



# **AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S ADOPTIVE SEIZURE PROCESS AND STATUS OF RELATED EQUITABLE SHARING REQUESTS**

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Audit Division

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# **AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S ADOPTIVE SEIZURE PROCESS AND STATUS OF RELATED EQUITABLE SHARING REQUESTS**

## **EXECUTIVE SUMMARY**

During law enforcement operations, state and local law enforcement agencies often seize assets and proceeds from assets linked to criminal activity. The purpose of the seizures typically is to ensure that criminal organizations and individuals do not benefit from illegal activities. State and local law enforcement agencies may seek to have such assets forfeited under state law or, alternatively, agencies may transfer the seized assets to the Drug Enforcement Administration (DEA) or another component of the Department of Justice (DOJ or the Department) for forfeiture under federal law through the Department's Asset Forfeiture Program. Transferred seizures are referred to as "adoptive" seizures because the federal agency adopts the seizures made by state and local law enforcement agencies.<sup>1</sup>

The DEA Agents Manual states that, in reviewing an adoption request from state or local law enforcement agencies, the DEA should take into consideration whether:

- state law authorizes the transfer of the asset(s) to the federal government for forfeiture,
- state law or procedures are inadequate or forfeiture experience is lacking in the state system,
- the appropriate state or local prosecuting official has reviewed the case and declined to initiate forfeiture proceedings,
- a "significant amount" (that is, an amount sufficient to warrant federal prosecution) of drugs is involved, and
- the government is likely to be able to satisfy its requisite burden of proof that the asset is subject to forfeiture.

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<sup>1</sup> Seizures made through the joint efforts of federal, state, local, and foreign law enforcement agencies are referred to as "joint" seizures.

Federal law authorizes the Department to share with state and local law enforcement agencies the property and proceeds from adoptive and joint seizures forfeited under federal law. This process is called equitable sharing. Any property or proceeds transferred to a state or local law enforcement agency must have a reasonable relationship to the degree of participation the agency had in the law enforcement effort that led to the seizure. Equitable sharing of seized property encourages cooperation among federal, state, and local law enforcement agencies. To receive an equitable share of seized property, a participating law enforcement agency must submit an equitable sharing request form to the federal agency processing the asset for forfeiture. Seized assets and equitable sharing requests are tracked in the Department's Consolidated Assets Tracking System (CATS).

The objective of our audit was to assess the design and implementation of the DEA's adoptive seizure process. We selected the DEA Atlanta Division for testing because, within the DEA, the Atlanta Division processed the largest dollar value of adoptive seizures and testing at the Atlanta Division enabled us to make efficient use of time and cost resources.

## **Results in Brief**

We found that the DEA generally complied with its internal controls for adoptive seizures that we tested. The DEA's adoptive seizure process was designed to ensure compliance with laws and regulations except that the process did not require the DEA to make and preserve records of adoption requests that it denied.<sup>2</sup> Without these records, we could not assess whether the DEA made the appropriate decisions pertaining to denied adoptive seizure requests. We also found that the form published by the DOJ Criminal Division and submitted to the DEA by state and local law enforcement agencies to request a federal adoption should be revised. The revised form should provide DEA managers who approve adoption requests with more information about whether the state and local law enforcement agencies followed state forfeiture law, if required, before seeking a federal adoption.<sup>3</sup>

Nationwide, 9,035 equitable sharing requests estimated at \$318.8 million were still in a "pending" (not paid) status for more than

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<sup>2</sup> 44 U.S.C. § 3101 (2012), requires agencies to make and preserve records containing adequate and proper documentation of its transactions and decisions.

<sup>3</sup> Some states have laws requiring state and local law enforcement to turn over seized assets to a state or local prosecutor to decide whether to pursue forfeiture under state law.

4 years after the assets were seized.<sup>4</sup> At the DEA Atlanta Division, we examined a sample of these pending requests and determined that the most common reasons for the pending status were that the requesting law enforcement agency was not in compliance with the Asset Forfeiture Program or the requesting agency had been suspended from receiving equitable sharing funds. However, some of these equitable sharing requests were no longer pending, but the CATS records had not been updated.

As a result of our audit, we make three recommendations to improve the DEA's adoptive seizure process and the Department's Asset Forfeiture Program. First, we recommend that the DEA implement procedures to create and maintain records pertaining to adoption requests that were denied and the reasons for the denial. Those records could consist of emails containing details about the seizures and the reasons the DEA denied the adoption requests.

Second, we recommend that the DEA coordinate with the Criminal Division, Asset Forfeiture and Money Laundering Section, to modify the adoption request form to include questions pertaining to whether state and local law enforcement agencies followed state forfeiture laws, if applicable, before seeking a federal adoption.

Finally, we recommend that the DEA coordinate with Justice Management Division's Asset Forfeiture Management Staff regarding the need for a system to: (1) identify equitable sharing requests pending for more than 6 months after forfeiture and disposal actions are completed, and (2) ensure that the appropriate DOJ component updates CATS as necessary for each pending request.

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<sup>4</sup> According to CATS, 6,453 of the 9,035 pending equitable sharing requests (or an estimated \$229,085,650 of \$318,804,219) pertained to assets that had been forfeited to the United States Government. The OIG analyzed these requests because they represent the oldest pending requests in our data sample. We do not intend to imply that all requests pending for less than 4 years have been or will necessarily be handled in a timely manner.

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# INTRODUCTION

## Background

State and local law enforcement agencies seize assets and proceeds from criminal activity during their enforcement operations. The purpose of the seizures typically is to ensure that criminal organizations and individuals do not benefit from illegal activities. State and local law enforcement agencies may have the seized assets forfeited under state law or may transfer the seized assets to a federal agency, such as the Drug Enforcement Administration (DEA), for forfeiture under federal law through the Department of Justice (DOJ or Department) Asset Forfeiture Program. The Asset Forfeiture Program helps the DEA strengthen its partnerships with other law enforcement agencies. Seizures made by state and local law enforcement agencies that are transferred to a federal agency are referred to as "adoptive" seizures because the federal agency adopts the seizures for forfeiture through the Asset Forfeiture Program. Seizures made through the joint efforts of federal, state, and local law enforcement agencies are referred to as "joint" seizures.

## DOJ Asset Forfeiture Program

DOJ's Criminal Division and the Justice Management Division (JMD) manage the Asset Forfeiture Program. Specifically, the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) monitors state and local law enforcement agencies' compliance with equitable sharing program requirements, coordinates international forfeitures and sharing, develops training seminars for all levels of government, and provides legal support to the U.S. Attorney's Office (USAO).

JMD's Asset Forfeiture Management Staff (AFMS) manages the DOJ's Consolidated Assets Tracking System (CATS) database. Seized assets adopted by the DEA are turned over to the U.S. Marshals Service (USMS) and deposited in the Seized Asset Deposit Fund, which is a holding account for seized cash pending resolution of forfeiture proceedings. After the DEA or the USAO completes forfeiture actions and the DEA or the USMS disposes of the assets, the proceeds are transferred to the Assets Forfeiture Fund. After the DEA, USAO, or AFMLS approve the equitable sharing request, the USMS disburses the equitable sharing funds to the federal, state, and local law enforcement agencies.

AFMS also administers the Seized Asset Deposit Fund and the Assets Forfeiture Fund. Proceeds from forfeited assets are to be used for law

enforcement purposes and to administer the Asset Forfeiture Program. Seized assets processed through the program are tracked in CATS. The Guide to Equitable Sharing for State and Local Law Enforcement Agencies provides guidance and details about the Asset Forfeiture Program such as instructions on how to participate in the program, minimum value thresholds for adoptive assets, how to apply for an equitable share, how equitable sharing amounts are determined, accounting for equitable sharing receipts, reporting and audit requirements, and consequences for not complying with program requirements.

According to the DOJ Criminal Division's Guide to Equitable Sharing for State and Local Law Enforcement Agencies, these five federal agencies that participate in the DOJ Asset Forfeiture Program may directly adopt seizures made by state and local law enforcement agencies:<sup>1</sup>

- Bureau of Alcohol, Tobacco, Firearms and Explosives;
- Drug Enforcement Administration;
- Federal Bureau of Investigation;
- U.S. Postal Inspection Service; and
- U.S. Attorney's Offices.

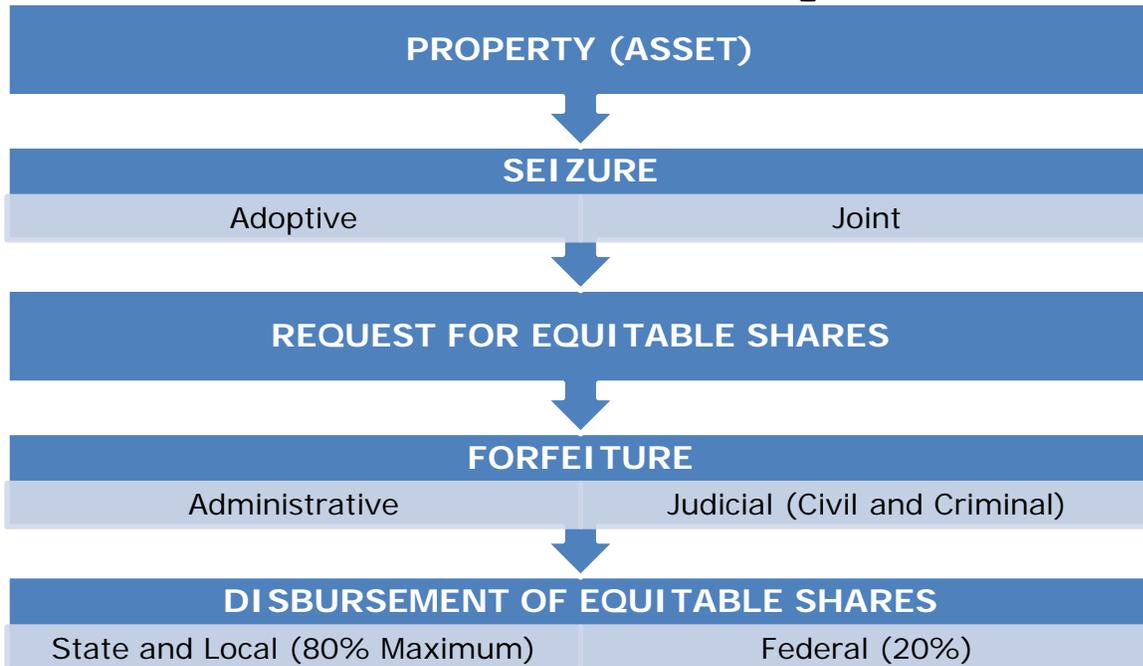
After an asset is seized, these agencies may process the asset for forfeiture under federal law and share the proceeds with the law enforcement agencies that participated in the seizure.<sup>2</sup> An overview of the Asset Forfeiture Program is presented in Exhibit 1.

