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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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## **Seized Assets Program**

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## **Division of State Police**

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# Executive Summary

## Purpose

To determine whether the New York State Division of State Police properly accounts for seized assets and whether it obtains the requested share from forfeited assets. This audit covers the period of April 1, 2011 through September 19, 2013.

## Background

The mission of the New York State Division of State Police (Division) is to serve, protect, and defend the people of New York State while preserving their rights and dignity. During the course of an investigation or an arrest, law enforcement agencies may seize assets, including cash, personal property, real property, vehicles, or other items that are suspected of being used to conduct criminal activity, are the proceeds from a criminal activity, or were purchased with the proceeds of a criminal activity. For asset seizure cases in which the Division is involved, its Asset Seizure Unit (ASU) is responsible for ensuring proper processing and tracking of asset seizure cases, even when another law enforcement agency takes custody of the seized assets. If a judicial or administrative process determines the seized assets should be forfeited, proper processing and tracking by the Division should ensure that it receives the requested share of any forfeitures. Assets are considered in pending status until a forfeiture determination is made. As of September 2013, the Division was tracking 5,047 pending seized assets valued at \$2.012 billion. Funds received from forfeited assets are to be used to enhance law enforcement efforts.

## Key Findings

- The Division did not properly account for or track seized assets. Specifically, the Division did not maintain its Asset Seizure Tracking System database with complete and/or updated information, including case disposition status, number and value of assets, and amount of proceeds received.
- Of 107 seized assets we sampled pending disposition per the Division's control records, we determined that 56 assets were actually closed. The 56 forfeited assets were valued at \$992.7 million, and the Division received only \$12.2 million (or less than 1.25 percent of the amount seized). Generally, the Division does not receive explanations of distributions for cases it does not administer, nor does it question the amounts it receives.
- For 13 assets, the difference between what the Division expected to receive and what it actually received totaled about \$1.4 million. In one instance, the Division received \$840,000 less than it anticipated.
- The Division had custody of more than \$700,000 in seized assets classified as abandoned. When rightful owners cannot be located, the Division should turn the assets over to the Office of the State Comptroller's Office of Unclaimed Funds.
- Individual troops did not always report asset seizures to Division Headquarters. During our site visits, we identified 16 cash seizures totaling \$39,967 and three vehicles that were not reported to Division Headquarters.

## Key Recommendations

- Ensure the Division obtains the proper share of any proceeds from forfeited assets by:
  - Reconciling the amounts received with the amounts requested by obtaining and

- reviewing the calculation used to determine the Division's share. Question the amount received when the difference is greater than a pre-established variance;
- Obtaining an accounting of proceeds that were distributed to the Special Narcotics Prosecutor in accordance with the Task Force Agreement; and
- Periodically following up on pending cases to determine their status.
- Ensure Division records accurately reflect up-to-date information about all seized assets by:
  - Requiring that all seized assets be reported to Division Headquarters, even those in the custody of a local or Federal law enforcement agency;
  - Routinely providing reports of all pending seized assets to Division troops for them to update with any status changes; and
  - Updating the seized asset tracking database timely, including when: notifications of dispositions are made; an asset should be returned to its rightful owner; or assets should be turned over to the Office of the State Comptroller's Office of Unclaimed Funds.

### **Other Related Audit/Report of Interest**

[Division of State Police: Interest Earned on Seized Assets \(2009-S-57\)](#)

**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

December 23, 2014

Mr. Joseph D'Amico  
Superintendent  
New York State Division of State Police  
1220 Washington Avenue, Building 22  
Albany, NY 12226-2252

Dear Superintendent D'Amico:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By doing so, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Division of State Police entitled *Seized Assets Program*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

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## Background

The New York State Division of State Police (Division) has 11 troops throughout New York as well as its main Headquarters in Albany, which provides administrative and support services to the troops. It is the mission of the Division to serve, protect, and defend the people while preserving the rights and dignity of all.

During the course of an investigation or an arrest, law enforcement agencies may seize assets. Seized assets may include cash, personal property, real property, vehicles, or other items that are suspected as being used to conduct criminal activity, are the proceeds from a criminal activity, or were purchased with the proceeds of a criminal activity. The Division's Asset Seizure Unit (ASU) is responsible for ensuring proper processing and tracking of asset seizure cases, in accordance with Federal, State, and local laws regarding seizure and subsequent forfeiture of assets.

