

GAO

United States General Accounting Office

High-Risk Series

December 1992

Asset Forfeiture Programs





United States
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Comptroller General
of the United States

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The President of the Senate
The Speaker of the House of Representatives

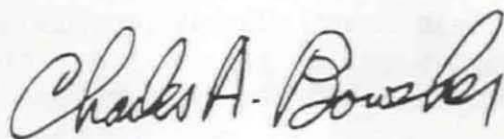
In January 1990, in the aftermath of scandals at the Departments of Defense and Housing and Urban Development, the General Accounting Office began a special effort to review and report on federal government program areas that we considered "high risk."

After consulting with congressional leaders, GAO sought, first, to identify areas that are especially vulnerable to waste, fraud, abuse, and mismanagement. We then began work to see whether we could find the fundamental causes of problems in these high-risk areas and recommend solutions to the Congress and executive branch administrators.

We identified 17 federal program areas as the focus of our project. These program areas were selected because they had weaknesses in internal controls (procedures necessary to guard against fraud and abuse) or in financial management systems (which are essential to promoting good management, preventing waste, and ensuring accountability). Correcting these problems is essential to safeguarding scarce resources and ensuring their efficient and effective use on behalf of the American taxpayer.

This report is one of the high-risk series reports, which summarize our findings and recommendations. It describes the substantial progress that has been made in the management and disposition of seized and forfeited assets by the Department of Justice and the U.S. Customs Service. In a period of about 10 years, Justice and Customs have transformed their problem-ridden seized property programs into more businesslike operations that generate revenues totaling about \$900 million annually. This report focuses on the program changes made and highlights those areas where sustained management attention is needed.

Copies of this report are being sent to the President-elect, the Democratic and Republican leadership of the Congress, congressional committee and subcommittee chairs and ranking minority members, the Director-designate of the Office of Management and Budget, the Attorney General-designate, and the Secretary-designate of the Treasury.

A handwritten signature in black ink, reading "Charles A. Bowsher". The signature is written in a cursive, flowing style with a large initial "C".

Charles A. Bowsher

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Overview

The federal government has had the authority to take property through forfeiture for more than 200 years. It was not until about 1980, however, that it began to apply the asset forfeiture laws as powerful weapons against drug traffickers and other organized crime figures. The number and value of seizures soon grew dramatically. In 1979, the total value of seized property inventories at the Department of Justice and the U.S. Customs Service was \$33 million. By 1992, the inventories were valued at \$1.9 billion. They now include 16,000 cars; 5,200 real properties; other property (such as planes, boats, jewelry, and antiques) valued at about \$360 million; and \$550 million in cash.

Initially, Justice and Customs focused more on taking the property away from the criminal and less on managing the property that was taken. But today, property management is an integral part of these agencies' total program operations, and while sustained management attention is still needed and further system modifications may eventually be appropriate, the two agencies now have systems in place to help ensure that their property management programs are run in a businesslike manner.

Problems and Remedies

Following are three examples of major problem areas in which Justice and Customs have made improvements in the past several years.

In July 1982, we reported that seized property was improperly cared for, resulting in a loss of revenue for the United States. The agencies had to pay expenses related to seizure and forfeiture out of money appropriated for salaries and expenses, which gave them little incentive to make use of asset forfeiture laws or properly manage and maintain seized property. Following our recommendation, however, Congress established asset forfeiture funds at Justice and Customs. Proceeds from seizure activities are deposited in these funds and are used to finance program expenses. The funds are self-supporting; in fiscal year 1991, receipts exceeded expenses by more than \$715 million.

Beginning in the mid-1980s, we reported that millions of dollars in seized cash was being held unnecessarily in agency vaults and safe deposit boxes before being deposited in designated U.S. Treasury accounts. This prevented the federal government from obtaining economic benefits from the money and increased the

administrative costs and risks of holding the cash. In 1987, Justice and Customs established policies to minimize the delay and have since established systems for overseeing seized cash operations.

