



Testimony

Before the Subcommittee on Readiness,
Committee on Armed Services, House
of Representatives

For Release on Delivery
Expected at 10:30 a.m. ET
Thursday, July 27, 2017

DOD EXCESS PROPERTY

Enhanced Controls Needed for Access to Excess Controlled Property

Statement of Zina D. Merritt, Director, Defense
Capabilities and Management

Wayne A. McElrath, Director, Forensic Audits and
Investigative Service

Chairman Wilson, Ranking Member Bordallo, and Members of the Subcommittee:

Thank you for the opportunity to be here today with my colleague, Wayne McElrath, with whom I am jointly providing this statement. Today, we will discuss our July 2017 report on the Department of Defense (DOD) Law Enforcement Support Office (LESO) program, also known as the 1033 program in reference to the section of the law authorizing it.¹ Under this authority, DOD can transfer excess personal property to federal, state, and local law enforcement agencies.² The Defense Logistics Agency (DLA) Disposition Services administers the LESO Program for DOD.

Since 1991, DOD has reported transferring more than \$6 billion worth of its excess personal property to more than 8,600 federal, state, and local law enforcement agencies. According to DOD, about 4 to 7 percent of the total excess property transferred is controlled property, which typically involves sensitive equipment and items that cannot be released to the public. Examples of controlled items available include night-vision goggles, thermal imaging equipment, specialized printers, and explosive ordnance detonation robots, as well as certain high-visibility items, such as small arms, High Mobility Multipurpose Wheeled Vehicles (HMMWVs), Mine-Resistant Ambush Protected Vehicles (MRAPs), and aircraft. LESO program data shows that during calendar years 2013 through 2015, approximately \$1.1 billion of excess controlled property was transferred to federal, state, and local law enforcement agencies. Approximately two-thirds of the 388,000 DOD excess controlled property items had been transferred to state and local agencies, and one-third had been transferred to federal agencies.

Over the past 15 years, we have examined DOD's excess property reutilization program and reported deficiencies, including unauthorized parties obtaining excess controlled property and internal control breakdowns with regard to the security of sensitive excess military equipment.³ We have made over 20 recommendations aimed at

¹GAO, *DOD Excess Controlled Property: Enhanced Controls Needed for Access to Excess Controlled Property*, [GAO-17-532](#) (Washington, D.C.: July 18, 2017).

²DOD defines personal property as all DOD property except real property, records of the federal government, and certain naval vessels.

³Internal control is a process used by management to help an entity achieve its objectives. See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

enhancing internal controls over DOD's disposal and accountability of its excess property and improving the overall economy and efficiency of the reutilization program. The department has implemented most of the recommendations. Likewise, the DOD Office of Inspector General has reported on internal control deficiencies, such as the distribution of excess property to law enforcement agencies without the accountability necessary to ensure that the released property had the proper authorization. The Inspector General has made recommendations, which the department has also implemented.

Our testimony today summarizes key findings from our July 2017 report on DOD excess property. Accordingly, our testimony addresses (1) how federal, state, and local law enforcement agencies reported using and benefiting from excess controlled property transferred to them through the LESO program; and (2) the extent to which DLA has taken actions to enhance processes, including internal controls, related to its transfers of excess controlled property.

To conduct our work, we reviewed DOD policies and procedures, interviewed and surveyed cognizant officials, and conducted independent testing of LESO's application and DLA's transfer process. Specifically, we conducted a survey of 15 participating federal law enforcement agencies as well as 53 state coordinators who had controlled property transferred to their offices through the LESO program during calendar years 2013, 2014, and 2015 to gain an understanding of their use of the LESO program.⁴ Also, we conducted non-generalizable case studies of five states: Arizona, Georgia, Maryland, Michigan, and Texas. We interviewed federal, state, and local law enforcement officials in each of the selected states to gain an understanding of how property is transferred to them, including how they screen for, obtain, and dispose of DOD excess controlled property.

