

July 2012

JUSTICE ASSETS FORFEITURE FUND

Transparency of Balances and Controls over Equitable Sharing Should Be Improved



Why GAO Did This Study

Every year, federal law enforcement agencies seize millions of dollars in assets in the course of investigations. The AFF was established to receive the proceeds of forfeiture and holds more than \$1 billion in assets. DOJ uses the proceeds from forfeitures primarily to cover the costs of forfeiture activities. DOJ also shares forfeiture proceeds with state and local agencies that participate in joint investigations through its equitable sharing program. GAO was asked to review (1) AFF's revenues and expenditures from fiscal years 2003 through 2011 and DOJ's processes for carrying over funds for the next fiscal year, and (2) the extent to which DOJ has established controls to help ensure that the equitable sharing program is implemented in accordance with established guidance. GAO analyzed data on AFF revenues, expenditures, and balances; interviewed DOJ officials; and analyzed a sample of 25 equitable sharing determinations, which included 5 determinations from each relevant DOJ agency. GAO's analysis of the samples was not generalizable, but provided insight into DOJ's decisions.

What GAO Recommends

GAO recommends that, among other things, DOJ clearly document how it determines the amount of funds that will need to be carried over for the next fiscal year, develop guidance on how components should make adjustments to equitable sharing determinations, and ensure that the basis for equitable sharing determinations is documented and subjected to review and approval. DOJ concurred with GAO's recommendations.

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What GAO Found

Annual revenues into the Assets Forfeiture Fund (AFF) from forfeited assets increased from \$500 million in 2003 to \$1.8 billion in 2011, in part due to an increase in prosecutions of fraud and financial crimes cases. Expenditures in support of forfeiture activities such as equitable sharing payments to state and local law enforcement agencies and payments to victims also increased over the same 9-year period, growing from \$458 million in 2003 to \$1.3 billion in 2011. The Department of Justice (DOJ) uses the difference between revenues and expenditures in any year to help cover anticipated expenses in the next fiscal year. Because the AFF uses fund revenues to pay for the expenses associated with forfeiture activities, DOJ carries over funds at the end of each fiscal year to ensure it has sufficient resources to cover expenses that may not be covered by the next year's revenues. When determining the amounts to carry over, DOJ reviews historical data on past program expenditures, analyzes known future expenses such as salaries and contracts, and estimates the costs of any potential new expenditures. However, DOJ has not documented the process for determining the amount of funds needed to cover anticipated expenditures in the next fiscal year in its annual budget justifications. Providing more transparent information as part of the AFF's annual budget process would better inform Congress' oversight of the AFF. Further, after DOJ obligates funds needed to cover program expenses, any remaining AFF funds identified at the end of a fiscal year may be declared an excess unobligated balance. DOJ has the authority to use these balances for any of the department's authorized purposes. Per Office of Management and Budget guidance, in recent years, DOJ used these excess unobligated balances to help cover rescissions. Rescissions cancel the availability of DOJ's previously enacted budget authority, making the funds involved no longer available for obligation. For example, in fiscal year 2011, DOJ used excess unobligated balances to help cover a \$495 million AFF program rescission.

DOJ has established guidelines for making equitable sharing determinations, but controls to ensure consistency and transparency could be improved. For example, DOJ agencies responsible for making equitable sharing determinations may make adjustments to sharing percentages when work hours alone do not reflect the relative value of an agency's contribution to an investigation. If a state or local law enforcement agency contributed a helicopter or a drug-sniffing dog to an investigation, its sharing percentage might be adjusted upward from what it would be based on work hours alone. However, DOJ's guidance does not include information regarding how decisions about these adjustments to sharing determinations should be made. This is particularly important given that these determinations represent DOJ's overall assessment of each agency's unique contributions and are a key component of how DOJ determines how much to award to each agency. Furthermore, key information that serves as the basis for equitable sharing determinations—such as the work hours contributed by each of the participating agencies in an investigation—is not subject to review by approving authorities. Developing guidance regarding how these decisions are to be made, documenting the basis for these decisions, and subjecting them to review and approval would help ensure the consistency and transparency of equitable sharing determinations.

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Abbreviations

AFF	Assets Forfeiture Fund
AFMLS	Asset Forfeiture and Money Laundering Section
AFMS	Asset Forfeiture Management Staff
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CATS	Consolidated Asset Tracking System
DAG	Deputy Attorney General
DEA	Drug Enforcement Administration
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
OIG	Office of Inspector General
OMB	Office of Management and Budget
RICO	Racketeering Influenced and Corrupt Organizations
TFF	Treasury Forfeiture Fund
USAO	United States Attorney's Office
USMS	United States Marshals Service
VOCA	Victims of Crime Assistance

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United States Government Accountability Office
Washington, DC 20548

July 12, 2012

Congressional Requesters:

Every year, federal, state, and local law enforcement agencies seize millions of dollars in assets that are forfeited through the Department of Justice's (DOJ) Asset Forfeiture Program. Forfeited assets can include, but are not limited to, businesses, cash, bank accounts, automobiles, boats, airplanes, jewelry, art objects, and real estate.¹ A primary goal of the program is preventing and reducing crime through the seizure and forfeiture of assets that were used in or acquired as a result of criminal activity. The Comprehensive Crime Control Act of 1984 established the Assets Forfeiture Fund (AFF) within DOJ to receive the proceeds of forfeitures and the AFF currently holds more than \$1 billion in assets.² Revenues generated from forfeitures are used to fund program-related expenses including payments to victims and lienholders, the costs of storing and maintaining forfeited assets, and certain law enforcement activities, such as the payment of awards for information leading to asset forfeiture.³ After funds have been obligated for program expenses in the current fiscal year, any unobligated funds that remain in the AFF at the end of the fiscal year are then carried forward to the next fiscal year.⁴ Specifically, at the end of each fiscal year, DOJ carries over funds to ensure it has resources to cover expenses that may not be covered by the next year's anticipated revenues. Those funds determined to be in excess of these requirements (excess unobligated balances) may be

¹Once a seized asset is officially forfeited, it becomes the property of the U.S. government. DOJ also seizes illegal drugs and counterfeit items that have no resale value to the federal government. These items are typically held by the agencies until they are approved for destruction. According to DOJ, forfeited firearms generally must be destroyed in a way that prevents them from ever being put back together and used.

²Pub. L. No. 98-473, tit. II, § 310, 98 Stat. 1976, 2052 (codified as amended at 28 U.S.C. § 524(c)).

³These authorized uses of these revenues are enumerated in 28 U.S.C. § 524(c)(1). The amount of fund revenues that can be spent on certain types of expenses, such as the purchase of evidence of a drug offense, is to be specified in annual appropriations acts, but revenues can be used without limitation for all other authorized purposes. Before 1985, the costs of forfeiture activities were paid out of agency operational funds.

⁴Obligated balance refers to the amount of obligations already incurred for which payment has not yet been made. Unobligated balance is the portion of obligational authority that has not yet been obligated.

declared as Super Surplus and, after congressional notification, can be used at DOJ's discretion for a variety of purposes.⁵

All federal law enforcement agencies within DOJ participate in the Asset Forfeiture Program including the United States Marshals Service (USMS); the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Drug Enforcement Administration (DEA); and the Federal Bureau of Investigation (FBI) as well as other agencies not part of DOJ such as the Department of Defense Criminal Investigative Service. Often, state and local law enforcement agencies participate in joint investigations with DOJ's law enforcement agencies. In return, state and local law enforcement agencies can receive a portion of the proceeds of forfeited assets resulting from these investigations in the form of cash or property through DOJ's equitable sharing program.⁶ From fiscal years 2003 through 2011, DOJ has shared over \$3.2 billion in cash and property with more than 9,200 state and local law enforcement agencies. You expressed interest in the management of the AFF and oversight of the equitable sharing program. Thus, this report addresses the following questions:

1. How, if at all, have the AFF's revenues and expenditures changed from fiscal years 2003 through 2011 and to what extent does DOJ have processes in place to ensure transparency when carrying over funds for the next fiscal year?
2. To what extent has DOJ established controls to help ensure that the equitable sharing program is implemented in accordance with established DOJ guidance?

To determine how the AFF's revenues and expenditures from fiscal year 2003—the year in which the AFF was removed from GAO's high-risk list—through fiscal year 2011 had changed, we analyzed DOJ data on

⁵These Super Surplus balances may be allocated at the discretion of the Attorney General for "...any Federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice" pursuant to 28 U.S.C. § 524(c)(8)(E).

⁶21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2) authorize the Attorney General to share federally forfeited property with participating state and local law enforcement agencies.

revenues and expenditures by fiscal year.⁷ We used information on revenues and expenditures contained in the department's financial accounting systems. We interviewed DOJ officials regarding information in the financial accounting systems to discuss trends and anomalies in the revenues and expenditures over this 9-year period. As part of our review we also determined the extent to which DOJ has processes in place to ensure transparency when carrying over funds for the next fiscal year. We reviewed information on unobligated and excess unobligated balances from DOJ's annual Congressional Budget Justifications to Congress, available through DOJ's public website and also contained in the AFF's financial accounting systems.⁸ Specifically, we assessed the extent to which the Congressional Budget Justifications outlined the processes for carrying over funds for the next fiscal year. We also reviewed prior GAO reports on the importance of transparency in federal budget submissions to Congress. We interviewed DOJ officials from the Asset Forfeiture Management Staff responsible for oversight of the AFF regarding their processes for carrying over funds at the end of the fiscal year. Further, we analyzed data on the AFF's excess unobligated balances from fiscal years 2003 through 2011, and interviewed officials about how excess unobligated balances have been used since 2003, including how these balances have been used to cover the cost of annual rescissions over this time period.

To assess the reliability of DOJ's financial accounting system for providing revenues, expenditures, and excess unobligated balances data, we reviewed relevant documentation and conducted interviews with knowledgeable DOJ agency officials to understand how DOJ collects, categorizes, and tabulates the information and the actions it takes to ensure its consistency, accuracy, and completeness. We determined information on the financial accounting system provided by DOJ to be sufficiently reliable for presenting the total revenues, expenditures, and excess unobligated balances for fiscal years 2003 through 2011.

⁷We first reported on the Department of Justice's Asset Forfeiture Program as a high-risk area in 1990 because of shortcomings in the management of and accountability for seized and forfeited property. In 2003, actions taken by DOJ resulted in the AFF being removed from GAO's high-risk list. See GAO, *High-Risk Series, An Update*, [GAO-03-119](#) (Washington, D.C.: Jan. 1, 2003).

⁸After revenues to cover program expenses have been carried over, any funds that remain in the AFF at the end of the fiscal year may be identified as excess unobligated balances.

To determine the extent to which DOJ has established controls to help ensure that the equitable sharing program is implemented in accordance with established guidance, we analyzed the most current guidance provided to DOJ agencies, including the 2009 *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* and the 2008 *Asset Forfeiture Policy Manual*, which is also provided to all DOJ agencies. In the course of our review, DOJ officials informed us that they are in the process of updating the 2008 *Asset Forfeiture Policy Manual* and provided us with a copy of the revised chapter on equitable sharing, which we also analyzed. We interviewed officials from DOJ's Asset Forfeiture Management Staff responsible for managing the AFF, and officials from the Asset Forfeiture and Money Laundering Section responsible for establishing the policies and procedures of the fund. In addition, we discussed equitable sharing guidance, policy, and related issues with headquarters officials from DOJ's law enforcement agencies, including ATF, DEA, FBI, and USMS. We also compared DOJ's equitable sharing guidance against criteria included in *Standards for Internal Control in the Federal Government*.⁹

To determine the extent to which DOJ ensures that agencies responsible for making equitable sharing decisions follow DOJ guidance, we also reviewed a nonprobability sample of 25 equitable sharing determinations completed during fiscal year 2010. Specifically, we selected the last 5 equitable sharing determinations approved in fiscal year 2010 by each of the three DOJ law enforcement agencies responsible for making equitable sharing decisions, the last 5 determinations that were reviewed and approved by the Asset Forfeiture and Money Laundering Section in fiscal year 2010, and the last 5 determinations that were subject to review and approval by the U.S. Attorney's Office in fiscal year 2010.¹⁰ We also interviewed officials from six local law enforcement agencies in two states to get their perspectives on the equitable sharing program. We selected

⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

¹⁰We received sample equitable sharing determinations from each of the DOJ agencies responsible for making equitable sharing recommendations. These were the Asset Forfeiture Money Laundering Section, ATF, DEA, FBI, and the United States Attorney's Office. Although the results of our review of equitable sharing determinations cannot be generalized to all equitable sharing determinations, we gained a critical understanding of how each of the DOJ agencies makes sharing recommendations as well as the process for reviewing and approving final equitable sharing determinations.

agencies from these two states because they are two of the states that received the largest amounts of equitable sharing dollars in fiscal year 2011. While the views of these local law enforcement agencies cannot be generalized to the population of equitable sharing participants, these interviews provided insight into the views of select local law enforcement agencies on the equitable sharing program. As part of our review of the equitable sharing program, we also analyzed information on equitable sharing payments by state and by fiscal year. To assess the relationship between equitable sharing payments and the population of a state, and per capita equitable sharing payments and arrest rates, we reviewed equitable sharing payments data from fiscal years 2003 through 2011 provided by DOJ, U.S. Census Bureau data for the U.S. population in 2010, and FBI's annual uniform crime data on arrest rates for 2010, which were the most current data available at the time we did our analysis. We interviewed FBI officials to assess the reliability of the FBI uniform crime data. In the course of the interview we determined that the arrest data for Washington, D.C. and Illinois did not capture the entire area, but determined the data for all other states was sufficiently reliable for the purposes of our review. Consequently, we excluded Washington, D.C. and Illinois from our analysis. Because it was out of the scope of our work, we did not attempt to determine other factors that could explain the relationship between equitable sharing funds and population or arrests.

