Department of Law and Public Safety
Attorney General’s Law Enforcement Forfeiture Account

July 1, 2008 to January 31, 2010

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State Auditor
New Jersey State Legislature

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The Honorable Stephen M. Sweeney
President of the Senate

The Honorable Sheila Y. Oliver
Speaker of the General Assembly

Mr. Albert Porroni
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of Law and Public Safety, Attorney General’s Law Enforcement Forfeiture Account for the period of July 1, 2008 to January 31, 2010. If you would like a personal briefing, please call me at (609) 292-3700.

Stephen M. Eells
State Auditor
October 28, 2010
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Department of Law and Public Safety
Attorney General's Law Enforcement Forfeiture Account

Scope

We have completed an audit of the Department of Law and Public Safety, Attorney General’s Law Enforcement Forfeiture Account for the period July 1, 2008 to January 31, 2010. Our audit included financial activities accounted for in the state’s General Fund and the cash management accounts (CMA) within the state’s Cash Management Fund.

Fiscal year 2009 expenditures were $3.8 million. These funds support law enforcement programs chiefly within the Division of Criminal Justice and the Division of State Police. Fiscal year 2009 revenues were $2.3 million. Revenues are derived from forfeitures prosecuted by the Division of Criminal Justice, forfeiture shares received from other prosecuting agencies, and interest earnings on seizures while cases are held for litigation. The primary responsibilities of the program are to provide custodianship and financial accountability over seized proceeds “held-in-trust”, and to disburse the assets resulting from forfeiture actions in accordance with applicable laws, directives, court orders, and standard operating procedures.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the department’s program, were reasonable, and were recorded properly in the accounting systems. We also tested for resolution of the significant issues noted in our prior report dated May 29, 2003.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. In preparation for our testing, we studied legislation,
preparation for our testing, we studied legislation, administrative codes, circular letters promulgated by the Department of the Treasury, federal forfeiture guidelines, and standard operating procedures of the program. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of financial transactions. We also read the budget messages, reviewed financial trends, and interviewed department personnel to obtain an understanding of the program and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample populations were sorted and transactions were judgmentally selected for testing.

To ascertain the status of findings included in our prior report, we identified corrective action taken, if any, by the department and tested transactions to determine if the corrective action was effective.

**Conclusions**

We found that the financial transactions included in our testing were related to the program, were reasonable, and were properly recorded in the accounting systems. In making these determinations, we noted certain accounting inefficiencies, inadequate financial reporting, and discrepancies over the seized and forfeited funds meriting management’s attention. We also found that the department has not resolved the significant issues noted in our prior report relating to forfeited revenue recognition, the transfer of interest income, and proper closing of old outstanding seized cases. These issues have been restated in this report.
Forfeiture Program Financial Activity

The financial accounting over seized and forfeited funds is an inefficient and convoluted process that needs to be enhanced. Funds seized by state law enforcement agencies are first deposited and transferred into two temporary clearing accounts, and then transferred to separate cash management accounts (CMA) where they accumulate interest. The department has been maintaining its subsidiary recordkeeping for these funds by utilizing various electronic spreadsheets. The disposition of the principal amounts seized when a case is closed include returning it to the defendant, sharing it with other law enforcement agencies, or depositing forfeited proceeds into the Attorney General’s Law Enforcement Forfeiture Account (AGLEFA). Interest earnings on all CMAs are retained by the state and are transferred into the Asset Maintenance Account (AMA). The AGLEFA, AMA, and six federal accounts partially fund various law enforcement programs including witness protection, confidential investigations, and enhancing the computer-aided dispatching system. An additional program supported by five percent of forfeited funds is the Hepatitis Inoculation Program administered by the Department of Health and Senior Services. Our review of these accounts and the state’s General Fund accounts revealed the following discrepancies and internal control weaknesses.

- As of January 31, 2010, seized funds were $23 million, and federal forfeited and state forfeited fund balances available for spending were $2.4 million and $3.8 million, respectively (see following chart). The reporting of these funds is not financially transparent because they are recorded in the state’s Investment Trust Fund which consolidates investment pools from municipalities, counties, and public authorities. Furthermore, the aggregate
seized and forfeited balances are not included in the semi-annual disclosure reports to the State Legislature and the Department of the Treasury; only financial activity for the period is required. Disclosure of the additional balances would enhance transparency.

