89 percent went to agencies in California and Arizona. In fiscal years 1990 and 1991, about half of the shared assets went to agencies in California.

Objectives, Scope, and Methodology

Our objectives were to (1) determine how selected state and local law enforcement agencies have used and accounted for shared assets received from Justice and Customs, (2) determine whether applicable laws and program guidance establish use requirements for shared assets and remedies for misuse, and (3) identify the nature and extent of program oversight and any problems it has identified.

Time and resources constraints prevented us from visiting a representative sample of the over 3,000 agencies in the program that would have enabled us to generalize about how state and local agencies used shared assets.

For this reason, we chose a case study approach to illustrate some of the program's results. We judgmentally selected 1 state law enforcement agency, 1 multiagency task force, and 13 local agencies (police and sheriffs' departments) for a total of 15. We selected agencies in the states where Justice and Customs shared the most forfeited assets in fiscal years 1989 and 1990: California, New York, and Texas for Justice and California and Arizona for Customs.⁴ We selected agencies that received large amounts of shared assets, received large amounts of shared assets relative to agency size, or had questionable uses of shared assets reported in the news media or by other law enforcement agency officials.⁵

We visited the selected agencies to determine how they had used shared assets. At each location we traced and verified cash receipts from Justice and Customs and reviewed accounting records of how forfeited cash was maintained and spent. We also interviewed appropriate law enforcement and/or government officials to obtain their views on interpretations of program guidance, desired changes to the guidelines, program problems, and program successes.

To identify program guidance, remedies for misuse of assets, and the nature and extent of oversight we reviewed applicable laws and Justice and Customs program guidelines. At Justice and Customs headquarters we interviewed officials responsible for setting and administering program policies. We spoke with Marshals Service officials at headquarters, a regional office, and two district offices who were responsible for managing and distributing the shared assets. We also interviewed U.S. Attorney officials at two districts.

Our work was done from August 1990 to June 1992 in accordance with generally accepted government auditing standards. We discussed the information in this report with Justice and Customs officials. Their views are discussed on page 14.

⁴At the time of our review, the Marshals Service could provide information on total assets shared summarized by federal judicial district but not by individual law enforcement agency without an extensive reconstructive file search. Distribution information by agency—for example, how much shared cash a particular police department received—was vital to our identifying agencies for review. Therefore, to obtain the needed information we developed a database from Marshals Service computer files that summarized the information in the necessary format. Customs provided a breakdown of cash and property distributions by agency.

⁵We considered agencies that received large amounts of shared assets to be agencies in the top 25 recipients for Justice in fiscal years 1989 and 1990, and the top 2 Customs recipients in fiscal year 1989. We considered agencies that received a large amount of shared assets relative to agency size to be agencies that received over \$250,000 during fiscal years 1989 and 1990 and served populations of less than 15,000.

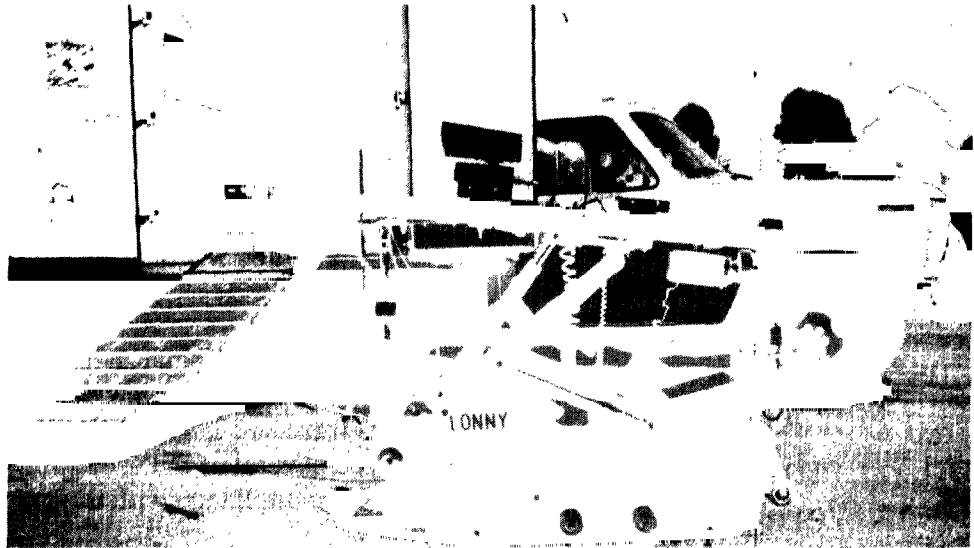
State and Local Agencies Used Shared Assets for a Wide Variety of Purposes

The state and local agencies we visited used shared assets for a wide range of purposes, including the following:

- police officer salaries and overtime;
- vehicle leases and purchases;
- computers and software;
- drug education, including salaries for Drug Abuse Resistance Education officers;
- payments to informants;
- off-site undercover facilities;
- undercover investigation expenses such as travel;
- police dogs;
- crime lab equipment;
- communication and surveillance equipment;
- training expenses, including travel and tuition;
- weapons and protective vests;
- helicopters;
- telephone bills;
- damages for liability claims; and
- building leases and improvements.

In addition, some agencies purchased state-of-the-art investigative equipment. For example, one sheriff's department bought a "super bomb robot" (see fig. 2). This robot, according to the sheriff's department, is the law enforcement tool of the future and is being purchased by civilian and military explosives and tactical units throughout the world. Some of its uses include bomb disposal, remote observation in potentially dangerous situations, and remote area searches. In another case, a police department bought a crime scene van, which contains lighting, radios, and all other necessary equipment to investigate a crime scene, day or night.

Figure 2: Super Bomb Robot



Fourteen of the 15 agencies we visited received asset sharing funds from Justice, and 9 received funds from both Justice and Customs. Each of the nine agencies that received funds from both Justice and Customs deposited them into the same account. Consequently, the agencies could not differentiate between expenditures of Justice or Customs shared funds—it was all “federal funds.”

Many of the state and local law enforcement officials told us that the asset sharing funds were an important funding source. It allowed them to purchase equipment and develop programs that would be impossible to do with normal operating funds. For example, one city’s police officials said that their biggest expenditure of asset sharing funds was for salaries of a seven-member special antinarcotics enforcement team. The officials said that without asset sharing funds, the department would probably have a drug enforcement team of some type, but it would not be as sophisticated or effective.

Officials at another police department said that asset sharing was an essential revenue source. Asset sharing funds accounted for about 10 percent of the department’s annual budget of approximately \$10 million. The police chief of another city told us that although the police department did not have a special narcotics unit, the asset sharing funds were essential for financing undercover narcotics operations. The funds also purchased needed equipment such as vehicles, computers, and radios.