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<sup>1</sup> Other federal agencies participate in the DOJ Asset Forfeiture Program as part of joint seizure operations, but they do not directly adopt seized assets. The DOJ Criminal Division's AFMLS manages the equitable sharing of assets, coordinates international forfeitures and sharing, develops training seminars for all levels of government, provides legal support to the USAO, and monitors state and local law enforcement agencies' compliance with equitable sharing program requirements. The U.S. Department of the Treasury has a separate asset forfeiture program that processes adoptive seizures. Agencies that participate in the Treasury Asset Forfeiture Program include the Internal Revenue Service, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, U.S. Secret Service, and U.S. Coast Guard.

<sup>2</sup> Processing an asset for forfeiture and equitable sharing consists of transferring the asset to the USMS for safekeeping, notifying the owners or other interested parties of the government's intent to proceed with forfeiture, taking the legal actions necessary to have title to the property transferred to the government, and reviewing and approving requests from law enforcement agencies for a share of the proceeds from the forfeited asset.

**Exhibit 1: Summary of  
the Asset Forfeiture Program**



Source: Office of the Inspector General (OIG) summary of the Guide to Equitable Sharing for State and Local Law Enforcement Agencies

*Types of Seizures*

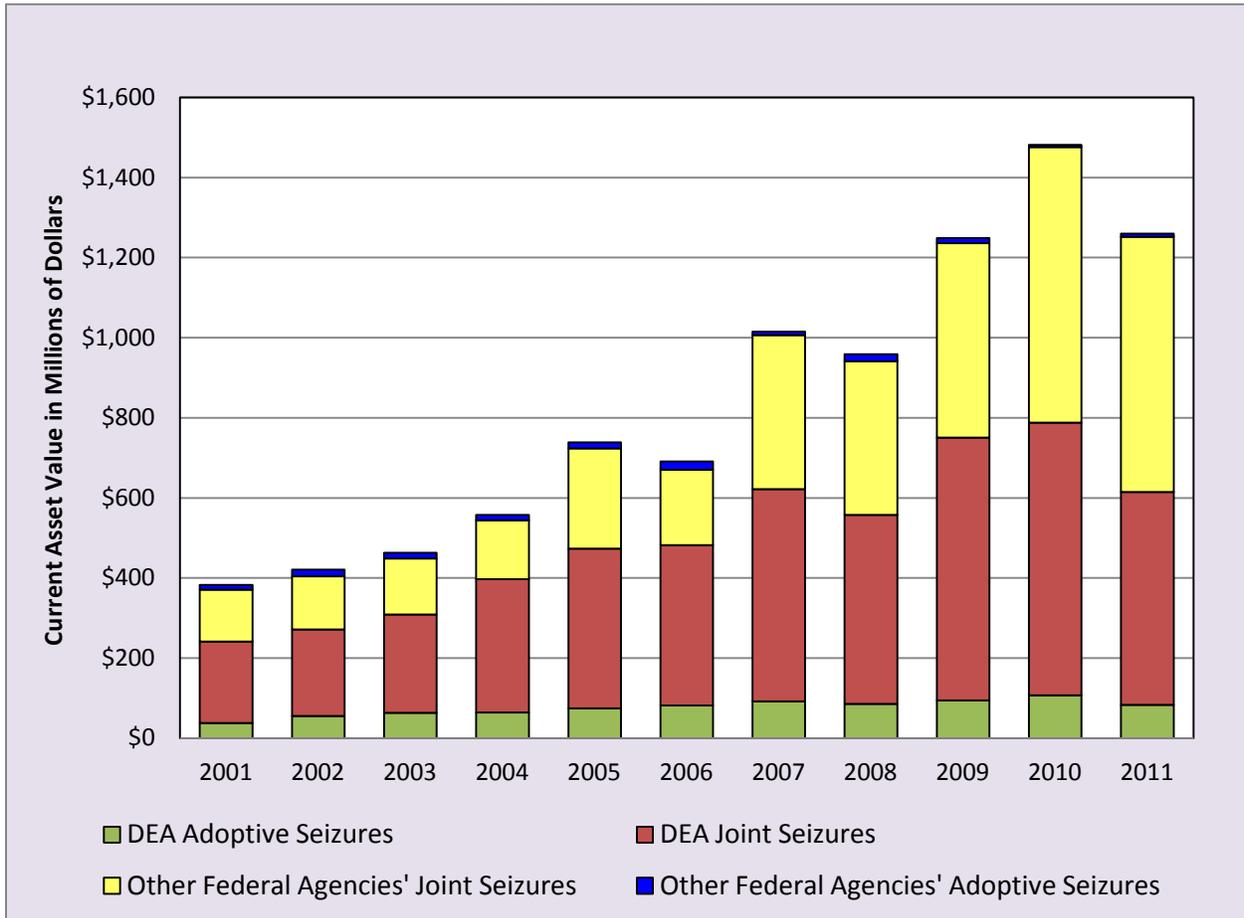
The Comprehensive Drug Abuse Prevention and Control Act of 1970 authorizes federal law enforcement to seize property, including money and vehicles, alleged to have facilitated illegal drug transactions or the proceeds of such transactions. Federal agencies process seized assets through the Asset Forfeiture Program as either adoptive seizures or joint investigation seizures.

According to the CATS data, for the period of October 1, 2000, through September 30, 2011, the DEA and other federal agencies processed over 150,644 seized assets valued at about \$9.2 billion of which \$5.5 billion (60 percent) originated from seizures processed by the DEA and \$3.7 billion (40 percent) originated from seizures processed by other federal agencies.<sup>3</sup> Exhibit 2 shows the value of adoptive and joint seized assets processed each fiscal year (FY) by the DEA and other federal agencies.

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<sup>3</sup> During this 11-year period, there was an additional \$522 million in DEA seizures that had no equitable sharing requests, but we did not include these in our analysis because those seizures were beyond the scope of our audit. The scope of our audit only included seizures with equitable sharing requests.

## Exhibit 2: Value of Assets Seized During Fiscal Year 2001 Through Fiscal Year 2011<sup>4</sup>



Source: DOJ's Consolidated Assets Tracking System

### *Types of Forfeitures*

The DOJ Criminal Division defines forfeiture as “the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or harder to detect without compensating the owner.”<sup>5</sup> In a forfeiture proceeding, if the government is successful, ownership of the asset is transferred to the government. Property (assets) can be forfeited through the Asset Forfeiture Program under administrative or judicial (civil or criminal) forfeiture proceedings.

<sup>4</sup> FY 2001 through FY 2010 data is from the CATS records as of October 4, 2011, and FY 2011 data is from the CATS records as of October 25, 2011.

<sup>5</sup> *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*, April 2009, page 8.

In an administrative forfeiture action, the federal law enforcement agency must, within 60 days after the date of seizure, notify the owner or other interested parties of the government's intent to proceed with the forfeiture action.<sup>6</sup> The DEA refers to this as a Notice of Seizure. Interested parties have until the date specified in the notice to contest the forfeiture.<sup>7</sup> If the forfeiture is not contested, the DEA issues a Declaration of Forfeiture and ownership of the property is transferred to the government. If an interested party contests the forfeiture by filing a claim against the property, administrative forfeiture proceedings are terminated, and the government has 90 days to proceed with a civil or criminal forfeiture action or return the property and initiate forfeiture action at a later date.

During a federal civil forfeiture proceeding, the court hears argument and evidence from both the government and all interested parties on the forfeiture allegations. The court will determine whether the government met its burden to establish that the property is subject to forfeiture.<sup>8</sup> If the government meets its burden of proof and no interested parties are successful in establishing an innocent owner defense, the court issues a Final Judgment of Forfeiture order and ownership of the property passes to the government.

