



USE OF EQUITABLE SHARING REVENUES BY THE NEBRASKA STATE PATROL LINCOLN, NEBRASKA

U.S. Department of Justice Office of the Inspector General Audit Division

Audit Report GR-60-06-003 February 2, 2006

USE OF EQUITABLE SHARING REVENUES BY THE NEBRASKA STATE PATROL LINCOLN, NEBRASKA

EXECUTIVE SUMMARY

The U.S. Department of Justice (DOJ), Office of the Inspector General, Audit Division, has completed an audit of the use of DOJ equitable sharing revenues received by the Nebraska State Patrol (NSP). Equitable sharing revenues represent a share of the proceeds from the forfeiture of assets seized in the course of certain criminal investigations. During the period of July 1, 2003, through June 30, 2005, the NSP was awarded DOJ equitable sharing revenues totaling \$2,579,902, and property valued at \$95,031 to support law enforcement operations.

We reviewed the NSP's compliance with six essential equitable sharing guidelines and found that the NSP generally complied with the guidelines. However, we found weaknesses in the following three areas:

- The Annual Certification Reports submitted for the fiscal years (FY) 2004 and 2005 contained inaccurate information and were not complete.
- A new Federal Sharing Agreement was not submitted when an administration change occurred.
- We identified \$115,340 in questioned costs related to expenditures of equitable sharing revenues for unallowable purposes. We also identified an additional \$70,000 in expenditures that were unsupported.

The results of our work are discussed in greater detail in the Findings and Recommendations section of this report. The audit objectives, scope, and methodology appear in Appendix I.

¹ The DOJ 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 equitable sharing of assets recovered through this program; and, as a by-product, (3) to produce revenues to enhance forfeitures and strengthen law enforcement.

We discussed the results of our audit with NSP officials and have included their comments in the report, as applicable. In addition, we provided the NSP and the DOJ, Criminal Division, with a draft copy of our audit report and requested a formal response. The NSP provided a response to the draft report which is shown in our report at Appendix III. The Criminal Division did not provide a response to the draft report.

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INTRODUCTION

The U.S. Department of Justice (DOJ), Office of the Inspector General, Audit Division, has completed an audit of the use of DOJ equitable sharing revenues by the Nebraska State Patrol (NSP). The audit covered the period of July 1, 2003, through June 30, 2005. During that period, the NSP was awarded DOJ equitable sharing revenues totaling \$2,579,902, and property valued at \$95,031.

Background

The primary purpose of the DOJ Asset Forfeiture Program is to deter crime by depriving criminals of the profit and proceeds from illegal activities. A secondary purpose of the program is to enhance cooperation among federal, state, and local law enforcement agencies by sharing federal forfeiture proceeds through the DOJ equitable sharing program. State and local law enforcement agencies may receive equitable sharing revenues by participating directly with DOJ agencies in joint investigations leading to the seizure or forfeiture of property. The amount shared with the state and local law enforcement agencies in joint investigations is based on the degree of the agencies' direct participation in the case. The U.S. Department of the Treasury also administers a similar equitable sharing program. Our audit was limited to equitable sharing revenues received by the NSP through the DOJ equitable sharing program.

Although several DOJ agencies are involved in various aspects of the seizure, forfeiture, and disposition of equitable sharing revenues, the DOJ Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS), is responsible for issuing policy statements, implementing governing legislation, and monitoring the use of DOJ equitable sharing funds. Generally, the use of equitable sharing revenues by state and local recipient agencies is limited to law enforcement purposes. However, under certain circumstances, up to 15 percent of equitable sharing revenues may be used for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities. This provision generally requires that all expenditures be made by the law enforcement agency and does not allow for the transfer of cash.

² Our audit period equated to the NSP's 2004 and 2005 fiscal years.

Section 4 of the March 1998 Addendum to *A Guide to Equitable* Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, dated March 1994 (1994 Equitable Sharing Guide), "Permissible Use Policy," is a supplement to this provision that states an agency may reimburse local recipients for community-based programs and activities if preapproved by a chief law enforcement officer, and if itemized expenditures are supported by receipts.