We first reported in 1977 that the asset forfeiture programs were operating without sufficient program information to make informed management decisions. Congressional oversight was also hampered by the lack of reliable information. Justice and Customs have since made considerable progress in establishing systems to produce reliable inventory data.

Open or
Emerging Issues

Now that major operational problems relating to the management and disposition of seized and forfeited assets have been identified and corrective actions have been initiated, sustained oversight is needed to see these problems through to resolution.

In addition, the incoming Attorney General and Secretary of the Treasury should continue to pursue a recent initiative involving consolidation. In 1991, we reported that the two agencies could reduce their program administration costs by about 11 percent annually by consolidating the

management and disposition of their noncash seized property inventories. The recommended consolidation has not yet taken place, but the two agencies have agreed to a pilot program.

Interest in the asset forfeiture programs is now broadening to include the question of whether the agencies are applying the asset forfeiture laws appropriately and effectively. Adequate safeguards are needed to ensure that federal agencies do not become overzealous in their use of the asset forfeiture laws or too dependent on the funds derived from seizures. The system must include appropriate checks and balances; otherwise, asset forfeiture programs run the risk of being seriously curtailed. The first in a series of congressional hearings on this issue took place in September 1992. We expect to do considerable work on it in the future.

Seized and Forfeited Assets

The government seizes property for violations of law and regulation and takes title to that property through either an administrative or judicial process, depending on the type and value of the property, the violation for which it was seized, and whether a bond has been posted. Posting a bond automatically requires that the forfeiture be done through a judicial process. Anyone having a legal interest in the seized property has the option of posting a bond.

After forfeiture, noncash property may be sold, put into official use, or shared with state and local law enforcement agencies participating in the seizure. Forfeited cash and the proceeds from the sale of noncash properties may also be shared with state and local law enforcement agencies.

The federal government has had the ability to take property through forfeiture for more than 200 years, although this was rarely done before the 1980s. Beginning about 1980, the number and value of seizures started growing dramatically as law enforcement agencies began relying more heavily on forfeiture as a means of fighting drug traffickers and other organized crime figures. In addition, in 1984 the Comprehensive Crime Control Act expanded

the federal government's seizure authority and established funds to finance the management and disposition of seized and forfeited assets. More recently, the asset forfeiture laws were expanded to cover crimes associated with money laundering and financial institutions-related offenses. Collectively, these changes have resulted in the value of Justice's and Customs' seized property inventories growing from \$33 million in 1979 to \$1.9 billion in 1992.

This explosive growth in the asset forfeiture programs resulted in a nightmare for the seizing agencies. Before the mid-1980s, they were either unmotivated to take, or unable to gain, control of the asset management side of their programs. Most of what they did was reactionary. They did not have effective means for dealing with the management problems associated with the ever-increasing amount of property and money seized. The agencies were, in essence, victims of their own success—the more successful they became in employing asset forfeiture as a law enforcement tool, the larger their problems grew in managing and disposing of the assets.

During the late 1980s and early 1990s, the programs matured, and the agencies gained

more control. Accomplishing this, however, was no easy task because it involved changing their organizations' cultures. What was once viewed as a by-product of a law enforcement responsibility is now viewed as an integral part of overall operations.

Some of the more significant changes affecting property management and disposition are highlighted in the following sections. While these changes have made a tremendous difference in the management and disposition of seized properties, we believe the agencies have one more major hurdle that needs to be overcome. That hurdle involves consolidating the management and disposition of noncash seized properties in one agency. Recently, Justice and Customs agreed on a plan to begin testing the merits of consolidation, but continued oversight will be necessary to complete the consolidation effort. Continued oversight is also needed to address some of the other corrective actions that have been initiated.

Special Funds
Established to
Pay Asset
Forfeiture-
Related Expenses

In July 1983, we reported that property was not properly cared for after it was seized, resulting in lost revenue for the government. We reported that the seizing agencies had little incentive to properly manage and

maintain seized property. They had to pay expenses related to the seizure and forfeiture out of money appropriated for salaries and expenses. If seized property was forfeited and sold, agencies could recover seizure- and forfeiture-related expenses from sales proceeds. If the property was not forfeited, or if costs exceeded whatever proceeds were realized, the seizing agencies had to divert money from other law enforcement operations to cover these costs.

