

GAO

Report to Congressional Committees
and Subcommittees

June 1990

ASSET FORFEITURE

Legislation Needed to
Improve Cash
Processing and
Financial Reporting





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

General Government Division

B-240015

June 19, 1990

The Honorable John Glenn
Chairman, Committee on Governmental
Affairs
United States Senate

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on Judiciary
United States Senate

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

The Honorable John Conyers, Jr.
Chairman, Committee on Government
Operations
House of Representatives

The Honorable Jack Brooks
Chairman, Committee on Judiciary
House of Representatives

The Honorable Dan Rostenkowski
Chairman, Committee on Ways and Means
House of Representatives

The Honorable William J. Hughes
Chairman, Subcommittee on Crime
Committee on Judiciary
House of Representatives

The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

This report is one of a series we will be issuing to address various aspects of the Department of Justice's and the U.S. Customs Service's asset forfeiture programs. The Comptroller General has designated the asset forfeiture programs as 1 of 14 high-risk areas warranting special audit effort. Both programs deal with hundreds of millions of dollars of

Requiring uncontested cash seizures over \$100,000 to be forfeited judicially adds an unnecessary burden on the district courts and contributes to inefficient use of U.S. Attorney resources. Changing the law to permit administrative forfeiture of all uncontested cash seizures, regardless of amount, would have multiple benefits. It would reduce the court system's burden, permit more efficient use of attorney resources, and allow millions of dollars to be put to use sooner by the government without affecting individual due process rights. H.R. 1594, currently pending before Congress, contains a provision allowing Justice and Customs to administratively forfeit all uncontested cash seizures regardless of amount. Contested seizures would continue to be resolved judicially.

Another cash management issue needing attention is the long-standing problem of agencies unnecessarily holding seized cash for evidence purposes. Both Justice and Customs established policies to minimize the unnecessary holding of cash as evidence. While the situation is much improved from earlier years, the problem remains. Justice and Customs need to do a better job of insuring that seized cash is not held unnecessarily for evidence purposes in order to maximize the economic benefits to the government and minimize the risks associated with holding cash.

Stronger financial information and internal controls are also needed to adequately and accurately assess program performance. Currently, neither Congress nor the agencies have a clear picture of whether the government is making or losing money on the management and sale of seized assets. The asset forfeiture funds have been in operation for 6 years, but the agencies have never produced a full set of audited financial statements even though the programs have been designated by their agencies as highly vulnerable to fraud, waste, and mismanagement. Statutorily requiring a full set of annually audited financial statements would significantly strengthen internal controls and improve the information available for effective oversight by both Congress and the affected agencies. H.R. 1594 establishes such a requirement for Customs.

Objectives, Scope, and Methodology

Our objectives were to (1) determine if seized cash could be forfeited faster and thereby put to use sooner and (2) assess the adequacy of Justice's and Customs' forfeiture fund financial reporting.

Our audit work concentrated on those locations where Justice and Customs seize the most property—Florida, California, Texas, and New York. Work included interviewing knowledgeable Justice and Customs

because contested cases would continue to be resolved judicially. Both Justice and Customs have endorsed the proposal, and H.R. 1594, which is currently pending before Congress, contains a provision to implement this recommendation.

Agencies Continue to Unnecessarily Hold Seized Cash for Evidence

Thus far, Justice and Customs have been only partially successful in identifying and depositing seized cash not needed for evidence. Failure to promptly identify and deposit seized cash not needed for evidence prevents the government from obtaining economic benefits from the idle cash and increases the risks associated with handling, storing, accounting for, and safeguarding the cash. In 1987 Justice and Customs established policies designed to minimize the unnecessary holding of cash. Although the situation has much improved because of the new policies, problems remain.

Both Justice and Customs policies stress the need to promptly identify and deposit into their Treasury holding accounts all seized cash not needed as evidence. Basically, this process is to be done within 60 days of seizure. Decisions to hold for evidence amounts of less than \$5,000 reside with U.S. Attorneys. Decisions to hold amounts of \$5,000 or more require Department of Justice headquarters approval. Agency policies discourage retaining seized cash for evidence unless it is absolutely critical to the case. These policies take into account the fact that photographs or videotapes can be used as substitutes for seized cash. Reasons used to justify retention of seized cash include unique packaging, fingerprints, and narcotic residue.