Additionally, our investigators created a fictitious federal agency to conduct independent testing of the LESO program's internal controls and DLA's transfer of controlled property to law enforcement agencies. We

⁴State coordinators are Governor-appointed positions to manage LESO program responsibilities in their respective state or U.S. territory. As of September 2016, all states, with the exception of Hawaii, had a state coordinator, and the following territories had state coordinators: Guam, Northern Marianas Islands, Puerto Rico, and U.S. Virgin Islands. For purposes of this statement, when we reference state coordinators, we are referring to state coordinators from states and U.S. territories.

also compared DLA and LESO practices to those identified in GAO's *A Framework for Managing Fraud Risks in Federal Programs* (hereafter cited as the Fraud Risk Framework).⁵ Issued in July 2015, GAO's Fraud Risk Framework is a comprehensive set of leading practices that serves as a guide for program managers to use when developing efforts to combat fraud in a strategic, risk-based manner. Further details on our scope and methodology are included in our report. The work on which this statement is based was conducted in accordance with generally accepted government auditing standards and our investigative work was performed in accordance with the Council of Inspector General on Integrity and Efficiency standards for investigations.

Law Enforcement Agencies Reported Various Uses and Benefits from the Transfer of the DOD Excess Controlled Property

Federal law enforcement agencies and state coordinators in our survey—as well as officials we interviewed from federal, state, and local law enforcement agencies—reported various uses of DOD excess controlled property for law enforcement activities. The reported uses included enhancing counterdrug, counterterrorism, and border-security activities. Also, law enforcement agencies reported using DOD's excess controlled property for other law enforcement activities, such as search and rescue, natural disaster response, surveillance, reaching barricaded suspects, police training, and the serving of warrants.

Federal, state, and local agencies cited a number of ways in which they had benefited from LESO program, with several reporting that the transfers of controlled property allowed them to save money. For example, a local law enforcement official in Texas reported that 96 percent of the department budget goes to salaries and that the LESO program helped the department acquire items that it would otherwise not be able to afford, saving the department an estimated \$2 million to \$3 million. Additionally, agencies provided examples of how property they received through the LESO program have been used. For example, the Bureau of Indian Affairs officials reported they have used vehicles to support their Office of Justice Services' drug unit during marijuana eradication and border operations by providing transport to agents over inhospitable terrain in mountainous and desert environments. In another example, Texas law enforcement officials reported that the San Marcos and Hays County police departments used their issued Mine Resistant

⁵ GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: July 28, 2015).

Ambush Protected (MRAP) vehicles to rescue more than 600 stranded people from floodwaters in October 2015. Moreover, the Los Angeles County Sheriff's Department reported that it used a robot to remove a rifle from an attempted murder suspect who had barricaded himself.

DLA Has Taken Some Actions to Address Weaknesses in Its Excess Controlled Property Program, but Deficiencies Exist in Key Processes

DLA Actions to Address Weaknesses in LESO Program

DLA has taken some steps to address previously identified weaknesses in its processes for transferring and monitoring its excess controlled property through revisions to its policy and procedures on the management, oversight, and accountability of the LESO program. Such revisions were made, in part, because of recommendations made by the DOD and DLA Offices of Inspector General. The DOD and DLA Offices of Inspector General conducted four audits of the LESO program between 2003 and 2013 that identified more than a dozen recommendations, such as developing and implementing written standard operating procedures for the approval and disapproval of law enforcement agency property requests and issuance, transfer, turn-in and disposal of LESO property. In our July 2017 report, we found the department had taken the following actions to enhance its transfer process through revisions to policy and procedures:

- transitioned full management responsibility of the LESO Program to DLA Disposition Services in 2009;
- developed LESO Program Standard Operating Procedures in 2012 and updated them in 2013;

-
- transitioned to a new data system in 2013 after identifying that the old system was not capable of post-issue tracking;⁶
 - revised the DLA instruction that provides policy, responsibility, and procedures for DLA's management responsibilities of the LESO program in 2014 and 2016;⁷ and
 - revised LESO program processes in 2016 to incorporate recommendations made by the Federal Interagency Law Enforcement Equipment Working Group,⁸ such as defining executive order controlled property or prohibiting schools K-12 from participating in the program.

In addition, DLA is in the process of developing additional training on LESO program policies and procedures, and is establishing memorandums of understanding with federal law enforcement agencies on the general terms and conditions of participating in the program, including the restrictions on the transfer and sale of controlled property.

DLA Has Deficiencies in Its Processes for Verifying and Approving Applications and Transferring Property and Has Not Conducted a Risk Assessment

We found weaknesses in three areas: (1) verifying and approving applications, (2) transferring property, and (3) the assessment of risk. First, our independent testing of the LESO program's internal controls identified deficiencies in the processes for verification and approval of federal law enforcement agency applications. Specifically, our investigators posing as authorized federal law enforcement officials of a fictitious agency applied and were granted access to the LESO program in early 2017. In late 2016, we emailed our completed application to the LESO program office. Our application contained fictitious information including agency name, number of employees, point of contact, and physical location. In early 2017, after revising our application at the direction of LESO officials we were notified that our fictitious law enforcement agency was approved to participate in the LESO program. LESO officials also emailed us to request confirmation of our agency's

⁶This new system, managed by the Forest Service, allows state and local law enforcement agencies to complete their annual inventories and certification and manage their own property book.