We recommended that the Congress enact legislation establishing special funds to pay asset forfeiture-related expenses. In 1984, such legislation was enacted, establishing asset forfeiture funds in the Department of Justice and the U.S. Customs Service. This change removed the budgetary disincentive to the aggressive use of forfeiture as a weapon in the war against crime. Proceeds from seizure activities are deposited in these funds and are used to finance program expenses such as those incurred in the care, custody, and disposal of seized and forfeited assets; payments of liens and mortgages; and purchases of evidence and rewards for information related to asset seizure. These funds have always operated on a self-supporting basis—that is, each year fund receipts have exceeded expenses. For fiscal

year 1991, receipts exceeded expenses by more than \$715 million.

Year-end surpluses in Customs' fund are transferred to the general fund of the Treasury. Year-end surpluses in Justice's fund have historically been used for other law enforcement purposes, such as building prisons or hiring more U.S. Attorney office personnel, or transferred to a special forfeiture fund under the control of the Director of the Office of National Drug Control Policy. On October 6, 1992, the President signed into law a bill replacing the Customs fund with a Treasury-wide forfeiture fund. The newly created Treasury fund was basically modeled after the Department of Justice's forfeiture fund.

Improved Seized Cash Management

Beginning in the mid-1980s, we reported on several occasions that millions of dollars in seized cash was being held unnecessarily in agency vaults and safe deposit boxes before being deposited into designated U.S. Treasury accounts. We reported that the deposit delays prevented the government from obtaining economic benefits from the idle cash and increased the administrative costs and risks in handling, storing,

accounting for, and safeguarding the cash from theft and abuse.

In late 1986 and early 1987, we reviewed 129 seized cash cases involving about \$39 million and found deposit delays in 107, or 83 percent, of the cases. We considered a delay to occur if the money was not deposited within 14 days after forfeiture or 14 days after a decision that it was no longer necessary to hold the cash as evidence. The deposit delays varied from 2 days to almost 5 years.

We reported that there were several causes for the delays, including the lack of a national policy on seized cash management. In addition, the agencies lacked information necessary to oversee and monitor seized cash operations.

In 1987, Justice and Customs established policies designed to minimize the unnecessary holding of cash. Their policies stressed the need to promptly identify and deposit all seized cash not needed as evidence. Furthermore, agency policies discouraged retaining seized cash for evidence unless it was absolutely critical to the case.

Both agencies have also established systems for overseeing and monitoring seized cash operations. These systems, along with the new policies, have led to major improvements in managing seized cash. However, aggressive monitoring of seized cash may be necessary for some time to help ensure compliance with established cash management policies. For example, the Department of the Treasury's Office of Inspector General recently reported that Customs was not depositing seized cash in a timely manner. In response, the Assistant Commissioner, Commercial Operations, issued a memo reminding employees that seized cash is to be deposited unless there is documentation in the file from the appropriate U.S. Attorney's office stating that the cash is needed as evidence and should not be deposited.

Improved
Management
Information and
Financial Reports

The lack of reliable program information has been a major contributor to program deficiencies. For many years, the asset forfeiture programs operated without sufficient information necessary to make informed management decisions. Congressional oversight was also hampered by the lack of reliable information.

Major improvements have been made in this area by both Justice and Customs. Additionally, both agencies have embarked upon ambitious efforts to further improve their information systems. These efforts are, however, long term and require sustained oversight.

Beginning with our first report on asset forfeiture in 1977, we have reported on many occasions the need to improve program information. Also, a 1983 Department of Justice internal report, which addressed the management of seized assets departmentwide, stated that forfeiture operations were conducted without the information needed to monitor, oversee, or evaluate the initiative and recommended that Justice ensure the availability of useful asset seizure and forfeiture case tracking and inventory data. Only recently, however, have Justice and Customs been able to put systems in place that provide them with the information necessary to make data-driven decisions. For many years, Justice and Customs had to scramble to meet their information needs.