Unlike civil forfeiture in which the proceedings are against the property (in rem), criminal forfeiture proceedings are against the person (in personam). Under criminal forfeiture proceedings, the forfeiture is part of the trial process that targets property named in the indictment. Proceedings to determine whether the property will be forfeited take place after, and only if, the defendant is convicted. As shown in Exhibit 3, 70 percent of all seized

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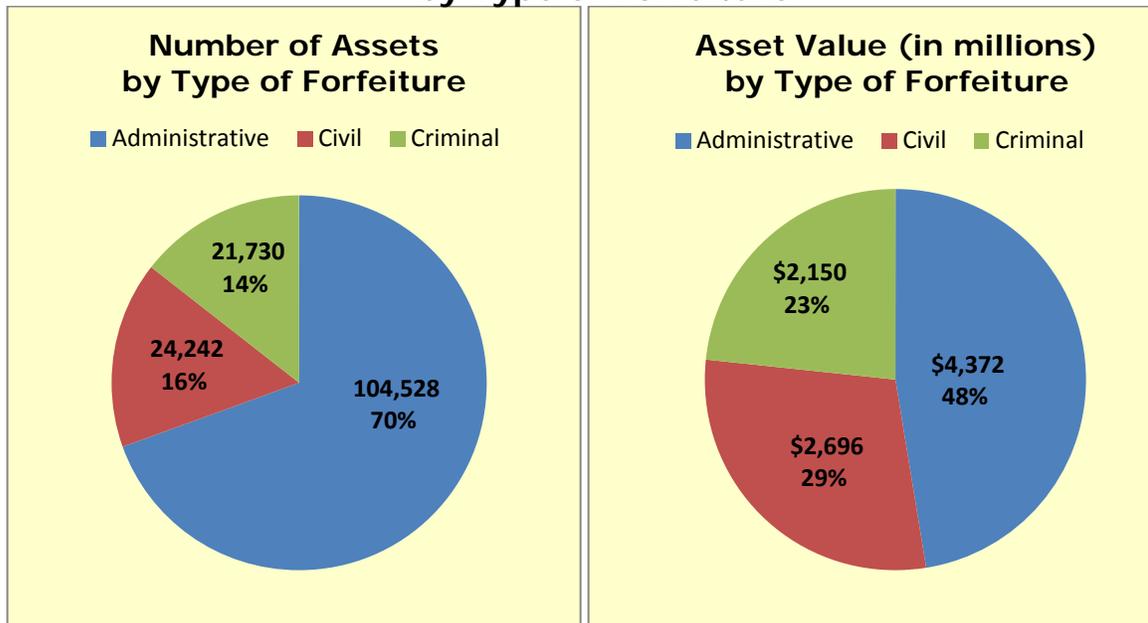
<sup>6</sup> If the asset was seized by a state or local law enforcement agency and adopted by the government for processing under federal forfeiture law, the adopting federal law enforcement agency has 90 days to notify the owner or other interested parties of its intent to proceed with forfeiture.

<sup>7</sup> According to 18 U.S.C. § 983(a)(2)(B), "the deadline may not be earlier than 35 days after the date the letter is mailed to the owner, except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure."

<sup>8</sup> As a protection to innocent owners, a person's interest in the property cannot be forfeited if the person can prove the elements of the "innocent owner defense" described in 18 U.S.C. § 983(d) (2011). That statute defines an "innocent owner" as "an owner who (i) did not know of the conduct giving rise to forfeiture; or (ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property."

assets and nearly half of the asset values are processed as administrative forfeitures.

**Exhibit 3: FYs 2001 Through 2011 Seized Assets by Type of Forfeiture<sup>9</sup>**



Source: DOJ's Consolidated Assets Tracking System

### *Equitable Sharing*

Federal law authorizes the Attorney General to share with state and local law enforcement agencies the property and proceeds from adoptive and joint seizures. Any property or proceeds transferred to a state or local law enforcement agency must bear a reasonable relationship to the degree of participation the state or local law enforcement had in the law enforcement effort that led to the seizure. This "equitable sharing" of seized property helps the DEA achieve its mission by encouraging cooperation among federal, state, and local law enforcement agencies.

The DOJ's Criminal Division, AFMLS monitors state and local law enforcement agencies' compliance with equitable sharing participation requirements, coordinates international forfeitures and sharing, develops training seminars for all levels of government, and provides legal support to

<sup>9</sup> Our analysis includes adoptive and joint seizures processed by the DEA and other federal agencies. Our analysis does not include 144 assets valued at \$1.2 million because the DEA terminated forfeiture proceedings on those assets.

the USAO. The USMS disburses the equitable sharing payments and is the custodian for seized and forfeited assets.

To receive an equitable share of adoptive and joint seizures, the requesting law enforcement agencies must submit an Application for Transfer of Federally Forfeited Property (Form DAG-71) to the federal agency processing the asset for forfeiture.<sup>10</sup> If the value of the seized assets in a forfeiture proceeding is less than \$1 million, equitable sharing requests are reviewed and may be approved by the investigative agency if the proceeding is administrative, or by the USAO if the proceeding is judicial. If the value of the assets is greater than \$1 million, the Deputy Attorney General must review and approve equitable sharing requests, although the Deputy Attorney General has delegated this authority to the Criminal Division in situations where the investigative agency, the USAO, and the Criminal Division’s AFMLS agree about the appropriate disposition of the request.

Equitable sharing cannot occur until forfeiture actions have been completed, the asset has been disposed of, and the sharing of the asset has been approved by the appropriate federal office. The length of time between the date of seizure and the date that equitable sharing funds are disbursed depends on the type of forfeiture. Exhibit 4 shows the average length of time for completed equitable sharing requests and the percentage completed within 1 to 4 years.

**Exhibit 4: Completed Equitable Sharing Requests**

Type of Forfeiture	Average Time to Complete	Percent Completed Within			
		1 Year	2 Years	3 Years	4 Years
Administrative	0.7 years	72%	94%	98%	99%
Civil Judicial	1.8 years	15%	58%	77%	87%
Criminal Judicial	1.9 years	18%	55%	77%	87%
All types	0.9 years	58%	85%	93%	96%

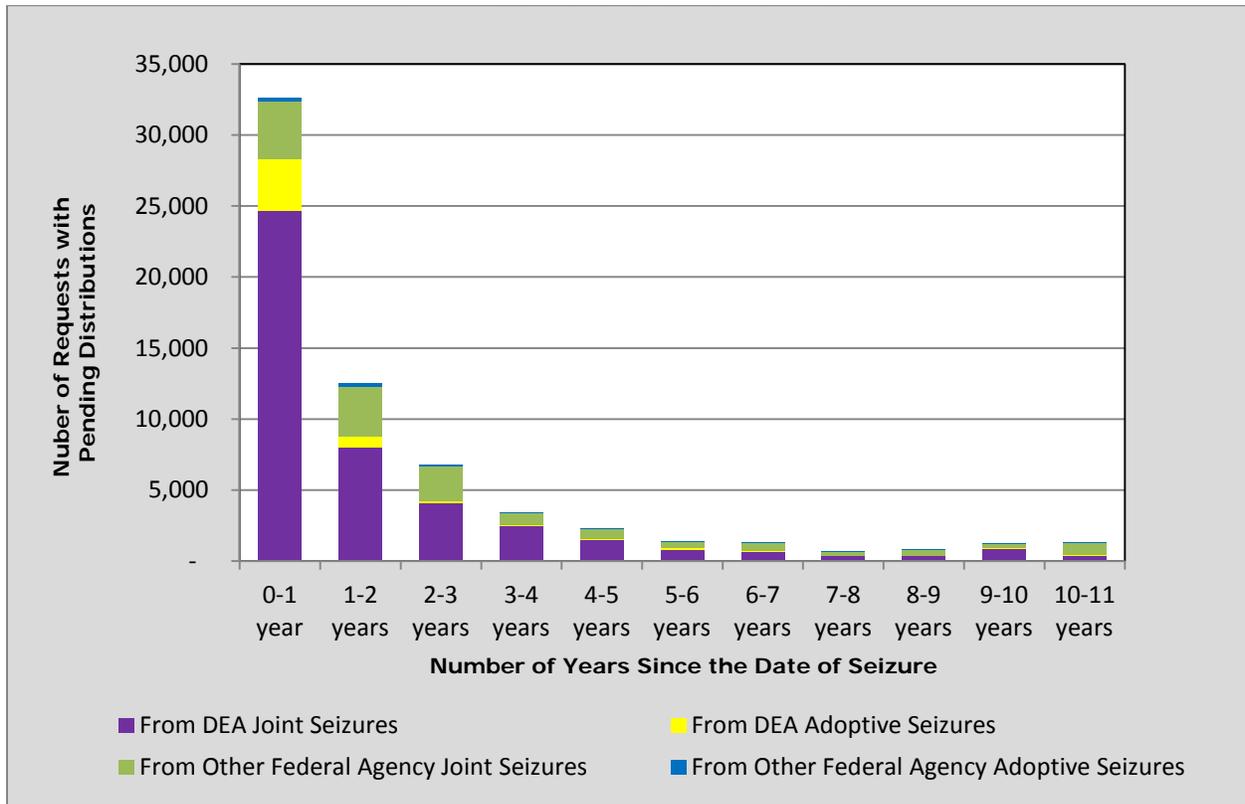
Source: OIG analysis of the DOJ’s Consolidated Assets Tracking System data

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<sup>10</sup> A request for adoption is different from a request for equitable sharing. A Request for Adoption of State or Local Seizure form (see Appendix II) is used by a state or local law enforcement agency to request that a federal agency, such as the DEA, “adopt” the asset for forfeiture under federal law. There is one adoption request form for each adoptive asset. The form is not used for joint seizures. A request for equitable sharing, Application for Transfer of Federally Forfeited Property, Form DAG-71, is used to request a share of the proceeds from adoptive and joint seizures forfeited under federal law. There can be multiple equitable sharing requests from various law enforcement agencies for a share of each adopted or joint seizure.