The Division may work with other law enforcement entities during the course of an investigation, including Federal agencies, local authorities, and multi-agency task forces. The law enforcement agencies present at the time of the seizure or otherwise assisting with the case determine who should retain custody of any seized assets. Whether that is the Division or not, the seized assets should be documented and reported to the Division's ASU and entered into the Division's Asset Seizure Tracking System database (database).

A seized asset cannot be used immediately by the law enforcement agency that has custody of it; instead, the asset must be kept secure until a court orders it forfeited or returned to its rightful owner. In the event a seized asset is forfeited, the participating law enforcement entities share the net proceeds from the sale after certain case-related expenses are paid. The proceeds are distributed based on local, State, and Federal laws and guidelines, as well as any formal agreements.

Between April 2011 and August 2013, the Division received \$19.4 million in proceeds from forfeited seized assets, including \$15.2 million for assets seized prior to April 2011. As of September 2013, the Division's database included 1,788 assets seized between April 2011 and August 2013 that were still pending court dispositions. These seized assets included money, vehicles, and other items, as shown in the following table:

<b>Seizures Made April 2011 to August 2013, Pending as of 9/19/2013</b>		
<b>Type of Asset</b>	<b>Number</b>	<b>Value</b>
Currency	1,408	\$1,225,373,232
Vehicles	304	1,180,679
Real Property	49	969,417
Personal Property	22	815,413
Electronic Equipment	2	1,000
Other	3	56,362
<b>Totals</b>	<b>1,788</b>	<b>\$1,228,396,103</b>

## Audit Findings and Recommendations

The Division did not properly account for or track seized assets. Specifically, the Division did not maintain its Asset Seizure Tracking System database with complete and/or updated information, including case disposition status, number and value of assets, and amount of proceeds received. Without proper tracking and accounting of seized asset cases, the Division cannot readily or accurately determine the number and value of seized assets in its own and other agencies' custody, the amount of proceeds due through court or administrative dispositions, and the amount of proceeds received. As a result, there is limited assurance that the Division receives its correct share of proceeds from forfeited assets.

Based on our judgmental sample of seized assets, we found 56 assets – with a total value of about \$992.7 million – that were misclassified in the database as pending disposition when, in fact, the cases had been closed. Furthermore, the Division had already received proceeds from forfeited assets in these cases totaling \$12.2 million. While the Division did have records of receipts from forfeitures, the accounting for individual items on the Division's database was not complete.

The Division continues to hold over \$700,000 in seized assets that it considers abandoned. Division officials should take actions to return assets that were not forfeited. Further, when the rightful owners of the assets cannot be located, the Division should turn them over to the Office of the State Comptroller's Office of Unclaimed Funds (OUF).

Also, when individual Division troops seize assets that will be held by local entities, these seizures are not always reported to the ASU for proper recording in the database. During visits to troops and to local District Attorney Offices, we identified 19 seized assets that were not in the database. We provided the information about these seized assets to the ASU so that the Division's database could be updated.

### Tracking and Accounting for Seized Assets

The Division has not adequately tracked the current status of seized assets. As a result, it cannot readily determine whether seized assets have been forfeited or should be returned to the rightful owner. As assets are seized, some assets remain in the Division's possession for asset administration and safekeeping, while others are transferred to another law enforcement agency, such as the Federal Drug Enforcement Administration (DEA) or a State, county, or local prosecutor. For example, the Division participates jointly in many Federal investigations, and the lead Federal agency usually takes custody of any assets seized in those cases. Even if the Division does not retain custody of the seized asset, the Division is still eligible for a share of the proceeds when a court or Federal administrative office determines that the seized asset should be forfeited.

A pending seized asset is an asset for which there was no forfeiture decision. As of September 2013, the Division had 5,047 pending seized assets valued at \$2.012 billion in its database, some of which go back more than two decades. We sampled only assets seized since September 2003, yielding a total population of 3,923 seized assets. We further broke this population into two



groups: 1,788 pending assets valued at \$1.23 billion (seized between April 2011 and September 2013) and 2,135 aged pending assets valued at \$707.7 million (seized between September 2003 and March 2011). We drew a separate judgmental sample from each group.

