GAO
Accountability * Integrity * Reliability

Highlights

Highlights of GAO-12-736, a report to congressional requesters

July 2012

JUSTICE ASSETS FORFEITURE FUND

Transparency of Balances and Controls over Equitable Sharing Should Be Improved

Why GAO Did This Study

Every year, federal law enforcement agencies seize millions of dollars in assets in the course of investigations. The AFF was established to receive the proceeds of forfeiture and holds more than $1 billion in assets. DOJ uses the proceeds from forfeitures primarily to cover the costs of forfeiture activities. DOJ also shares forfeiture proceeds with state and local agencies that participate in joint investigations through its equitable sharing program. GAO was asked to review (1) AFF's revenues and expenditures from fiscal years 2003 through 2011 and DOJ's processes for carrying over funds for the next fiscal year, and (2) the extent to which DOJ has established controls to help ensure that the equitable sharing program is implemented in accordance with established guidance. GAO analyzed data on AFF revenues, expenditures, and balances; interviewed DOJ officials; and analyzed a sample of 25 equitable sharing determinations, which included 5 determinations from each relevant DOJ agency. GAO's analysis of the samples was not generalizable, but provided insight into DOJ's decisions.

What GAO Recommends

GAO recommends that, among other things, DOJ clearly document how it determines the amount of funds that will need to be carried over for the next fiscal year, develop guidance on how components should make adjustments to equitable sharing determinations, and ensure that the basis for equitable sharing determinations is documented and subjected to review and approval. DOJ concurred with GAO's recommendations.

View GAO-12-736. For more information, contact David C. Maurer at (202) 512-9627 or maurerd@gao.gov.

What GAO Found

Annual revenues into the Assets Forfeiture Fund (AFF) from forfeited assets increased from $500 million in 2003 to $1.8 billion in 2011, in part due to an increase in prosecutions of fraud and financial crimes cases. Expenditures in support of forfeiture activities such as equitable sharing payments to state and local law enforcement agencies and payments to victims also increased over the same 9-year period, growing from $458 million in 2003 to $1.3 billion in 2011. The Department of Justice (DOJ) uses the difference between revenues and expenditures in any year to help cover anticipated expenses in the next fiscal year. Because the AFF uses fund revenues to pay for the expenses associated with forfeiture activities, DOJ carries over funds at the end of each fiscal year to ensure it has sufficient resources to cover expenses that may not be covered by the next year's revenues. When determining the amounts to carry over, DOJ reviews historical data on past program expenditures, analyzes known future expenses such as salaries and contracts, and estimates the costs of any potential new expenditures. However, DOJ has not documented the process for determining the amount of funds needed to cover anticipated expenditures in the next fiscal year in its annual budget justifications. Providing more transparent information as part of the AFF's annual budget process would better inform Congress' oversight of the AFF. Further, after DOJ obligates funds needed to cover program expenses, any remaining AFF funds identified at the end of a fiscal year may be declared an excess unobligated balance. DOJ has the authority to use these balances for any of the department's authorized purposes. Per Office of Management and Budget guidance, in recent years, DOJ used these excess unobligated balances to help cover rescissions. Rescissions cancel the availability of DOJ's previously enacted budget authority, making the funds involved no longer available for obligation. For example, in fiscal year 2011, DOJ used excess unobligated balances to help cover a $495 million AFF program rescission.

DOJ has established guidelines for making equitable sharing determinations, but controls to ensure consistency and transparency could be improved. For example, DOJ agencies responsible for making equitable sharing determinations may make adjustments to sharing percentages when work hours alone do not reflect the relative value of an agency's contribution to an investigation. If a state or local law enforcement agency contributed a helicopter or a drug-sniffing dog to an investigation, its sharing percentage might be adjusted upward from what it would be based on work hours alone. However, DOJ's guidance does not include information regarding how decisions about these adjustments to sharing determinations should be made. This is particularly important given that these determinations represent DOJ's overall assessment of each agency's unique contributions and are a key component of how DOJ determines how much to award to each agency. Furthermore, key information that serves as the basis for equitable sharing determinations—such as the work hours contributed by each of the participating agencies in an investigation—is not subject to review by approving authorities. Developing guidance regarding how these decisions are to be made, documenting the basis for these decisions, and subjecting them to review and approval would help ensure the consistency and transparency of equitable sharing determinations.