<table>
<thead>
<tr>
<th>Cash Balances</th>
<th>Number of CMAs</th>
<th>January 31, 2010 Balances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forfeited Funds:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>6</td>
<td>$3.8 million</td>
</tr>
<tr>
<td>Federal</td>
<td>6</td>
<td>$2.4 million</td>
</tr>
<tr>
<td>Seized Funds:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trust Liability</td>
<td>270</td>
<td>$23.1 million</td>
</tr>
<tr>
<td>Total</td>
<td>282</td>
<td>$29.3 million</td>
</tr>
</tbody>
</table>

- Forfeited revenues and interest income are not recognized properly in the state’s accounting system in accordance with generally accepted accounting principles. Per Statement No. 33 of the Government Accounting Standards Board, revenue should be recognized at the time of obtaining forfeiture judgment. Forfeited funds and interest are deposited as revenue when law enforcement spending projects are approved by the Attorney General instead of recognizing revenue when the seized funds are forfeited per a court judgment. Our prior audit report cited $3 million in prior fiscal years’ revenue was deferred and not recognized timely in the state’s financial statements. As of January 31, 2010, $6.2 million has not been recognized as revenue. We also noted that from January 2009 to November 2009, three transactions totaling $260,000 were improperly created as revenue refunds and deposited back into the AGLEFA account.

- The department does not reconcile internal transfers between CMAs or CMA balances to open cases. We prepared our own
reconciliations of various CMA accounts and discovered a surplus of $184,000. This is made up of a surplus of seized funds totaling $107,000 in the two clearing bank accounts and a surplus of $77,000 in the restitution account. Except for in-transit items, all clearing accounts should have zero balances. The restitution account is a holding account where deposits are resubmitted to victims or claimants. The restitution account is no longer active. The last financial transaction was March 2000.

- There are no follow-up procedures between assigned attorneys and fiscal personnel to resolve old outstanding criminal cases with seized funds. Fourteen of the twenty-five CMA cases tested did not have court documentation on file to determine the proper disposition of these dormant funds. We also calculated $140,000 in accumulated interest income that was not transferred to the Asset Maintenance Account. In addition, the general small money account has approximately 150 seized cases totaling $80,000 that are over ten years old and have not been resolved. This account was recently reconciled for the first time by the department.

- Old seized cases, where the claimants could not be found, have not been escheated or reported to the State Treasury annually as required by state regulations. In January 2010, the department, for the first time, escheated $36,000 representing 15 cases.

**Recommendation**

The department should improve financial transparency, efficiency, and internal controls over seized and forfeited funds by adopting the following recommendations.

- The cash management accounts (CMA) and the clearing bank accounts should be consolidated and accounted for in a trustee
capacity in the state’s accounting system. Semi-annual disclosure reports should be enhanced by including aggregate seized and forfeited balances.

- Forfeited revenue earned by the state should be recognized at the time of obtaining a forfeiture judgment in accordance with generally accepted accounting principles.

- All individual open cases should be periodically reconciled with the state’s accounting system. The department should determine the disposition of the $184,000 surplus from the clearing and restitution accounts.

- Follow-up procedures should be developed to resolve old outstanding cases timely.

- Unclaimed funds should be escheated annually.
October 25, 2010

John J. Termyna, Assistant State Auditor
Office of Legislative Services
Office of the State Auditor
125 S. Warren Street
P. O. Box 067
Trenton, New Jersey 08625-0067

Dear Mr. Termyna:


Thank you for the opportunity to provide this response to the audit report.

Very truly yours,

Paula T. Dow
Attorney General

PTD/pgb
Attachment
c: Phillip Kwon, First Assistant Attorney General
Carolyn Murray, Counsel to the Attorney General
Daniel W. Foster, Administrator
BGO989
Attorney General’s Law Enforcement Forfeiture Account - Audit Response

Finding:

The reporting of these funds is not financially transparent because they are recorded in the state’s Investment Trust Fund which consolidates investment pools from municipalities, counties and public authorities. Furthermore, the aggregate seized and forfeited balance are not included in the semi-annual disclosure reports to the Legislature and the Department of Treasury; only financial activity for the period is required. Disclosure of the additional balances would enhance transparency.