The NSP has divisions throughout the state of Nebraska, and its headquarters are located in Lincoln. The NSP's approved budgets were \$43.43 million in FY 2004 and \$43.93 million in FY 2005.

FINDINGS AND RECOMMENDATIONS

The NSP complied with equitable sharing guidelines with respect to accounting for equitable sharing receipts, use of equitable sharing property, interest earned on equitable sharing funds, and nonsupplanting requirements. However, we found weaknesses related to the NSP's Annual Certification Reports and Federal Sharing Agreements, and the accounting for and use of equitable sharing revenues. Overall, we identified \$185,340 in dollar-related findings, which is approximately 7.2 percent of total equitable sharing revenues awarded to the NSP during FYs 2004 and 2005.

Federal Sharing Agreements and Annual Certification Reports

The 1998 Addendum to the 1994 Equitable Sharing Agreement requires that any state or local law enforcement agency that received forfeited cash, property, or proceeds as a result of a federal forfeiture shall submit a Federal Sharing Agreement and an Annual Certification Report. The submission of the agreements and reports is a prerequisite to the approval of any equitable sharing request. Noncompliance may result in the denial of the agency's sharing request.

The Federal Sharing Agreement must be submitted every 3 years on or before October 1. The agreement must be signed by the head of the law enforcement agency and a designated official of the local governing body. If a change in administration occurs at the state or local law enforcement agency or its governing body within the 3-year period, the requesting agency must submit a new agreement. By signing the agreement, the signatories agree to be bound by the statutes and guidelines that regulate the equitable sharing program and certify that the law enforcement agency will comply with these guidelines and statutes.

The Annual Certification Report is due 60 days after the close of the requesting agency's fiscal year. The Annual Certification Report must also be signed by the head of the law enforcement agency and a designated official of the local governing body. By signing the report, the signatories certify that the accounting of funds received and spent by the law enforcement agency is accurate and in compliance with the guidelines and statutes that govern the equitable sharing program.

We tested compliance with the Federal Sharing Agreement and Annual Certification Report requirements to determine if the required agreements and reports were submitted, complete, accurate, and signed by the appropriate officials. Our testing determined that the NSP generally submitted reports in a timely manner and were signed by the appropriate officials. However, there was a significant change in the administration at both the state and local law enforcement agency levels in 2005 and the requesting agency did not submit a new agreement, as required.

We also found that the Annual Certification Reports were not always complete or accurate. Budgeted dollars, and tangible property received, are detailed below.

- The actual budgets provided by NSP officials did not reconcile to the budgeted numbers reported on lines o through r of both the FY 2004 and FY 2005 Annual Certification Reports.
- The NSP received property in FYs 2004 and 2005 valued at a total of \$95,031, but failed to report this property on line 9 of its Annual Certification Reports.

NSP officials stated that the Annual Certification Reports were prepared with preliminary budget figures, rather than the figures from the official, adopted budgets. The NSP stated that they would include the total value of shared property on line 9 of future reports and mentioned that they would submit a new Federal Sharing Agreement signed by the new administration.

Accounting for Equitable Sharing Receipts

The 1994 Equitable Sharing Guide requires that all participating state and local law enforcement agencies implement standard accounting procedures to track equitable sharing revenues and property. We reviewed the NSP's procedures for tracking equitable sharing requests against sharing receipts, reconciled the agency's accounting records to DOJ records of equitable sharing funds, and tested a judgmental sample of 15 equitable sharing receipts to

determine if the funds were properly accounted for and deposited in a timely manner.

Based on our review, we determined that all of the sampled equitable sharing revenues received by the NSP during FYs 2004 and 2005 were accounted for in accordance with the guidelines.

Use of Equitable Sharing Property

The 1994 Equitable Sharing Guide requires that any forfeited tangible property transferred to a state or local agency for official use must be used for law enforcement purposes only. Further, vehicles and other tangible property transferred for official law enforcement use must be so used for at least 2 years. However, if the property becomes unsuitable for such stated purposes before the end of the 2-year period, it may be sold. We reviewed the NSP's inventory of equitable sharing property from FYs 2004 and 2005, to determine if property was accounted for properly, used for law enforcement purposes, and maintained for the required 2-year period.