With the number of seizures growing exponentially in the early 1980s, the agencies had to move quickly to establish even the

most rudimentary information systems. Responding to this need, the U.S. Marshals Service—the custodian for seized property within the Department of Justice—purchased personal computers, which were used primarily for inventory control. The intention was to use these computers in the short term while a needs assessment was done and a more sophisticated system put in place. Because of budget constraints and other program priorities, however, the new system was slow in coming. It was not until 1987 that the Marshals Service issued a request for proposals for the design and installation of a new system, and it was not until 1991 that the new system was fully operational in all Marshals Service districts.

Establishing a system capable of producing reliable inventory data fulfilled only part of Justice's and Customs' information needs. Financial and other management information, such as case tracking data, is needed to effectively manage the asset forfeiture program. To satisfy this need, Justice embarked on a major effort to develop an information system that would be used by all federal agencies participating in Justice's asset forfeiture program. As envisioned, this system would tie together asset forfeiture personnel in over 640

locations throughout the United States. It would replace the many incompatible systems now being used by the various seizing agencies. A prototype of the system has been developed and demonstrated to several user groups. Implementation is expected in 1993.

Customs took a different path to fulfill its need for inventory information. Customs awarded a contract for the nationwide management of its seized property inventory and as part of that contract required that the contractor develop a seized property information system. That system was put in place in early 1987 and remained virtually under the exclusive control of the contractor for the duration of the contract, which ran until 1991. At the conclusion of the contract, the system was turned over to Customs. At that time, Customs made a number of system improvements, including documenting the system and adding edit checks, and began to integrate its management and accounting systems. As of September 1992, those efforts were still under way. Customs has also begun an effort to completely redesign its seized property case tracking system. This effort is expected to take about 4 years.

It will be some time before Justice's and Customs' seized property information systems are state-of-the-art. The agencies, however, have made considerable progress in improving seized property information and have efforts under way to make other substantive improvements. However, without sustained oversight these efforts may flounder, especially in times of tight budgets. It is critically important that these efforts not be sidelined but rather receive the attention they deserve.

Accounting system weaknesses have also been a particularly troublesome issue for both Justice and Customs. Given the nature of the seized property programs, we have recommended since 1987 that Justice and Customs annually produce audited forfeiture fund financial statements. Such statements would help instill a more businesslike discipline in program operations and make apparent other information shortcomings. Justice started producing such statements beginning with its fiscal year 1989 operations and Customs with its fiscal year 1990 operations. In addition, legislation was enacted in 1990 that should ensure continued production of such statements.

**Faster Forfeiting
of Uncontested
Cash Seizures**

In 1989 and again in 1990, we reported that millions of dollars in seized cash was being forfeited through the judicial system even though no one was contesting the forfeiture. At the time of our review, the law required that all cash seizures over \$100,000 be forfeited judicially. We reported that this requirement delayed forfeiture, added an unnecessary burden on the district courts, and contributed to inefficient use of U.S. Attorney resources. We recommended that the law be changed so that all uncontested cash seizures could be forfeited administratively, regardless of amount.

That recommendation was implemented in 1990. The seizing agencies reported that this change in law has resulted in seized cash being forfeited much faster without affecting individual due process rights. Contested cases continue to be resolved judicially.

**Agreement to
Test Feasibility of
Consolidating
Property
Management and
Disposition**

In 1991, we reported that program administration costs could be reduced by about 11 percent annually if Justice and Customs consolidated the postseizure management and disposition of their noncash seized property inventories. We also reported that additional savings would likely accrue from lower vendor costs due to

economies of scale. The recommended consolidation has not yet taken place, but the two agencies have agreed to a pilot test.

Given the similarities in Justice's and Customs' seized property programs, consolidation makes sense. Both agencies seize similar types of assets, and those assets are generally located in the same geographic areas. However, under the current operating structure, each agency maintains separate and distinct programs for managing and disposing of its property. Justice, through the Marshals Service, contracts directly with vendors that provide the service. Customs has a nationwide contractor that provides custodial services either directly or through subcontracts with other vendors.