In appendix I, we present 15 case studies that expand on the range of uses of shared assets beyond those listed earlier and present state and local law enforcement agency officials' views on asset sharing. Because we found guidance subject to interpretation, we could not readily determine whether some specific uses of shared assets were in compliance with Justice and/or Customs guidance. Therefore, in some cases, we obtained views on compliance from Justice and Customs. We included these views in the case studies and discuss them in the following section.

Justice and Customs Did Not Always Agree on Whether Specific Uses Were Proper

We found that the agencies used shared assets for a wide variety of purposes. However, in some cases, we could not determine whether these purposes were in compliance with Justice and/or Customs guidelines. We considered several of the uses subject to interpretation, that is, not clearly in or out of compliance with the guidelines.

Consequently, we asked Justice and Customs officials if the purposes we identified were appropriate uses of shared assets. We gave Justice and Customs descriptions of several uses and asked them the following questions:

1. Does the use appear to be for a "law enforcement purpose" in accordance with program guidance?⁶ What aspects of the use make it in or out of compliance with this requirement?
2. Does this use appear to fulfill the requirement in the guidance that shared property increase and not supplant law enforcement resources of the state or local agency?⁷ What aspects of the use make it in or out of compliance with this requirement?

⁶21 U.S.C. 881(e)(1) and 19 U.S.C. 1616a give Justice and Customs, respectively, authority to share assets with state and local law enforcement agencies that participate in activities leading to the seizure and forfeiture. Neither statute addresses how the state and local agencies are to use the transferred property. However, the legislative history (S. Rep. No. 225, 98th Cong., 1st Sess. 216, 1983) indicates that shared assets are intended to go directly to state and local law enforcement agencies for their "official use." The Attorney General's Guidelines on Seized and Forfeited Property, Department of Justice (Washington, D.C.: 1990) requires that state and local agencies use transferred assets for law enforcement purposes. It is also Customs policy that shared assets be used for law enforcement purposes.

⁷The Attorney General's Guidelines state that cash and property will be shared with a state or local agency only where it will increase and not supplant law enforcement resources of the agency. Treasury Decision 86-51 sets Customs policy that the requesting agency give a statement of the intended use for the property and "the extent to which transferred funds will be credited directly to the budget of the state or local agency involved, resulting in an increase of law enforcement resources for that state or local agency."

In 7 out of 20 examples, Justice and Customs did not agree on whether a specific use of shared assets was proper. Justice considered all seven to be improper uses of shared assets. Customs said that, generally, all 20 examples fit the broad usage in the applicable statute.

The different responses from the two agencies underscore that the program guidance can be broadly interpreted. We summarize in the following section some of the responses. (The complete text of all of the responses is included in app. I.)

Cases 4 and 5

Two agencies donated funds to the “victim/witness” and “crime stoppers” programs.

EOAF response: Improper because clearly a pass-through.⁸ These are law enforcement “uses” in that they further the mission of the agency and, in fact, are of direct help to the agency, but because they involve pass-throughs to nonlaw-enforcement entities, they are barred under our current interpretation of the Attorney General’s Guidelines.

Customs response: We find that crime stoppers programs and victim/witness programs are legitimate law enforcement purposes.

Case 10

One police department deposited shared cash into the city’s general fund. Law enforcement spending increased by about \$52,000 during a year in which \$780,000 in shared cash was deposited into the general fund.

EOAF response: This use is clearly improper. The assets went into the city’s general fund; there is no record that the money ever was spent for any particular law enforcement purpose; total law enforcement expenditures did not increase in any way close to being commensurate with the amount of sharing money received.

Customs response: We would prefer that the funds maintain a separate identity; however, the increase to the police department may be spread

⁸A pass-through is when one agency distributes shared assets to another entity. Justice policy does not allow pass-throughs because Justice interprets the applicable statutory language as allowing sharing only with the law enforcement agency that participated in activities leading to the seizure and forfeiture. Justice issued this policy in May 1991; however, it is not specifically stated in guidance that has been distributed to state and local agencies. Customs, which operates under the same statutory language, does not have a similar policy.

over several fiscal years, thus not readily apparent in 1 fiscal year accounting.

Case 13

One police department used shared assets for city employee drug testing.

EOAF response: Improper. This does not appear to be a proper law enforcement use because it is going for drug testing of city employees, not just agency personnel. This is also the kind of expenditure that would typically be covered by appropriated funds, as it is a recurring expenditure. Hence, there would be a supplantation problem even if testing was limited to law enforcement agency personnel—unless perhaps it was being used only for a trial program or the agency could articulate a proper law enforcement rationale for the tests.

Customs response: We would prefer the use be more directly linked to the use of the law enforcement agency. We would not approve this asset sharing if it was listed in the request form from the law enforcement agency; however, we do feel this is a law enforcement purpose.

State and Local Agency Officials Suggested Clarifying Program Guidance

Many state and local agency officials stated that asset sharing program guidance needed clarification. Most agency officials cited the Attorney General's Guidelines and other Justice asset sharing guides as their source of guidance for the program.⁹ Officials stated that they also followed opinions contained in correspondence with Justice and Customs; direction received from their local U.S. Attorney, Drug Enforcement Administration or Federal Bureau of Investigation office; or information received in asset forfeiture training seminars.

Officials at six agencies stated that they would like "law enforcement purposes" and "supplanting" to be better defined. The officials also suggested that the program guidance be revised to include

- examples of appropriate and inappropriate uses;
- penalties imposed on abusers; and
- regular federal auditing.

According to the officials, the primary reason they need clearer program guidance is because their local governing bodies (i.e., city councils and

⁹In addition to the July 1990 Attorney General's Guidelines, Justice published Accounting for Federal Asset Forfeiture Funds (Washington, D.C.: Sept. 1990) and A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (Washington, D.C.: Dec. 1990).

county boards of supervisors) try to gain control over the use of the funds. Four agencies provided specific instances in which their local governments attempted to use or succeeded in using the funds for inappropriate purposes or to supplant existing law enforcement resources. For example, officials at one police department complained that their city council used shared assets funds to purchase carpeting for the public library.

Moreover, one police chief said that there should be a more specific policy regarding appropriate use of the funds and prohibiting supplanting, because "as municipal budgets get tighter, local governments will be eyeing revenues from every source." Another police chief explained that the city council, "using very creative thinking," inquired about using asset sharing funds to pay the salaries of five drug education officers. The chief explained to the city council that the positions had always been paid from the general fund, so to switch to the shared asset fund would be supplanting. One council member suggested cutting the positions for a month and then reinstating them with asset sharing funds. In the chief's opinion, this would be in clear defiance of the program's intent: that shared assets increase law enforcement resources.