During FYs 2004 and 2005, the NSP received 10 equitable sharing vehicles valued at \$95,031, to be placed into official law enforcement use. We determined that 8 assets were generally accounted for properly, were used for law enforcement purposes, and were generally maintained for the required 2-year period or were still being used within the 2-year period. Two vehicles were still in the United States Marshals Service custody for storage until those vehicles could be transferred to the NSP and added to its inventory.

Use of Equitable Sharing Funds

Generally, the 1994 Equitable Sharing Guide requires that the use of equitable sharing funds received by state and local recipient agencies be limited to law enforcement purposes. However, under certain circumstances, up to 15 percent of equitable sharing revenues may be used for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities. The 1998 Addendum to the 1994 Equitable Sharing Guide requires that all expenditures be made by the law enforcement agency and does not allow for the transfer of cash. Itemized expenses must be supported

by receipts and previously approved by the chief law enforcement officer.

During FYs 2004 and 2005, the NSP spent \$2,694,976 of its DOJ equitable sharing revenues. We examined 70 transactions totaling \$1,123,110 (41.7 percent of the equitable sharing revenues used). We tested these transactions to determine if the expenditures were supported by adequate documentation, whether equipment purchases were properly included on the agency's inventory and used for law enforcement purposes, and if expenditures were for an allowable use. We determined that the transactions were generally supported by adequate documentation, equipment purchased was used for law enforcement purposes, and the expenditures were generally allowable and in accordance with the guidelines.

However, we identified \$185,340 in questioned costs as unsupported or unallowable. Of this amount, NSP officials remedied \$65,000 by providing us with additional supporting documentation subsequent to our fieldwork, leaving questioned costs totaling \$120,340. The following is a summary of these findings:

- The NSP paid \$65,000 for computers for which supporting documentation was not adequate. The NSP officials agreed that the documentation attached to the disbursement records did not support the payment. Subsequent to our fieldwork, the NSP provided us with documentation that remedied this unsupported cost.
- The NSP paid \$5,000 for a Methamphetamine Impact Awareness Project for which the supporting documentation was not adequate. The NSP officials agreed that the documentation attached to the Methamphetamine Impact Awareness Project did not support that payment. They agreed to try to locate documentation to support that payment, but had not provided us that support at the time our fieldwork concluded. As a result, we are questioning the entire \$5,000 as unsupported.
- The NSP paid \$39,340 to an architecture firm to create a renovation plan, including a climate controlled environment for its computer servers, located in the basement of the NSP headquarter building located in Lincoln, Nebraska. However, the plan was abandoned when the Fire Marshal did not approve the plan. The NSP agreed that the \$39,340 renovation plan was never undertaken; however, they stated that a supplemental

additional plan was being considered. Because the funds were spent and the renovation never occurred, we are questioning the entire \$39,340 as being unallowable.

 As illustrated in the following table, the NSP transferred cash of \$76,000 to nonprofit organizations:

Cash Transferred from the NSP to Nonprofit Organizations

oush transferred from the Not to Nonprofit organizations			
Transaction	Recipient	Amount	
Date		Transferred	
10/02/2003	Nebraska Domestic Sexual Assault Coalition	\$25,000	
08/06/2003	Family Action Network	\$10,000	
11/18/2003	Child Advocacy Center	\$10,000	
07/06/2004	Child Advocacy Center	\$10,000	
02/11/2005	University of Nebraska	\$10,000	
02/01/2005	Faith Regional Health Services (FRHS)	\$6,000	
08/01/2003	Native American Teachings "Straight Arrow" Program	\$5,000	
Total		\$76,000	