Exhibit 5 shows numbers of equitable sharing requests that were still pending as of September 30, 2011, and the numbers of years since the assets were seized. The requests are associated with assets seized during fiscal years 2001 through 2011.<sup>11</sup>

**Exhibit 5: Number of Pending Equitable Sharing Requests as of September 30, 2011, and Number of Years Since the Date of Seizure**



Source: DOJ's Consolidated Assets Tracking System

<sup>11</sup> There may be pending equitable sharing requests for assets that were seized prior to FY 2001, but those seizures were beyond the scope of our audit. The pending equitable sharing requests shown in the exhibit are for assets seized during FY 2001 through 2011.

## *Disbursement of Equitable Shares*

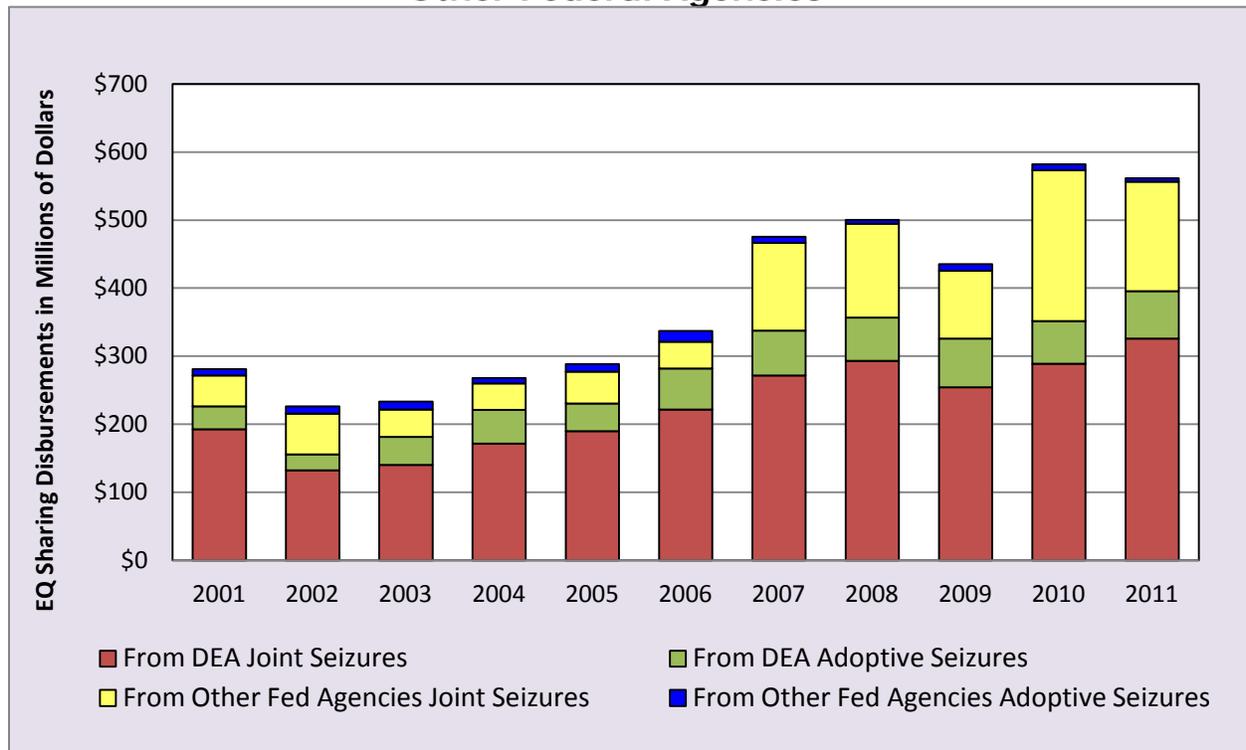
Under the Asset Forfeiture Program, up to 80 percent of the net proceeds from the adopted forfeited assets are disbursed to the participating law enforcement agencies and the federal government keeps the remaining 20 percent.<sup>12</sup>

From FY 2001 through FY 2011, federal agencies transferred almost \$4.2 billion in equitable sharing money and other assets to 7,270 state and local law enforcement agencies. Over \$3 billion of this originated from the DEA's joint and adoptive seizures. For both the DEA and other federal agencies, equitable sharing disbursements more than doubled from FY 2002 to FY 2011. Exhibit 6 shows the disbursements to state and local law enforcement agencies from FY 2001 through FY 2011.

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<sup>12</sup> Under 21 U.S.C. § 881 (2011), the Attorney General is directed to determine the value of an agency's participation in the effort that led to the forfeiture. The Attorney General's Guidelines on Seized and Forfeited Property, July 1990, Amended 2005, require that 20 percent of the net proceeds be allocated to the United States. Based on this requirement, state and local agencies may be eligible for up to 80 percent of the total net proceeds realized from the disposition of forfeited property. The net proceeds, which is the amount available for equitable sharing, is the gross amount of proceeds minus expenses, such as payment of liens on the property, money paid to victims, and federal case-related expenses. See the Guide to Equitable Sharing for State and Local Law Enforcement Agencies for more information on expenses used in calculating net proceeds.

**Exhibit 6: Value of Equitable Sharing Disbursements from Adoptive and Joint Seizures Processed by the DEA and Other Federal Agencies<sup>13</sup>**



Source: DOJ's Consolidated Assets Tracking System

The objective of this audit was to assess the design and implementation of the DEA's adoptive seizure process. We focused our audit on the DEA Atlanta Division because, within the DEA, it processed the largest number and dollar value of adoptive seizures. The DEA Atlanta Division has geographic responsibility for Georgia, North Carolina, South Carolina, and Tennessee.

<sup>13</sup> The disbursements shown in the chart are all disbursements in a given year, whether derived from assets seized in the current year or prior years. Disbursements include the value of all money and other assets, such as vehicles, transferred to law enforcement agencies. Equitable sharing disbursements are less than the value of the seized assets because: (1) there can be a lag time of several years between the seizure and the disbursement of proceeds from the forfeiture, and some assets depreciate over time; (2) disposal costs may reduce the amount of proceeds available for distribution; or (3) forfeiture proceedings may have been terminated and the asset returned to the owner. Also, pursuant to the Attorney General's guidelines discussed above, no more than 80 percent of the net proceeds from forfeited assets may be disbursed to participating state and local law enforcement agencies.

**Exhibit 7: Equitable Sharing Disbursements to State and Local Law Enforcement Agencies in the DEA Atlanta Division  
(during FYs 2001 Through 2011)**

<b>State</b>	<b>Amount Disbursed to State (in millions)</b>	<b>Amount from Adoptive Assets (in millions)</b>	<b>Percent from Adoptive Assets</b>
Georgia	\$204	\$53	26%
North Carolina	\$128	\$74	58%
South Carolina	\$45	\$18	40%
Tennessee	\$57	\$5	9%
<b>Total</b>	<b>\$434</b>	<b>\$150</b>	<b>35%</b>

Source: OIG analysis of the DOJ's Consolidated Assets Tracking System data

The results of our audit are presented in the following section.

## FINDINGS AND RECOMMENDATIONS

We found that the DEA generally complied with the internal controls for adoptive seizures that we tested. The DEA's process was designed to ensure compliance with laws and regulations except that the process did not require the DEA to make and preserve records of adoption requests that it denied. We also found that the form published by the DOJ Criminal Division and used by state and local law enforcement agencies to request a federal adoption does not ensure that DEA managers have sufficient information about whether the state and local law enforcement agencies followed existing state forfeiture laws prior to the request for a federal adoption. In addition, we found a significant number of pending requests in CATS, including \$2.6 million in equitable sharing requests (32 requests) submitted to the DEA Atlanta Division, had been in a pending status for 4 to 10 years after the assets were seized. Yet further inspection of the requests relating to the Atlanta Division determined that the CATS records for some of those requests had not been updated and the requests were no longer actually pending. Based on these findings, we recommend that the DEA implement procedures to create and maintain records of adoption requests that it denies. We also recommend that the DEA coordinate with the Criminal Division to modify the adoption request form. Finally, we recommend that the DEA coordinate with JMD's AFMS regarding the need for a system to: (1) identify equitable sharing requests pending for more than 6 months after forfeiture and disposal actions are completed, and (2) ensure that the appropriate DOJ component updates CATS as necessary for each pending request.

### The DEA's Adoptive Seizures Process

The DEA has implemented a system of internal controls for adopting seized assets from state and local law enforcement agencies and processing the seized assets under federal forfeiture law.<sup>14</sup>

The DEA Agents Manual establishes the following requirements:

- State and local law enforcement agencies have 30 days from the date an asset is seized to request a federal adoption (Test 2, page 17). If the request for adoption is beyond the 30-day time period, waivers of the 30-day rule may be approved where the state or local agency

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<sup>14</sup> We designed audit test questions for what we consider to be the most important of the DEA's internal controls described below. The test question numbers are shown in parentheses.

requesting adoption can demonstrate exigent circumstances justifying the delay. Requests for waivers must be submitted by the requesting agency in writing, explaining the basis for the delay. The Agents Manual does not state whether the DEA may verbally approve a waiver or whether the approval must be in writing.

According to the Agents Manual, in deciding whether to “adopt” a seizure made by a state or local law enforcement agency, the DEA Special Agent in Charge, Assistant Special Agent in Charge, Resident Agent in Charge, or Group Supervisor (not below the GS-14 level) should take into consideration whether:

- state forfeiture law allows the transfer of the asset to the federal government,
- state law or procedures are inadequate or forfeiture experience is lacking in the state system,<sup>15</sup>
- the appropriate state or local prosecuting official has reviewed the case and declined to initiate forfeiture proceedings, (Test 1, page 15)
- a "significant amount" (that is, an amount sufficient to warrant federal prosecution) of drugs are involved, and
- the government is likely to be able to satisfy its requisite burden of proof that the asset is subject to forfeiture (Test 3 and 4, page 17).