Justice Is Aware of Confusing Program Guidance

Justice is aware that existing guidance for the use of shared assets is vague and leads to confusion. The Director, EOAF, told us that the state and local law enforcement agencies that participate in the asset sharing program need more guidance for proper use of shared assets and that the latest guidance is too vague in this respect.¹⁰ Revising and clarifying guidance is one of the options that EOAF is considering in a move to implement stronger oversight of asset sharing.

At EOAF's request, the Justice Management Division completed a study of the sharing program in January 1992, which was intended to identify options for strengthening asset sharing oversight. The study addressed problems with program guidance as part of its overall report on how EOAF can establish oversight that will ensure compliance with program guidance.¹¹ In relation to the guidance, the study said the following:

¹⁰A Guide to Equitable Sharing.

¹¹A Management Review of the Equitable Sharing Program, Department of Justice, Justice Management Division, Management and Planning Staff (Jan. 1992).

- The provision of clear and consistent policy and program guidance has been a problem, especially in matters that address such critical sharing issues as nonsupplantation.
- The majority of concerns center around the need for more specific guidance on allowable uses.
- Although EOAF's A Guide to Equitable Sharing is viewed as useful for general procedural guidance, sharing program policies remain quite vague and inconsistent.

The study also stated that although the various guidelines that Justice has issued have been steps in the right direction, they did not provide the type of practical guidance that is of most concern to law enforcement officials. For example, the study said that the list of allowable expenses in A Guide to Equitable Sharing might have been more comprehensive and useful if it had included examples of typical expenses that would be considered outside the guidance.

The study also made observations during its field work that indicated a need for updated and more comprehensive guidance, including

- more than just minor confusion among state and local participants as to permissible expenditures, as demonstrated by expenditures that appeared to be borderline in nature;
- indications that supplantation was occurring or was about to occur; and
- some fear, shared by federal, state, and local officials, that pressure will mount for sharing funds to be diverted toward nonlaw-enforcement purposes.

The study concluded that the sharing program has outgrown the administrative controls originally designed for it, and that now is an opportune time to install an oversight mechanism that will ensure compliance with the Attorney General's Guidelines. The study presented several options to meet that goal:

1. Establish an annual report/certification process. This would be a control process requiring a fiscal year track of each law enforcement agency's sharing account activity, beginning with the initial balance and progressing through its receipts, expenditures, and any interest accrued, and concluding with the year-end balance. Certain categories of expenditures (e.g., overtime and equipment purchases) would be listed.

2. **Impose a formal audit requirement.** EOAF would announce a specific set of audit requirements to which agencies participating in the program would adhere. Either Justice would contract for the audits or state and local agencies would be responsible for their own audits.

3. **Use local-based memoranda of understanding.** EOAF would sanction a formal, more comprehensive set of conditions to which all local signatories would be committed. These agreements would represent a commitment to the major rules of the program and would be a precondition for continued program participation.

4. **Issue revised guidelines.** EOAF would clarify policy and program guidance, making it comprehensive and specific. Included would be examples of expenditures that do and do not constitute appropriate law enforcement purposes. Guidance would also address and clarify what constitutes supplantation and the consequences of it, identifying expenditures that seem most often to lead to supplantation.

Justice and Customs Planned Actions to Address Program Guidance and Oversight

Justice and Customs officials told us that their agencies have not routinely monitored the use of shared assets.¹² Their primary means of finding inappropriate use of shared assets has been agency self-reporting. In some cases Justice and Customs have learned of actual or planned misuses of shared assets and have written letters to law enforcement agencies and governing bodies threatening not to share with them in the future unless they stop the inappropriate uses.

The Director, EOAF, told us that new guidance, which should clarify appropriate uses of shared assets, will be issued in the near future. He also said that EOAF will consider options to increase oversight, such as the annual certification requirement presented in the Justice Management Division study, for future implementation. Customs said it would work with Justice to develop mutually agreeable guidelines.

Conclusions

We found widespread support for asset sharing among the law enforcement officials we interviewed. Law enforcement officials reported that sharing not only has increased the resources they have available to fight crime but also has helped support programs that would have been impossible to support without sharing.

¹²Justice has conducted two random mail surveys of asset sharing, and the Justice Office of Inspector General has an asset sharing review currently in progress. The Treasury Office of Inspector General also has a review of Customs asset sharing in progress.

We reviewed records showing millions of dollars of shared assets spent by the 15 agencies. In general, these assets were used for a wide variety of law enforcement purposes in accordance with program guidance. However, in some cases we could not readily determine whether the uses were in compliance with Justice and Customs guidance. Justice and Customs gave us differing opinions on appropriate uses in some instances, and state and local agency officials said that asset sharing guidance needed clarification.

Justice is aware of the confusing program guidance. It is working toward clarifying guidance, including more clearly defining appropriate and inappropriate uses. Justice is also considering options intended to strengthen program oversight.

The state and local agencies we reviewed did not distinguish between the Justice and Customs asset sharing programs and did not keep separate records for assets received from each program. In order to avoid confusion among participating state and local agencies and to facilitate oversight, the Justice and Customs asset sharing programs should have the same guidelines, with the same interpretations of appropriate asset use. The options that Justice is currently considering for program changes could serve as a guide for the agencies' joint efforts.

Recommendations

To better ensure that assets shared with state and local law enforcement agencies are used in accordance with program goals, we recommend that the Attorney General and the Commissioner of Customs work together to develop mutually agreeable guidelines for asset sharing. The joint guidance should establish clear, specific definitions for concepts such as "law enforcement purposes" and "supplanting of resources."

We also recommend that the agencies jointly develop policies and procedures and assign responsibilities for federal oversight of asset sharing, using the options that Justice is currently considering.

Agency Views

The Director, EOAF, Department of Justice, and the Assistant Commissioner, Office of Enforcement, U.S. Customs Service, agreed that the two agencies should develop mutually agreeable guidelines for asset sharing. They plan to work together to develop guidelines that are clear, consistent, and within the scope of the law.

Both agencies also agreed to work together to develop policies and procedures and assign responsibilities for federal oversight of asset sharing, using the options that Justice is currently considering.

As arranged with the Subcommittee, we plan no further distribution of this report until 30 days after its date, unless you publicly release its contents earlier. After 30 days, we will send copies to the Attorney General, the Secretary of the Treasury, and other interested parties.

Major contributors to this report are listed in appendix II. If you need any additional information or have any further questions, please contact me on (202) 566-0065.