We conducted this performance audit from April 2011 through July 2012 in accordance with generally accepted government auditing standards.¹¹ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Asset Forfeiture Program has three primary goals: (1) to punish and deter criminal activity by depriving criminals of property used or acquired through illegal activities; (2) to enhance cooperation among foreign, federal, state, and local law enforcement agencies through the equitable sharing of assets recovered through this program; and, as a by-product,

¹¹ During the course of our work, we experienced delays in obtaining certain data and documents from DOJ. This information was critical to the completion of our work.

(3) to produce revenues in support of future law enforcement investigations and related forfeiture activities. A number of federal law enforcement organizations participate in the AFF, including USMS, which serves as the primary custodian of seized and forfeited property for the program. See figure 1 for the Asset Forfeiture Program participants.

Figure 1: DOJ Asset Forfeiture Program Participants



Source: DOJ.

Roles and Responsibilities of Asset Forfeiture Program Participants

DOJ's Asset Forfeiture Management Staff (AFMS) is part of DOJ's Justice Management Division and is responsible for managing and overseeing all financial aspects of the AFF, review and evaluation of asset forfeiture program activities, internal controls and audit functions, information systems, and other administrative functions related to the fund. The Asset Forfeiture Money and Laundering Section (AFMLS) is part of DOJ's Criminal Division and is responsible for legal aspects of the program, including civil and criminal litigation and providing legal advice to the U.S. Attorneys' Offices. AFMLS is responsible for establishing the Asset Forfeiture Program's policies and procedures, coordinating multidistrict asset seizures, acting on petitions for remission in judicial forfeiture cases, and coordinating international forfeiture and sharing. AFMLS also oversees the AFF's equitable sharing program. United States Attorneys' Offices (USAO) are responsible for the prosecution of both criminal and civil actions against property used or acquired during illegal activity.

USMS serves as the primary custodian of seized property for the Asset Forfeiture Program. USMS manages and disposes of the majority of the valued property seized for forfeiture. In serving as the primary custodian of the majority of assets managed by the fund, USMS manages all valued assets that are not considered evidence, contraband, or targeted for use by individual law enforcement agencies. ATF enforces the federal laws and regulations relating to alcohol, tobacco, firearms, explosives, and arson by working directly and in cooperation with other federal, state, and local law enforcement agencies. While USMS is the primary custodian over valued assets, ATF maintains custody over assets seized under its authority, including firearms, ammunition, explosives, alcohol, and tobacco. DEA implements major investigative strategies against drug networks and cartels. DEA maintains custody over narcotics and other seized contraband. The FBI investigates a broad range of criminal violations, integrating the use of asset forfeiture into its overall strategy to eliminate targeted criminal enterprises.

There are several agencies outside the Department of Justice that also participate in the DOJ Asset Forfeiture Program. Non-DOJ participants include the United States Postal Inspection Service, the Food and Drug Administration's Office of Criminal Investigations, the United States Department of Agriculture's Office of the Inspector General, the Department of State's Bureau of Diplomatic Security, and the Department of Defense Criminal Investigative Service.

Types of Forfeiture

There are two types of forfeiture: administrative and judicial, and they differ in a number of ways, including (1) the point in the proceeding, generally at which the property may be seized; (2) the burden of proof necessary to forfeit the property; and (3) in some cases, the type of property interests that can be forfeited.

Administrative forfeiture allows for property to be forfeited without judicial involvement. Although property may be seized without any judicial involvement, seizures performed by federal agencies must be based on probable cause.¹² In administrative forfeitures, the government initiates a forfeiture action and will take ownership of the property provided that no one steps forward to contest the forfeiture. Specifically, the administrative forfeiture procedure requires that those with an interest in the property be notified and given an opportunity to request judicial forfeiture proceedings. See below for an example of an administrative forfeiture.

Example of Administrative Forfeiture

DEA initiated a task force investigation into a drug-trafficking organization. Task force officers received information from a confidential source that the drug-trafficking organization was using a van with hidden compartments to transport methamphetamine and drug proceeds, and a drug detection dog gave a positive alert to the presence of drugs in the van. Officers obtained and executed a search warrant on the vehicle, which resulted in the discovery and seizure of 149 kilograms of cocaine and \$1,229,785 in U.S. currency. Because no party filed a claim contesting the forfeiture, the currency was administratively forfeited by DEA pursuant to 19 U.S.C. § 1609.

Source: DOJ.

Judicial forfeiture, both civil and criminal, is the process by which property may be forfeited to the United States by filing a forfeiture action in federal court. In civil forfeiture, the action is against the property and thus does not require that the owner of the property be charged with a federal offense. The government must only prove a connection between the property and the crime. By contrast, criminal forfeiture requires a conviction of the defendant before property is subject to forfeiture.

¹²Probable cause for an administrative forfeiture is defined as a reasonable ground for belief of guilt, supported by less than prima facie proof, but more than mere suspicion.

Example of Civil Forfeiture

After obtaining a search warrant, agents searched a residence and the adjoining land on a 50-acre farm. Agents found firearms and ammunition, along with 60 pounds of processed marijuana. Agents also found approximately 4,000 marijuana plants growing outside in the adjacent field, along with approximately 2,500 plants being processed.

While the owner of the farm will be subject to prosecution, because the land was used for illegal activities, a separate civil forfeiture action was filed against the property. The farm where the marijuana plants were located was seized and will be forfeited under civil forfeiture proceedings.

Source: U.S. Attorney's Office.

Example of Criminal Forfeiture

According to the United States Attorney, two Philadelphia-based corporations operated an Internet enterprise that facilitated interstate prostitution activities. The defendants allegedly developed and operated an Internet website and created an online network for prostitutes, escort services, and others to advertise their illegal activities to consumers and users of those services.

The case was investigated by state police, FBI, and the Internal Revenue Service Criminal Investigations Division. The investigation found that defendants received fees in the form of money orders, checks, credit card payments, and wire transfers from users of the website. The funds the defendants allegedly received were the proceeds of violations of federal laws prohibiting interstate travel in aid of racketeering enterprises, specifically prostitution, and aiding and abetting such travel. The money-laundering conspiracy charge alleges that the defendants engaged in monetary transactions in property of a value greater than \$10,000 derived from those unlawful activities.

The defendants entered guilty pleas to the money-laundering conspiracy charge and agreed to serve a probation term of 18 months and to pay a \$1,500,000 fine. In addition, under the terms of the plea agreement, the defendants agreed to the criminal forfeiture of \$4.9 million in cash derived from the unlawful activity, as well as forfeiture of the domain name, all of which represent property used to facilitate the commission of the offenses.

Source: U.S. Attorney's Office.

The asset forfeiture process involves a number of key steps, including necessary planning in advance of the seizure, seizing and taking custody of the asset, notifying interested parties, addressing any claims and petitions, and equitable sharing with state and local law enforcement agencies. According to DOJ, enhancing cooperation among federal, state, and local law enforcement agencies is one goal of the equitable sharing program. For more information on how agencies qualify for equitable sharing, see appendix I.

AFF Revenues and Expenditures Have Increased since Fiscal Year 2003, and DOJ's Process for Carrying Over Funds Could Be More Transparent

From fiscal years 2003 through 2011, AFF revenues and expenditures increased, with annual revenues doubling in fiscal year 2006, due in part to an increase in forfeitures resulting from fraud and financial crimes investigations. DOJ estimates anticipated revenues and expenditures based on prior years' trends and then carries over funds to help cover operational expenses and other liabilities in the next fiscal year, including reserves needed for pending equitable sharing and third-party payments. However, the transparency of DOJ's process for carrying over these funds could be enhanced. Once all expenses have been accounted for and unobligated funds deemed necessary for next year's expenses have been carried over to the next fiscal year, DOJ then reserves funds to cover annual rescissions.¹³

AFF's Revenues More than Tripled from Fiscal Years 2003 through 2011

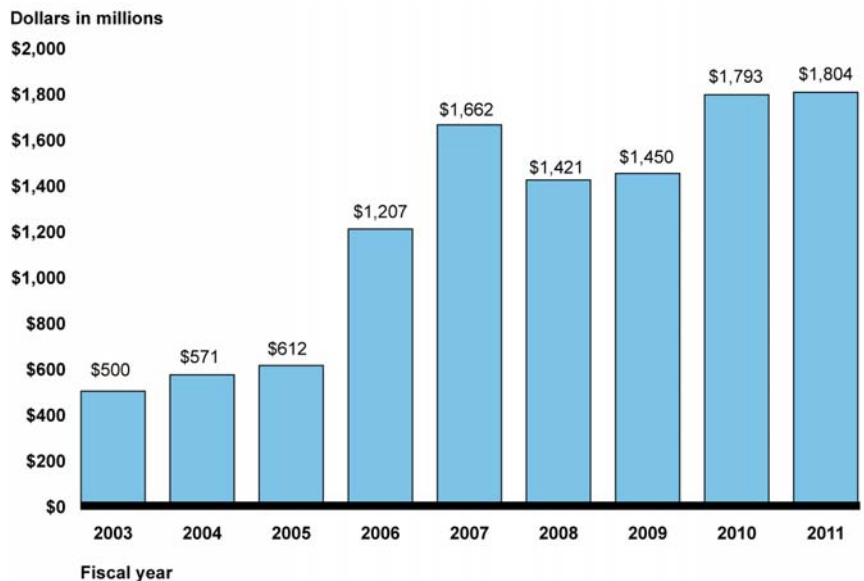
In the 9-year period from fiscal years 2003 through 2011, AFF revenues totaled \$11 billion, growing from \$500 million in fiscal year 2003 to \$1.8 billion in fiscal year 2011. Since 2006, an increase in the prosecution of fraud and financial crime cases has led to substantial increases in AFF revenue.¹⁴ For example, a money laundering case in fiscal year 2007 involved the misappropriation of funds by the founder of a television cable company, Adelphia Communications, and resulted in over \$700 million in forfeited assets. As a result of the increase in forfeitures resulting from money laundering and financial crimes investigations, in 2006, revenues doubled those of previous years, and for the first time in the AFF's history, total annual revenues grew above \$1 billion to approximately \$1.2 billion. Since 2006, the AFF's annual revenues have remained above \$1 billion,

¹³A rescission is a law that "cancels the availability of budget authority previously enacted before the authority would otherwise expire." GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: Sept. 1, 2005). Budget authority refers to authority provided by federal law to enter into financial obligations that will result in immediate or future payments involving federal government funds. Cancellation of this authority makes the funds involved no longer available for obligation.

¹⁴DOJ's 2007-2012 Strategic Plan highlights the Asset Forfeiture Program under several of the department's strategic objectives, including combating public and corporate corruption, fraud, economic crime, and cybercrime, and reducing the threat, trafficking, use, and related violence of illegal drugs. As outlined in the Strategic Plan, prosecutors only recently have had the legal tools to directly forfeit the proceeds of white collar crime. DOJ's Asset Forfeiture 2008-2012 Strategic Plan also describes the enhanced focus on financial investigations.

with the highest revenues of \$1.8 billion reported in 2011.¹⁵ Figure 2 shows the fund's revenue growth over time from fiscal years 2003 through 2011.

Figure 2: AFF's Revenue Totals for Fiscal Years 2003 through 2011



Source: GAO analysis of DOJ data.

Moreover, according to DOJ officials, in addition to an increase in the prosecution of fraud and financial crime cases, the increase in revenues can also be attributed to an overall increase in the number of forfeiture cases together with higher-value forfeitures. Across all fiscal years, forfeited cash income constituted 76 percent or more of the AFF's revenue sources. Forfeited cash income includes cash/currency, as well as financial instruments such as money orders, bank accounts, brokerage accounts, and shares of stock. The second, and much smaller, source of revenue is the sale of forfeited property including automobiles, boats, airplanes, jewelry, and real estate, among others. In fiscal year 2011, revenues from forfeited cash income and the sale of forfeited property together accounted for over 84 percent of the total revenues. Other

¹⁵The large growth in revenues in fiscal year 2007 is attributed to the large case deposits such as the Adelphia Communications investigations, which resulted in approximately \$728 million, or 44 percent of the total revenues.

sources of income may include transfers from the Treasury Forfeiture Fund (TFF), and transfers from other federal agencies.¹⁶ Additionally, since fiscal year 2006—when the AFF’s revenues from fraud and financial crime cases increased—large-case deposits (forfeitures greater than \$25 million) of forfeited cash income have contributed an average of 37 percent to total revenues.¹⁷ For example, in 2007, DOJ reported a total of six large deposits that totaled \$842 million, or slightly over 50 percent of the AFF’s total revenues in that fiscal year. These forfeitures of assets greater than \$25 million involved investigations of misappropriation of funds, including corporate fraud and the illegal sales of pharmaceutical drugs. The types of assets that were seized in these investigations were primarily forfeited cash income.