With regard to whether the government is likely to be able to satisfy its burden of proof, the Agents Manual states that these DEA officials may deem this consideration satisfied when any of the following factors are present: (1) the seizure is based on a federal or state judicial warrant, (2) an arrest was made for a felony violation of the Controlled Substances Act or an equivalent state felony charge that would be a felony if pursued under federal law, or (3) drugs or other contraband associated with a federal felony drug offense were also confiscated at the time of the seizure. If none of these three factors are present, the adoption request forms must be sent to DEA Headquarters within 5 working days from the date of the adoption request. DEA legal staff then review the request to determine whether other factors surrounding the seizure are sufficient to satisfy the DEA's burden of proof in

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<sup>15</sup> Forfeiture experience refers to the level of training and experience needed to determine whether the asset was seized based on sufficient probable cause and familiarity with state procedures for forfeiting the assets.

showing that the asset is subject to forfeiture and for approval of the adoption request.

DEA Headquarters must notify interested parties in writing within 90 days from the date the asset was seized about its intent to proceed with forfeiture actions (Test 5, page 18).<sup>16</sup> In addition, pursuant to 44 U.S.C. § 3101, the Department must make and preserve records containing adequate and proper documentation of its transactions and decisions.

Although we assessed these controls and found that the DEA's adoptive seizure process was designed to ensure compliance with laws and regulations, we also found that the DEA's internal control process did not require that it retain records of adoption requests that it denied.

Specifically, DEA officials told us that they often receive adoption requests from state and local law enforcement agencies by telephone, but those requests are denied because of insufficient probable cause or because the value of the asset does not meet the minimum threshold for adoption. However, the DEA does not document the details about these adoption requests or the reasons for the denials. Without these records, we were unable to assess the DEA's decisions pertaining to these adoptive seizure requests.

In light of the DEA's statutory obligation to make and preserve records containing adequate and proper documentation of its transactions and decisions and because the DEA's not doing so precluded our review of its handling of some adoptive seizure requests, we recommend that the DEA implement procedures to create and maintain records relating to all adoption requests, including those that are denied. A record of each denied request could consist of an email summarizing the request and the reasons for the denial.

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<sup>16</sup> Interested parties are those who appear to have an interest in the seized property. The DEA has established timeframes for completing various forms and steps in the seizure process in order to meet this 90-day requirement.

## The DEA's Adoptive Seizures Process Testing

We also assessed whether the DEA had properly implemented its adoptive seizure process to ensure compliance with the DEA's internal control policies for adoptive seizures by testing whether the DEA followed those policies. We performed detailed audit testing on a sample of 63 seized assets adopted by the DEA's Atlanta Division for forfeiture through the Asset Forfeiture Program. The adoptive assets we tested were seized in Georgia, South Carolina, North Carolina, and Tennessee.<sup>17</sup> Our audit objective, scope, and methodology are described in more detail in Appendix I.

We found that 62 of 63 adoption requests we tested were properly approved as adoptive seizures by DEA managers at the Atlanta Division or by DEA Headquarters legal staff, and the DEA gave public notice within 90 days after seizure of its intent to proceed with forfeiture.<sup>18</sup> For 62 of 63 adopted assets, the state and local law enforcement agencies requested the adoption within 30 days from the date of seizure. For one adoption request, the DEA waived the 30-day requirement in writing.

However, we also found that the form published by the DOJ Criminal Division and used by state and local law enforcement agencies to request a federal adoption does not ensure that DEA managers have sufficient information about whether a state or local prosecutor declined to proceed with forfeiture under state law prior to the request for a federal adoption.<sup>19</sup>

Details of each of our audit tests are explained below.

### Test 1: Did a state or local prosecuting official review the case and decline to initiate forfeiture proceedings?

According to the DEA Agents Manual, before deciding whether to adopt a seizure made by a state or local law enforcement agency, DEA managers should consider whether the state or local prosecutor has reviewed the case

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<sup>17</sup> The DEA Atlanta Division has geographic responsibility for Georgia, South Carolina, North Carolina, and Tennessee. North Carolina does not have state civil asset forfeiture laws. Generally, under North Carolina forfeiture law, the property owner must be convicted of a crime before the asset can be forfeited to the government.

<sup>18</sup> One seized asset we examined should not have been recorded in CATS as an adoptive seizure because the DEA was involved in the events that led to seizure.

<sup>19</sup> Our audit sampling methodology, described in detail in Appendix I, does not permit us to project our audit test results to all adoptive seizures.

and declined to initiate forfeiture proceedings under state law.<sup>20</sup> The adoption request form requires the state or local law enforcement agency making the adoption request to provide the following information:<sup>21</sup>

Has a state or local prosecutor declined to proceed with forfeiture under state law? ( ) Yes ( ) No

Provide the name of the prosecutor and declination date.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

On 23 of the 63 adoption request forms we examined, the law enforcement agency answered “No”– a state or local prosecutor did not decline to proceed with forfeiture under state law. However, this question is not applicable because the seizures we tested were seized in states that did not require the seizing law enforcement agency to check with a state or local prosecutor before seeking a federal adoption. Staff at the DEA Atlanta Division told us that the law enforcement agencies that completed the adoption request form answered “no” because either:

- the state or local prosecutor did not decline to proceed with forfeiture,<sup>22</sup>
- there was not a sufficient amount of drugs associated with the seized asset to warrant presenting the case for forfeiture under state law, or
- the state or local prosecutor only handles cases involving criminal prosecution. Most of the adopted assets we tested were forfeited under federal administrative procedures or federal civil statutes.

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<sup>20</sup> At the time of our audit, 13 states had laws requiring the seizing law enforcement agency to check with the state or local prosecutor before seeking a federal adoption of the seized assets. The 63 adopted seizures we tested were seized in states that did not have this requirement.

<sup>21</sup> See Appendix II for a copy of the Request for Adoption of State and Local Seizure Form.

<sup>22</sup> We believe this could also indicate that the case was not presented, or state law did not require that the case be presented, to a prosecutor to decide whether to proceed with forfeiture under state law, which was not required in the states where the assets were seized.

We concluded that the adoption request form should be revised so that the question can be answered "Yes," "No," or "Not Applicable" and that a line should be added to capture the reason for the answer.<sup>23</sup>

Test 2: Did the state or local law enforcement agency request the adoption within 30 calendar days from the date of seizure?

We found that for 62 of 63 adopted assets, the law enforcement agencies requested the adoption within 30 days from the date of seizure. For one adoption request, the DEA waived the 30-day requirement in writing.

Tests 3 and 4: Did local DEA managers consider whether the government is likely to be able to satisfy its requisite burden of proof that the asset is subject to forfeiture?

As discussed above, according to the DEA Agents Manual, the DEA should consider whether the government is likely to be able to satisfy the requisite burden of proof that the asset is subject to forfeiture before approving a request for adoption.

We tested 63 adopted assets and found that the 22 adoption request forms approved by managers at the DEA's Atlanta Division were based on at least one of the three factors identified in the DEA Agents Manual as sufficient for such approvals.<sup>24</sup> The remaining 41 adoption requests were approved by DEA Headquarters staff. We did not test whether DEA Headquarters' approvals were based on sufficient probable cause for making the seizure because our review was focused on field office operations and we did not test DEA Headquarters operations.

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<sup>23</sup> Subsequent to the issuance of our draft audit report, an AFMLS official told us that, in the view of the AFMLS, a "Not Applicable" choice should not be provided because communication should take place with local prosecutors to ensure proper coordination. The AFMLS official agreed that a line should be added to the form requiring an explanation any time a "No" answer is selected.

<sup>24</sup> As noted above, those factors are: (1) the seizure was based on a federal or state judicial seizure warrant; (2) an arrest was made for a felony violation of the Controlled Substances Act or an equivalent state felony charge that would be a felony if pursued under federal law; and (3) drugs or other contraband associated with a federal felony drug offense were also confiscated at the time of seizure.

We reviewed the police reports and other supporting documentation to determine whether there was a record that probable cause had been established in the manner prescribed by the DEA Agents Manual, but we did not try to make a determination of whether the reasons recorded as establishing probable cause were legally sufficient.

## Test 5: Did the DEA give notice of its intent to proceed with forfeiture within 90 calendar days from the date of seizure?<sup>25</sup>

We consider this internal control to be one of the most important internal controls in the adoptive seizure and forfeiture process. If the DEA does not meet this 90-day requirement, the asset must be returned to the owner. For all 63 assets we tested, the DEA gave public notice within 90 calendar days from the date of seizure of its intent to proceed with forfeiture actions.<sup>26</sup>

### **Pending Equitable Sharing Requests**

To participate in the equitable sharing program, state and local law enforcement agencies must be in compliance with equitable sharing participation requirements and must submit annual reports to the Criminal Division's AFMLS. To receive a share of the proceeds from federally forfeited assets, the law enforcement agency must submit an Application for Transfer of Federally Forfeited Property (DOJ Form DAG-71), including the sharing percentage requested.

Equitable sharing decisions are made by either the investigative agency, such as the DEA, the USAO, or the Deputy Attorney General. In administrative forfeitures of less than \$1 million, the investigative agency determines the amount to be shared. In judicial forfeitures of less than \$1 million, the U.S. Attorney determines the amount to be shared. In administrative and judicial forfeitures of \$1 million or more the Deputy Attorney General determines the appropriate equitable share.<sup>27</sup>

As noted in the Guide to Equitable Sharing for State and Local Law Enforcement Agencies, forfeitures, like all legal proceedings, take time, and

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<sup>25</sup> The DEA must, within 90 calendar days from the date of seizure (or 60 calendar days in joint seizure cases), send a Notice of Seizure to the owner and all interested parties by certified mail and through advertisement in a nationwide publication.