⁷DLA Instruction 8160.01, *Law Enforcement Support Office* (July 21, 2014), and DLA Instruction 4140.11, *Department of Defense 1033 Program* (Dec. 22, 2016).

⁸In 2015, the President issued Executive Order 13688, *Federal Support for Local Law Enforcement Equipment Acquisition*, which established a Federal Interagency Law Enforcement Equipment Working Group to support oversight and policy development functions for controlled equipment programs.

authorizing statute; in response, our investigators submitted fictitious authorizing provisions as provisions in the U.S. Code. At no point during the application process did LESO officials verbally contact officials at the agency we created—either the main point of contact listed on the application or the designated point of contact at a headquarters' level—to verify the legitimacy of our application or to discuss establishing a memorandum of understanding with our agency.

DLA's internal controls for verifying and approving federal agency applications and enrollment in the LESO program were not adequate to prevent the approval of a fraudulent application to obtain excess controlled property. Specifically, LESO's reliance on electronic communications without actual verification does not allow it to properly vet for potentially fraudulent activity. For example, DLA did not require supervisory approval for all federal agency applications, or require confirmation of the application with designated points of contact at the headquarters of participating federal agencies. Additionally, at the time we submitted our application, DLA officials did not visit the location of the applying federal law enforcement agency to help verify the legitimacy of the application. After our briefing of DLA officials in March 2017 on the results of our investigative work, DLA officials stated they took immediate action, and in April 2017 visited 13 participating federal law enforcement agencies. However, at this time DLA has not reviewed and revised the policy or procedures for verifying and approving federal agency applications and enrollment in the LESO program.

Second, our independent testing also identified deficiencies in the transfer of controlled property, such as DLA personnel not routinely requesting and verifying identification of individuals picking up controlled property or verifying the quantity of approved items prior to transfer. Our investigators, after being approved to participate in the LESO program, obtained access to the department's online systems to view and request controlled property. We subsequently submitted requests to obtain controlled property, including non-lethal items and potentially-lethal items if modified with commercially available items. In less than a week after submitting the requests, our fictitious agency was approved for the transfer of over 100 controlled property items with a total estimated value of about \$1.2 million. The estimated value of each item ranged from \$277 to over \$600,000, including items such as night-vision goggles, reflex (also known as reflector) sights, infrared illuminators, simulated pipe bombs, and simulated rifles. Our investigator scheduled appointments and obtained the controlled property items, such as those shown in the photos below.

Figure 1: Examples of Excess Controlled Property Items Obtained



Night-vision goggle

Simulated M-16A2 rifle

Pipe Bomb Trainer

Source: GAO photos of DOD excess controlled property items obtained. | GAO-17-781T

Using fictitious identification and law enforcement credentials, along with the LESO-approved documentation, our investigator was able to pass security checks and enter the DLA Disposition Service warehouse sites. Personnel at two of the three sites did not request or check for valid identification of our investigator picking up the property. According to DLA guidance, direct pickup of allocated property may be made by an individual with valid identification and the appropriate DOD authorization form that is signed by the authorized individual listed in the letter.⁹

DLA has not taken steps to reasonably ensure that onsite officials routinely request and verify valid identification of the individual(s) authorized to pick up allocated property from the LESO program, as required by the guidance. DLA officials acknowledged they could take additional steps to ensure compliance with the requirements in the handbook. Furthermore, although we were approved to receive over 100 items and the transfer documentation reflects this amount, we were provided more items than we were approved to receive. The discrepancy involved one type of item—infrared illuminators. We requested 48 infrared

⁹DLA, *Disposition Services Customer Handbook* (2016). According to program documentation, when an application to participate in the LESO program is approved, an Authorization Letter for Property Screening is generated and forwarded to the state coordinator or federal agency. The letter of authorization includes participant information such as telephone number and address that can be used by a DLA Disposition Services' site to contact an agency, if needed, to coordinate the direct pickup of property.