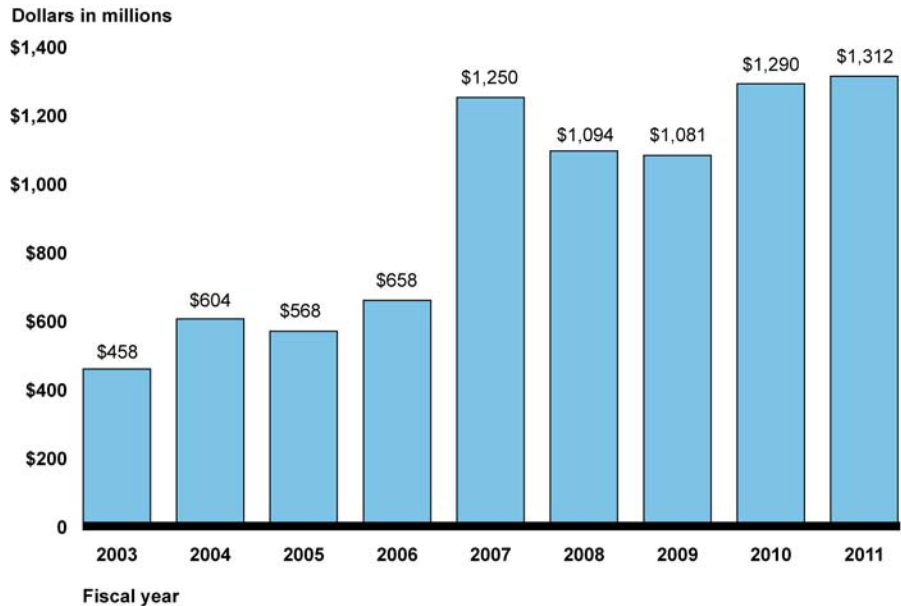
AFF’s Expenditures on Forfeiture Activities Also Increased

From fiscal years 2003 through 2011, AFF expenditures totaled \$8.3 billion. As revenues have increased, there has been a corresponding increase in expenditures in support of asset forfeiture activities. Specifically, expenditures increased from \$458 million in fiscal year 2003 to \$1.3 billion in fiscal year 2011. Figure 3 shows the expenditures from fiscal year 2003 through 2011, including the large growth in expenditures beginning in 2007.

¹⁶Transfers from the TFF or other federal agencies include DOJ’s share of forfeited assets resulting from investigations initiated by a non-DOJ law enforcement agency. Over this 9-year period, these sources of income have not, individually, exceeded more than 4 percent of revenues, and combined have not exceeded 9 percent. One exception is in fiscal year 2011, when the other sources of income totaled nearly 16 percent of total revenues due to the transfer of funds from the TFF, which totaled approximately \$270 million, or 15 percent of revenues.

¹⁷Prior to 2006, DOJ officials did not maintain data on large-case deposits because there were few to no forfeitures of this size and scope.

Figure 3: Total Forfeiture Program Expenditures from Fiscal Years 2003 through 2011



Source: GAO analysis of DOJ data.

Revenues resulting from forfeitures are used to pay the forfeiture program's expenditures in three major categories:

1. payments to third parties, including payments to satisfy interested parties such as lienholders, as well as the return of funds to victims of large-scale fraud;
2. equitable sharing payments to state and local law enforcement agencies that participated in law enforcement efforts resulting in the forfeitures; and
3. all other program operations expenses that include a total of 13 expenditure categories such as asset management and disposal, the storage and destruction of drugs, and investigative expenses leading to a seizure.

Table 1 shows the AFF's expenditures across all fiscal years, including payments to third parties, equitable sharing, and all other program operations expenses.

Table 1: AFF's Expenditures across All Fiscal Years by Type of Expenditure

Dollars in millions

	Fiscal year								
	2003	2004	2005	2006	2007	2008	2009	2010	2011
Third-party interests	\$44	\$49	\$82	\$66	\$558	\$248	\$173	\$333	\$376
Equitable sharing payments	218	268	271	324	400	437	396	388	445
All other program operations expenses	196	287	215	268	292	409	512	569	491
Total expenditures	\$458	\$604	\$568	\$658	\$1,250	\$1,094	\$1,081	\$1,290	\$1,312

Source: GAO analysis of DOJ data.

Equitable sharing payments to state and local law enforcement agencies have generally increased since fiscal year 2003; in fiscal year 2003, equitable sharing payments totaled \$218 million, and in fiscal year 2011, equitable sharing totaled \$445 million.¹⁸ Moreover, when compared with DOJ grant programs, equitable sharing is one of the largest DOJ programs providing funds to recipients in order to support state and local law enforcement activities. For example, in fiscal year 2010, the Victims of Crime Assistance (VOCA) Program was DOJ's largest grant program; DOJ distributed approximately \$412 million in funds through the VOCA program. By way of comparison, equitable sharing in fiscal year 2010 provided a total of \$388 million in equitable sharing payments to state and local law enforcement agencies. According to state and local law enforcement officials we met with, because most of their departmental budgets go toward personnel costs, the equitable sharing program is extremely important because it helps fund equipment, training, and other programs that they may otherwise not be able to afford. For example, one local law enforcement agency stated that salaries make up 96 percent of its annual budget. As a result, equitable sharing dollars allow them to purchase equipment they could not otherwise buy with the limited available annual budget. See appendix I for the total equitable sharing payments made to each state in fiscal year 2011.

Equitable sharing has generally increased from 2003 through 2011; however, as a percentage of total expenditures, equitable sharing has

¹⁸When compared with all 15 expenditure categories in the AFF, equitable sharing was the largest expenditure category in all fiscal years except in 2007, when third-party payments were the largest expenditure category due to an increase in fraud and financial crimes cases that involved a larger proportion of payments to lienholders and victims.

decreased from 48 percent of total expenditures in 2003 to 34 percent in 2011. This percentage decrease began in fiscal year 2006, when another expenditure category—payments to third parties including lienholders and victims—increased from 10 to 44 percent of total expenditures. DOJ officials attribute the shift among these major expense categories in part to the increase in the prosecution of fraud cases with significant numbers of victims. Moreover, because large-case deposits are generally the result of fraud and financial crime cases, they typically have a greater proportion of payments to victims than equitable sharing, a fact that may also contribute to the overall percentage decrease in equitable sharing.¹⁹ For example, in fiscal year 2007, as a result of a non-prosecution agreement with Adelphia Communications, over \$700 million in cash and stocks was forfeited and liquidated.²⁰ In fiscal year 2012, the net proceeds from these forfeitures, which totaled approximately \$728 million, were returned to victims.

In addition to equitable sharing and third-party payments to victims and lienholders, the AFF is used to pay for a variety of program operations expenses. According to DOJ, the primary purpose of the AFF is to provide a stable source of resources to cover the costs of the Asset Forfeiture Program, including the costs of seizing, evaluating, inventorying, maintaining, protecting, advertising, forfeiting, and disposing of property seized for forfeiture.²¹ Among the program operations expenses covered by the AFF are costs associated with storing, maintaining, and disposing of forfeited assets. The AFF also funds case-related expenses including costs of managing paperwork, costs associated with the prosecution of forfeiture cases, costs associated with

¹⁹No funds are shared with state and local law enforcement partners until victims or other third parties have been fully compensated for their financial losses, and forfeiture costs have been recovered.

²⁰ Non-prosecution agreements generally require companies to comply with a set of terms for a specified duration in exchange for prosecutors deciding not to prosecute. These terms have included restitution to victims, forfeiture of criminal proceeds, and monetary penalties, among other things.

²¹Under current regulations, the department must advertise each administrative seizure 3 consecutive weeks in a newspaper of general circulation. Judicial forfeitures are advertised on <http://www.forfeiture.gov>. In addition, the department must also incur the cost of providing personal notice, by certified mail or other means, to all individuals or entities identified as having a potential legal interest in the property.

the execution of forfeiture judgments, and the costs of advertising.²² The AFF also funds a variety of investigative expenses associated with forfeiture, including payments to reimburse any federal agency participating in the AFF for investigative costs leading to seizures. Other investigative expenses may include awards for information, purchase of evidence, and costs to fund joint task force operations. For additional details regarding expenditure categories, see appendix II.

DOJ Carries Over Funds Needed to Cover Anticipated Expenditures in the Next Fiscal Year, but Transparency Could Be Improved

At the end of each fiscal year, DOJ carries over funds in order to help ensure it has sufficient resources to cover all AFF expenses that may not be covered by the next year's revenues; however, the process DOJ uses to determine how much to carry over each year is not documented or outlined in its Congressional Budget Justifications. While DOJ officials stated that they cannot predict how much revenue will result from forfeitures in any given year, they attempt to estimate their anticipated revenues based on prior years' trends. They then carry over funds needed to cover anticipated expenses for the coming year including funds needed to cover the costs of pending equitable sharing and third-party payments as well as funds needed to ensure the Asset Forfeiture Program's solvency—including the anticipated costs associated with continuing forfeiture activities—at the start of the next fiscal year. Similar to the growth in revenues and expenditures, the funds DOJ carries over to cover these authorized expenses at the end of each fiscal year have grown since 2003. For example, at the end of fiscal year 2003, DOJ carried over approximately \$365 million both to maintain solvency and to cover anticipated equitable sharing and third-party payments in fiscal year 2004. In comparison, in fiscal year 2011, DOJ carried over a total of \$844 million to cover these expenditures. Additionally, DOJ officials emphasized that because revenues from fraud and financial crime cases have increased, the funds needed to make third-party payments, including payments to victims, have also increased. The flow of funds into and out of the AFF is complex and involves an interaction among revenues, expenditures, and funds carried over to manage the AFF. The following illustrates how DOJ used revenues, expenditures, and carryover funds to manage the AFF in fiscal year 2010:

²²Program operational expenses for managing the paperwork associated with forfeiture, include costs for data entry, data analysis, word processing, file control, file review, quality control, case file preparation, and other process support functions.

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- At the start of fiscal year 2010, DOJ carried over a total of \$634 million in funds from fiscal year 2009 to maintain the program's solvency and for pending equitable sharing and third-party payments. These funds were used at the start of fiscal year 2010 to continue operations, such as paying expenses for asset storage, and to cover pending equitable sharing and third-party payments. In addition to the \$634 million, \$207 million was reserved to cover DOJ's fiscal year 2010 rescission. This rescission was proposed in the President's budget, and later passed by Congress and enacted into law. As a result, at the start of fiscal year 2010, DOJ carried over a total of \$841 million in funds from fiscal year 2009, as shown in table 2 below.
 - In the course of fiscal year 2010, a total of approximately \$1.58 billion was deposited into the AFF, including revenues received from forfeitures.²³
 - Based on the total of \$841 million that was carried over from fiscal year 2009 plus the \$1.58 billion deposited into the AFF in fiscal year 2010, DOJ then had approximately \$2.42 billion in total available resources in fiscal year 2010. Of these resources, DOJ obligated \$1.45 billion in fiscal year 2010 and carried over \$975 million into fiscal year 2011 to maintain solvency and reserves and to cover the proposed fiscal year 2011 rescission.²⁴
 - While DOJ had obligated \$1.45 billion for the three main expenditure categories; equitable sharing, third-party interests, and all other program operations expenses, DOJ's actual expenditures in fiscal year 2010 totaled \$1.29 billion. The difference of \$0.16 billion in fiscal year 2010 represents funds that had been obligated, but had not yet been spent. According to DOJ officials, there may be a lag between the funds obligated in a fiscal year and the actual expenditures, and

²³The total deposited in the AFF includes the revenues resulting from forfeitures, prior year rescissions restored to the AFF, current year rescission, and recovery/refund of prior year obligations. If obligations are ultimately lower than anticipated, funds previously obligated are "refunded" to the AFF. These funds are referred to as "recoveries/refunds of prior year obligations."

²⁴According to DOJ officials, they had originally planned to carry over approximately \$724 million into fiscal year 2011, but the actual amount carried over (\$975 million) was higher due to the unpredictable dynamics of fund deposits. Specifically, according to DOJ officials, while DOJ makes some determinations about what is required for carryover, the actual carryover can differ from the anticipated levels due to the timing of deposits into the fund.

therefore, it is not uncommon for the total obligations to be higher than the expenditures in a given fiscal year. Table 2 shows the total funds available for use in fiscal year 2010.

Table 2: Total Funds Available for Use in Fiscal Year 2010

Dollars in millions	
Carryover from fiscal year 2009 ^a	\$841
Plus deposits into the AFF during fiscal year 2010	1,580
Total resources	2,420
Less total obligations for fiscal year 2010	-1,450
Total funds carried over for fiscal year 2011^b	\$975

Source: GAO analysis of DOJ data.