Source: Expenditure documents provided by the NSP

These payments were made without formal approval from the chief law enforcement officer connecting the nonprofit organization's work to the effort of the NSP. The 1998 Addendum to the 1994 Equitable Sharing Guide, Section 4 Permissible Use Policy, states that costs are allowable, "which are formally approved by the chief law enforcement officer as being supportive of and consistent with a law enforcement effort, policy, and/or initiative. This provision requires that all expenditures be made by the law enforcement agency and does not allow for the transfer of cash." The officials also believed that the expenses associated with the cash transfers were allowable because they believed that the guidelines preventing cash transfers did not go into effect until the beginning of 2005, when in fact they went into effect in 1998. For the \$6,000 paid to the Faith Regional Health Services (FRHS) on February 1, 2005, a portion of the guidelines were followed. The payment was on a reimbursement basis, but the chief law enforcement officer did not formally demonstrate the connection between the FRHS and efforts of the NSP. The NSP understands the 1994 Equitable Sharing Guide requirements and will adhere to them in the future. As a result, we are questioning the entire \$76,000 as being unallowable.

Interest Earned On Equitable Sharing Funds

The 1994 Equitable Sharing Guide requires that interest earned on equitable sharing funds is subject to the same use restrictions as equitable sharing funds. We determined whether equitable sharing funds were placed in interest bearing accounts, verified the calculations for the amount of interest earned, and determined whether the interest earned was accurately added to the equitable sharing fund balance.

During FYs 2004 and 2005, the NSP earned \$251,498 in interest on equitable sharing funds, which were properly invested in an interest bearing account. All interest earned by the NSP was accounted for properly, recorded separately, and accurately added to the equitable sharing fund balance.

Supplanting

Pursuant to the 1994 Equitable Sharing Guide, equitable sharing revenues must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Equitable sharing funds shall not be used to replace or supplant the resources of the recipient. To test whether equitable sharing funds were used to supplement rather than supplant local funding we interviewed local officials and reviewed the agency's budgets for FYs 2003, 2004, 2005, and 2006.

Based on the results of our review, we did not find any indication that the NSP was using equitable sharing funds to supplant local funding. Local funding for the NSP increased in each of the fiscal years reviewed from \$42.39 million in FY 2003, to \$46.20 million in FY 2006.

Views of Responsible Officials

We discussed the results of our review with NSP officials throughout the audit and at a formal exit conference. Their comments on specific issues have been included in the appropriate sections of the report.

Recommendations

We recommend that the Criminal Division:

- 1. Ensure that the NSP corrects its FY 2004 and FY 2005 Annual Certification Reports to accurately reflect correct budget figures, and values of assets received.
- 2. Ensure that the NSP submits a new Federal Sharing Agreement to reflect the change of administration.
- 3. Remedy the \$120,340 of questioned costs related to unallowable or unsupported expenditures.

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of the audit were to assess whether equitable sharing cash and property received by the NSP were accounted for properly and used for allowable purposes as defined by the applicable regulations and guidelines. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and included such tests of the records and procedures that we considered necessary to accomplish the audit objectives. Our audit covered the period of July 1, 2003, through June 30, 2005.

In conducting our audit, we relied on computer-processed data contained in the DOJ Consolidated Asset Tracking System (CATS) for the purpose of determining equitable sharing revenues and property awarded to the NSP during the audit period. We did not establish the reliability of the data contained in the CATS system as a whole; however, this data was used with other available evidence, and we believe the opinions, conclusions and recommendations included is this report are valid.

We performed audit work at the NSP headquarters offices located in Lincoln, Nebraska. To accomplish the objectives of the audit, we interviewed NSP officials, examined records related to revenues, interest earned, and expenditures of DOJ equitable sharing revenues and property received by the NSP. In addition, we reviewed laws, regulations and guidelines governing the accounting for and use of DOJ equitable sharing receipts, which included the three major guidelines issued by the DOJ:

- Accounting for Federal Asset Forfeiture Funds, A Guide for State and Local Law Enforcement Agencies, dated July 1991;
- A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, dated March 1994; and
- Addendum to A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, dated March 1998.