For each pending or aged pending seized asset in our sample, we determined its status as of January 2014. For those that had been closed (i.e., a forfeiture decision was already made), we reviewed the documentation to ensure the money was distributed (if forfeited) to law enforcement agencies or returned to the rightful owner (if not forfeited). We further tested 11 seized assets (six from the pending sample and five from the aged pending sample) to verify the Division's database correctly indicated the agency in possession of the assets.

Of the 107 pending seized assets in the two samples, 51 (valued at \$533.0 million) were pending disposition, and 56 (valued at \$992.7 million) were closed per court or administrative disposition. The Division had received \$12.2 million total for its share of the proceeds from the closed cases, or less than 1.25 percent of the assets' total value. Proceeds from the forfeited assets are to be used to enhance law enforcement efforts. Therefore, Division officials should ensure that the correct amounts are received.

Ten of the closed seized assets (valued at \$2.1 million) were from seizures that involved the New York Drug Enforcement Task Force (Task Force). For these ten items, the Division's share could have been about \$592,000. However, as of January 2014, Division officials were unaware that forfeiture decisions were previously made for these assets. Under the terms of the Task Force agreement, the New York City Special Narcotics Prosecutor is reimbursed \$1.4 million each year for its expenses. Until those expenses are reimbursed, none of the other participants in the Task Force (including the Division) will share in the proceeds from the forfeited assets. The Division needs to verify that proceeds were distributed in accordance with the Task Force agreement for forfeited assets, and then update its database accordingly to show that these assets are closed.

Of the 11 seized assets selected for physical observation, the six from the pending sample were still open, and the five from the aged pending sample were in fact closed. The six that were still pending were in the location noted in the Division's database. For the five that were closed, one asset was returned to the owner, and four were forfeited with the Division receiving its shares of the proceeds. One of the four had been closed in 2008, but was still classified on Division records as pending, although the asset had been sold.

During our site visits to other law enforcement agencies and Division troops, we obtained information about 81 seized assets resulting from law enforcement actions involving the Division. Of these, only 62 appeared in the Division's database, and the other 19 items (16 cash seizures totaling \$39,967 and three vehicles) had not been reported to the ASU's Seized Assets Coordinator (Coordinator). Thus, these items were not posted to the database, and therefore, no case files were started for them. We shared pertinent information on these assets with the Division so that its records could be updated.

Responsibility for tracking seized assets (including changes in their status) is placed with the Coordinator at Headquarters. However, the Coordinator does not routinely inquire about the



status of pending seized assets. Instead, the Coordinator relies on notification from the entity with custody and from the individual Division troops. This occurs, in part, because the Coordinator handles not only seized assets, but other duties as well. Although Division troops notify the Coordinator about seized assets that remain in the Division's custody, they do not always notify the Coordinator about seized assets that are transferred to another law enforcement agency. Further, when Division troops are notified that a seized asset has been forfeited or returned to its rightful owner, they do not routinely share that notification with the Coordinator.

Similarly, other law enforcement agencies do not routinely notify the Coordinator about status changes for seized assets in their custody. For example, when a seized asset held by the Federal government has been forfeited, the Division is not notified about the forfeiture. Instead, Division staff becomes aware of the forfeiture from bank statement reviews indicating the receipt of money from the Federal government. The Coordinator or the Administrative Secretary (Secretary) then has to research the deposit to determine which seized asset the money relates to. If the Division does not receive proceeds from the forfeiture, the Coordinator has no way to know the case has been closed, and therefore, to update the database to indicate such closure.

## **Ensuring Proceeds Due Are Received**

The amount the Division receives from a forfeited asset depends on which other law enforcement agencies were involved, and may be governed by Federal law, State law, local ordinance, or a memorandum of understanding or other agreement. For example, when a case involves a Federal agency, the Federal government takes 20 percent of the total, and then distributes the remaining 80 percent among all the agencies involved (including any Federal agencies such as the Drug Enforcement Administration, Alcohol, Tobacco and Firearms, and Immigration and Customs Enforcement). Claimants, including the Division, must file a claim form shortly after the seizure indicating what resources were invested in the investigation, and the investment of investigative resources is a major factor in Federal allocation determinations. Regardless of the allocation formula used, the allocation is based on the net proceeds of the asset after various case-related expenses have been paid. Also, we determined the Division had a net return rate of less than 1.25 percent on the \$992.7 million in assets related to the cases we found were closed.