In April 1992, the Marshals Service and Customs signed a memorandum of understanding to test consolidation beginning in October 1992. The Marshals Service will manage both agencies' real property, and Customs will manage the agencies' vessels. The agencies will manage vehicles, with the location and number of vehicles being the determining factor in which agency handles them. After 1 year, the agencies will conduct a cost analysis and evaluation of the pilot test. We see this pilot

project as a positive step forward. However, sustained management attention and support will be necessary to see this effort through; otherwise, problems that might be encountered along the way have the potential of derailing the project.

Following this consolidation theme, in July 1992 we recommended that Justice and Customs develop mutually agreeable guidelines for asset sharing and jointly develop policies and procedures and assign responsibilities for federal oversight of asset sharing. In fiscal year 1991, Justice shared more than \$287 million and Customs shared \$95.2 million with state and local law enforcement agencies that assisted the federal government in making seizures.

Under current guidance, Justice and Customs allow different uses of shared proceeds. Officials in some state and local agencies find the guidance vague and confusing. A recent Justice Management Division study concluded that more practical guidance and oversight mechanisms were needed to ensure that state and local agencies comply with federal guidance on using shared proceeds. Both Justice and Customs agreed with our recommendations and plan to work together to develop clearer

asset-sharing guidelines and to develop oversight policies and procedures, including assigning responsibilities for federal oversight of asset sharing.

More Informed
Seizures Being
Made

In September 1987, we reported that the failure to obtain title searches on real properties before seizure often resulted in seizures with very low or nonexistent defendant equity. We recognize that there are cases—such as crack houses and clandestine labs—in which, for law enforcement reasons, it is desirable to seize properties with little or no defendant equity. However, seizures that are designed to financially punish a violator should only be made when it can be shown there is something of value to be forfeited. Otherwise, the seizure may end up costing the government more than it hurts the violator.

As Justice's asset forfeiture program has grown and more emphasis has been given to its management, title searches, which identify legal owners and encumbrances, have been done on a more regular basis.¹ The need for, and importance of, title searches has been stressed to the seizing agencies

¹About 98 percent of the real property seizures are made by Justice.

through increased Justice oversight of seizure activities and guidance to the field as well as through training. In recent discussions, Justice officials indicated that very few real properties are now being brought into inventory without first having had a title search. For cases in which the investigation would be jeopardized by doing a title search before seizure, Justice's policy is to do one immediately after seizure. Justice officials also acknowledged that some of their earlier less-than-ideal seizures remained in inventory. Justice's Executive Office of Asset Forfeiture is currently incorporating these new preseizure planning policies into a soon to be issued directive entitled "Guidelines for Pre-seizure Planning." That directive is expected to be issued by the end of 1992.

Conclusions and Action Needed

Seized property management today is very different from what it was just a few years ago. Congress and the press have recognized the improvements as evidenced by the dramatic decrease in the number of congressional hearings and news items relating to poor property management practices.

Notwithstanding improved property management practices, the seized property programs remain highly visible and are subjected to continued scrutiny. The focus today, however, is not on property management but rather on how the asset forfeiture laws are being used. The first in a series of planned hearings on this subject was held on September 30, 1992, by the Legislation and National Security Subcommittee, House Committee on Government Operations.

Concerns have been raised about agencies becoming overzealous in their use of the asset forfeiture laws or too dependent on the funds derived from such seizures. The new Attorney General and Secretary of the Treasury need to ensure that adequate safeguards are in place to help prevent such developments. A system with proper checks and balances must be in place; otherwise,

the asset forfeiture programs risk being seriously curtailed. Our future work will focus more heavily on these aspects of the asset forfeiture programs. We will also continue monitoring property management activities.

Related GAO Products

Asset Forfeiture: Improved Guidance
Needed for Use of Shared Assets
(GAO/GGD-92-115, July 16, 1992).