illuminators but onsite officials at one Disposition Services site provided us with 51 infrared illuminators in 52 pouches, of which one pouch was empty. Additionally, we found that one DLA Disposition Services site had a checklist as a part of their transfer documentation for their personnel to complete. The checklist required manual completion of several items, including quantity, date, and who fulfilled the order. The other two DLA Disposition Services sites, including the site that transferred the wrong quantity, did not include this checklist with the transfer documentation we received. DLA guidance states that accountability records be maintained in auditable condition to allow property to be traced from receipt to final disposition.¹⁰ We concluded that without guidance that specifically requires DLA Disposition Services' on-site officials to verify the type and quantity of approved items against the actual items being transferred prior to removal from the sites, DLA will lack reasonable assurance that the approved items transferred are appropriately reflected in their inventory records.

Third, while DLA has taken some steps, mostly in early 2017, to address identified deficiencies in the LESO program, DLA lacks a comprehensive framework for instituting fraud prevention and mitigation measures. During the course of our review, DLA revised the LESO program applications by requiring applicants to sign an attestation that the agency that they represent is a legitimate law enforcement agency. Further, DLA officials stated they are more carefully reviewing the legitimacy of some information on the application such as email addresses and physically visiting federal agencies that enter into memorandums of understanding with the LESO program.

However, as previously discussed, we identified internal controls weakness in the policy and procedures for verifying and approving federal agency applications and enrollment as well as weakness throughout the process from approval to the actual transfer of the items to the agencies, which indicates that DLA has not examined potential risks for all stages of the process. According to GAO's Fraud Risk Framework¹¹, effective fraud risk managers collect and analyze data on identified fraud schemes, use these lessons learned to improve fraud risk management activities, and plan and conduct fraud risk assessments that are tailored to their

¹⁰DOD Manual 4160.01, vol.1, *Defense Materiel Disposition: Disposal Guidance and Procedures* (October 22, 2015).

¹¹ [GAO-15-593SP](#) (Washington, D.C.: July 28, 2015).

programs. The framework states there is no universally accepted approach for conducting fraud risk assessments since circumstances among programs vary. However, per leading practices, assessing fraud risks generally involves five actions: (1) identifying inherent fraud risks affecting the program, (2) assessing the likelihood and effect of those fraud risks, (3) determining fraud risk tolerance, (4) examining the suitability of existing fraud controls and prioritizing residual fraud risks, and (5) documenting the program's fraud risk profile.

DLA has begun to examine some fraud risks associated with the LESO program. However, DLA officials acknowledged during our March 2017 meeting that they have not conducted a fraud risk assessment on the LESO program to include the application process, and as such, has not designed or implemented a strategy with specific control activities to mitigate risks to the program. We concluded that conducting such an assessment could have program-wide improvements, including strengthening the controls to verify the legitimacy of applicants.

Overall, we concluded in our July 2017 report that DLA's internal controls did not provide reasonable assurance in preventing fraud. Therefore, we made four recommendations for DLA to:

- review and revise policy or procedures for verifying and approving federal agency applications and enrollment;
- ensure compliance that DLA Disposition Services on-site officials transferring controlled property verify that persons picking up items have valid identification and are authorized to pick up allocated property from the LESO program;
- issue guidance that requires DLA Disposition Services on-site officials to verify the type and quantity of approved items against the actual items being transferred prior to removal from the sites; and
- conduct a fraud risk assessment to design and implement a strategy with specific internal control activities to mitigate assessed fraud risks.

DOD concurred with all of our recommendations and highlighted actions to address each one.

Chairman Wilson, Ranking Member Bordallo, and Members of the Subcommittee, this concludes our prepared statement. My colleague, Mr. McElrath, and I would be pleased to respond to any questions that you may have at this time.

Contacts and Acknowledgments

For questions about this statement, please contact Zina D. Merritt at (202) 512-5257 or merrittz@gao.gov or Wayne A. McElrath at (202) 512-2905 or mcelrathw@gao.gov. In addition, individuals making significant contributions to this statement include: Marilyn Wasleski, Assistant Director; Laura Czohara, Martin de Alteriis, Barbara Lewis, Felicia Lopez, Maria McMullen, George Ogilvie, Richard Powelson, and Samuel Woo.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [LinkedIn](#), [Twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at www.gao.gov and read [The Watchblog](#).

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800, U.S. Government Accountability Office, 441 G Street NW, Room 7149, Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707, U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



Please Print on Recycled Paper.