Note: Totals may not add due to rounding.

^aThis amount includes funds to maintain solvency, cover pending equitable sharing and third-party payments, and funds needed to cover the fiscal year 2010 rescission.

^bAccording to DOJ officials, they had originally planned to carry over approximately \$724 million into fiscal year 2011, but the actual amount carried over (\$975 million) was higher due to the unpredictable dynamics of fund deposits.

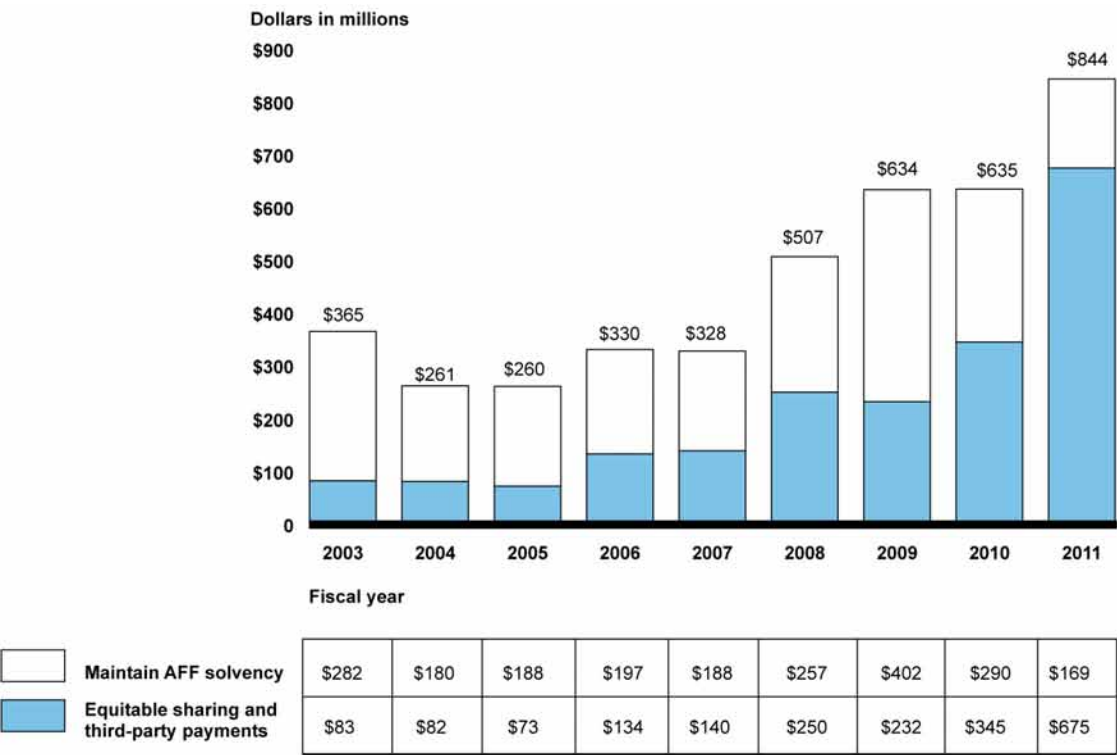
In order to identify the funds that will need to be carried over to cover anticipated expenses for the coming year, DOJ officials stated that they use reports generated from its asset-tracking system to identify pending equitable sharing and third-party payments.²⁵ These reports provide DOJ with information to determine carry over funds needed for the disbursements that must be paid in the next fiscal year.²⁶ In addition, DOJ carries over funds needed to ensure the Asset Forfeiture Program's solvency at the start of the next fiscal year. According to DOJ officials, they consider a number of factors when calculating the funds needed to maintain solvency, such as historical data including information on the costs of past contracts, salary costs, and other expenses; known future expenses including salaries and contracts; and the costs of any potential new expenditures.

²⁵DOJ's Consolidated Asset Tracking System (CATS) is used to track the life cycle of forfeited assets from seizure to disposition.

²⁶DOJ officials noted that they may have large victim pay-outs and expenses in the coming year that cannot be anticipated.

DOJ officials explained the general factors they consider when carrying over funds needed to cover anticipated expenditures in the next fiscal year, but they do not specify in the AFF's Congressional Budget Justifications how they determine the total amounts carried over each year. Specifically, the Congressional Budget Justifications do not include information on how DOJ calculated the amounts carried over nor do they explain the significant variations from one year to the next in the amount of funds carried over for solvency. For example, in fiscal year 2007, DOJ carried over \$188 million based on its estimates of what it needed to cover solvency. The amount carried over to cover solvency then increased to \$402 million in fiscal year 2009 and decreased to \$169 million by fiscal year 2011. Figure 4 shows the variation in carryover funds retained in the AFF at the end of each fiscal year to cover solvency, equitable sharing, and third-party payments from fiscal years 2003 through 2011.

Figure 4: Funds Carried Over at the End of the Fiscal Year to Cover Solvency, Equitable Sharing, and Third-Party Payments in the Next Fiscal Year



Source: GAO analysis of DOJ data.
Note: The funds carried over to maintain AFF solvency include start-of-year operational expenses such as asset storage.

DOJ officials stated that a number of cost drivers may change the funds needed for solvency from year to year. These cost drivers include salaries for government employees, information systems costs, asset management and disposal contracts, and contracts for administrative support staff, among other things. According to DOJ, these categories comprise recurring operational costs of the Asset Forfeiture Program. While these expenses are generally funded by AFF revenues, DOJ carries over funds to ensure it has sufficient resources that may not be covered by the next year's revenues. Moreover, additional funds may need to be carried over to account for any number of program uncertainties.²⁷ For example, the AFF could be responsible for making payments related to pending judicial actions, in the event that DOJ were to lose a forfeiture case in court. Therefore, DOJ may carry over more funds from one fiscal year to the next in order to cover these types of liabilities. DOJ officials stated that they estimate needed carryover funds by reviewing the cost drivers, as well as by assessing the risk that revenues may be less than projected. DOJ officials further noted that planning for AFF carryover and the actual carryover can differ due to the unpredictable dynamics of the fund. According to DOJ officials, there is no documented process used to determine the amount of funds that are carried over at the end of each fiscal year.

Our prior work has emphasized the importance of transparency in federal agencies' budget presentations to help provide Congress the necessary information to make appropriation decisions and conduct oversight.²⁸ The department provides a yearly budget justification to Congress that details the estimated revenues, expenses, and carryover requirements for the upcoming fiscal year as well as AFF-related performance information. Officials further noted that the Congressional Justification includes discussions of the various categories of fund expenses, but does not include a detailed discussion of the process used to estimate the amounts carried over. Without a clearly documented and transparent process that demonstrates how DOJ determines the amounts that will be carried over each year, it is difficult to determine whether DOJ's conclusions regarding

²⁷ According to DOJ officials, program uncertainties may include several risk factors such as uncertain revenue streams, unanticipated program expenses, pending congressional actions on rescissions, and pending judicial actions prior to final order of forfeiture.

²⁸ GAO, *Veterans Disability: More Transparency Needed to Improve Oversight of VBA's Compensation and Pension Staffing Levels*, [GAO-05-47](#) (Washington, D.C.: Nov. 15, 2004).

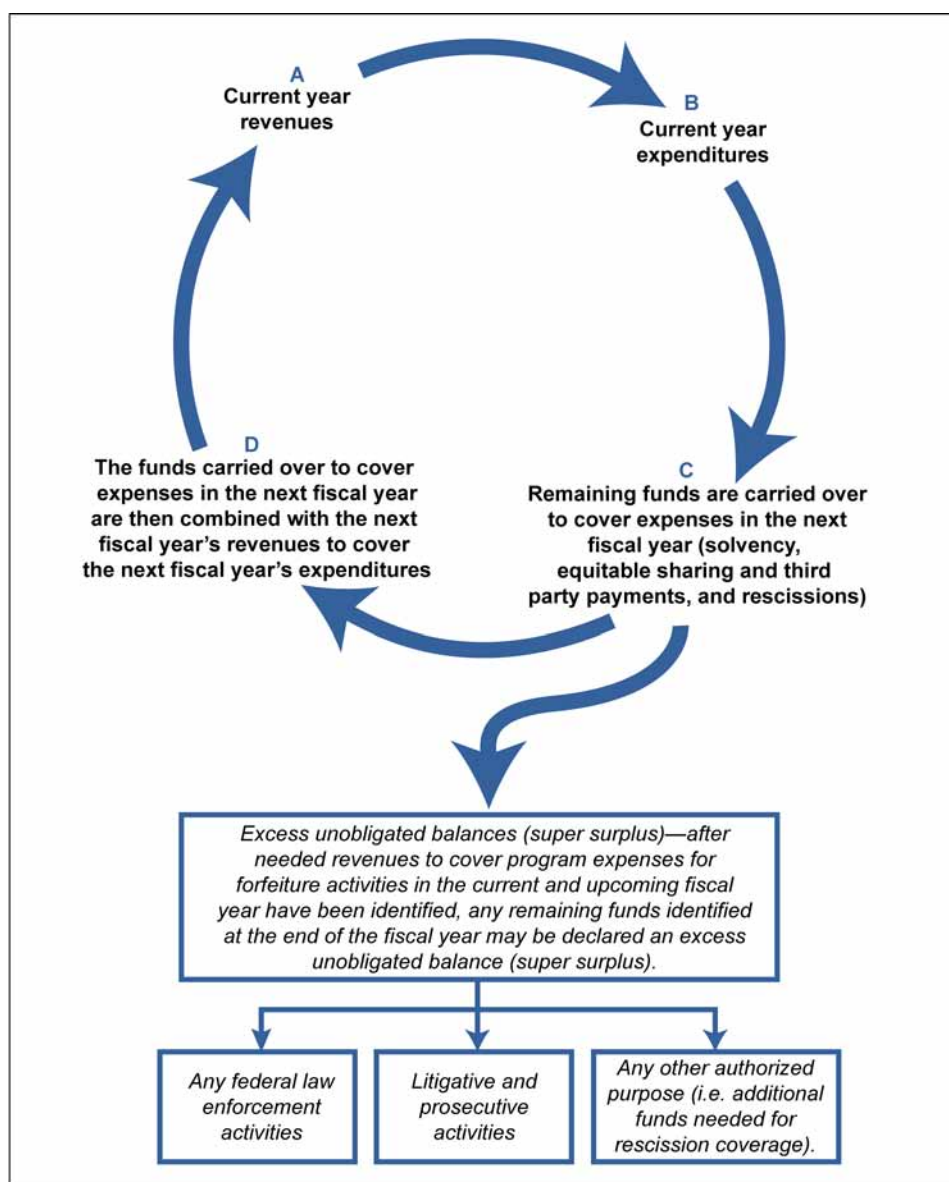
the amounts that need to be carried over each year are well founded. Providing more transparent information as part of the AFF's annual budget process would better inform Congress' oversight of the AFF, by making it easier to evaluate whether the funds carried over to maintain Asset Forfeiture Program solvency and cover pending equitable sharing and third-party payments adequately reflect the AFF's needed resources.

Since 2003, DOJ Has Retained Excess Balances in the AFF to Cover Yearly Proposed Rescissions, and These Rescissions Have Since Accumulated to Over Half a Billion Dollars

After revenues needed to cover expenses in the current and upcoming fiscal years have been carried over, DOJ reserves funds to cover rescissions. After these funds have been reserved, any funds determined to be in excess of these requirements (excess unobligated balances) may be declared as Super Surplus. While these Super Surplus balances may be used at DOJ's discretion for a variety of purposes, in recent years, these balances have been used as a means to supplement the funds reserved to cover yearly rescissions proposed in the President's budget, and later passed by Congress and enacted into law.²⁹ Figure 5 provides a description of the process for identifying Super Surplus balances in any given fiscal year.

²⁹Prior to 2008, these excess unobligated balances were also used to fund departmental priorities. However, because rescissions from the AFF have been greater than the existing balance since fiscal year 2008, the funds have been unavailable for departmental priorities in recent years.

Figure 5: Process for Identifying Excess Unobligated (Super Surplus) Balances



Source: DOJ.

Rescissions are legislative actions to reduce an agency's budgetary resources. For example, in fiscal year 2010, \$387 million was rescinded from the AFF, and in fiscal year 2011, the enacted rescission totaled \$495 million. Rescinded funds are generally taken from an agency and

returned to the Treasury before they are obligated. However, per Office of Management and Budget (OMB) guidance, rescinded funds from the AFF have not been returned to the Treasury. Instead, DOJ has treated the funds as unavailable for obligation for the remainder of the fiscal year for which the rescission was enacted.³⁰ At the beginning of each new fiscal year, DOJ would have made the rescinded funds available for obligation again, also in response to OMB guidance, had a new rescission not been enacted. With the enactment of a new rescission for the subsequent fiscal year, however, DOJ has continued to treat the rescinded funds as unavailable for obligation. For example, the \$387 million that was rescinded from the AFF in fiscal year 2010 was treated as unavailable for obligation in fiscal year 2010, and was then used again to cover part of the enacted \$495 million rescission in fiscal year 2011. To make up the difference needed to meet the \$495 million rescission in fiscal year 2011, DOJ used unobligated balances in the amount of \$233 million.³¹ Table 3 shows the enacted rescissions for each fiscal year, as well as the unobligated balances used by DOJ in order to meet the rescissions.