Our audit specifically evaluated the NSP's compliance with six essential equitable sharing guidelines, as detailed in the body of this report. We did not test overall internal controls and compliance with laws and regulations for the State of Nebraska or the NSP as a whole. Rather, we relied on the Single Audit conducted by independent Certified Public Accountants pursuant to the provisions of Office of Management and Budget Circular A-133. We reviewed the results of the Single Audit of the State of Nebraska for the fiscal year ended June 30, 2004. We reviewed the independent auditor's assessment, which disclosed one reportable condition relating to internal controls over financial reporting for the State of Nebraska, but noted no internal control matters considered to be material weaknesses and no significant issues of noncompliance regarding the NSP.

APPENDIX II

SCHEDULE OF DOLLAR-RELATED FINDINGS

QUESTIONED COSTS	Amount	Page
Unallowable Expenditures	\$115,340	6-7
Unsupported Expenditures	\$5,000	6
Total Questioned Costs	\$120,340	

Questioned Costs are monies spent that, at the time of the audit, do not comply with legal requirements, or are unsupported, or are unnecessary or unreasonable. They can be recoverable or nonrecoverable.



STATE OF NEBRASKA

NEBRASKA STATE PATROL Colonel Bryan J. Tuma Superintendent P.O. Box 94907 Lincoln, Nebraska 68509-4907 Phone: (402) 471-4545

November 7, 2005

U.S. Department of Justice Office of the Inspector General David M. Sheeren, Regional Audit Manager 1120 Lincoln, Room 1500 Denver, Co. 80203

Dear Mr. Sheeren:

The following information is being provided in response to the recommendations included in the draft audit report entitled *Use of Equitable Sharing Revenues by the Nebraska State Patrol (NSP)*.

The NSP is correcting the FY2004 and FY2005 Annual Certification Reports and these reports will be submitted upon receiving signatures from the respective authorities.

The NSP has submitted new Federal Sharing Agreements to reflect the change of administration.

The NSP requested follow-up documentation by each of the entities noted in the report to provide justification and documentation of the funds transferred to them and subsequently expended by each of the entities.

The following is a listing of the entities involved and the information received in response to our request.

Nebraska Domestic Sexual Assault Coalition (NDSAC) - provided a copy of the "Spanish Hotline Report" detailing the expenditures incurred. A copy of this report is attached. Also attached is a copy of the correspondence between the NSP and the NDSAC which shows that the chief law enforcement officer approved these expenditures and connected the nonprofit organizations work to the effort of the NSP.





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David M. Sheeren, Regional Audit Manager November 7, 2005

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Family Action Network - provided information concerning the number of cases in which the NSP was involved. A description of the Family Advocacy Network is attached indicating the relationship with the NSP.

Lancaster County Child Advocacy Center - The NSP actually entered into a contract with this entity. The contract defines the relationship between the entity and the NSP. Documentation of the expenses incurred will be forthcoming, as their director will be unavailable until November 10th. A copy of the contract is attached. Two payments were made to this entity and both contracts were covered by contract.

University of Nebraska – The University of Nebraska Foundation (UNL) has not expended the funds they were provided. The NSP has requested that the UNL Foundation return the unexpended funds with the agreement that they would be provided upon fulfilling the requirements explained in this draft audit report.

Faith Regional Services - the correspondence with the Faith Regional Services indicate the relationship between the NSP and this entity.

The Native American Teachings "Straight Arrow" Program - this entity will be providing documentation concerning their program.

The questioned payment to the architecture firm should be an allowable expense. The NSP entered into an agreement with the firm with the full intention of completing the renovation plan, until numerous problems were encountered with the approval of the plan through the State Fire Marshall's Office. The NSP feels that the structural problems which resulted in the abandonment of the renovation plan were beyond the responsibility of the NSP, and that the costs should be allowed.

The NSP was not aware of the existence of the "March 1998 Addendum to A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." The orange colored guides do not reflect the effective dates of any changes or revisions included within the guides. They are all simply marked as "MARCH 1994." This causes considerable confusion in attempting to comply with the guidelines which change without adequate notice to the recipients.

The NSP believes that the documentation provided shows clearly that the agency complied with the intent of the President's initiative to promote additional emphasis on reducing the demand for controlled substances.