<sup>26</sup> During our testing of the adoptive seizures, we identified one seized asset that was incorrectly recorded in CATS as a joint seizure. The CATS record was incorrect because documentation maintained by the DEA showed that the seizure was the result of a joint investigation between the DEA and the law enforcement agency that made the seizure. For joint seizures, the DEA has 60 calendar days to complete the noticing requirement. The DEA notified interested parties within 40 days from the date of seizure.

<sup>27</sup> The Deputy Attorney General has delegated this authority to the Assistant Attorney General of the Criminal Division in cases where the seizing agency, the U.S. Attorney, and the Criminal Division's AFMLS agree on the allocation of the forfeited property.

equitable sharing can only occur after the federal forfeiture process has been completed, the property has been disposed of, and a final sharing decision has been made. After these actions are completed, the USMS, as the custodian of seized and forfeited assets, transfers the equitable sharing payments to the law enforcement agencies. We completed analysis of all equitable sharing requests for FY 2001 through FY 2011 and found that 96 percent of equitable sharing requests were completed in 4 years or less.<sup>28</sup>

To better understand the 4 percent of equitable sharing requests not completed in 4 years, we analyzed the CATS data as of October 2011 and found that the data contained 9,035 equitable sharing requests totaling an estimated \$318.8 million that had been in a pending status for 4 to 10 years.<sup>29</sup>

Exhibit 8 shows the equitable sharing requests for adoptive and joint seizures processed by the DEA and other federal agencies that have been pending over 4 years.

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<sup>28</sup> For judicial forfeitures (civil and criminal), 87 percent of the equitable sharing requests were completed within 4 years. For administrative forfeitures, 99 percent of the equitable sharing requests were completed within 4 years. For all forfeitures, 96 percent of the equitable sharing requests were completed within 4 years. The OIG analyzed requests pending longer than 4 years because they represent the oldest pending requests in our data sample. We do not intend to imply that all requests pending for less than 4 years have been or will necessarily be handled in a timely manner.

<sup>29</sup> Pending equitable sharing requests are only an estimate because asset disposal costs and claims against the asset may reduce the amount of proceeds available for distribution. Also, according to CATS, 6,453 of the 9,035 pending equitable sharing requests (or an estimated \$229,085,650 of \$318,804,219) pertained to assets that had been forfeited to the United States Government.

**Exhibit 8: Estimated Equitable Sharing Requests for Adoptive and Joint Seizures Processed by the DEA and Other Federal Agencies that Have Been Pending Over 4 Years<sup>30</sup>**

Fiscal Year of Seizure	Adoptive Seizures		Joint Seizures		Total
	DEA	Other Federal Agencies	DEA	Other Federal Agencies	
<b>2001</b>	\$3,166,690 86 requests	\$247,433 21 requests	\$3,736,649 396 requests	\$11,096,700 766 requests	<b>\$18,247,472</b> <b>1,269 requests</b>
<b>2002</b>	\$1,313,936 62 requests	\$48,708 7 requests	\$2,648,932 847 requests	\$11,729,319 325 requests	<b>\$15,740,895</b> <b>1,241 requests</b>
<b>2003</b>	\$291,566 15 requests	\$139,931 14 requests	\$3,272,088 373 requests	\$36,050,878 444 requests	<b>\$39,754,463</b> <b>846 requests</b>
<b>2004</b>	\$114,168 18 requests	\$312,074 12 requests	\$2,660,544 356 requests	\$12,680,828 275 requests	<b>\$15,767,614</b> <b>661 requests</b>
<b>2005</b>	\$249,296 32 requests	\$181,194 12 requests	\$20,702,022 660 requests	\$69,423,556 619 requests	<b>\$90,556,068</b> <b>1,323 requests</b>
<b>2006</b>	\$2,263,436 83 requests	\$1,106,959 28 requests	\$11,749,539 812 requests	\$31,544,151 471 requests	<b>\$46,664,085</b> <b>1,394 requests</b>
<b>2007</b>	\$1,609,728 67 requests	\$209,633 26 requests	\$48,732,539 1,502 requests	\$41,521,721 706 requests	<b>\$92,073,621</b> <b>2,301 requests</b>
<b>Total</b>	<b>\$9,008,820</b> <b>363 requests</b>	<b>\$2,245,932</b> <b>120 requests</b>	<b>\$93,502,313</b> <b>4,946 requests</b>	<b>\$214,047,153</b> <b>3,606 requests</b>	<b>\$318,804,218</b> <b>9,035 requests</b>

Source: DOJ's Consolidated Assets Tracking System

At the DEA Atlanta Division, we identified \$2.6 million in equitable sharing requests (32 requests) associated with adoptive assets seized during FYs 2001 through 2007 that have been pending for over 4 years.<sup>31</sup> As of October 2011, these equitable sharing requests were still pending. Exhibit 9 shows the amount, the number of requests, and the reasons the requests were still pending.<sup>32</sup>

<sup>30</sup> The amount of pending equitable sharing requests may be different than the amount disbursed because equitable sharing funds available for disbursements are based on the net proceeds after forfeiture. Net proceeds take into account any valid claims against the assets, payments to victims, federal case-related expenses, and any property management and disposal costs. Also, federal law mandates that sharing is discretionary. Any equitable sharing payments of less than \$50 scheduled for disbursement are "extinguished," and the funds remain in the Assets Forfeiture Fund.

<sup>31</sup> The equitable sharing requests we examined at the DEA Atlanta Division were selected from the CATS data as of February 12, 2011. In October 2011, we updated our CATS data through FY 2011. At that time, 32 of the equitable sharing requests we examined were still in a pending status.

<sup>32</sup> Eleven of the requests were also pending awaiting a sharing decision by the investigative agency (1 request) or the U.S. Attorney's Office (10 requests).

**Exhibit 9: Estimated Value and Number of Equitable Sharing Requests Pending Over 4 Years as of October 4, 2011  
(DEA Atlanta Division - Adoptive Seizures)**

Current Status	Year Asset was Seized							Total
	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	
<b>Pending.</b> Agency was not in compliance with the Asset Forfeiture Program.	\$287 1 request	\$40,464 10 requests				\$7,616 1 request		<b>\$48,367</b> <b>12 requests</b>
<b>Pending.</b> Agency is suspended from the equitable sharing program and all sharing is on hold.	\$1,624,004 1 request	\$672,650 9 requests	\$270,102 6 requests				\$8,399 1 request	<b>\$2,575,156</b> <b>17 requests</b>
<b>Subtotal</b>								<b>\$2,623,523</b> <b>29 requests</b>
<b>Pending.</b> Forfeiture actions not completed.							\$8,260 2 requests	<b>\$8,260</b> <b>2 requests</b>
<b>Pending.</b> There are no proceeds to share.	\$4,160 1 request							<b>\$4,160</b> <b>1 request</b>
<b>Total</b>	<b>\$1,628,451</b> <b>3 requests</b>	<b>\$713,115</b> <b>19 requests</b>	<b>\$270,102</b> <b>6 requests</b>			<b>\$7,616</b> <b>1 request</b>	<b>\$16,659</b> <b>3 requests</b>	<b>\$2,635,943</b> <b>32 requests</b>

Source: DOJ's Consolidated Assets Tracking System

Most of these equitable sharing requests (29 of the 32 requests, accounting for all but \$12,000 of the requested funds) were pending because the requesting law enforcement agencies were not in compliance with the equitable sharing program (9 agencies, 12 sharing requests) or equitable sharing was on hold because an agency was suspended from the program and was not eligible to receive equitable sharing funds (2 agencies, 17 sharing requests).<sup>33</sup> Two of the 32 sharing requests totaling \$8,260 were

<sup>33</sup> Fourteen pending equitable sharing requests are from a law enforcement agency that is suspended from the Asset Forfeiture Program and is currently not eligible to submit equitable sharing requests or receive the funds. Three other equitable sharing requests are from an agency that participated in the seizures with the suspended agency. Equitable sharing is on hold for all 17 requests.

pending because forfeiture actions had not been completed and 1 of 32 equitable sharing requests for \$4,160 was pending because there were no proceeds to share.<sup>34</sup>

Before the status of these pending requests can be updated, one or more of the following actions must be completed: (1) the requesting law enforcement agencies must submit a written certification to the AFMLS that they will comply with the equitable sharing program requirements; (2) the DEA or the USAO must complete the relevant forfeiture actions; (3) the DEA or the USAO must approve the equitable sharing request; or (4) the USMS must update the CATS record for the seized asset indicating that there are no proceeds available for sharing.<sup>35</sup>

We discussed the pending equitable sharing requests issue with the Department's Criminal Division. The Assistant Deputy Chief of the AFMLS, which monitors law enforcement agencies' compliance with equitable sharing participation requirements, told us that the equitable sharing funds associated with the forfeited assets cannot be put to use for law enforcement purposes until they are paid. These pending requests represent millions of dollars that are not being used to control and prevent crime.

The Assistant Deputy Chief, AMFLS, also told us that most law enforcement agencies considered to be out of compliance with the equitable sharing program are in that condition because the agency has not submitted its required annual certification report to the AFMLS.<sup>36</sup> The AFMLS official also told us that at any one time there may be hundreds of agencies that are not in compliance, but within about 30 days the agencies submit the reports and are taken off the non-compliance list and are eligible to receive

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<sup>34</sup> For the forfeited asset with no proceeds to share, a Justice Management Division official told us that the USMS did not complete a "Rejected – No proceeds" memo to complete the equitable sharing process.