Sincerely yours,



Harold A. Valentine
Associate Director, Administration
of Justice Issues

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Abbreviations

EOAF Executive Office for Asset Forfeiture

Case Studies: State and Local Agency Use of Shared Assets

We visited 15 state and local law enforcement agencies that received federally shared assets. The agencies were located in Arizona, California, New York, and Texas—the states where Justice and Customs have shared the most forfeited assets. Included were 10 police departments, 3 sheriff's departments, 1 state police agency, and 1 multiagency narcotics task force. Table I.1 presents the case studies in descending order by total Justice and Customs asset sharing funds distributed in federal fiscal years 1989 and 1990.

The case studies illustrate how agencies used the asset sharing funds and present state and local law enforcement officials' views on asset sharing. The information we found did not always provide a clear, understandable, and logical reason why agencies spent asset sharing funds as they did. In fact, in several cases, we could not easily determine whether uses complied with Justice and Customs guidance. **The uses for which we could not easily determine compliance with program guidance are presented in bold type.** We asked Justice and Customs officials their opinions on these uses of shared assets. We did not give them every possible example. Justice and Customs did not always agree on appropriate uses. We have included their responses with the appropriate cases.

**Appendix I
Case Studies: State and Local Agency Use of
Shared Assets**

**Table I.1: State and Local Agencies
Visited**

Case	Type of agency	Justice shared assets	Customs shared assets	Total shared assets
1.	Sheriff's department	\$ 11,492,200	\$ 9,796,832	\$ 21,289,032
2.	State police	14,524,225	891,360	15,415,635
3.	Task force	435,938	14,057,970	14,493,908
4.	Police department	1,976,131	1,677,165	2,653,296
5.	Police department	0	2,109,341	2,109,341
6.	Sheriff's department	1,695,156	48,000	1,743,156
7.	Police department	1,372,793	67,200	1,439,993
8.	Police department	907,953	52,200	960,153
9.	Sheriff's department	902,316	0	902,316
10.	Police department	32,004	765,228	797,232
11.	Police department	503,501	287,882	791,383
12.	Police department	512,209	0	512,209
13.	Police department	381,797	0	381,797
14.	Police department	285,743	0	285,743
15.	Police department	276,558	0	276,558

Source: U.S. Customs Service and U.S. Marshals Service.

Case 1

In this case, the sheriff's department used shared assets for costs such as salaries, vehicles, parking fees, building rental, travel and tuition for drug enforcement training, and equipment such as bomb suits and body wires. **The department also used shared funds to pay hotel conference center costs for a "community gang workshop." Workshop costs totaling nearly \$10,000 included 2 days of breakfast, lunch, and beverages for 200 people; hors d'oeuvres; meeting room rental fees; and service charges.**

The department spent a total of several million dollars per year in unshared cash for salaries from July 1989 to June 1991. These salaries included those of sworn and nonsworn personnel in special programs such as an antidrug community education program, narcotics task forces, inmate treatment, and an automated information retrieval system for patrol stations.

The department passed through a portion of shared cash to other cities in which it provided contracted law enforcement services and in which seizures took place. The contract cities did not maintain their own police forces. We reviewed records at one contract city and found that the city used cash pass-throughs to pay the county for law enforcement services. Records did not show whether the services paid for with the cash pass-throughs were in addition to normal contract services.

Department officials said that no significant disagreements had occurred between the department and the county board of supervisors over use of shared assets. The sheriff's department had decided how to use the assets but had tried to cooperate with the county. For example, the county board of supervisors wanted an inmate rehabilitation program but did not have available funds. The sheriff's department agreed to fund the program for 1 year with shared cash. So far, the sheriff's department had funded the program for 2 years and had spent about \$7 million in shared cash, including about \$1.2 million spent in 1 year for the salaries of probation officers who worked directly with the inmates. Shared cash also paid the salaries of sheriff's deputies working in the program.

Executive Office for Asset Forfeiture (EOAF) Response: Expenditure for the community gang workshop is a proper use of the funds. Public relations programs designed to foster compliance with the law, particularly when directed at problem groups, are appropriate law enforcement uses. Many of the individual expenditures appear to be social in nature, or arguably excessive, so the question then becomes whether such expenditures are deemed to be necessary and proper under local law and custom to making such workshops attractive to participants.

Paying salaries of special program personnel is a proper use of the funds unless there is a supplantation problem. If these special program personnel were already employed before the equitable sharing, the use of shared money for their salaries would clearly create a supplantation problem.

Funding an inmate drug rehabilitation program may be a proper law enforcement use when the agency has custodial responsibility for the inmates. Using part of the money to pay for salaries is proper if limited to new positions and only for a limited period of time. Use of money to pay for probation officer salaries is clearly an improper pass-through,

assuming the probation officers are employees of the court, not the sheriff's department.

Pass-throughs to contract cities are probably an improper use of the funds. Here it could be argued that the money is in effect being spent by the recipient agency as it is receiving the money from the contract city. This argument might fly if the contract city clearly used the money to pay the agency to perform new services. But we can hypothesize no situation in which it would be necessary for the money to go first to the city and then back to the recipient agency.

Customs Response: Expenditure for the community gang workshop seems to be an acceptable use of the funds.

Generally, Customs does not approve requests for drug education programs that are not related to the law enforcement agency; however, we find use of the funds for these special programs acceptable.

The pass-throughs to contract cities seem to be a unique situation; however, if the funds are being used by the law enforcement agency for law enforcement purposes, the practice is acceptable.

Case 2

At this state police department, shared cash was deposited into a seized assets account where it was commingled with other revenues, such as fees for accident reports and photographs and revenues from a statewide cellular phone surcharge. Deposits into the account could be identified by source, such as shared assets or fee revenues, but expenditures could not. From 1986 through 1991, shared cash accounted for approximately 81 percent of the deposits into the seized assets account. According to state police officials, the state legislature decided to commingle the revenues because the shared asset revenue is not a reliable source of funds, and they wanted a steady cash flow in the account. The other revenue sources in the account did not have restrictions on their use as did the asset forfeiture funds. The account did not earn interest.

Expenditures from the seized assets account included salaries for 74 law enforcement personnel, patrol vehicles, undercover vehicle lease payments, crime lab supplies, a confidential fund, and leases on police substations. A state police official said that the seized assets account was used to pay the substation leases for the last couple of

years but that the leases had been paid with general fund money in the past.

According to state police officials, because of delays in receiving federal asset sharing funds, the state legislature has loaned the seized assets account approximately \$21 million to offset a negative cash balance of that amount. However, new revenues coming into the account are spent without reducing the negative balance. If the negative balance is never reduced by future receipts, the state will have to absorb the loss.

The state police are to submit an annual budget request for the use of asset sharing funds, but the state legislature has final control over how the funds are spent. According to a state police official, the legislature is aware of Justice's accounting guide,¹ which prohibits the commingling of federal sharing funds with other sources of revenue. He stated that the legislature believed that because deposits of federal sharing funds into the account can be identified, the funds were sufficiently separated and they have not violated the guidance. The official also stated that he would prefer the funds to be totally separated from other revenue sources, but he is not in control—the state legislature is.