Recommendation:

The cash management accounts (CMA) and the clearing bank accounts should be consolidated and accounted for in a trustee capacity in the state’s accounting system. Semi-annual disclosure reports should be enhanced by including aggregate seized and forfeited balances.

Response:

The forfeiture program does not consist of a single account, but a system of accounts which are kept separate because of distinct purposes and restrictions. These accounts are maintained as “off-line” accounts under the auspices of Circular Letters 10-19 and 10-11 and their predecessor circular letters. Off-line accounts are designed for “fiduciary funds which are not under the control of the State Treasurer.” Under these two Circular Letters, arrangement for banking services and investment is under the control of the Department of the Treasury. The Department of Law and Public Safety does not control where these funds are invested, how the deposits are managed or how performance of these funds are reported.

It should be clarified that some of the accounts belong to other agencies in addition to those for the Department of Law and Public Safety. There are federal forfeiture sharing accounts held for the Division of Taxation Bureau of Criminal Investigation, New Jersey National Guard Counter-Drug Task Force and the New Jersey Transit Police. The two federal forfeiture sharing agencies, the U.S. Department of Justice and the U.S. Department of Treasury, require that their forfeiture shares be held in an account separate from all others. These accounts cannot be consolidated or placed in the state’s accounting system by federal regulation.

The seized money accounts consist of property which does not belong to the state. This is property awaiting final resolution which may include returning the property or forfeiting it. Currently, separate cash management accounts are maintained because when a seizure occurs, a cash management account is created for that seizure. Having a separate cash management account for each seizure makes it easier to maintain the account in tandem with the case file.

Forfeiture funds are restricted use funds limited to use for law enforcement purposes by the law enforcement entity contributing to the forfeiture and require
the approval of the Attorney General for a specific use. As restricted funds, forfeiture funds cannot be placed in the state’s accounting system.

In the interest of transparency, all future semi-annual disclosure reports will include aggregate seized and forfeited balances. The Department will also contact Treasury officials to explore any efficiencies in consolidating or maintaining these off-line accounts that do not conflict with federal or state forfeiture requirements.

Finding:

Forfeited revenues and interest income are not recognized properly in the state’s accounting system in accordance with generally accepted accounting principles. Per Statement No. 33 of the Government Accounting Standards Board, revenue should be recognized at the time of obtaining forfeiture judgment. Forfeited funds and interest are deposited as revenue when law enforcement spending projects are approved by the Attorney General instead of recognizing revenue when the seized funds are forfeited per a court judgment. Our prior audit report cited $3 million in prior fiscal years’ revenue was deferred and not recognized timely in the state’s financial statements. As of January 31, 2010, $6.2 million has not been recognized as revenue. We also noted that from January 2009 to November 2009, three transactions totaling $260,000 were improperly created as revenue refunds and deposited back into the AGLEFA account.

Recommendation:

Forfeited revenue by the state should be recognized at the time of obtaining a forfeiture judgment in accordance with generally accepted accounting principles.

Response:

Statement No. 33 of the Government Accounting Standards Board, which applies generally accepted accounting principals to the operation of state and local governments, provides scant guidance on the issue of revenue recognition. There is an analogous accounting issue in the federal system which is governed by the Statements of Federal Financial Accounting Standards. Statement No.7, Appendix B, paragraph 265, which is not directly controlling but can provide guidance, indicates that where property, as defined in the Consolidated Glossary of the Statements, is held for internal use, revenue is recognized at the time approval is obtained to use the property internally.

The Department would recognize forfeiture receipts as revenue upon forfeiture judgement if they were immediately available for general purposes. However, since the use of forfeiture funds is restricted, the Department maintains that recognition as revenue will occur when a specific use of the forfeiture funds is approved by the Attorney General. The Department will make increased efforts towards recognizing revenue in the same fiscal year as judgements are made. Before funds are expended from the AGLEFA, the Department will provide upon request by the Director of the Office of Management and Budget, an expenditure plan advising of the intended use of the funds. We believe this is in accordance with generally accepted accounting principles applicable to government agencies acquiring restricted use of forfeiture revenue which requires approval before use.
The Department agrees that $260,000 of balances from completed law enforcement projects were returned to the AGLEFA account during the period indicated. However, the Department maintains that these transactions were the result of an internal control to insure proper use of all forfeiture proceeds as identified above, and thus were not improper revenue refunds.