<sup>35</sup> We note that the DEA appears to have taken steps to resolve some of these pending cases. Specifically, we noted that the DEA's seized asset files contained letters notifying the non-compliant law enforcement agencies that their equitable sharing requests were pending because they were not in compliance with the equitable sharing program.

<sup>36</sup> For an agency to remain in compliance, it must submit the Equitable Sharing Agreement and Certification Form annually, as required by the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*. The agreement and certification form reports the amount of equitable sharing funds an agency received and expended, by category, in the prior fiscal year. Failure to file the form within 60 days of the end of the agency's fiscal year results in an agency becoming non-compliant and unable to receive additional equitable sharing until the required paperwork is properly submitted.

payment.<sup>37</sup> The AFMLS official stated that the equitable sharing requests that were pending because of non-compliance probably should have been “extinguished,” meaning a decision was made that a previously approved equitable sharing request would not be paid. When a request is extinguished, the asset is still forfeited, but the funds remain in the Asset Forfeiture Fund. However, the AFMLS official told us that the CATS records may be incorrect because of timing differences between the equitable sharing payment date and the dates the agencies were in or out of compliance with the sharing program or a backlog in the payments process. Consequently, these pending requests may have been paid, but the CATS records were not updated.

The Assistant Deputy Chief, AFMLS, told us that investigative agencies should have a process to identify equitable sharing requests that are in pending status for more than 6 months after forfeiture actions have been completed and, if needed, update the CATS records.

During discussion of our results regarding pending assets, DEA officials told us that a large number of DEA assets shown as pending in CATS cannot be updated by the DEA because other DOJ components must take actions and update the CATS records. For example, a litigating component may need to update the status of civil or criminal actions pertaining to an asset. DEA staff do not have the capability to update CATS for another component’s actions.

## **Conclusion**

We found that the DEA generally complied with the internal controls for adoptive seizures that we tested. The DEA’s adoptive seizure process was designed to ensure compliance with laws and regulations, except that the process did not require that the DEA to make and preserve records of adoption requests that were denied. We also found that the adoption request form published by the Criminal Division and used by state and local law enforcement agencies to request a federal adoption should be revised to provide DEA managers with better information pertaining to whether the

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<sup>37</sup> The Assistant Deputy Chief of the Criminal Division’s AFMLS said that although the Division maintains the date of the most current change to each law enforcement agency’s compliance status, it does not maintain historical information about the dates that law enforcement agencies were in and out of compliance with the equitable sharing program. If law enforcement agencies fail to become compliant within one year, their previously approved equitable sharing requests may be “extinguished” and the corresponding money may remain in the Assets Forfeiture Fund.

state or local law enforcement agency making the adoption request checked with a state or local prosecutor, if required, before seeking a federal adoption. We also found that as of October 2011 there were 9,035 equitable sharing requests totaling an estimated \$318.8 million that were still in a pending status for 4 to 10 years after the assets were seized.<sup>38</sup> This represents a significant amount of resources that are not being used to control and prevent crime. The pending requests were from all federal agencies that participate in the Asset Forfeiture Program. At the DEA Atlanta Division, 29 of those requests totaling \$2.6 million were still pending because the requesting law enforcement agency was not in compliance with or was suspended from the equitable sharing program.

An official from the Criminal Division told us that the funds associated with pending equitable sharing requests cannot be put to use for law enforcement purposes until they are disbursed to the law enforcement agencies. The DEA needs to coordinate with JMD's AFMS to identify long-pending requests and ensure CATS is updated.

## **Recommendations**

We recommend that the DEA:

1. Implement procedures to create and maintain records of adoption requests that were denied. Those records could consist of emails between the DEA and the law enforcement agency requesting the adoption with all relevant details about the seizures and the reasons the adoption requests were denied.
2. Coordinate with the Criminal Division, AFMLS, to modify the Request for Adoption of State or Local Seizure form so that the question "Has a state or local prosecutor declined the case?" can only be answered "Yes," "No" or "Not Applicable," and add a line to capture the reason for the response.
3. Coordinate with JMD's AFMS regarding the need for a system to:  
(1) identify equitable sharing requests pending for more than 6 months after forfeiture and disposal actions are completed, and (2) ensure that the appropriate DOJ component updates CATS as necessary for each pending request.

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<sup>38</sup> According to CATS, 6,453 of the 9,035 pending equitable sharing requests (or an estimated \$229,085,650 of \$318,804,219) pertained to assets that had been forfeited to the United States Government.

## STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by *Government Auditing Standards*, we tested a sample of assets seized by state and local law enforcement agencies and adopted by the DEA for processing under federal forfeiture law through the Department's Asset Forfeiture Program.<sup>39</sup> We completed these tests to obtain reasonable assurance about the DEA's compliance with laws and regulations that, in our judgment if not complied with, could have a material effect of the DEA's and Department's operations. In planning our audit, we identified the following laws and regulations that were significant within the context of our audit objective:

- Federal seizure and forfeiture laws;
- State seizure and forfeiture laws;
- The DEA Agents Manual;
- Guide to Equitable Sharing for State and Local Law Enforcement Agencies, April 2009;
- The Attorney General's Guidelines on Seized and Forfeited Property, July 1990 (amended November 2005); and
- Asset Forfeiture Policy Manual (published by the Department).

Except for any instances of noncompliance identified in the Findings and Recommendations section of this report, we did not identify any other instances of noncompliance with the laws and guidelines we reviewed.

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<sup>39</sup> Our methodology for selecting a sample of seized assets for testing is described in detail in Appendix I, Audit Objectives, Scope, and Methodology.

## STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objective. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our assessment of the DEA's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. The DEA's management is responsible for the establishment and maintenance of internal controls.

As noted in our report, the DEA needs to implement internal control procedures to create and maintain documentation of adoption requests that were denied.

Because we are not expressing an opinion on the DEA's internal control structure as a whole, this statement is intended solely for the information and use of the auditee. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

## APPENDIX I

### AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

#### Objective

The objective of this audit was to assess the design and implementation of the Drug Enforcement Administration's adoptive seizure process.

#### Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objective.

To assess the design and implementation of the DEA's adoptive seizure process, we identified applicable federal and state seizure laws, reviewed the DEA's internal controls for adoptive seizures, and interviewed officials at DEA Headquarters, the Department of Justice's Criminal Division, the DOJ Justice Management Division, and at the DEA Division office in Atlanta, Georgia, where we conducted detailed audit testing.<sup>40</sup> We also tested those internal controls that we considered significant within the context of our audit objective.

We selected the DEA Atlanta Division for testing because within the DEA's 21 field divisions the Atlanta Division processed the largest dollar value of adopted seized assets and testing at that location enabled us to make efficient use of time and cost resources.

We obtained the universe of adopted seizures from which we selected our sample by downloading from the DOJ's Consolidated Assets Tracking System (CATS) assets seized from October 1, 2000, through February 12, 2011, and adopted by the DEA for processing under federal forfeiture law. To compile the universe, we used two datasets with different date ranges for the seizure dates. One dataset contained the DEA's adoptive seized assets from FY 2007 through February 12, 2011 (the date we downloaded the data). In order to capture adoptive assets with older pending equitable sharing

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<sup>40</sup> We did not interview state and local law enforcement officers.

requests, we used a dataset with the DEA's adoptive seized assets from seizure date FY 2001 to February 12, 2011.<sup>41</sup>

To develop our sampling plan we performed descriptive statistical analysis on different data variables that included the DEA division offices, the current value of the seized assets, the number of equitable sharing requests, equitable sharing requests that were in a pending status, and the dates of different events associated with the adoptive seizures process.

Analysis of the adoptive seized assets indicated a wide variation between the status of requests for equitable sharing and the processing of different seized assets. To capture the maximum information on several aspects of the adoptive seizure process, we used multiple criteria to select our judgmental sample. We employed multiple tests to assess various aspects of the process from adoption to disbursement of the equitable sharing proceeds associated with the adoptive seizures. We used the following information-based criteria to select our sample of adoptive assets for testing.

- Adoptive seized assets with pending equitable sharing requests (FY 2001 through February 12, 2011),
- Adoptive seized assets with equitable sharing requests that were disbursed and equitable sharing requests that were rejected (FY 2007 through February 12, 2011),
- Adoptive seized assets with equitable sharing requests that were disbursed and equitable sharing requests that were still pending (FY 2007 through February 12, 2011), and
- Adoptive seized asset records with data anomalies such as the date the asset was adopted by the DEA is more than 30 days after the date the asset was seized (FY 2007 through February 12, 2011).

Using these criteria, we selected a preliminary sample of 82 seized assets (with 133 associated equitable sharing requests) adopted by the DEA Atlanta Division office in Atlanta, Georgia. We performed limited testing on 58 of the 82 sample assets and eliminated those 58 assets from our detailed audit testing. The results of our preliminary judgmental sample detailed

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<sup>41</sup> In October 2011, we obtained updated CATS records through the end of FY 2011 to capture 11 complete years of historical information on seizures and equitable sharing requests. The seizures and equitable sharing requests after February 12, 2011, were not part of our detailed audit testing.

testing showed that there were few exceptions for the compliance tests we conducted.