David M. Sheeren, Regional Audit Manager November 7, 2005

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The NSP further believes that the correspondence with these different agencies indicates the formal approval of the chief law enforcement officer connecting the nonprofit organization's work to the effort of the agency. Copies of this correspondence and/or contracts are also provided.

Sincerely,

Bryan J. Tuma, Colonel

Superintendent of Law Enforcement and Public Safety

cc: John Little, Accounting

Enclosures: Spanish Hotline Report

Letter to Governor Mike Johanns reference Nebraska Domestic Violence Sexual Assault Coalition Statewide Spanish Crisis Line Nebraska Domestic Violence Sexual Assault Coalition Summary Letter from Nebraska Domestic Violence Sexual Assault Coalition

Fax from Family Advocacy Network

Email to John Little reference request for Family Advocacy Network Funding

Letter to Governor Mike Johanns reference Public Safety Cash Fund
Letter from Child Advocacy Center reference proposed contract between
Lancaster County and Child Advocacy Center and Agreement
Letter from Keith Miles reference NSP request for information on
Payment

Letter to Cassia Spohn from Lt. Colonel Thorson reference check payable to University of Nebraska Foundation

OFFICE OF THE INSPECTOR GENERAL AUDIT DIVISION ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE REPORT

We received a response to our draft report from the NSP. The Criminal Division did not respond. The response from the NSP appears in Appendix III.

In its response, the NSP agreed with two of our audit recommendations, and described corrective actions it has taken or intends to take to close those recommendations. The NSP response indicated disagreement with Recommendation No. 3, indicating concern with all of the \$120,340 of the questioned costs detailed in our draft report.

Our report provides details for the costs questioned regarding funds transferred to nonprofit organizations. As stated in the report, these payments were made without formal approval from the chief law enforcement officer connecting the nonprofit organizations' work to the effort of the NSP and all expenditures must be made by the law enforcement agency and not through a transfer of funds to the nonprofit organization. The NSP response provided documentation including the approval by the chief law enforcement officer and connection of the work of the nonprofits with the NSP; however, the funds are still questioned because the expenditures were not made by the NSP. One expenditure from the previously listed questioned costs was properly expended by the NSP, but the chief law enforcement officer did not provide written confirmation that the Faith Regional Health Services work was in support of the NSP activities. Funds were also spent to plan a renovation at the NSP headquarters; however, the renovation never took place and those funds are being questioned.

Therefore, the following is the current status of our recommendations and the actions necessary for closure:

1. **Resolved.** NSP provided documentation regarding its FY 2004 and FY 2005 Annual Certification Reports, however; these reports do not accurately reflect the total law enforcement

budget amounts for the same period. Additionally, the amounts listed for Appraisal Value of Other Assets Received do not match the USMS valuation of the vehicles. This recommendation can be closed when NSP provides corrected FY 2004 and FY 2005 Annual Certification Reports.

Closed.

Unresolved. Documentation provided by the NSP demonstrates 3. written approval from a law enforcement official; however, the equitable sharing funds were transferred directly to nonprofit agencies. The 1998 Addendum to the 1994 Equitable Sharing Guide, Section 4 Permissible Use Policy, states that costs are allowable, "which are formally approved by the chief law enforcement officer as being supportive of and consistent with a law enforcement effort, policy, and/or initiative. This provision requires that all expenditures be made by the law enforcement agency and does not allow for the transfer of cash." One expenditure from the previously listed questioned costs was properly expended by the NSP, but the chief law enforcement officer did not provide written confirmation that the Faith Regional Health Services work was in support of the NSP activities. In addition, although NSP provided information regarding the expenditure of funds for planning of a building renovation, we need additional information regarding this process. This information should include a description of planning activity focusing on the feasibility of the renovation, the architecture firms' conclusion on the feasibility of the project, any policies or procedures describing standard practices for renovation projects, and the Fire Marshal's rejection notification. This recommendation can be closed when the Criminal Division provides a remedy for the questioned costs.