The state police officials had no suggestions for changes to the federal guidance. However, they did suggest that a better guidance distribution system is needed because they do not receive guidance until long after it has been issued. The officials stated that the Drug Enforcement Administration or Marshals Service should distribute the guidance because they know which agencies are participating in the program.

EOAF Response: This is an improper use because it constitutes supplantation. Equitable sharing money can be used to temporarily lease new facilities by analogy to the rule on temporary salaries. These appear to be recurring expenditures, and appropriated funds have been made available in the past; therefore, we see a supplantation problem in the case as presented.

Customs Response: Leasing of facilities for law enforcement purposes is an acceptable use.

¹Accounting for Federal Asset Forfeiture Funds: A Guide for State and Local Law Enforcement Agencies, Department of Justice, Executive Office for Asset Forfeiture (Sept. 1990).

Case 3

The focus of this regional narcotics task force was on major narcotics trafficking. In the past 4 years, the task force seized about 18,000 pounds of cocaine and approximately \$80 million in cash. The task force was completely self-supporting from shared assets proceeds. Task force funding could end at any time if drug seizure activity were to cease.

The task force consisted of 26 federal, state, and local law enforcement agencies, with 60 police officers and support staff from the agencies assigned full time. The task force retained 25 percent of shared cash received and paid the remaining 75 percent to the participating state and local agencies. Payments to the agencies were based on an agreed upon formula with each agency receiving the same percentage of each forfeiture. The sharing percentages ranged from 1.88 percent for agencies providing 1 investigator to 24.64 percent for the sheriff's department providing 20 personnel to the task force.

The task force did not monitor how the participating agencies used their sharing proceeds but did have a statement in its agreement stipulating that the asset or property would only be used for narcotic law enforcement purposes. We visited two of the agencies that worked with the task force. The results of our visits are in cases 11 and 13.

The 25-percent asset sharing proceeds retained by the task force were used for operating expenses and for items such as overtime salaries, office equipment, and vehicle leases. The task force also planned to purchase a helicopter, according to the program manager.

EOAF Response: Improper. Department rules clearly forbid pass-throughs to other law enforcement agencies. Each recipient agency must directly apply for equitable sharing money.

Customs Response: We would rather the funds be used directly by the task force, or each agency request sharing directly from Customs; however, this procedure seems proper.

Case 4

This city police department's biggest expenditure of asset sharing funds was for salaries, overtime, and other expenses of a seven-member special narcotics enforcement team. The cost for operating this team ranged from about \$437,000 to about \$604,000 annually for the 3-year period we reviewed. The department also purchased hand guns, computers,

communications and surveillance equipment, and undercover vehicles. **The police department contracted with a private helicopter company on contingency, agreeing to pay a portion of any asset sharing proceeds if the helicopter was used in a seizure effort.** The department also paid informants and purchased materials for a drug education program with asset sharing funds.

The asset sharing funds were maintained in a separate city revenue account called the "Drug Enforcement Rebate" account. Several months before our visit, the city decided to credit the "Drug Enforcement Rebate" account with the interest the asset sharing money earned. Before this decision, interest earned went to the city's general fund. In addition, after our visit the city decided to credit nearly \$400,000 to the "Drug Enforcement Rebate" account for interest that was previously credited to the city's general fund.

The police department prepared a separate budget for using the asset forfeiture funds, which went through the regular budget process to obtain city council approval. Police officials said that the city government had not interfered over use of the funds. They also commented that the asset forfeiture sharing program helped to foster a good working relationship between the local law enforcement community and federal law enforcement agencies.

The police department had one problem that it could not resolve, however. It was not allowed to donate to the nonprofit, nongovernment program "We Tip," according to a ranking police officer. The officer said that the police department wanted to give two seized vehicles to "We Tip," which supplies information on criminals to law enforcement agencies. According to the officer, the U.S. Attorney said that the police department could not give the vehicles to "We Tip" because the program was not a governmental agency. The officer believed, however, that giving the cars to "We Tip" would be within the spirit of the program because informants can be rewarded, so why not this organization? We could not find any documentation of a U.S. Attorney making the statement, and the police official was unclear about who really made it. (See cases 5 and 6 for similar situations.)

EOAF Response: The helicopter contingency situation is improper. The problem with paying a portion of asset sharing proceeds to a private helicopter company is, first, that it involves a commitment to use future

equitable sharing money in a certain way. A local law enforcement agency may not commit in advance to spend seized assets in a certain way. It has no authority to make such a commitment because it has no authority to bind the federal decisionmaker as to either the possibility of sharing or how the money may be spent. Second, once the money is received by the agency, it is being used to pay for a service already provided and a liability already incurred, hence, the money is not being spent to augment law enforcement resources but rather to supplant the use of existing appropriations to pay off contingent liabilities. Third, this arrangement creates a serious ethical appearance problem, because it ties in compensation with the fact and amount of forfeiture—something that is clearly barred for government workers.

Private agencies such as “We Tip” may further the mission of the law enforcement agency and be of direct help. However, because the donation to “We Tip” clearly involves a pass-through to a nonlaw-enforcement entity, it is barred under our current interpretation of the Attorney General’s Guidelines on Seized and Forfeited Property.

Customs Response: Paying a portion of asset sharing proceeds to a private helicopter firm on contingency appears to be for law enforcement use.

We find that crime stoppers and victim/witness programs are legitimate law enforcement purposes.

Case 5

This city police department used shared assets for a crime van, 32 police cars, undercover expenses, payments to informants, computers, a surveillance camera for the jail, materials for a drug education program, training and related travel expenses, and an **audit of asset forfeiture funds by an outside accounting firm.**

The police department also donated \$5,000 on two occasions to the Victim/Witness Program, a private, nongovernmental organization that counsels victims and witnesses. The chief of police considered this to be a law enforcement purpose because crime victims do a better job of testifying after they have had counseling (two other cities made donations to similar organizations, see cases 4 and 6).

EOAF Response: Use of the money to pay for an audit of funds received is a proper use. There is no indication that there are existing funds available to cover audits of equitable sharing money.

The donation to the Victim/Witness Program is barred under our current interpretation of the Attorney General's Guidelines because it is a pass-through to a nonlaw-enforcement entity.

Customs Response: The use of the money to pay for the audit and the donation are legitimate law enforcement purposes.

Case 6

This sheriff's department was involved in a major dispute with the county board of supervisors over the use of asset sharing funds. The county board of supervisors wanted to use \$400,000 for repairs to the jail. The former sheriff did not want to use the funds for jail repairs, so he opened an account in a commercial bank and made asset sharing check deposits and expenditures to and from this account without the county's knowledge.