Table 3: Funds Reserved to Cover AFF's Annual Rescissions for Fiscal Years 2003 through 2011

Dollars in millions		2003	2004	2005	2006	2007	2008	2009	2010	2011
1	Enacted rescission	\$51	\$62	\$102	\$102	\$170	\$240	\$285	\$387	\$495
2	Funds maintained in the AFF from previous rescissions ^a	45	51	62	102	102	170	240	285	387
3	Unobligated balances reserved to help cover rescission ^b	\$23	\$12	\$40	\$1	\$68	\$70	\$45	\$207	\$233

Source: GAO analysis of DOJ data.

Notes: Rows 2 and 3 generally add up to the total enacted rescissions (as represented in row 1). However, in fiscal years 2003, 2010, and 2011, DOJ reserved funds greater than the enacted rescission. According to DOJ officials, DOJ believed that future rescissions would increase and so a greater amount was reserved to ensure that DOJ could meet proposed future rescissions.

^a Funds from the prior years' rescission were used to help cover the new year's rescission.

^b According to DOJ officials, unobligated and excess unobligated balances (Super Surplus) are used to help cover the annual rescissions.

³⁰See OMB Circular No. A-11, Sec. 20 & App. F (2011).

³¹For fiscal years 2003, 2010, and 2011, DOJ officials reported that the unobligated balance reserved to cover the rescission was higher than needed in those fiscal years because a portion of the balances was reserved to cover current and future rescissions.

One effect of these rescissions is to reduce the department's discretionary spending in the year in which the rescission was enacted. This could ultimately decrease the size of the federal deficit, provided the decreased spending from the rescission is not offset by increased spending elsewhere. For example, in fiscal year 2012, DOJ's discretionary budget authority was reduced to \$27.4 billion, due in part to the \$675 million enacted AFF rescission.

DOJ Could Enhance Controls and Oversight Mechanisms for Its Equitable Sharing Program

DOJ has established guidelines and oversight mechanisms for the equitable sharing program, but additional controls could enhance the consistency and transparency of the program. Moreover, DOJ has recently started conducting reviews of state and local law enforcement agencies that participate in the equitable sharing program to determine the extent to which they are complying with program policies as well as bookkeeping, accounting, and reporting requirements.

DOJ Has Established Guidelines for Making Equitable Sharing Determinations, but Additional Controls Could Improve Consistency and Transparency

Guidelines Governing the Equitable Sharing Process

DOJ has established written guidelines governing how state and local law enforcement agencies should apply for equitable sharing.³² Specifically, according to the guidelines, state and local law enforcement agencies must submit an application for equitable sharing in which they outline identifying information for their agency, information on the asset that was forfeited, how they intend to use the asset (or the proceeds of the asset),

³²Within DOJ, AFMLS is responsible for oversight of the equitable sharing program.

and the number of work hours their agency contributed to the investigation.³³

In addition, DOJ has established mechanisms governing how DOJ agencies should make equitable sharing determinations. Specifically, the field office for the DOJ agency that served as the lead federal agency in the investigation is responsible for making an initial recommendation regarding the percentage of the proceeds of the forfeited asset that each participating agency should receive. According to forfeiture statutes governing the transfer of forfeited property to state and local law enforcement agencies, equitable sharing determinations must bear a reasonable relationship to the degree of direct participation of the requesting agency in the total law enforcement effort leading to the forfeiture.³⁴ As a general rule, recommendations made by the field office are to be based on a comparison of the work hours that each federal, state, and local law enforcement agency contributed to the investigation. However, according to DOJ guidelines, further adjustments to sharing percentages may be made when work hours alone do not reflect the relative value of an agency's participation in an investigation. For example, if a state or local law enforcement agency contributed additional resources or equipment to an investigation, its sharing percentage might be adjusted upward from what it would be based on work hours alone.

DOJ has also established mechanisms for ensuring that equitable sharing recommendations are reviewed and approved by the appropriate authorities within DOJ depending on the amount and type of forfeiture. Specifically, once state and local law enforcement agencies complete the application for equitable sharing, DOJ's written guidelines state that the field office for the DOJ agency that served as the lead federal agency in the investigation should document its sharing recommendations for each

³³The amount of equitable sharing revenues shared with state and local law enforcement agencies is based on the degree of the agencies' direct participation in the investigation. For example, if one agency contributed three officers to an investigation, it might receive a greater portion of the equitable sharing proceeds than an agency that contributed only one officer's time to the investigation. The application for equitable sharing is titled Application for Transfer of Federally Forfeited Property and is commonly referred to by DOJ officials and state and local law enforcement agencies as the DAG-71.

³⁴See 21 U.S.C. §881(e)(3); 18 U.S.C. §981(e).

of the agencies that participated in the investigation.³⁵ The field office is then required to forward both the application forms completed by state and local law enforcement agencies and sharing recommendations to investigative agency headquarters officials for review. The review process differs depending on the amount and type of the forfeiture, as follows:

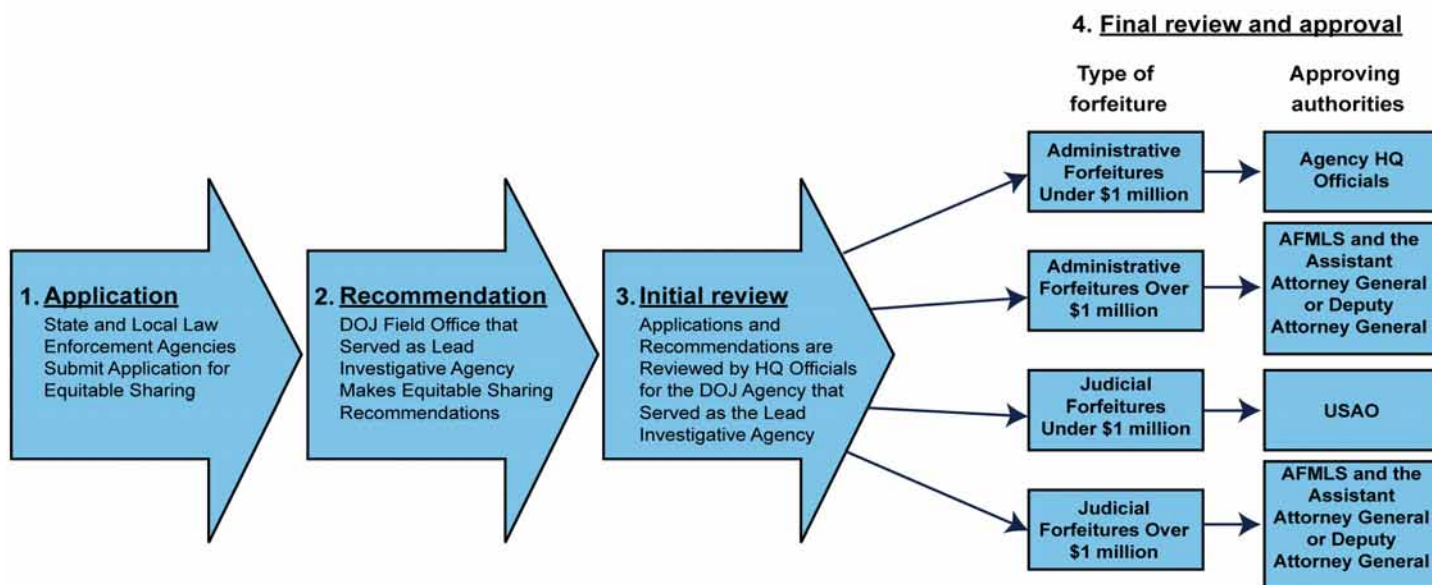
- For administrative forfeitures less than \$1 million, agency headquarters officials are responsible for reviewing and approving the final sharing determination.
- For judicial forfeitures less than \$1 million, agency headquarters officials are to forward the recommendation to the USAO for final approval.
- In any administrative or judicial forfeiture where the total appraised value of all forfeited assets is \$1 million or more, in multidistrict cases, and in cases involving the equitable transfer of real property, the agency headquarters officials forward the recommendation to the USAO for review, which is then submitted to AFMLS officials for review.
 - Where the investigative agency, the USAO, and AFMLS concur in a sharing recommendation, the Assistant Attorney General makes the final equitable sharing determination.³⁶
 - Where the investigative agency, the USAO, and AFMLS do not all concur in a sharing recommendation, the Deputy Attorney General (DAG) determines the appropriate share.

Figure 6 shows the steps involved in making equitable sharing determinations.

³⁵DOJ's recommendations are documented in the Decision Form for Transfer of Federally Forfeited Property, which is commonly referred to by DOJ officials and state and local law enforcement agencies as the DAG-72.

³⁶By delegation dated August 26, 2011, the Assistant Attorney General for the Criminal Division delegated his authority to determine equitable sharing matters between \$1 million and \$5 million to the Chief of AFMLS, where the seizing agency, USAO, and AFMLS all agree on the proposed sharing allocations.

Figure 6: Process for Making Equitable Sharing Determinations



Note: In administrative and judicial forfeitures over \$1 million where the investigative agency, the United States Attorney's Office (USAO), and Asset Forfeiture Money Laundering Section (AFMLS) concur in a sharing recommendation, the Assistant Attorney General reviews and approves the final equitable sharing decision. However, by delegation dated August 26, 2011, the Assistant Attorney General for the Criminal Division delegated his authority to determine equitable sharing matters between \$1 and \$5 million to the Chief of AFMLS, where the seizing agency, the USAO, and AFMLS all agree on the proposed sharing allocations. Where the investigative agency, the USAO, and AFMLS do not all concur in a sharing recommendation, the Deputy Attorney General (DAG) determines the appropriate share.

Source: DOJ.

Guidance for Making Adjustments to Equitable Sharing Percentages

While DOJ has established guidance indicating that adjustments to sharing percentages may be made when a state or local law enforcement agency's work hours alone do not reflect the value of its participation in an investigation, DOJ has not developed guidance regarding how to apply the qualitative factors that may warrant departures from sharing percentages. DOJ agencies currently make adjustments to sharing percentages based on a number of qualitative factors regarding the additional assistance or contributions state or local law enforcement agencies may have made during an investigation. According to DOJ's written guidelines, DOJ agencies must take these factors into account when determining whether to adjust an equitable sharing percentage beyond a strict work hour allocation. For example, according to DOJ guidelines, the deciding authority should consider such factors as the inherent importance of the activity, the length of the investigation, whether an agency originated the information leading to the seizure, or whether an

agency provided unique and indispensable assistance, among others. In addition, DOJ's Equitable Sharing Guidelines state that each agency may use judgment when determining how these qualitative factors should be used to adjust sharing percentages.

In the course of our review, DOJ officials provided examples of these qualitative factors. For example, if a state or local law enforcement agency provided a helicopter, drug-sniffing dog, or a criminal informant to an investigation, DOJ would consider these contributions to be unique or indispensable assistance. In one case we reviewed, a local law enforcement agency that participated in a joint investigation with federal agents would have received 7.4 percent in equitable sharing based on the work hours it contributed to the investigation. However, the agency also provided information obtained from a confidential source that led to the seizure and provided a helicopter for aerial surveillance. As a result, its final sharing determination was adjusted upward from 7.4 percent to 12 percent. If the net proceeds of the forfeiture are \$1.6 million once all investigative and forfeiture-related expenses have been paid, the resulting equitable sharing payment made to the law enforcement agency will increase from \$118,400 to \$192,000.³⁷

Standards for Internal Control in the Federal Government calls for significant events to be clearly documented in directives, policies, or manuals to help ensure operations are carried out as intended. AFMLS officials report that they have established "rules of thumb" based on historical knowledge or precedent when applying these qualitative factors to equitable sharing adjustments that are subject to their review, but have not issued guidance to the DOJ agencies. Further, headquarters officials for each of the DOJ agencies emphasized that they follow the guidelines issued by DOJ when making adjustments to sharing percentages. However, as previously discussed, these guidelines outline the qualitative factors that may be considered when making adjustments to sharing percentages, but they do not include any additional information regarding how qualitative factors should be used to adjust sharing percentages. As a result, agency headquarters officials stated that field office staff use

³⁷In the cases we reviewed, the net proceeds had not yet been determined. Until the asset has been sold, and all forfeiture expenses—such as storage and advertising—have been paid, DOJ does not know the net proceeds that will ultimately be paid in each case. For this reason DOJ agencies identify a percentage (as opposed to a dollar amount) when making equitable sharing recommendations.

their own judgment when determining how qualitative factors should be used to adjust sharing percentages. AFMLS officials state that adjustments to equitable sharing percentages based on qualitative factors should be made on a case-by-case basis because each investigation is unique and the facts and circumstances of each case must be considered in totality before making adjustments to sharing determinations. While we recognize the inherently subjective nature of evaluating each agency's unique contributions to a case based on facts and circumstances, additional guidance regarding how to apply the qualitative factors could help to improve transparency and better ensure consistency with which these qualitative factors are applied over time or across cases. This is particularly important given that these determinations represent DOJ's overall assessment of each agency's unique contributions to an investigation and are a key component of how DOJ makes decisions about how much to award each agency.