Justice's policy also points out that cash, unlike other assets seized by the government (e.g. real property, conveyances), is a fungible item, and this fact allows the government more flexibility in its decision whether to hold it for evidence. For example, a decision to return seized cash to its owner following case dismissal requires only that a like amount of cash be returned—not the actual cash seized. Therefore, given the agencies' policies and the fact that cash is a fungible item, it seems reasonable to expect that most cash would normally be deposited in the agencies' holding accounts.

We asked Justice and Customs how much seized cash was being held as evidence in February 1990. We learned that both agencies were still unnecessarily holding substantial amounts. Customs, for example, was holding about \$36 million nationwide. About \$31 million of this amount involved seizures of \$5,000 or more that had been on hand for more

Both agencies have identified their seized property programs as highly vulnerable to fraud, waste, and abuse, and have acknowledged that significant internal control weaknesses plague these programs. Both agencies have embarked upon ambitious efforts to correct these problems. A key part of any effort would be to have integrated, sound financial systems in place that can produce accurate, timely, and comprehensive financial statements capable of audit verification. The successful preparation of financial statements on an annual basis would help provide a clear picture of Justice's and Customs' financial condition and the results of their operations.

In its 1989 Financial Integrity Act report to the President and Congress, Justice said its seized property program had material weaknesses that included

- inadequate systems for tracking inventories,
- insufficient internal controls, and
- a lack of adequate periodic program and functional audits.

At Customs, key management weaknesses included

- insufficient data to effectively manage inventories,
- inadequate physical inventories, and
- an absence of regular financial audits.

These fundamental problems exist for a number of reasons. First, the seized property program must compete for limited resources with other enforcement programs within Justice and Customs. Second, both agencies acknowledge that they lack property management expertise. Third, both agencies acknowledge that there has not been effective headquarters oversight. The bottom line is that neither agency has a good way of measuring the effectiveness or efficiency of its operations.

To address these problems, Justice and Customs have begun efforts to (1) redesign their seized property data systems, (2) provide more property management training to field operations, and (3) increase their headquarters oversight. In addition, both Justice and Customs have recently initiated efforts to prepare a set of financial statements for their forfeiture programs. We have assisted these agencies by helping them develop pro forma financial statements (see app. I). We and program managers from both agencies agree that these statements can help these agencies to

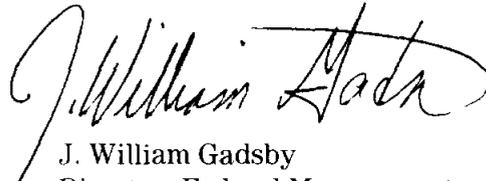
**Recommendation to
the Department of
Justice the
Department of the
Treasury**

To ensure compliance with existing cash management policies, we also recommend that the Attorney General and the Secretary of the Treasury aggressively monitor the holding of seized cash for evidence purposes to insure that cash is not being held without adequate justification. This can be accomplished by routinely following-up with the seizing agencies and U.S. Attorney offices to determine if the reasons for initially holding seized cash as evidence remain valid and that the required approvals have been obtained.

We did not obtain written comments on this report. However, we discussed the report with Justice and Customs officials and have incorporated their comments where appropriate. Agency officials agreed with the recommendations contained in the report.

We are sending copies of this report to the Attorney General; Secretary, Department of the Treasury; and the Commissioner, U.S. Customs Service. We will provide copies to other parties upon request.

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



J. William Gadsby
Director, Federal Management
Issues

Appendix I
Pro Forma Financial Statements

ASSET FORFEITURE FUND
STATEMENT OF OPERATIONS
FOR THE YEARS ENDED SEPTEMBER 30
(in thousands)

<u>REVENUES</u>	<u>199x</u>	<u>199x</u>
Forfeited Cash		
Sales of Forfeited Property, Net (Note 3)		
Assets Retained for Agencies Use		
State and Local Agencies		
Foreign Governments		
Federal Agencies		
Interest Income		
Investment Income		
Fines and Penalties in Lieu of Forfeiture		
Recovery of Returned Asset Management Costs		
Miscellaneous Income	_____	_____
 Total Operating Income	 _____	 _____
Less - Refunds	_____	_____
Net Operating Income	_____	_____
 <u>EXPENSES</u>		
Asset Management Expenses		
Property Management and Maintenance Expenses		
Contractor/Selling Expenses		
Theft, Loss, and Damage		
Evidence Storage and Destruction		
Case Related Expenses		
Legal Advertising Expense		
Other Expenses		
Program Management Expenses		
Automated Data Processing		
Training and Printing		
Specialized Contract Services		
Miscellaneous	_____	_____
 Total Expenses	 _____	 _____
 Excess of Revenues over Expenses	 _____	 _____