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

Asset Forfeiture: Customs Reports Improved
Controls Over Sales of Forfeited Property
(GAO/GGD-91-127, Sept. 25, 1991).

Asset Forfeiture: Noncash Property Should
Be Consolidated Under the Marshals Service
(GAO/GGD-91-97, June 28, 1991).

Asset Forfeiture: Need for Stronger Marshals
Service Oversight of Commercial Real
Property (GAO/GGD-91-82, May 31, 1991).

Asset Forfeiture: Opportunities for Savings
Through Program Consolidation
(GAO/T-GGD-91-22, Apr. 25, 1991).

Asset Forfeiture: Opportunities to Improve
Program Administration (GAO/T-GGD-91-16,
Mar. 13, 1991).

Oversight Hearings on Asset Forfeiture
Programs (GAO/T-GGD-90-56, July 24, 1990).

Asset Forfeiture: Legislation Needed to Improve Cash Processing and Financial Reporting (GAO/GGD-90-94, June 19, 1990).

Asset Forfeiture: Helping Finance the War on Drugs (GAO/GGD-90-01VR, Oct. 1989).

Profitability of Customs Forfeiture Program Can Be Enhanced (GAO/T-GGD-90-1, Oct. 10, 1989).

Asset Forfeiture: An Update (GAO/T-GGD-89-17, Apr. 24, 1989).

Asset Forfeiture Programs: Progress and Problems (GAO/T-GGD-88-41, June 23, 1988).

Asset Forfeiture Programs: Corrective Actions Underway But Additional Improvements Needed (GAO/T-GGD-88-16, Mar. 4, 1988).

Seized Conveyances: Justice and Customs Correction of Previous Conveyance Management Problems (GAO/GGD-88-30, Feb. 3, 1988).

Real Property Seizure and Disposal Program Improvements Needed (GAO/T-GGD-87-28, Sept. 25, 1987).

Asset Forfeiture Funds: Changes Needed to Enhance Congressional Oversight (GAO/T-GGD-87-27, Sept. 25, 1987).

Millions of Dollars in Seized Cash Can Be Deposited Faster (GAO/T-GGD-87-7, Mar. 13, 1987).

Drug Enforcement Administration's Use of Forfeited Personal Property (GAO/GGD-87-20, Dec. 10, 1986).

Customs' Management of Seized and Forfeited Cars, Boats, and Planes (Testimony, Apr. 3, 1986).

Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12, Mar. 14, 1986).

Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement (GAO/PLRD-83-94, July 15, 1983).

Asset Forfeiture: A Seldom Used Tool in Combatting Drug Trafficking (GAO/GGD-81-51, Apr. 10, 1981).

Drugs, Firearms, Currency, and Other Property Seized by Law Enforcement

Agencies: Too Much Held Too Long
(GAO/GGD-76-105, May 31, 1977).

High-Risk Series

Lending and Insuring Issues

Farmers Home Administration's Farm Loan
Programs (GAO/HR-93-1).

Guaranteed Student Loans (GAO/HR-93-2).

Bank Insurance Fund (GAO/HR-93-3).

Resolution Trust Corporation (GAO/HR-93-4).

Pension Benefit Guaranty Corporation
(GAO/HR-93-5).

Medicare Claims (GAO/HR-93-6).

Contracting Issues

Defense Weapons Systems Acquisition
(GAO/HR-93-7).

Defense Contract Pricing (GAO/HR-93-8).

Department of Energy Contract Management
(GAO/HR-93-9).

Superfund Program Management
(GAO/HR-93-10).

NASA Contract Management (GAO/HR-93-11).

Accountability
Issues

Defense Inventory Management
(GAO/HR-93-12).

Internal Revenue Service Receivables
(GAO/HR-93-13).

Managing the Customs Service (GAO/HR-93-14).

Management of Overseas Real Property
(GAO/HR-93-15).

Federal Transit Administration Grant
Management (GAO/HR-93-16).

Asset Forfeiture Programs (GAO/HR-93-17).

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