Transparency of Equitable Sharing Determinations

Documentation of Work Hours

DOJ's written guidance also requires the DOJ agencies that are responsible for making equitable sharing determinations to use work hours as the primary basis for calculating sharing percentages; however, agencies do not consistently document the work hours each agency contributed to the investigation. According to DOJ officials, the work hours contributed by each of the local, state, and federal law enforcement agencies involved in the investigation should be added together by the DOJ agency leading the investigation to arrive at a total. Each law enforcement agency's individual work hours are then divided by the total in order to determine each agency's equitable sharing percentage. DOJ's guidance states that every agency participating in the investigation should report work hours on either the application for equitable sharing or on the equitable sharing decision form. While state and local law enforcement agencies record their work hours on their applications for equitable sharing, we found that the DOJ agencies did not consistently record their own hours or the total hours contributed by all participating agencies. Of the 25 equitable sharing determinations we reviewed, 5 included supplemental memos provided by the DOJ agencies detailing the work hours provided by all of the agencies involved in the investigation. However, these memos are not required under existing DOJ guidance and were provided in only those investigations subject to AFMLS review. For the remaining 20 determinations, DOJ agencies did not document this information. Specifically, although work hours serve as the primary basis of calculating equitable sharing determinations, in 20 of the 25 determinations we reviewed, neither the work hours contributed by DOJ

agencies nor the total number of work hours contributed by all of the agencies involved in the investigation were recorded in the documents provided to agency headquarters officials for review. According to DOJ agency headquarters officials responsible for reviewing and approving equitable sharing determinations, they rely on agents in the field to calculate sharing percentages and as a result, they do not verify the work hours contributed by each agency involved in the investigation. In the absence of documented work hours, it is unclear how deciding authorities could verify whether equitable sharing determinations involving millions of dollars in assets were calculated in accordance with established guidance.

Documentation of Rationale for Making Adjustments to Sharing Determinations

DOJ's guidance does not explicitly require DOJ agencies to record the rationale for making adjustments to sharing percentages when work hours alone do not reflect the value of an agency's participation in the investigation. In the 25 equitable sharing determinations we reviewed, state and local law enforcement agencies often reported basic information regarding their agency's role in a particular investigation in their applications for equitable sharing, but DOJ's rationale for making adjustments to sharing percentages was not consistently documented in each investigation. Specifically, agencies did not consistently document whether they believed the state or local law enforcement agency made additional contributions that warranted departures from standard sharing percentages. Of the 25 determinations we reviewed, 5 included supplemental memos provided by the DOJ agencies indicating whether adjustments from standard sharing percentages were warranted. In 3 of these 5 AFMLS determinations, adjustments to sharing percentages were made based on the additional contributions of the state and local law enforcement agencies involved in the investigation and the memos detailed the rationale for making the adjustment in each case. However, these memos are not required under existing DOJ guidance and were provided in only those investigations subject to AFMLS review. For the remaining 20 investigations, DOJ did not document this information. Moreover, because work hours were not documented in these cases, it was not possible to determine whether further adjustments were made based on additional contributions made by each of the agencies involved in the investigation.

According to DOJ agency headquarters officials responsible for reviewing and approving equitable sharing determinations, they rely on agents in

the field to calculate sharing percentages and, as a result, they do not attempt to verify the adjustments that are made based on each agency's additional contributions to the investigation. Specifically, agency headquarters officials reported that the field is responsible for confirming state and local law enforcement's contributions to a case through a variety of means including face-to-face meetings, telephone conversations, and e-mails. For example, one agency official noted that although the rationale for making adjustments to sharing percentages is not included in the documents provided to headquarters for review and approval, the field office is most familiar with the investigation and the contributions that each state and local law enforcement agency may have made in a given case. Therefore, headquarters considers the field office to be the best source of information for how qualitative factors should be taken into account when adjusting sharing percentages. Agency headquarters officials further noted that it is rare for them to question equitable sharing recommendations made by the field or to ask for more information regarding the rationale for adjustments to sharing percentages. While the field office may have firsthand knowledge of the contributions of state and local law enforcement agencies in a given investigation, in the absence of the rationale for adjustments to sharing percentages being documented, there is limited transparency over how and why agencies make adjustments to sharing determinations when work hours alone do not accurately represent an agency's contribution to an investigation.

Standards for Internal Control in the Federal Government states that transactions should be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from the initiation and authorization through its final classification in summary records. In addition, control activities help to ensure that all transactions are completely and accurately recorded. In the absence of consistently documenting work hours and the rationale for making adjustments to sharing percentages, it is unclear how the equitable sharing deciding authorities could evaluate the nature and value of the contributions of each of the agencies involved in the investigation. Establishing a mechanism to ensure that this information is documented by all DOJ agencies responsible for making equitable sharing determinations could enhance the transparency of equitable sharing decisions.

Monitoring of Equitable Sharing Decisions

In the absence of documenting work hours or the rationale for making adjustments to sharing percentages, deciding authorities have limited means to verify the basis for equitable sharing decisions. Agency headquarters officials responsible for reviewing and approving equitable sharing determinations report that they review equitable sharing applications and decision forms to ensure that they are complete and that sharing determinations appear reasonable. However, headquarters officials for each of the DOJ agencies reported that they rely on field office staff to ensure that equitable sharing percentages were calculated correctly based on the work hours and the qualitative factors that each federal, state, and local law enforcement agency contributed to the investigation. However, because the information that serves as the basis for equitable sharing recommendations—including work hours and the qualitative factors used to make adjustments to sharing percentages—are not subject to review by agency headquarters officials, DOJ does not have reasonable assurance that the equitable sharing determinations are made in accordance with the established guidance. According to *Standards for Internal Control in the Federal Government*, controls should generally be designed to ensure that ongoing monitoring occurs in the course of normal operations. Such monitoring should be performed continually and ingrained in the agency's operations. This could include regular management and supervisory activities, comparisons, reconciliations, or other actions. Developing a mechanism to verify the work hours and qualitative factors that serve as the basis for equitable sharing determinations could improve DOJ's visibility over equitable sharing determinations and help promote confidence in the integrity of the equitable sharing program. Agency headquarters officials have reported that altogether, DEA, ATF, and FBI reviewed a total of 52,034 equitable sharing requests in fiscal year 2011, and 113 of these requests went to AFMLS for review and approval. As a result, agency headquarters officials note that they have limited resources to verify the basis for each and every equitable sharing determination. We recognize that in the face of these limited resources, it may not be practical for agency headquarters officials to review all of the information used in support of all equitable sharing determinations. However, a spot check approach would allow headquarters officials to assess the extent to which equitable sharing decisions are made in accordance with established guidelines to help address resource constraints.

DOJ Has Established Requirements Governing the Use of Equitable Sharing Funds and Began Conducting Compliance Reviews of These Agencies in 2011

Requirements Governing the Uses of and Controls over Equitably Shared Funds and Property

DOJ has established requirements governing the permissible uses of equitable sharing funds. Specifically, DOJ's guidelines state that equitably shared funds or assets put into official use shall be used by law enforcement agencies for law enforcement purposes only. Some of the permissible uses of equitable sharing funds include training, facilities, equipment, travel and transportation in support of law enforcement activities, as well as paying for the costs of asset accounting and auditing functions.³⁸ Examples of impermissible uses of equitable sharing funds include payments to cover the costs of salaries or benefits and non-law enforcement education and training.³⁹ DOJ's guidelines also state that agencies should use federal sharing monies prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals outside of the per diem are all considered impermissible uses of shared funds.

DOJ's guidelines further state that equitable sharing funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency and should not be used to replace or supplant the appropriated resources of the recipient. This means that equitable sharing funds must serve only to supplement funds they would normally receive and must not be used as a substitute for funds or equipment that would otherwise be provided by the law enforcement agency. For example, if

³⁸The same restrictions apply to equitably shared assets such as vehicles that are put into official use. DOJ guidelines state such property must be used for law enforcement purposes only.

³⁹According to DOJ's equitable sharing guidelines, the reason that equitable sharing funds should not be used to pay for salaries and overtime is to protect the integrity of the asset forfeiture and equitable sharing programs. Specifically, DOJ wants to ensure that the prospect of receiving equitable sharing monies does not influence, or appear to influence, law enforcement decisions.

city officials were to cut the police department's budget by \$100,000 as a result of the police department's receiving \$100,000 in equitable sharing funds, DOJ would consider this to be an example of improper supplantation, which is not an allowable use of equitable sharing funds.

In addition to establishing requirements governing the permissible uses of equitably shared funds and property, DOJ has also established bookkeeping, internal controls, reporting, and audit requirements that state and local law enforcement agencies must follow in order to participate in the equitable sharing program. For example, state and local law enforcement agencies must establish mechanisms to track equitably shared funds and property, implement proper bookkeeping and accounting procedures, maintain compliance with internal controls standards, and meet defined reporting standards. Among other things, DOJ's equitable sharing guidance calls for participating agencies to avoid commingling DOJ equitable sharing funds with funds from any other source, maintain a record of all equitable sharing expenditures, and complete annual reports known as Equitable Sharing Agreement and Certification Forms. These Equitable Sharing Agreement and Certification Forms require agencies participating in the equitable sharing program to report annually on the actual amounts and uses of equitably shared funds and property.⁴⁰ Among other things, agencies must detail the beginning and ending equitable sharing fund balance, and the totals spent on specific law enforcement activities (e.g., training, computers, weapons, and surveillance equipment). In submitting the form each year, agencies must certify that they will be complying with the guidelines and statutes governing the equitable sharing program.

In addition to the requirements outlined by DOJ, state and local agencies that receive equitable sharing funds must also comply with the Single Audit Act as outlined by OMB guidance.⁴¹ The Single Audit Act requires state and local governments and nonprofit organizations that expend a cumulative total of \$500,000 or more in federal awards in a fiscal year to complete a Single Audit. According to DOJ officials, based on these

⁴⁰AFMLS maintains a compliance database that tracks whether agencies have submitted their Equitable Sharing Agreement and Certification Forms for the current fiscal year. Agencies that are not in compliance are not eligible to receive equitable sharing funds.

⁴¹Office of Management and Budget, "Audits of States, Local Governments and Non-Profit Organizations," A-133, June 27, 2003.

Compliance Reviews of Equitable Sharing Participants

requirements, the substantial majority of equitable sharing participants are required to comply with the Single Audit Act.⁴² Under a Single Audit, an auditor must provide his or her opinion on the presentation of the entity's financial statements and schedule of federal expenditures, and on compliance with applicable laws, regulations, and provisions of contracts or grant agreements that could have a direct and material effect on the financial statements.

In April 2011, during the course of our review, AFMLS began conducting compliance reviews of state and local law enforcement agencies participating in the equitable sharing program to determine the extent to which they are complying with established requirements. Specifically, AFMLS established a Compliance Review Team and began conducting regular compliance reviews of equitable sharing participants in April 2011.⁴³ According to AFMLS officials, the Compliance Review Team was established in order to ensure that there were adequate controls and oversight mechanisms of the equitable sharing program in place. AFMLS officials stated that the resources needed to establish the Compliance Review Team did not become available until December 2010, at which point AFMLS initiated a pilot of the compliance review program. Among other things, in selecting equitable sharing participants to include in compliance reviews, AFMLS monitors news briefs regarding potential misuse of asset forfeiture funds among equitable sharing participants and also responds to referrals from the DOJ Office of Inspector General (OIG) and from the U.S. Attorneys' Offices.⁴⁴ AFMLS officials noted that, thus far, they have not yet found any instances of intentional abuse of funds in the course of their compliance reviews that were not already identified

⁴²The Single Audit Act, enacted in 1984 and amended in 1996, is intended to, among other things, promote sound financial management, including effective internal controls, with respect to federal awards administered by state and local governments and nonprofit organizations. Single Audit Act Amendments of 1996, Pub. L. No. 104-152, § 1(b), 110 Stat. 1396, 1396. As part of the Single Audit, auditees must prepare a Schedule of Expenditures of Federal Awards in order to show the activity of all federal awards programs within the period covered by the auditee's financial statements.

⁴³AFMLS officials reported that pilot testing of the compliance review process was started in December 2010, but the compliance review team did not start on a full-scale basis until April 2011.

⁴⁴DOJ's Office of Inspector General also conducts audits of equitable sharing participants and completes approximately 3 or 4 audits of state and local law enforcement agencies each year. Since 2010, DOJ OIG has completed a total of 10 audits of equitable sharing participants.

beforehand either through news reports or referrals from the U.S. Attorneys' Offices.⁴⁵

AFMLS has established guidelines for conducting compliance reviews of equitable sharing participants in order to determine the extent to which agencies are following established equitable sharing guidelines. Among other things, they select a sample of the agency's expenditures in order to substantiate the agency's records and to confirm that the expenditure was consistent with established DOJ guidelines. AFMLS also determines whether the agency has established an appropriate system of internal controls for tracking and recording equitable sharing receipts and expenditures. Further, AFMLS determines whether the agency was subject to Single Audit requirements and if so, whether the Single Audit including reporting on equitable sharing funds was completed as required.