Appendix I
 Pro Forma Financial Statements

ASSET FORFEITURE FUND
 STATEMENT OF CHANGES IN FINANCIAL POSITION
 (Cash Basis)
 FOR THE YEARS ENDED SEPTEMBER 30
 (in thousands)

	<u>199x</u>	<u>199x</u>
SOURCES OF CASH		
Excess of Revenues over Expenses		
Items Not Affecting Cash:		
Allowance for Theft, Loss, and Damages		
Decrease (increase) in Accounts Receivable		
Decrease (increase) in Interest Receivable		
Increase (decrease) in Accounts Payable		
Increase (decrease) in Liens Payable		
Increase (decrease) in Taxes Payable		
Increase (decrease) in Distributions Payable		
Increase (decrease) in Refunds Payable		
	_____	_____
Total Sources of Cash		
USES OF CASH		
Distributions		
State/Local Agencies		
Foreign Governments		
Federal Agencies		
	_____	_____
Total Cash Distributed		
Total Uses of Cash		
Cash Retained in Fund	_____	_____
CASH - beginning of the year	_____	_____
CASH - end of the year	_____	_____

**Appendix I
Pro Forma Financial Statements**

**Asset Forfeiture Fund Schedule of Revenues Over Asset Specific Expenses for the Year Ended September 30, 19XX
(In Thousands)**

Revenues	Cash	Property	Investments	Vehicles	Vessels	Aircraft	Other	Total
Sales of forfeited property, net Assets retained for use by:	XXX	XX	XX	XX	XX	XX	XX	XXX
state and local agencies	X	X		X	X	X	X	X
foreign governments	X	X		X	X	X	X	X
federal agencies	X	X		X	X	X	X	X
Interest income	X							X
Investment income			X					
Recovery of returned asset management costs	X	X	X	X	X	X	X	X
Miscellaneous income		X	X	X	X	X	X	X
Fines and penalties		X	X	X	X	X	X	X
Total operating income	XXX	XX	XX	XX	XX	XX	XX	XXX
less - refunds							X	X
Net operating income	XXX	XX	XX	XX	XX	XX	XX	XXX
Asset specific expenses								
Property management and maintenance	X	X	X	X	X	X	X	XX
Contractor/selling expenses		X	X	X	X	X	X	XX
Theft, loss, and damages		X	X	X	X	X	X	XX
Evidence storage and destruction		X	X	X	X	X	X	XX
Total asset specific expenses	X	X	X	X	X	X	X	XX
Revenues over asset specific expenses	XXX	XX	XX	XX	XX	XX	XX	XXX

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Appendix I
Pro Forma Financial Statements

NOTES TO ASSET FORFEITURE FUND PRO-FORMA FINANCIAL STATEMENTS

1. Organization and Purpose

Background information on agency, the forfeiture act, and fund capitalization.

2. Summary of Significant Accounting Policies

- distribution of net proceeds,
- distribution of forfeited assets out of the fund,
- interest income,
- investments,
- reimbursement of other agencies,
- seized cash and assets.

3. Table Showing the Derivation of Net Sales

Sales of Forfeited Property
Less: Liens
Fair Market Value Adjustment on Disposal
Net Sales of Forfeited Property

4. Cash

Total cash (no netting of equity sharing).

5. Overall Note on Expenses

Disclose any significant contractor relationship and responsibilities. When multiple contractors are used, suggest including a small schedule indicating expenses related to each of the contractors.

6. Accounts Receivable

7. Table Showing

Distributions of Excess Revenues over Expenses -- including equipping conveyances.