To determine whether the Division had received all the proceeds it was due, we selected a random sample of 35 seized assets where the Division received money (drawn from a population of 1,072 checks totaling \$19.4 million) and a random sample of 10 seized assets where the Division did not receive money (drawn from a population of 65 seized assets marked as no longer pending in the database, valued at \$770,709). When the Division does not receive any money, it sometimes receives a non-monetary asset such as a motor vehicle, but most often it receives nothing at all.

The Division received a total of \$5.5 million for the 35 seized assets (with proceeds) in our sample. For 13 of these assets, the difference between what the Division expected to receive and what it actually received was more than \$1,000 (per individual asset) and totaled about \$1.4 million. In one instance, the Division received \$840,000 less than it anticipated. Nevertheless, Division officials did not request explanations of the shortfalls from the law enforcement agencies responsible for the distributions. Thus, officials had no detailed explanations for the variances.

We met with Federal officials and they showed us how the amounts were calculated, including the deductions of expenses from gross proceeds and the actual percentages used to allocate the Division's share. Although the calculations were mathematically correct, the basis for allocation percentages was unclear.

It is in the Division's interest to ensure that allocation percentages are appropriate prior to the distribution of proceeds from forfeited assets. Although Federal officials sent e-mail reports of forfeitures to the Division in the past, they no longer did so at the time of our audit. Thus, Division staff searched the Federal system for the current status of its cases, which can often be time consuming. Consequently, the Division should develop and implement a more proactive and efficient system for monitoring the status of seized assets and ensuring that it obtains the requested share of forfeited assets when they are allocated among multiple law enforcement agencies.

In addition, we also noted that the Secretary updated the database for the ten sampled seized assets for which the Division did not receive money. In several of these instances, the Division received motor vehicles. However, although the Secretary processed the checks received between April 2011 and September 2013 and compiled a list of the associated seized assets, the receipt of these assets was not posted to the seized asset database. Without such information, the Division cannot readily identify items that remain outstanding or instances wherein it received less than was expected.

## **Returning Non-Forfeited Assets**

When seized assets are not forfeited, they are ordered to be returned to their owner. For assets in its possession, the Division is responsible for identifying the rightful owner and returning the assets. If property has remained unclaimed by the owner, it is generally considered to become abandoned property and subject to the State's Abandoned Property Law (Law). The Division is not subject to the mandatory provisions of the Law, but could voluntarily turn items of intangible personal property (cash) over to the OUF. To do so, the Division would have to demonstrate that it had conducted a diligent search for the rightful owner and that the property remained unclaimed after two years.

As of October 2013, the Division had in custody 205 seized assets valued at over \$700,000 that were considered abandoned. We selected a judgmental sample of 20 of these assets valued at \$142,479. We reviewed the files for these 20 items and determined that in ten cases a court determined the assets should be returned to their rightful owners. Of these ten, the Division had returned only one item. The remaining nine items (valued at a total of \$30,469) should also be returned to their rightful owners. We found evidence that the Division attempted to contact the owners of two of these nine items, although the attempts were unsuccessful. Moreover, the Division had not requested the OUF to accept custody of these two items.

The Division has no formal procedures to identify and notify the rightful owner or to handle abandoned property (including a written request for voluntary transfer to the OUF). Thus, the Division continues to have custody of property that should have been returned to their rightful

owners or the OUF, when the Division cannot locate the owners.