As of December 2011, AFMLS had completed a total of 11 onsite audits of approximately 9,200 state and local law enforcement agencies that participate in the equitable sharing program.⁴⁶ AFMLS reports it currently has limited staff (eight total) and resources to conduct compliance reviews of equitable sharing participants. As a result, AFMLS reported conducting risk assessments in order to select agencies for compliance reviews. In addition to monitoring news briefs regarding the potential misuse of funds among equitable sharing participants, some of the issues that AFMLS considers as part of these risk assessments include the amount of each agency's equitable sharing expenditures, whether a state or local law enforcement agency has reported spending a significant amount of money in a sensitive area, and whether a small law enforcement agency that may be unfamiliar with the equitable sharing program suddenly received a large equitable sharing payment. The 11 compliance reviews completed in 2011 revealed that participants do not consistently follow requirements to properly account for equitable sharing receipts and expenditures, do not consistently comply with the allowable

⁴⁵An example of a misuse of funds that was identified beforehand includes a case in 2011 involving a sheriff that allegedly used \$10,000 in equitable sharing funds for personal use. The money in the account was to be used for vehicles, equipment, and specialized training, but the prosecutor noted during an opening statement at trial that the sheriff had used the money "like a personal checking account."

⁴⁶Of the 9,200 state and local law enforcement agencies that participate in the equitable sharing program, approximately 4,500 agencies receive equitable sharing payments in any given year.

uses of equitable sharing funds, and do not consistently complete Single Audits as required. AFMLS identified one or more areas for corrective action in 9 of the 11 compliance reviews.⁴⁷ Two of the state and local law enforcement agencies were determined to be in full compliance with all of the equitable sharing requirements. In May 2012, AFMLS officials reported that all of the agencies had fully addressed the corrective actions identified by AFMLS. See appendix III for the results of the 11 compliance reviews AFMLS has completed as of December 2011.

AFMLS has established a mechanism to systematically track and analyze the results of these reviews. Specifically, the findings from each compliance review are entered into a tracking report, and follow-up with each agency is completed to ensure that corrective actions are taken. AFMLS officials noted that they may follow up with an agency multiple times to ensure that items identified for corrective action are addressed. According to AFMLS, tracking frequencies and trends identified in the course of compliance reviews is an important tool in risk evaluations for both future audit selections and return audits to specific participants with particularly troublesome problems. Further, AFMLS officials have stated that they plan to use the results of compliance reviews in order to identify larger trends that may need to be addressed across all equitable sharing participants. For example, AFMLS has found through these reviews that equitable sharing recipients are not consistently reporting equitable sharing expenditures on Single Audits. AFMLS has reported that it is currently working with both equitable sharing recipients and the auditor community to address this issue. AFMLS's approach to conducting compliance reviews of equitable sharing participants is consistent with standards for internal control, which state that monitoring should assess the quality of performance over time and ensure that the findings of audits and other reviews are promptly resolved.

Conclusions

With more than \$1 billion in forfeited assets deposited into the AFF every year since 2006, the Asset Forfeiture Program generates substantial revenue for the Department of Justice. These funds are used to cover annual operating expenses, to compensate crime victims, or are shared with state and local law enforcement agencies that participate in investigations resulting in forfeiture. The significant amounts of money

⁴⁷All 11 agencies complied with at least one of the requirements evaluated by AFMLS.

involved as well as the sensitive nature of asset forfeiture mean it is imperative to be vigilant in maintaining the transparency of the program. Since the Asset Forfeiture Program's operations are supported by annual revenues, DOJ faces a challenging task estimating future revenues and expenditures each year. The AFF's annual revenues have consistently exceeded annual expenditures, allowing DOJ to cover annual rescissions and to reserve funds for the next fiscal year. This allows DOJ to ensure that the AFF has sufficient resources at the start of each fiscal year to cover solvency and pending equitable sharing and third-party payments. However, the AFF's Congressional Budget Justification does not clearly outline the factors that DOJ considers when determining the total amounts that need to be carried over each fiscal year. As part of the AFF's annual budget process, documenting how DOJ determines the funds that need to be carried over at the end of each year and providing additional details on that determination to Congress would provide more transparency over the process and would help Congress make more informed appropriations decisions.

In addition, the authorization to share federal forfeiture proceeds with cooperating state and local law enforcement agencies is one of the most important provisions of asset forfeiture. DOJ has established guidelines stating that adjustments to equitable sharing percentages should be based on qualitative factors; however, additional guidance regarding how to apply these factors could help to improve the transparency and better ensure consistency with which adjustments to sharing percentages are made over time or across cases. Additionally, there are gaps in the extent to which key information that serves as the basis for equitable sharing decisions is documented. In the absence of documenting the work hours used to calculate initial equitable sharing percentages—the primary means to determine each agency's share of forfeiture proceeds—it is unclear how equitable sharing deciding authorities could verify the relative degree of participation of each of the agencies involved in the case. Similarly, documenting information on DOJ's rationale for making adjustments to sharing percentages could help to improve transparency over whether equitable sharing decisions are being made in accordance with DOJ's guidance. Additionally, establishing a mechanism to verify that equitable sharing determinations are made in accordance with established guidance would provide DOJ with greater assurance that there are effective management practices in place to help promote confidence in the integrity of the equitable sharing program.

Recommendations for Executive Action

We are making four recommendations to the Attorney General.

To help improve transparency over the AFF's use of funds, we recommend that the Attorney General provide more detailed information to Congress as part of the AFF's annual budget process, clearly documenting how DOJ determines the amount of funds to be carried over into the next fiscal year.

To help improve management controls over the equitable sharing program, we recommend that the Attorney General direct AFMLS to take the following three actions:

- Develop and implement additional guidance on how DOJ agencies should apply qualitative factors when making adjustments to equitable sharing percentages.
- Establish a mechanism to ensure that the basis for equitable sharing determinations—including the work hours contributed by all participating agencies and the rationale for any adjustments to sharing percentages—are recorded in the documents provided to agency headquarters officials for review and approval.
- Develop a risk-based mechanism to monitor whether key information in support of equitable sharing determinations is recorded and the extent to which sharing determinations are made in accordance with established guidance.

Agency Comments

We provided a draft of this report to DOJ for its review and comment. DOJ did not provide official written comments to include in our report. However, in an e-mail received on June 21, 2012, the DOJ liaison stated that the department appreciated the opportunity to review the draft report and that DOJ concurred with our recommendations. DOJ further noted that the department will develop a plan of corrective action in order to address the recommendations. DOJ also provided us written technical comments, which we incorporated as appropriate.

We are sending copies of this report to the Attorney General, selected congressional committees, and other interested parties. In addition, this report is also available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any further questions about this report, please contact me at (202) 512- 9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found

on the last page of this report. Key contributors to this report are listed in appendix IV.

A handwritten signature in black ink, reading "David C. Maurer". The signature is written in a cursive style with a large, stylized "D" and "M".

David C. Maurer
Director, Homeland Security and Justice Issues

List of Requesters

The Honorable Charles E. Grassley
Ranking Member
Committee on Judiciary
United States Senate

The Honorable Lamar Smith
Chairman
The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Jim Sensenbrenner
Chairman
The Honorable Bobby Scott
Ranking Member
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
House of Representatives

The Honorable Frank R. Wolf
Chairman
The Honorable Chaka Fattah
Ranking Member
Subcommittee on Commerce, Justice, Science and Related Agencies
Appropriations Committee
House of Representatives

The Honorable Louie Gohmert
House of Representatives

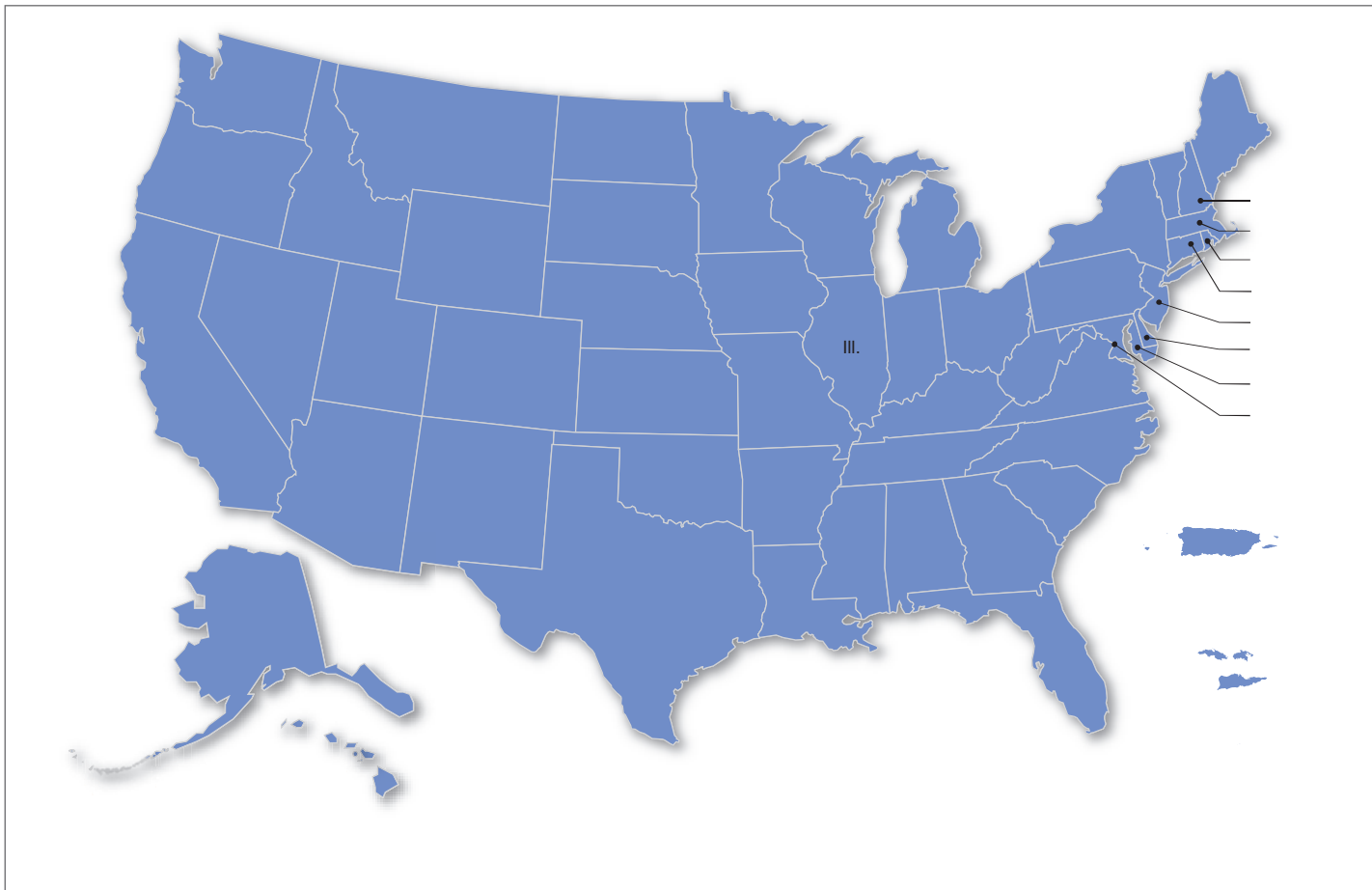
Appendix I: Equitable Sharing

State and local law enforcement agencies typically qualify for equitable sharing by participating directly with Department of Justice (DOJ) agencies in joint investigations leading to the seizure and forfeiture of property. Agencies may either receive a portion of the proceeds resulting from the sale of the forfeited asset or may request that a forfeited asset such as a vehicle be put into official use. Any property other than contraband or firearms may be transferred to a state or local agency for official use provided that it is used for law enforcement purposes. State and local law enforcement can receive equitable sharing payments after working on a joint case with one or more federal law enforcement partners or after participating in a case carried out by a federal law enforcement task force. Approximately 83 percent of all equitable sharing determinations are the result of joint investigations.

State and local law enforcement agencies can also qualify for equitable sharing by requesting that federal partners adopt a case initiated at the state or local level. An adoptive forfeiture occurs when local police officials effectively hand a case over to federal law enforcement officials provided that the property in question is forfeitable under federal law. According to DOJ officials, many state and local law enforcement agencies will make seizures pursuant to their state laws. However, they may reach out to federal law enforcement agencies to adopt a forfeiture if they don't have a state or local statute that allows them to carry out a forfeiture. For example, in a particular case, there may be large amounts of cash involved but no drugs found or seized. Federal statute allows for the forfeiture of assets based on illegal activity even if there are no drugs seized, whereas the state or local statute might not allow for this type of forfeiture. Alternatively, state and local law enforcement agencies may request that DOJ adopt a forfeiture in those cases where federal coordination or expertise is needed in the case. Our analysis shows a slight decrease in adoptive versus non-adoptive equitable sharing payments since 2003. In 2003, adoptions made up about 23 percent of all equitable sharing payments, while in 2010, adoptions made up about 17 percent of all equitable sharing payments. According to DOJ, as more states have established their own forfeiture laws, they may rely less on DOJ to adopt forfeiture cases and may instead pursue forfeitures under state law when appropriate. Figure 7 shows the equitable sharing payments made to each state in fiscal year 2011.