Finding:

The department does not reconcile internal transfers between CMAs or CMA balances to open cases. We prepared our own reconciliations of various CMA accounts and discovered a surplus of $184,000. This is made up of a surplus of seized funds totaling $107,000 in the two clearing bank accounts and a surplus of $77,000 in the restitution account. Except for in transit items, all clearing accounts should have zero balances. The restitution account is a holding account where deposits are resubmitted to victims or claimants. The restitution account is no longer active. The last financial transaction was March 2000.

Recommendation:

All individual open cases should be periodically reconciled with the state’s accounting system. The department should determine the disposition of the $184,000 surplus from the clearing and restitution accounts.

Response:

To facilitate the reconciliation of the CMAs to open cases, the Division of Criminal Justice (DCJ) will evaluate the conversion of the manual spreadsheets used to track CMAs to Quickbooks or an equivalent product. Monthly reconciliation of these accounts will be segregated and performed by staff outside the Property Management Office.

All open forfeiture cases will be loaded into the Asset Tracking System eliminating the manual spreadsheets used to track cases prior to 1996. Asset Management Standard Operating Procedures will be revised to insure monthly reconciliation of CMA activity to Quickbooks, the reconciliation of Quickbooks to the Asset Tracking System’s open cases and the reconciliation of open Asset Tracking cases to the DCJ’s new case tracking system, InfoShare. The InfoShare System interfaces with the Administrative Office of the Courts to get daily case updates from PROMIS GAVEL. This will assist in identifying completed cases so the forfeiture process can be finalized and orders of the Court are received in a timely manner.

The $184,000 in question will be researched within the next 90 days as part of the consolidation, conversion and reconciliation in order to migrate from the spreadsheets to the accounting software package. A determination will be made as to the proper disposition of these funds including returning funds to defendants, distributing funds per court order, forfeiting of funds and, if appropriate, escheating any funds using the Unclaimed Property process.
Finding:

There are no follow-up procedures between assigned attorneys and fiscal personnel to resolve old outstanding criminal cases with seized funds. Fourteen of the twenty-five CMA cases tested did not have court documentation on file to determine the proper disposition of these dormant funds. We also calculated $140,000 in accumulated interest income that was not transferred to the Asset Maintenance Account. In addition, the general small money account has approximately 150 seized cases totaling $80,000 that are over ten years old and have not been resolved. This account was recently reconciled for the first time by the department.

Recommendation:

Follow-up procedures should be developed to resolve old outstanding cases timely.

Response:

Administrative managerial oversight of the Forfeiture area will be enhanced and DCJ will establish clear follow-up through the use of the InfoShare system to track cases that are ready to be processed based on orders from the Courts. This process will be documented as part of the revised SOP.

DCJ contends that CMAs without orders from the Courts cannot have the interest taken as there is a potential that the funds and interest may need to be returned to the defendant or distributed by order at the conclusion of the legal process.

Only two CMA accounts can have interest swept: the Small Money Account, and the Clearing Account. In the past year, less than $800 in interest was earned in these accounts. Therefore, sweeping these accounts once annually is appropriate. Per Forfeiture Program SOP, the interest earned in the other CMAs that have final orders from the court is moved directly into the Asset Maintenance Account when the Forfeiture process is finalized.

Finding:

Old seized cases, where the claimants could not be found, have not been escheated or reported to the State Treasury annually as required by state regulations. In January 2010, the department, for the first time, escheated $36,000 representing 15 cases.

Recommendation:

Unclaimed funds should be escheated annually.

Response:

InfoShare will be utilized to manage open and closed cases including those with potential forfeited property. The revised Standard Operating Procedures will insure timely identification and processing of potential forfeited property based on orders from the Courts, the return of assets to defendants when necessary and the escheating of funds using the Unclaimed Property process if appropriate.