The current sheriff said that when he took office, he sat down with the county board of supervisors, the auditor controller, and the chief administrative officer and explained the federal guidelines for use of the funds—that they must be used for law enforcement purposes and must supplement and not supplant law enforcement resources otherwise available. He and the board agreed that the funds should be accountable to the public, kept in a county account, and subject to county audit. They also agreed that the sheriff's department, not the county, will decide how to use the funds with board approval. They established a county ordinance that requires the funds to be used in accordance with the federal Attorney General's Guidelines.

Use of asset sharing funds at this sheriff's department included salaries for eight drug abuse education program staff persons and a systems analyst; the painting of helicopters; an informant fund; and a **\$10,000 donation to Crime Stoppers, a community based nonprofit organization that encourages anonymous tips from the public to help police solve difficult cases** (this type of donation is discussed in case studies 4 and 5). The department also purchased prisoner home surveillance equipment, a computer, a remote-control bomb disposal robot, vehicles, video equipment, cellular phones, six police dogs, and semiautomatic weapons.

The department shared proceeds of asset forfeitures with nine contract cities where the department provided law enforcement services and made asset seizures. We visited two of these cities and found that they had used the funds for a variety of purposes, including computer equipment, travel

and training, a motorcycle, a cellular phone, a body wire, and “drug free zone” signs.

The sheriff’s philosophy was that asset forfeiture funds should be used for nonrecurring expenses because they are not a reliable revenue source. He has had to deviate from this philosophy because of tight budget constraints. For example, the department hired a systems analyst to help with automated equipment purchased with shared assets because the county would not fund the position from the general fund. This sheriff also stated that although paying for drug education is not against federal guidelines, he would prefer to use the funds for nonrecurring expenses, such as equipment, and have the county pay for the program.

The former sheriff requested the purchase of 118 semiautomatic weapons with asset forfeiture funds because the county would not fund them because of budget constraints. The former sheriff stated he would prefer to use county money for future weapons purchases because weapons are legally required safety equipment that the county must provide by state law. According to the sheriff, he had the option of letting deputies be out-gunned or using asset forfeiture funds to purchase the necessary weapons. Because officer safety was at stake, he decided to use the asset sharing funds.

The sheriff stated that to maintain the integrity of the asset sharing program, the federal guidelines must explicitly state the following: (1) the law enforcement agency executive (i.e., the sheriff) is to decide how and when asset forfeiture funds are used and (2) the governing body should not dictate the use of the funds. Expenditures of the funds should be subject to review to ensure that the uses are consistent with the federal guidelines and to provide a check against embezzlement.

The sheriff also stated that this authority needs to be spelled out. As long as it is nebulous, there will be problems with the governing body trying to gain control of the funds. Particularly in times of financial crisis, city councils and boards of supervisors feel pressured to see the asset forfeiture funds as windfalls to cure their financial ills.

EOAF Response: The donation to the Crime Stoppers program is an improper use of asset forfeiture funds because it is a pass-through to a nonlaw-enforcement entity.

The purchase of semiautomatic weapons was a proper use of the funds. The sheriff was correct to say that this is the type of purchase that should be made with appropriated funds. However, without such funds, the purchase of additional equipment of any type is permissible so long as it enhances the ability of the agency to do its job.

Customs Response: We find that Crime Stoppers programs are legitimate law enforcement purposes.

The purchase of semiautomatic weapons is an acceptable use of the funds; however, we prefer that the assets not be used to circumvent local policies and procedures. To police local policies and regulations is far beyond our capabilities and responsibilities.

Case 7

This city police department used shared assets primarily to benefit its narcotics and air support units. The funds were used for items such as cellular phones, specialized surveillance equipment, an off-site undercover facility, and helicopters. **Included in the costs for the off-site facility were lease payments, telephone bills, furniture, improvements to the building, and paving the parking lot. The department did not have an off-site narcotics facility before it used the funds for this purpose.** Police officials said that asset forfeiture funds made purchasing these items possible. They could not have purchased them out of the normal department operating budget.

Police officials said that city officials had been “covetously” eyeing the asset sharing funds for purposes other than law enforcement, such as buying computers for the library and vehicles for the public works department. The police officials had to educate city officials that the asset sharing funds were to be used only for law enforcement purposes.

One police official told us that federal guidance concerning proper use of shared assets was too vague. He said that the Attorney General’s Guidelines require that shared assets be used for “law enforcement” purposes but do not clearly define “law enforcement.” The official suggested that it would be helpful if the guidelines provided examples of appropriate and inappropriate uses of asset sharing funds. As an example, he said he did not know if it was appropriate to use shared assets to pay for a drug education officer. The guidelines do not address the use of the funds for this purpose. One of his staff went to an asset seizure training conference and was told that using the funds for a drug education officer

was appropriate. The officer said that he would contact the local Drug Enforcement Administration or U.S. Attorney's office if he had any other questions.

Case 8

This police department used asset sharing funds for helicopter surveillance equipment and radios, crime lab equipment, computers, and body armor. Asset sharing funds were also used to pay the salary of an asset seizure coordinator, and \$100,000 was used to establish a cash fund, called the drug interdiction reserve, used for drug buys. Police officials stated that although shared assets accounted for only a small portion of their budget, they were essential for supporting surveillance activities and the crime lab.

Asset sharing funds were deposited into a city fund called the reserve for asset seizure fund, which included deposits from a state asset forfeiture process. **Interest did not accumulate in the reserve for asset seizure fund. It accumulated in the city's general fund.** The city budget manager told us that the city had no intention of crediting interest to the fund unless it was required to do so by law.

EOAF Response: Crediting interest to the city's general fund, not the separate asset forfeiture fund, was improper. Department guidelines are clear that interest on equitable sharing money received is subject to the same rules as the sharing money itself.

Customs Response: We have found several instances of interest not being earned on asset forfeiture funds through information from the receiving law enforcement agencies. We do not find this acceptable, and have notified the county and city authorities that the use did not comport with the certification on which the transfer was based.

Case 9

The sheriff of this county believed that shared assets should be used primarily for narcotics-related law enforcement, especially for antidrug abuse education. **The sheriff's department spent between \$3 million and \$4 million of asset forfeiture funds to educate county students about drug abuse. Sheriff's deputies went into schools to teach children to stay away from drugs, and the department also participated in a public/private sector drug abuse education organization that prepared antidrug abuse materials and distributed them to the community.**

In this county, a dispute between the sheriff's department and the county board of supervisors arose over a large parcel of forfeited real property. The real property, a 213-acre ranch, was transferred to the county under the sharing program for use as a law enforcement training center. The dispute began when the county board of supervisors, in a financial crunch, voted to sell the property and use the proceeds to build a new jail and for other purposes including decreasing a potential cost overrun of the sheriff's budget.