## **Administering the Seized Asset Bank Account**

The Division's Financial Administration unit maintains a separate bank account, known as the Seized Asset Account (Account), for seized cash. Financial Administration is responsible for recording deposits in the Account's check register and reconciling the Account's monthly bank statements. The Account is in the sole custody of the Division, as the funds are not considered State funds. Use of the Account helps to ensure that seized assets are not comingled with other Division funds, since the Division may not use seized money until a court determines that it should be forfeited. When investigators from a Division troop seize cash, they must deposit the money into the Account and forward the deposit slips to the Coordinator at Headquarters, along with other paperwork necessary to prepare a file on the seized funds. The troops are also expected to maintain a case file on each seizure. The Secretary records the seized funds on the database and then forwards the deposit slip to Financial Administration to post the deposit to the Account.

When Division employees receive and deposit seized asset cash, they should notify the employee who maintains the cash receipts journal for the Account. Cash receipts should be recorded and deposited timely. Further, on a monthly basis, Division staff should reconcile the bank deposits with the receipts recorded in the cash receipts journal. However, this does not always happen. We reviewed three months of bank statements with a total of 33 deposits, and found Financial Administration was missing deposit slips for three deposits for \$2,763, although the amounts in question were posted to the Account.

Division investigators do not always submit the deposit slips to the Coordinator. Financial Administration must then contact the Secretary or the Coordinator to track down the missing deposit slip, which sometimes involves contacting the Division investigator who made the deposit in the first place. Without verifying deposits, the Division does not know what should have been deposited to the Account, and it cannot perform a proper bank reconciliation.

## **Recommendations**

1. Ensure the Asset Seizure Tracking System is regularly updated for changes in status including timely recording of the amount received for forfeited assets.
2. Ensure the Division obtains the requested share of any proceeds from forfeited assets by:
  - Reconciling the amounts received with the amounts requested by obtaining and reviewing the calculation used to determine the Division's share. Question the amount received when the difference is greater than a pre-established variance;
  - Obtaining an accounting of proceeds that were distributed to the Special Narcotics Prosecutor in accordance with the Task Force Agreement and appropriately change the status of these seized assets to "closed;" and
  - Following up on pending cases to determine whether they are closed.

3. Ensure Division records accurately reflect up-to-date information about all seized assets, including, but not limited to:
  - Requiring that all seized assets be reported to Division Headquarters, even those in the custody of a local or Federal law enforcement agency;
  - Routinely providing reports of all pending seized assets to Division troops for them to update with any status changes;
  - Updating the seized asset tracking database timely, including when: notifications of dispositions are made; an asset should be returned to its rightful owner; or assets should be turned over to the Office of the State Comptroller's Office of Unclaimed Funds; and
  - Developing formal policies and procedures for returning items, including requiring tracking of all efforts to return property that is not forfeited.
4. Review all pending cases in the custody of another law enforcement agency periodically (and at least once a year) to determine the current status of a case and to discuss how distributions of seized assets will be calculated.
5. Ensure Financial Administration receives and records deposit information in the Account's check register timely.
6. Complete and document the reconciliation between the deposits made by the Division and the deposits on the monthly bank statement. Follow-up on any discrepancies with the Seized Asset Coordinator.

## Audit Scope and Methodology

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Our audit determined whether the Division properly accounts for seized assets and whether it obtains the requested share from forfeited assets. Our audit covered the period April 1, 2011 through September 19, 2013.

To achieve our objectives, we reviewed State, local, and Federal laws related to seized assets, as well as multi-agency task force agreements in which the Division participates. We interviewed Division administrative and finance officials and Troop Investigators to obtain an understanding of the internal controls regarding the asset seizure and forfeiture process. We also met with four District Attorneys who had custody of seized assets where the Division had been involved in the seizure.

For the period April 1, 2011 through August 31, 2013, we obtained a download of seized assets from the Division's Asset Seizure Tracking System database and a list of all payments received for its share of the proceeds from forfeited seized assets. We verified the completeness and accuracy of both the Asset Seizure Tracking System and the list of payments.

We tested 205 transactions drawn from six different populations. Our samples included 62 current and 45 aged pending seized items, 35 forfeited currency items, 10 closed or dropped items, 20

abandoned items, and 33 deposits to the seized asset sole custody account. For each transaction, we verified that the database was accurate, determined if appropriate actions were taken and documented, and verified the existence of tangible non-monetary assets and that currency was deposited into the sole custody account.