After reviewing the preliminary results of our detailed audit testing at the Atlanta Division office on 24 adoptive assets, we selected another judgmental sample from the remaining 15 offices within the DEA Atlanta Division. Our second judgmental sample included 39 adopted assets from FY 2007 through February 12, 2011. We selected these adoptive assets randomly from the remaining offices after allocating the sample proportional to the number of adoptive seizures at the respective offices. Our second judgmental sample of 39 adoptive assets had 62 requests for a share of the proceeds and covered DEA field offices in the states of Georgia, North Carolina, South Carolina, and Tennessee. Our sampling design and methodology does not permit us to project our audit test results to the universe of adoptive assets from which we selected our sample.

Overall, we conducted detailed audit testing on 63 assets seized by state and local law enforcement agencies and adopted by the DEA Atlanta Division office in Georgia, North Carolina, South Carolina, and Tennessee for processing through the DOJ Asset Forfeiture Program.

For each of the seizures sampled, we interviewed DEA officials and reviewed documentation from the DEA's seized asset files to determine the following:

- If required, did a state or local prosecutor decline to proceed with forfeiture under state law?
- Did the state or local law enforcement request DEA approval of the adoption within 30 days from the date the asset was seized?
- For adoption requests approved by DEA managers in field offices, was one of the sufficient probable cause factors, as defined in the DEA Agents Manual, documented in the police report or other documentation from the seizing agency?
- If the seizure was not based on sufficient probable cause for DEA managers in field offices to approve the adoption request form, was the request sent to DEA Headquarters legal staff for review and approval within 5 days from the date of the adoption request?
- Did the DEA give notice within 90 days from the date of seizure of its intent to proceed with forfeiture?

We also referred to the: (1) Guide to Equitable Sharing for State and Local Law Enforcement Agencies, (2) The Attorney General's Guidelines on Seized and Forfeited Property, (3) the DEA Agents Manual, (4) the Asset Forfeiture Policy Manual published by the DOJ and (5) the DEA's training material on adoptive seizures as needed to complete this audit.

REQUEST FOR ADOPTION OF STATE OR LOCAL SEIZURE FORM

Request for Adoption of State or Local Seizure

<p><b>Federal Use Only</b></p> <p>Asset Identifier:</p> <p>Agency Case Number:</p> <p>Seizure Date:</p> <p>Judicial District:</p> <p>Date Request Received:</p>
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- Request must be submitted to the federal investigative agency within 30 calendar days of state and local seizure date unless circumstances merit a waiver.
- Federal investigative agency shall review all requests for adoptions.
- U.S. Marshals Service must be consulted for purposes of preseizure planning prior to adoption

Name of Requesting State or local Agency:

Contact Person: \_\_\_\_\_ Telephone Number (\_\_\_\_)

Date of Seizure:

Date of Request:

Delay Requested in Processing: Yes ( ) Reason:

No ( )

Criminal Case:

State ( ) Case # \_\_\_\_\_ District Attorney Assigned:

Federal ( ) Case # \_\_\_\_\_ Assistant U.S. Attorney:

■ Was Property Seized Pursuant to State Warrant ■ State Forfeiture Action Initiated:

Yes ( ) Attach Copy No ( ) Yes ( ) No ( )

If yes, explain circumstances:

- Has a State or local prosecutor declined to proceed with forfeiture under State law?

Yes ( ) No ( )

- Please provide name of state or local prosecutor and declination date:

Name

Date

- Has another Federal Agency been contacted, and declined to proceed with this forfeiture under Federal law? Yes ( ) No ( )

- Have you attached copies of pertinent investigative or arrest reports and copies of any affidavits filed in support of a seizure warrant? Yes ( ) No ( )

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**To be Completed by Federal Investigative Agency**

- Recommend Adoption: [ ] Adoption is in accord with general and local policy.

- Decline Adoption: [ ] Reason for declination:

Investigative Agency Reviewing Official:

Signature

Date

Immediate Probable Cause Review needed if following factors are not present:

- seizure was based on judicial warrant
- arrest made in connection with seizure
- drugs or other contraband were seized from the person from whom the property was seized

Investigative Agency Headquarters Approval:

Signature

Date

## APPENDIX III

# THE DRUG ENFORCEMENT ADMINISTRATION'S RESPONSE TO THE DRAFT AUDIT REPORT



U. S. Department of Justice  
Drug Enforcement Administration

[www.dea.gov](http://www.dea.gov)

Washington, D.C. 20537

SEP 20 2012

### MEMORANDUM

TO: Ferris B. Polk  
Regional Audit Manager  
Atlanta Regional Audit Office  
Office of the Inspector General

FROM: Kevin M. Foley   
Deputy Chief Inspector  
Office of Inspections

SUBJECT: DEA's Response to the OIG's Draft Report: *Audit of the Drug Enforcement Administration's Adoptive Seizure Process and Status of Related Equitable Sharing Requests*

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ), Office of the Inspector General's (OIG) draft audit report, entitled: *Audit of the Drug Enforcement Administration's Adoptive Seizure Process and Status of Related Equitable Sharing Requests*. DEA acknowledges OIG's efforts in conducting a review of DEA's adoptive seizure process of forfeited assets under state law or under federal law through the Department's Asset Forfeiture Program. DEA is committed to coordination with federal, state, and local law enforcement officials on mutual drug enforcement efforts to address drug-related crime and help local law enforcement agencies confront drug trafficking to ensure that criminal organizations and individuals do not benefit from illegal activity.

DEA appreciates that the draft audit report indicates DEA's Adoptive Seizure Program generally complied with its internal controls for adoptive seizures. While DEA remains committed to process improvements and will work to implement the recommendations made by the OIG, the report identifies areas in which coordination and action from other components and the Department is needed.

DEA provides the following response to the OIG's recommendations:

**Recommendation 1. Implement procedures to create and maintain records of adoption requests that were denied. Those records could consist of emails between the DEA and the law enforcement agency requesting the adoption with all relevant details about the seizures and the reasons the adoption requests were denied.**

DEA concurs with the recommendation. DEA will inform all field offices to maintain records of instances in which adoptions were denied. These records will include the date of the request, the description of assets seized, and the reason for denial. DEA's Divisional Asset Removal Group Supervisors will be responsible for maintaining and submitting reports of adoption requests that were denied quarterly to the Office of Operations Management, Asset Forfeiture Section.

**Recommendation 2. Coordinate with the Criminal Division, AFMLS, to modify the Request for Adoption of State or Local Seizure form so that the question "Has a state or local prosecutor declined the case?" can only be answered "Yes," "No" or "Not Applicable," and add a line to capture the reason for the response.**

DEA concurs with the recommendation. DEA will coordinate with AFMLS to modify their "Request For Adoption Of State And Local Seizure Form" requesting that their question "has a state or local prosecutor declined to proceed with forfeiture under State law?" be modified to allow a "Yes", "No" or "Not Applicable" answer with an added line to capture the reason for the response.

**Recommendation 3. Coordinate with JMD's AFMS regarding the need for a system to: (1) identify equitable sharing requests pending for more than 6 months after forfeiture and disposal actions are completed, and (2) ensure that the appropriate DOJ component updates CATS as necessary for each pending request.**

DEA concurs with the recommendation. DEA will coordinate with AFMS in requesting CATS system enhancements to identify equitable sharing requests pending for more than 6 months after forfeiture, and that the disposal actions are completed/updated in CATS by the DOJ component as necessary.

Documentation detailing DEA's efforts to implement each of the recommendations noted in this report will be provided to the OIG on a quarterly basis, until all corrective actions have been completed. If you have any questions regarding DEA's response to the OIG's recommendations, please contact the Audit Liaison Team at (202) 307-8200.

## APPENDIX IV

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

The Office of the Inspector General provided a draft of this audit report to the Drug Enforcement Administration (DEA). The DEA response is incorporated in Appendix III of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

#### Recommendation Number:

1. **Resolved.** The DEA concurred with our recommendation to implement procedures to create and maintain records of adoption requests that were denied. The DEA stated in its response that it will inform all field offices to maintain records of instances in which adoptions were denied. These records will include the date of the request, the description of assets seized, and the reason for denial. DEA's Divisional Asset Removal Group Supervisors will be responsible for maintaining and submitting quarterly reports of adoption requests that were denied to the Office of Operations Management, Asset Forfeiture Section.

This recommendation can be closed when we receive evidence that the DEA implemented procedures to create and maintain records of adoption requests that were denied.

2. **Resolved.** The DEA concurred with our recommendation to coordinate with the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) to modify the Request for Adoption of State or Local Seizure form so that the question "Has a state or local prosecutor declined the case?" can only be answered "Yes," "No" or "Not Applicable," and add a line to capture the reason for the response. The DEA stated in its response that it will coordinate with the AFMLS to appropriately modify the Request For Adoption of State and Local Seizure form. As noted on page 17 of this report, an AFMLS official told us that, in the view of the AFMLS, a "Not Applicable" choice should not be provided because communication should take place with local prosecutors to ensure proper coordination. We believe that this point should be resolved through discussion between the DEA and AFMLS.

This recommendation can be closed when we receive evidence the DEA has coordinated with AFMLS to modify the Request for Adoption of State or Local Seizure form.

3. **Resolved.** The DEA concurred with our recommendation to coordinate with the Justice Management Division's Asset Forfeiture Management Staff (AFMS) regarding the need for a system to: (1) identify equitable sharing requests pending for more than 6 months after forfeiture and disposal actions are completed, and (2) ensure that the appropriate DOJ component updates the Consolidated Asset Tracking System (CATS) as necessary for each pending request. The DEA stated in its response that it will coordinate with AFMS in requesting needed CATS enhancements.

This recommendation can be closed when we receive evidence the DEA has coordinated with AFMS to identify long-pending requests and CATS enhancements.