Interactive Graphic

Directions: Place mouse over each state name for the total equitable sharing payments made to that state in fiscal year 2011.



Source: GAO analysis of DOJ data.

Our analysis shows a strong positive association between the equitable sharing payments made to each state and the state's total population. However, our analysis found no correlation between per capita equitable sharing payments and arrest rates, once we corrected for population size. It is important to note that a number of other factors may influence the amount of equitable sharing payments a state receives in a given year. For example, if a state or local law enforcement agency participated in a joint investigation that resulted in a very large forfeiture, the agency might receive a significant amount of equitable sharing dollars, even if no arrests were made in conjunction with the case. Alternately, an agency may work several cases that generate multiple arrests, but no forfeitures, so no equitable sharing payments would be made. Finally, differences in equitable sharing between states may be influenced by whether state and local law enforcement agencies decide to pursue forfeitures under their state laws versus those cases where federal involvement may be warranted.

Appendix II: Assets Forfeiture Fund Expenditure Categories

1. Third-Party Payments:

Third-party payments are payments to satisfy third-party interests, including lienholders and other innocent parties, pursuant to 28 U.S.C. § 524(c)(1)(D); payments in connection with the remission and mitigation of forfeitures, pursuant to 28 U.S.C. § 524(c)(1)(E).

2. Equitable Sharing Payments:

These funds are reserved until the receipt of the final forfeiture orders that result in distributions to the participants. Equitable sharing payments represent the transfer of portions of federally forfeited cash and proceeds from the sale of forfeited property to state and local law enforcement agencies and foreign governments that directly assisted in targeting or seizing the property. Most task force cases, for example, result in property forfeitures whose proceeds are shared among the participating agencies.

All other program operations expenses

3. Asset Management and Disposal:

According to DOJ, the primary purpose of the Assets Forfeiture Fund (AFF) is to ensure an adequate and appropriate source of funding for the management and disposal of forfeited assets. Also, funding is required for the assessment, containment, removal, and destruction of hazardous materials seized for forfeiture, and hazardous waste contaminated property seized for forfeiture. The United States Marshals Service (USMS) has primary responsibility for the storage and maintenance of assets, while the Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) are responsible for the disposal of toxic and hazardous substances.

4. Case-Related Expenses:

Case-related expenses are expenses associated with the prosecution of a forfeiture case or execution of a forfeiture judgment, such as advertising, travel and subsistence, court and deposition reporting, courtroom exhibit services, and expert witness costs. In appropriate cases, the services of foreign counsel may be necessary.

5. Special Contract Services:

The AFF uses contract personnel to manage the paperwork associated with forfeiture, including data entry, data analysis, word processing, file control, file review, quality control, case file preparation, and other process support functions.

6. Investigative Expenses Leading to Seizure:

Investigative expenses are those normally incurred in the identification, location, and seizure of property subject to forfeiture. These include payments to reimburse any federal agency participating in the AFF for investigative costs leading to seizures.

7. Contracts to Identify Assets:

Investigative agencies use these funds for subscription services to nationwide public record data systems, and for acquisition of specialized assistance, such as reconstruction of seized financial records. According to DOJ, these resources are used to identify assets during the investigative stage of the case, where such research will enhance effective use of the asset forfeiture sanction. DOJ officials note that if the government can improve upon the identification of ill-gotten assets, the nature of the criminal wrongdoing can be better demonstrated and reinforced before the jury. Such evidence results in greater penalties for criminals who may have avoided such penalties in the past by successfully concealing such assets.

8. Awards for Information Leading to a Forfeiture:

The Omnibus Consolidated Appropriations Act, 1997,¹ amended the Justice Fund statute to treat payments of awards based on the amount of the forfeiture the same as other costs of forfeiture. Therefore, the amount available each year for expenses for awards no longer had to be specified in annual appropriations acts.

9. Automated Data Processing:

Recurring costs include telecommunications support, system and equipment maintenance, user support and help desk, software

¹Pub. L. No. 104-208, div. A, § 114, 110 Stat. 3009, 3009-22 (1996).

maintenance, user training, equipment, and data center charges in support of the Consolidated Asset Tracking System (CATS). All asset forfeiture activity for each asset is recorded in CATS. According to DOJ, CATS enables access for more than 1,000 locations to a central database to perform full asset forfeiture life-cycle tasks more efficiently. The system provides current information to field personnel on the status of cases, integrates financial analysis capabilities into the inventory management process, provides the estimation of program income and expenses, and provides the capability for agency and department managers to review and assess program activity.

10. Training and Printing:

This category funds expenses for training personnel on aspects of the federal forfeiture program as well as other training necessary to maintain the competency of federal and contractor personnel dedicated to performing federal forfeiture functions. Printing costs reflect the continuing need to provide current legal advice and support. Expenses include updating and distributing manuals and pamphlets directly related to forfeiture issues, policies, and procedures.

11. Other Program Management:

This category includes several types of expenses in support of the overall management of the Asset Forfeiture Program, including management analysis, performance assessment, problem analysis, requirements analyses, policy development, and other special projects designed to improve program performance. This funding is to provide travel and per diem funds for temporary duty assignments needed to correct program deficiencies. Other activities funded under this heading include the annual audit of the financial statements of the Assets Forfeiture Fund and the Seized Asset Deposit Fund by an independent accounting firm and special assessments and reviews. This category also finances the Asset Forfeiture Money Laundering Section (AFMLS), Asset Forfeiture Management Staff (AFMS), and, since 2001, USMS headquarters administrative personnel and non-personnel costs associated with the forfeiture program. In addition, the AFF funds Deputy U.S. Marshal salaries to enhance the legal and fiduciary responsibilities that are inherent in the seizure of personal and real property during the pendency of a forfeiture action.

12. Storage, Protection, and Destruction of Controlled Substances:

These expenses are incurred to store, protect, or destroy controlled substances.

13. Joint Federal, State, and Local Law Enforcement Operations:

Under 28 U.S.C. § 524(c)(1)(I), the AFF has authority to pay for “overtime, travel, fuel, training, equipment, and other similar costs of state or local law enforcement officers that are incurred in a joint law enforcement operation with a federal law enforcement agency participating in the Fund.”

14. Awards for Information and Purchase of Evidence

Awards payable from the AFF directly support law enforcement efforts by encouraging the cooperation and assistance of informants. The AFF may also be used to purchase evidence of violations of drug laws, Racketeering Influenced and Corrupt Organizations (RICO), and criminal money laundering laws. According to DOJ, payment of awards to sources of information creates motivation for individuals to assist the government in the investigation of criminal activity and the seizure of assets.

15. Equipping of Conveyances:

This category provides funding to equip vehicles, vessels, or aircraft for law enforcement functions, but not to acquire them. Purchased equipment must be affixed to and used integrally with the conveyance. This funding is used for emergency and communications equipment, voice privacy and surveillance equipment, armoring, and engine upgrades and avionics equipment for aircraft. According to DOJ, it is only through AFF resources that many of these surveillance vehicles are available to the field districts that need them. DEA uses various surveillance techniques, including stationary and mobile platforms to conduct surveillance and gather intelligence, the cornerstone of cases against most major drug violators. In addition, evidence obtained through the use of such surveillance often provides the audio and video documentation necessary for conviction.

Appendix III: Results of Asset Forfeiture and Money Laundering Section Compliance Reviews Completed as of December 2011

DOJ's Asset Forfeiture and Money Laundering Section completed a total of 11 compliance reviews of equitable sharing participants in 2011. Table 4 shows the results of the 11 compliance reviews.

Table 4: Results of Compliance Reviews of Equitable Sharing Participants

Results of 11 compliance reviews	Example of finding	Recommendation by AFMLS
Four agencies did not complete Annual Equitable Sharing Agreement and Certification Forms on time.	AFMLS found that one agency submitted its Equitable Sharing Agreement and Certification Form late for 2 consecutive years. In 2009, the form was submitted 126 days after the end of the fiscal year and in 2010, the form was submitted 118 days after the end of the fiscal year.	Per section X.A of the <i>Guide to Equitable Sharing for State and Local Law Enforcement Agencies</i> , state and local law enforcement agencies must submit the Equitable Sharing Agreement and Certification Form within 60 days after the end of the agency's fiscal year. The law enforcement agency should submit the Equitable Sharing Agreement and Certification Form within the time frame specified.
Five agencies did not complete Annual Equitable Sharing Agreement and Certification Forms accurately.	AFMLS found differences between one agency's fiscal year 2010 equitable sharing general ledger and its fiscal year 2010 Equitable Sharing Agreement and Certification Form. Specifically, AFMLS found the total the agency reported spending on communications and computers was understated by \$1,097.18. Similarly, AFMLS found that the total spent on electronic surveillance equipment was overstated by \$4,376.20.	The police department should restate its fiscal year 2010 Equitable Sharing Agreement and Certification Form to reflect the differences noted.
Six agencies did not complete Single Audits (or document equitable sharing funds in the Single Audit's schedule of federal expenditures) as required.	AFMLS found that although one of the city's financial statements was subject to Single Audits under OMB A-133, the city police department's equitable sharing activity was not reviewed and reported on the Single Audit's schedule of federal expenditures.	Per section X.B of the <i>Guide to Equitable Sharing for State and Local Law Enforcement Agencies</i> , agencies that received federally shared cash, proceeds, or tangible property are required to perform an audit consistent with the Single Audit Act Amendments of 1996 and OMB Circular A-133. Equitable Sharing Program activity should be reviewed and should be included on the schedule of expenditures of federal awards for fiscal year 2011 and future years as part of the city's annual audit.

**Appendix III: Results of Asset Forfeiture and
Money Laundering Section Compliance
Reviews Completed as of December 2011**

Results of 11 compliance reviews	Example of finding	Recommendation by AFMLS
Three agencies did not comply with AFMLS guidelines regarding permissible uses of equitable sharing funds. ^a	In the course of one compliance review, AFMLS found that the law enforcement agency used \$2,000 in equitable sharing funds to pay a legal settlement related to injuries suffered by an individual who was involved in a car accident with a vehicle driven by a police department official. AFMLS determined the use was impermissible and required the agency to reimburse the equitable sharing account for the amount of the settlement.	Per section VIII of the <i>Guide to Equitable Sharing for State and Local Law Enforcement Agencies</i> , equitably shared funds shall be used by enforcement agencies for law enforcement purposes only. As legal settlement expenses are not listed in the guide as a permissible use, the police department should reimburse the equitable sharing account for the amount of the settlement.
Three agencies did not employ adequate internal controls over equitable sharing transactions and balances.	In the course of AFMLS's review of one agency's equitable sharing transactions, the reviewers found that 21 out of 30 invoices in support of purchases made with equitable sharing funds contained no evidence of approval prior to payment.	Per section IX of the <i>Guide to Equitable Sharing for State and Local Law Enforcement Agencies</i> , all participating agencies must implement standard accounting procedures and internal controls to track equitably shared monies and tangible property. The law enforcement agency should ensure that approval control is being performed. This approval can be evidenced by a signature or initial on the final invoice received from each vendor.
Three agencies did not have appropriate bookkeeping and accounting procedures in place.	AFMLS determined that one law enforcement agency was improperly commingling equitable sharing funds with other funds in its accounting system.	The law enforcement agency should include expenditures of DOJ equitable sharing funds in the summary of shared monies spent section of the Equitable Sharing Agreement and Certification Form. Additionally, per section IX.A.1 of the <i>Guide to Equitable Sharing for State and Local Law Enforcement Agencies</i> , law enforcement agencies must establish a separate revenue account or accounting code for the proceeds of the program. The law enforcement agency should establish and maintain a separate accounting code to track DOJ equitable sharing funds.

Source: GAO's analysis of DOJ data.

Notes: Some agencies had more than one violation, which is why violations do not total to 11.

^aWhile AFMLS found that these three agencies did not strictly comply with the permissible use of funds as outlined in the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*, it did not identify any instances among these three agencies of intentional misuse or abuse of equitable sharing funds.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

David C. Maurer, (202) 512-9627 or maurerd@gao.gov

Staff Acknowledgments

In addition to the contact named above, Sandra Burrell and Dawn Locke (Assistant Directors), Sylvia Bascope, Samantha Carter, Raymond Griffith, Mike Harmond, Shirley Hwang, Valerie Kasindi, and Jeremy Manion made key contributions to the report. Also contributing to this report were Lydia Araya, Benjamin Bolitzer, Frances Cook, Katherine Davis, Richard Eiserman, Janet Temko, Mitchell Karpman, Linda Miller, Jan Montgomery, Bintou Njie, Robert Lowthian, Cynthia Saunders, and Jerry Seigler.

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