<u>Agencies</u>	<u>Cash</u>	<u>Non-cash</u>
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State/local

Federal

Foreign

8. Contingencies

9. Reconciliation to Budget

Appendix I
Pro Forma Financial Statements

DISTRIBUTION OF EXCESS OF REVENUES OVER EXPENSES

Transfers to State and Local Agencies		
Transfers to Foreign Governments		
Transfers to Federal Agencies		
Total Distributions	_____	_____
Increase (Decrease) in Fund Balance	_____	_____
Beginning Fund Balance	_____	_____
Ending Fund Balance	_____	_____

Pro Forma Financial Statements

ASSET FORFEITURE FUND
STATEMENT OF FINANCIAL POSITION
FOR THE YEARS ENDED SEPTEMBER 30
(in thousands)

	<u>199X</u>	<u>199X</u>
<u>ASSETS</u>		
Forfeited Cash-		
Held in Treasury		
In Commercial Banks		
Other Cash		
Accounts Receivable		
Interest Receivable		
Forfeited Property -		
Real Property		
Investments		
Vehicles		
Vessels		
Aircraft		
Other		
Total Forfeited Property	_____	_____
Less -		
Allowance for Theft, Loss and Damages		
Allowance for Fair Market Value Adjustment on Disposal	_____	_____
 Total Assets	_____	_____
<u>LIABILITIES</u>		
Accounts Payable - Contractor		
Liens Payable		
Taxes Payable		
Accounts Payable - Other		
Deferred Revenue from Forfeited Assets		
Distributions Payable to State and Local Agencies		
Distributions Payable to Foreign Governments		
Distributions Payable to Federal Agencies		
Refunds Payable	_____	_____
 Total Liabilities		
Contingencies (See Note 8)		
<u>FUND BALANCE</u>		
 Total Liabilities and Fund Balance	_____	_____

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- more accurately report forfeiture program results by facilitating a full disclosure of their asset management and disposal activities,
 - more accurately determine the cost effectiveness of the asset management and disposal strategies, and
 - limit Justice's and Customs' exposure to fraud, waste, and mismanagement.

While the current Justice and Customs seized property program managers seem committed to preparing these statements, fixing their current data systems will require a long-term commitment. Indeed, the time required could likely exceed the tenure of the current seized property program managers. Congress can help ensure continuity of effort by requiring a set of annually audited financial statements. H.R. 1594, which is currently pending before Congress, establishes such a requirement for Customs.

Conclusions

Both Justice and Customs have administrative actions underway to correct, within their authority, the serious, long-standing cash management and financial reporting problems faced by these programs. However, legislative actions are needed to further improve the effectiveness of these programs.

Recommendations to Congress

We recommend that Congress

- amend 28 U.S.C. 524(c) to require that the Justice annual forfeiture fund report to Congress include a complete set of audited financial statements prepared in a manner consistent with the requirements of the Comptroller General and
- amend 19 U.S.C. 1613b to require that the Customs annual forfeiture fund report to Congress include a complete set of audited financial statements prepared in a manner consistent with the requirements of the Comptroller General.

than 60 days. About \$19 million of the \$31 million was in Miami, New York, and Los Angeles. Our inquiries of Customs officials at these locations showed that much of this money was not necessary for evidence and should have been deposited in the agency's holding account. Deposits totaling about \$8.3 million were made within 2 weeks following our initial inquiries and at least \$1.5 million more was deposited during the following 2 weeks.

At the time of our inquiries in February 1990, Justice was holding about \$35 million nationwide for evidence. Following our inquiries, Justice queried its agencies to determine if any of this money was being held unnecessarily. Justice's follow-up resulted in the identification and deposit of another \$16 million that was being unnecessarily held.

On at least two occasions since 1987, Justice has formally reminded its employees of its policy concerning the holding of cash as evidence. Customs has drafted a proposed revision to its seized cash directive that requires more communication between its office and the office of the U.S. Attorney. However, because the problem of unnecessarily holding seized cash as evidence has been recurring, Justice and Customs need to more aggressively monitor the practice of holding cash as evidence to insure that the cash is not being held without adequate justification. This can be accomplished by routinely following-up with the seizing agencies and U.S. Attorney offices to determine if the reasons for initially holding seized cash as evidence remain valid and that the required approvals have been obtained.