The U.S. Attorney stated that, as he understood it, the proceeds from such a sale would be used to offset current and future sheriff's department budgetary allocations and that that action would violate the Attorney General's Guidelines governing the transfer of federally forfeited property to local law enforcement agencies. He also said that the clear intent of the guidelines is to increase the resources of the law enforcement agencies that participated in the seizure and forfeiture of the property. To do otherwise would jeopardize the sheriff department's ability to participate in future sharing distributions.

Despite numerous attempts by Justice officials to stop the sale, the property was sold. The sale occurred after our visit to the sheriff's department, so we do not know how the sale proceeds were used. Justice officials said that in the future, the contract for transfer of real property will contain an enforceable reversionary clause to preclude similar problems from occurring. Under the clause, if the property is not used for the intended purpose, it will revert to federal ownership.

EOAF Response: The use of asset forfeiture funds for the drug abuse education program is a proper use of the funds but appears to be a pass-through. The expenditure of funds to pay the cost to educate students using agency personnel is proper. It is not clear, though, why \$3 million to \$4 million was necessary for this purpose. The money could not be used to cover salaries unless new positions were involved. It could be used to purchase training materials and to cover travel expenses.

Customs Response: Customs usually does not approve requests for drug education programs that are not directly related to the law enforcement agency; however, we find this case acceptable.

Case 10

The police chief said that shared cash was used to hire additional law enforcement personnel. Our review of the accounting records showed that

shared cash the police department received was deposited into the city's general fund. Because the shared cash did not maintain a separate identity in the general fund, we could not determine for what purpose it was spent. Law enforcement spending increased by about \$52,000 during a year in which \$780,000 in shared cash was deposited into the general fund.

EOAF Response: This use of shared assets is clearly improper. The assets went into the city's general fund. There is no record that the money ever was spent for any particular law enforcement purpose. Total law enforcement expenditures did not increase commensurate with the amount of equitable sharing money received.

Customs Response: We would prefer that the funds maintain a separate identity. However, the increase to the police department may be spread over several fiscal years and thus may not be readily apparent in 1 fiscal year accounting. If the law enforcement agency was getting shortchanged, we are sure they would request assistance from us to ensure that the certification and approval of the asset sharing is carried out.

Case 11

This police department used shared assets to pay for six police officer positions, all in a special narcotics enforcement detail. Funds were also used to purchase equipment such as guns, ammunition, mobile telephones, and a county-coordinated radio system.

The police chief expressed concerns about the use of shared assets. He said that the city council had its own ideas about uses of the funds, and they were not for law enforcement purposes. Although the city had not made the police department use the funds for inappropriate purposes, it often made requests that could circumvent the program's intent. For example, the chief said that the city manager wanted to use the funds to create a new youth and family coordinator position. It would not be a police position and very probably would not be an appropriate use of the funds. The chief also said that the city council, "with very creative thinking," inquired about using asset sharing funds to pay salaries of five existing drug education officers. The chief explained that these positions were always paid by the general fund, so to switch to the asset forfeiture fund would be using the funds to supplant existing resources. One council member suggested cutting the positions for a month and then reinstating them with asset forfeiture funds. In the chief's opinion, this would be in clear defiance of the program's intent.

The chief said that he constantly had to explain to the city council that the funds could not be used for nonlaw-enforcement purposes or to supplant the regular budget. He said that it would be helpful if program guidance provided examples of inappropriate uses of funds. He also thought that the funds should be audited regularly by the federal government, complete with penalties to the city if funds were found to be used inappropriately.

Case 12

According to police officials, before fiscal year 1992, the police department used asset forfeiture funds for narcotics investigations, training, computers, overtime, and a student drug education program. **For fiscal year 1992, federal asset forfeiture funds were budgeted primarily for the salaries of 63 new entry-level police officers. The funds had not been used for salaries in prior years. The police department would rather have used the funds for equipment and training, but funding for the salaries was not available from any other source. The new officers were a priority, so the police department funded the positions with shared assets.**

A police official stated that although it is best to use asset sharing funds for nonrecurring expenditures, the federal guidelines are flexible and allow using the funds for salaries. This flexibility is beneficial, because in the current fiscal climate the police department had no other way to fund the positions. However, if the city were financially healthy, the police department would be opposed to using the funds for the salaries of the 63 officers.

In accordance with state law, the police chief is to propose expenditures of asset sharing funds for approval by the city manager and city council. A police official said that the federal guidelines should state that the law enforcement agency head, not the municipal government, should decide how to use the funds.

EOAF Response: Despite the supplantation concern, we have approved the use of equitable sharing money to pay salaries for new positions on a temporary basis. The rationale is that we are increasing available law enforcement resources, assuming no money would otherwise be made available for such positions. We have yet to develop a hard and fast rule regarding how long such positions may be funded this way. One could not properly use equitable sharing funds received later to cover these positions because the positions would no longer be new.

Customs Response: The use of asset sharing funds to pay for the new police officers seems to be an acceptable use of the funds.

Case 13

This police department's primary use of shared assets was to pay the salaries for both sworn and civilian personnel in a major violators' program. The positions funded included four civilian crime scene officers. According to department officials, the officers had formerly been sworn personnel with salaries paid by the city general fund; changing them to civilian positions was the city's way to justify changing the funding to shared assets, thus supplanting the police department's regular budget. The department also funded most of its capital purchases with shared assets, because funding has been unavailable through the city general fund.

According to department officials, without the asset sharing funds they would not have a major violators' program, nor would they be able to purchase equipment. These officials said that, before the major violators' program, narcotics enforcement involved street-level drug dealing and did not accomplish much.

Other uses of shared assets included

- **\$4,000 in asset forfeiture funds to pay for drug testing of all city employees operating motor vehicles—not just law enforcement agency employees,**
- **payment of legal fees and damages in suits filed against the city in narcotics-related cases (in years before the city received shared cash, these costs were paid out of general fund money), and**
- **interest paid to the city general fund for cash used as flash rolls in narcotics investigations.**

In another transaction involving shared assets, city council minutes stated that asset seizure money was being used to fund new carpeting for the library. However, this use was not readily apparent in the accounting records, which did not actually show asset forfeiture funds paying for library carpeting. Budget changes moved \$40,000 in general funds from narcotics unit overtime to the library carpet project. Asset sharing funds budgeted for narcotics overtime were then increased by \$40,000. However, both the general fund and asset forfeiture fund budgets for narcotics overtime increased over previous levels, so the substitution of

asset sharing funds for general fund money was not easily detected.