We conducted our 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Authority

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The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

## Reporting Requirements

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We provided a draft copy of this report to Division officials for their review and formal comment. We considered the Division's comments in preparing this final report and have attached them in their entirety to the end of it. In their response, Division officials generally concurred with our recommendations and indicated that they would take certain actions to implement them.

Within 90 days after the release of this report, as required by Section 170 of the Executive Law, the Superintendent of the Division of State Police shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

## Contributors to This Report

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### Vision

A team of accountability experts respected for providing information that decision makers value.

### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

# Agency Comments



JOSEPH A. D'AMICO  
SUPERINTENDENT

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October 27, 2014

Ms. Carmen Maldonado  
Audit Director  
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Division of State Government Accountability  
123 William Street – 21<sup>st</sup> Floor  
New York, NY 10038

We have reviewed the draft audit report 2013-S-46 regarding the Division of State Police's Seized Assets Program. Generally, we concur with the findings and will take the following actions to implement the audit recommendations.

**Recommendation 1: Ensure the Asset Seizure Tracking System is regularly updated for changes in status including timely recording of the amount received for forfeited assets.**

For forfeited assets as a result of State courts disposition, the Division of State Police (Division) has and will continue to regularly update the Asset Seizure Tracking System (ASTS). For forfeited assets as a result of Federal courts disposition, the ASTS will be regularly updated for cases reported from October 2014 and thereafter. Cases closed prior to October 2014 will be reviewed, time permitting due to limited staff resources, and updates will be made to ASTS. In August of 2013, Division was able to obtain access to the United States Department of Justice (DOJ) Consolidated Asset Tracking System (CATS) enabling more efficient monitor of Federal dispositions.

**Recommendation 2: Ensure the Division obtains the requested share of any proceeds from forfeited assets by:**

- **Reconciling the amounts received with the amounts requested by obtaining and reviewing the calculation used to determine the Division's share. Question the amount received when the difference is greater than a pre-established variance;**

Division staff have been and will continue to reconcile the percentages received with the expected percentage of 41 percent for state cases. If the Division's distribution is less than 41 percent, then Division staff request an explanation from the applicable DAs office.



The Division will request the calculations for all federal distributions but is not confident that the federal agencies will provide such information to the Division. In the 2013-14 State fiscal year, there were 64 distributions for State cases and 425 distributions for federal cases. It is unlikely the various involved federal agencies will be willing to provide the calculations for so many cases, especially when considering that regardless of any MOUs for equitable sharing, federal agencies are not required to share forfeited property with participating state and local enforcement agencies.

In the event federal agencies will not share their calculations with the Division for every distribution, Division staff will request the calculations used to determine the Division's share of proceeds for high value seizures/forfeitures and for large variances between requested and received percentages when the Division does not know of a reason for the variance. Reasons for the variances include payments to outside agencies that assisted in the case, expenses such as payments to informants and incomplete information at the time the request is made. Requests for percentages of proceeds are required to be made within 60 days of the seizure. However, the cases are not resolved at this point in time so the requested percentage is an estimate. For example, for one federal case, the Division requested a 50 percent share of the proceeds based on direction from the U.S. Immigration & Customs Enforcement which believed the Division would have half of the work hours on the case. However a final accounting of the work hours showed that the Division worked around 36 percent of the total hours for the case and was paid 36 percent of the forfeited amount. The 14 percent or \$840,000 variance for this case can be explained by the difference between the Division's estimated and actual work hours for the case.

Effective January 2015, state and local law enforcement agencies have 45 days following the forfeiture (rather than within 60 days of the seizure) to request a share of proceeds under the DOJ Equitable Sharing Program. This extended timeframe will allow state and local law enforcement agencies to fully document all of their contributions to the seizure and forfeiture of the asset. In addition, state and local law enforcement agencies will no longer be able to request a percentage of proceeds under the DOJ Equitable Sharing Program but pre-arranged percentages pursuant to an MOU will still be honored. This means that for DOJ cases that are not pursuant to an MOU, the Division will no longer be able to compare its requested percentage to the actual percentage of proceeds received. However, the Division can compare the percentage it expects to receive to the percentage it actually receives.