Audited Financial Statements Needed

Justice and Customs are responsible for the control and management of their seized property, which, as of December 1989, was estimated to be worth \$1.4 billion. Operations of this nature and size should be managed on a day-to-day basis through effective and efficient use of business-type financial information flowing from good accounting systems. Reliable financial information is needed for program managers to make informed decisions and evaluations. In addition, Congress needs the information in its oversight role to have an accurate and complete picture of whether the government is managing its forfeiture program in the most cost effective and efficient manner. However, neither agency has produced a full set of audited financial statements covering forfeiture program operations.

officials; examining cash management policies, procedures, and evidentiary cash records; and assisting both Customs and Justice program officials in preparing financial statement formats. Our work in the cash area represents the latest in a series of GAO products addressing the need for a legislative change in the way seized cash is processed. Our methodology for the work relating to processing seized cash centered around a review of 1,125 closed cases totaling \$123.9 million. We worked backwards from cases closed in 1988, reviewing as many cases as time permitted. Our work was done in accordance with generally acceptable auditing standards. Views of responsible agency officials were included where appropriate.

Most Seized Cash Can Be Forfeited Faster

Because of a legislative requirement, most seized cash has been forfeited judicially even though no one came forward to claim the money. Processing such seizures judicially requires more time and adds unnecessarily to district courts' and U.S. Attorney offices' workloads.

Our analysis of the 1,125 cash cases shows that (1) judicial forfeitures take longer than administrative forfeitures and (2) most cash was forfeited judicially even though it was uncontested. Customs' and Justice's judicial forfeitures averaged 15 and 12 months, respectively, while administrative forfeitures averaged about 8 months at both agencies. About 82 percent (\$101.6 million) of the cash went through a judicial proceeding and 18 percent (\$22.3 million) through an administrative proceeding. About 89 percent (\$90.4 million) of the judicially forfeited cash was uncontested. These cases were forfeited judicially because of the legal requirement that cash over \$100,000 must go through a judicial proceeding.

As of December 1989, seized cash represented about 39 percent (\$557 million) of Justice's and Customs' \$1.4 billion inventory in seized property. Unless the law is changed permitting all uncontested cash seizures to be processed administratively, an estimated \$406 million will also go through the slower judicial process uncontested.

In April 1989 (GAO/T-GGD-89-17) we first recommended that 19 U.S.C. 1607(a) be amended to provide for the administrative forfeiture of all uncontested cash seizures. We continue to believe that recommendation needs to be implemented. Changing the law to allow uncontested cash seizures of any amount to be forfeited administratively would result in most seized cash being forfeited faster. This change would decrease district court workloads without affecting individuals' due process rights

seized property annually and have been identified by their agencies as having internal control problems.

Specifically, this report addresses the need to enact legislative changes designed to (1) speed up the processing of uncontested seized cash and (2) increase congressional and agency oversight through stronger financial controls and reporting requirements. In addition, we are recommending that Justice and Customs more aggressively monitor their controls over seized cash held for evidence purposes.

Background

Forfeiture law is an important part of law enforcement strategies for combating drug traffickers and organized crime because it allows the government to take property, including cash, that has been illegally used or acquired. In cases of \$100,000 or less, forfeiture can be handled administratively by the seizing agencies such as the Drug Enforcement Administration and the U.S. Customs Service. Generally, this proceeding is used on smaller cases involving cars, boats, planes, and other types of property such as jewelry and artwork. For amounts above \$100,000 and for all real property, the cases are handled judicially by U.S. Attorney offices and the courts. Also, cases under \$100,000 are handled judicially when the defendant or other involved parties request this form of handling.

The Comprehensive Crime Control Act of 1984 expanded the government's seizure authority and established asset forfeiture funds to finance the management and disposal of seized and forfeited assets. As a result of the expanded authority, Justice and Customs estimate the value of their asset inventories has grown from \$33 million in 1979 to \$1.4 billion in December 1989.

The primary objectives of the forfeiture programs are to (1) reduce the economic power of criminals and their enterprises, (2) improve intergovernmental cooperation by sharing proceeds with state and local governments, and (3) generate revenues to help fight the war on drugs. Given these objectives and the sharply increasing value of assets being seized, the need for sound policies, good internal controls, and comprehensive financial reporting is paramount.

Results in Brief

By law, cash seizures over \$100,000 must be forfeited judicially even though 89 percent of all cash forfeited judicially is never contested, that is, no one comes forward to claim the money.