The chief of police said that the city was “always trying to be inventive” in how it used shared assets. He believed the federal government must “put some teeth” into a law or regulation that stated what is not permissible for a city or police department to do with the assets. The program should have penalties for misuse—such as fines to be paid from the general fund—because if there were no consequences, there would be no reason to follow the guidance. At the time of our work, there was nothing to prevent cities from using shared assets for projects loosely or not at all associated with law enforcement.

EOAF Response: The use of asset forfeiture funds for city employee drug testing does not appear to be a proper law enforcement use because it is for drug testing of city employees, not just agency personnel. This is also the kind of expenditure that would typically be covered by appropriated funds because it is a recurring expenditure. Hence, there would be a supplantation problem even if testing was limited to law enforcement agency personnel, unless perhaps it was used only for a trial program or the agency could articulate a proper law enforcement rationale for the tests.

The payment of legal fees and damages is a proper use of the funds. The fact that appropriated money has been used in the past for a particular purpose is not conclusive as to whether there is a supplantation issue. If money has been required only on a sporadic basis to pay outside legal fees and damages, we would not classify the payments as recurring expenditures for which there are regularly designated appropriated funds. We reached this conclusion here in part because there was a total increase in agency expenditures as a result of equitable sharing. We are also satisfied that there is a proper law enforcement use here because the payment of law enforcement obligations is a law enforcement purpose. We would be troubled, however, if there was a standing fund to pay off liabilities and the fund was in surplus in any fiscal year because liabilities were paid from equitable sharing money.

It is clear from the stated facts that the equitable sharing money did pay for the carpeting in the public library. Accounting gimmicks make it appear that the money went to agency overtime, but we know that did not happen. If the city council minutes had not been so candid, the city might be able to disguise this fact. The justification that all budgets were in fact increased makes no difference, because it is clear that if this money had

not been used, the carpeting would not (as opposed to could not) have been done.

Customs Response: The use of asset forfeiture funds for city employee drug testing would not be approved if it was listed in an agency's request form. However, we do feel this is a law enforcement purpose. We would prefer the use be more directly linked to the use of the law enforcement agency.

Payment of legal fees and damages seems to be an acceptable use of the funds. Use of the funds for carpeting the public library is an improper use of the funds.

Case 14

According to the chief of police, this police department received asset sharing funds primarily from participation in a drug task force with the Drug Enforcement Administration and six other police and sheriff's departments. One officer from each agency was assigned to the task force. The police department was the custodian of the asset sharing funds for the task force and distributed the cash proceeds equally to the other participating agencies. Federal asset sharing checks were deposited into a city checking account for restricted revenue, where they were identified separately as "drug funds" and earned interest.

The police department used its share of the funds for vehicles and vehicle repairs, guns and ammunition, monthly task force expense contributions, veterinary bills for a police dog, a dictaphone recorder for 911 calls, and a task force investigator's gas and travel expenses. According to the police chief, the asset sharing program has allowed the department to purchase things it would not have been able to buy without the funds.

Approximately 10 percent of the funds the department received was given to a youth drug education program. According to the city manager, asset forfeiture funds were the primary funding source for the drug education program. Program expenditures from December 1986 through February 1992 totaled almost \$10,000 and included over \$4,000 for student and advisor meetings and travel (nonlaw-enforcement personnel) and almost \$2,000 for pizza, parties, dances, and movies. Other expenditures included shirts and identification cards.

According to the chief and the city manager, the police chief decided how to use the asset sharing funds, with approval by the city commission. The chief stated that there had been no problems with the city trying to gain control of the funds. The city commissioners once asked the chief if the funds could be used to add extensions to city buildings. The chief explained that building extensions would not be "in the spirit of the program," and the city did not use the funds in this manner.

The police chief was concerned that the city might try to make him use asset sharing funds for the salary of the officer assigned to the task force. He wanted the city's general fund to pay for the position as long as possible. He said that if a time came when the city could not afford to pay the salary, then he would agree to use shared assets.

EOAF Response: Expenditures for the youth drug education program were proper uses of the funds provided that they were deemed to be necessary and proper under local law and custom to making such programs attractive to the participants.

Customs Response: Customs usually does not approve requests for drug education programs that are not directly related to the law enforcement agency; however, we found this case acceptable.

Case 15

The police chief of this city believed that shared assets should be used primarily for narcotics law enforcement. Consequently, asset sharing funds were used to purchase special weapons for police officers, buy crime lab equipment, fund an undercover drug buy program in the high schools, and purchase a property tracking system that tracks all police property using scannable bar codes.

City funding was not available for any of these activities, and they would not have been possible without shared assets, according to the chief. The chief also said that shared assets were not used to pay police officer salaries. The asset sharing funds are not steady income and cannot be relied upon as a constant funding source needed to sustain ongoing expenses such as salaries.

Asset sharing funds were deposited into a separate city finance account. The city received the funds from the U.S. Marshals Service as checks made out in the chief of police's name, not to the city. The assistant director of finance told us that it would be better business practice if checks were

made out to the city and not to an individual. We addressed this situation in our recent report on the Marshals Service.² The Marshals Service clarified its policy to require checks to be written to an agency such as a city, rather than to an individual.

Interest earned on the asset forfeiture account went into the city's general fund. Police and city officials said they had not received any direction from the federal government concerning how earned interest must be used. The city director of finance/treasurer said that according to state law, all interest must be applied to the general fund regardless of which account earned the interest. He said that as city treasurer, he can be personally liable if he disobeys the law, and he will continue to credit the asset forfeiture interest to the general fund until he is directed otherwise by the U.S. Attorney.

Lastly, the city and police officials said that policy on appropriate use of shared assets should be more specific. As municipal budgets get tighter, they said, local governments will be eyeing revenues from every source, including shared assets. Clear, specific guidance about what the funds can be used for and a clearer definition of "law enforcement purposes" are needed.

EOAF Response: The purchase of the property tracking system is a proper use of asset forfeiture funds. As a capital expenditure, we see no supplantation problem. The use is clearly of benefit to the efficient operation of the agency.

Crediting interest to the city's general fund, not the separate asset forfeiture fund, is improper. Department guidelines are clear that interest on equitable sharing money received is subject to the same rules as the sharing money itself.

Customs Response: The purchase of the property tracking system is an acceptable use of asset forfeiture funds.

We have found several instances of interest not being earned on asset forfeiture funds through information from the receiving law enforcement agencies. We do not find this acceptable and have notified the county and city authorities that the use did not comport with the certification on which the transfer was based.

²Asset Forfeiture: U.S. Marshals Service Internal Control Weaknesses Over Cash Distributions (GAO/GGD-92-59, May 8, 1992).

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