- **Obtaining an accounting of proceeds that were distributed to the Special Narcotics Prosecutor in accordance with the Task Force Agreement and appropriately change the status of these seized assets to "closed"; and**

The Division will ask the Special Narcotics Prosecutor (SNP) for amounts withheld from the Division by case number which are used to pay the SNP for its expenses. The Division will then use this information to close out these cases. However, the Division does not believe it has the authority to ask the SNP for amounts which were withheld from other agencies and used to reimburse the SNP for its expenses. It is the responsibility of the U.S. Department of Treasury to ensure that the SNP is only being reimbursed for amounts it should be in accordance with the MOU.

- **Following up on pending cases to determine if they are closed.**

See the response to Recommendation 3. Also, for federal DOJ cases, the Division will become aware of which cases are still pending as it updates the Division's ASTS for closed cases by running queries on CATS.

**Recommendation 3: Ensure Division records accurately reflect up-to-date information about all seized assets, including but not limited to:**

- Requiring that all seized assets be reported to Division Headquarters, even those in the custody of a local or Federal law enforcement agency;
- Routinely providing reports of all pending seized assets to Division Troops for them to update with any status changes;
- Updating the seized asset tracking database timely, including when: notification of dispositions are made; an asset should be returned to its rightful owner; or assets should be turned over to the State Comptroller's Office of Unclaimed Funds; and
- Developing formal policies and procedures for returning items, including requiring tracking of all efforts to return property that is not forfeited.

Division staff will ensure Division records accurately reflect up-to-date information about all seized assets. To accomplish this, all seized assets will be required to be reported to Division Headquarters, including those in the custody of a local or Federal law enforcement agency. Reports of all pending seized assets will be routinely provided to Division Troops for them to update with any status changes. The ASTS will be updated timely, including when notifications of dispositions are made and when an asset should be returned to its rightful owner. The only exception to this as noted in the response to the first recommendation is that updates will be made to the ASTS for federal cases which closed prior to October 2014 as time permits. The Division's Counsel's office is exploring the Division's options for seized assets when owners cannot be located. Formal policies and procedures are being developed for returning assets including the tracking and documenting of all efforts to return property that is not forfeited.

**Recommendation 4: Review all pending cases in the custody of another law enforcement agency periodically (and at least once a year) to determine the current status of a case and to discuss how distributions of seized assets will be calculated.**

The Division does not believe federal agencies will engage in dialogue with the Division about how distributions of proceeds will be made for pending cases for the following reasons:

- There are currently 746 pending DOJ cases and neither the Division nor the federal agencies have the time to discuss all of these pending cases.
- For pending cases in which a judge ultimately decides that the asset should be returned to its rightful owner, such discussions would be fruitless.
- Determinations on how proceeds will be distributed are not made until all the work on a case is done and it is closed.
- Regardless of any MOUs for equitable sharing, federal agencies are not required to share forfeited property with participating state and local enforcement agencies and, therefore, federal agencies are not required to share their plans for distributing forfeited assets.

As stated in the response to Recommendation 2, for federal cases, the Division will request the calculation used to determine the Division's share of proceeds for large cases and large variances when the Division knows of no reason for the variance.

**Recommendation 5: Ensure Financial Administration receives and records deposit information in the Account's check register timely.**

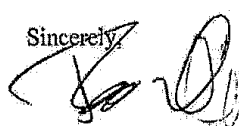
All agency staff involved with the submission of deposit slips and the recording of deposit information in the check register for the Key Bank account have been instructed that these transactions must be processed in a timely manner.

**Recommendation 6: Complete and document the reconciliation between the deposits made by the Division and the deposits on the monthly bank statement. Follow up on any discrepancies with the Seized Asset Coordinator.**

Division staff assigned to perform the monthly bank statement reconciliation have been instructed that a cross-checking must be done between every deposit transaction listed on the statement and the account register and supporting deposit slip. Each verified deposit must be clearly marked on the statement and register. Follow up with be done immediately when discrepancies are identified with an email to the Seized Asset Coordinator. The email will remain active until the discrepancy is resolved.

If you have any questions or require any additional information, please contact me at (518) 457-9455 or [Terence.Omara@troopers.ny.gov](mailto:Terence.Omara@troopers.ny.gov).

Sincerely,



Terence P. O'Mara  
Assistant Deputy Superintendent