



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



**Audit of  
the Office of the Special Narcotics Prosecutor  
for the City of New York  
Equitable Sharing Program Activities  
New York, New York**

**AUDIT OF  
THE OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR  
FOR THE CITY OF NEW YORK  
EQUITABLE SHARING PROGRAM ACTIVITIES  
NEW YORK, NEW YORK**

**EXECUTIVE SUMMARY\***

The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), has completed an audit to assess whether the Office of the Special Narcotics Prosecutor (OSNP) for the City of New York, New York (City), properly accounted for DOJ equitable sharing funds and property, and used such revenues for allowable purposes as defined by applicable guidelines. Equitable sharing revenues represent a share of the proceeds from the forfeiture of assets seized in the course of certain criminal investigations. The audit covered OSNP's fiscal years (FY) 2013 through 2015, beginning on July 1, 2012, and ending June 30, 2015. During the 3-year period, OSNP received equitable sharing receipts totaling \$20,605,509, and expended \$3,581,284 in equitable sharing funds.

The objective of the audit was to assess whether equitably shared cash and property received by OSNP was accounted for properly and used for allowable purposes, as defined by applicable regulations and the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (the Guide). Based on our review, we found that OSNP: (1) did not use the City's accounting system to account for its equitable sharing funds as required by the Guide; (2) received funds on behalf of the New York Drug Enforcement Task Force, which was not allowed according to the Guide; and (3) did not maintain accurate and complete DOJ Equitable Sharing Program inventory records.

Our report contains three recommendations to the DOJ Criminal Division's Money Laundering and Asset Recovery Section (MLARs), which are detailed later in this report. Our audit objective, scope, and methodology are discussed in Appendix 1. We discussed the results of our audit with OSNP officials and have included their comments in the report, as applicable. In addition, we requested a response to our draft audit report from OSNP and MLARS and their responses are appended to this report as Appendices 2 and 3, respectively. Our analysis of the responses, as well as a summary of actions necessary to resolve the report can be found in Appendix 4 of this report.

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\* Redactions were made to the full version of this report for privacy reasons. The redactions are contained only in Appendix 2, the auditee's response, and are of individuals' names.

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FOR THE CITY OF NEW YORK  
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**INTRODUCTION**

The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), has completed an audit to assess whether the Office of the Special Narcotics Prosecutor (OSNP) for the City of New York, New York (City), properly accounted for DOJ equitable sharing funds and property, and used such revenues for allowable purposes as defined by applicable guidelines. Equitable sharing revenues represent a share of the proceeds from the forfeiture of assets seized in the course of certain criminal investigations. The audit covered OSNP's fiscal years (FY) 2013 through 2015, covering the period beginning on July 1, 2012, and ending June 30, 2015.<sup>1</sup> During this 3-year period, OSNP received equitable sharing receipts totaling \$20,605,509, and expended \$3,581,284 in equitable sharing funds.<sup>2</sup>

**DOJ Equitable Sharing Program**

The *Comprehensive Crime Control Act of 1984* authorized federal officials to implement a national asset forfeiture program. One of the key elements in the Asset Forfeiture Program is the DOJ Equitable Sharing Program, a nationwide law enforcement initiative that removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime.<sup>3</sup> The DOJ Equitable Sharing Program allows any state or local law enforcement agency, which directly participated in an investigation or prosecution resulting in a federal forfeiture, to claim a portion of federally forfeited cash, property, and proceeds.

Although several DOJ agencies are involved in various aspects of the seizure, forfeiture, and disposition of equitable sharing revenues, three DOJ components work together to administer the DOJ Equitable Sharing Program: (1) the U.S. Marshals Service (USMS), (2) the Justice Management Division (JMD), and (3) the Criminal Division's Money Laundering and Asset Recovery Section (MLARS), formerly referred to as the Asset Forfeiture and Money Laundering Section. The USMS is responsible for transferring the equitable sharing funds from DOJ to the

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<sup>1</sup> OSNP's fiscal year begins on July 1 and ends on June 30.

<sup>2</sup> OSNP also expended \$17,463,522 in equitable sharing funds during the period under review, including transfers to other law enforcement agencies totaling \$12,046,978 and expenditures associated with the New York Drug Enforcement Task Force totaling \$5,416,544.

<sup>3</sup> The U.S. Department of the Treasury also administers a federal asset forfeiture program. This audit was limited to equitable sharing revenues received through the DOJ Equitable Sharing Program.

receiving state or local agency. JMD manages the Consolidated Asset Tracking System (CATS), a database used to track federally seized assets throughout the forfeiture life cycle. Finally, MLARS tracks membership of state and local participants, updates the DOJ Equitable Sharing Program rules and policies, and monitors the allocation and use of equitably shared funds.

State and local law enforcement agencies may receive equitable sharing funds by participating directly with DOJ agencies on investigations that lead to the seizure and forfeiture of property, or by seizing property and requesting one of the DOJ agencies to adopt the seizure and proceed with federal forfeiture.<sup>4</sup> Once an investigation is completed and the seized assets are forfeited, the assisting state and local law enforcement agencies can request a share of the forfeited assets or a percentage of the proceeds derived from the sale of forfeited assets. Generally, the degree of a state or local agency's direct participation in an investigation determines the amount or percentage of funds shared with that agency.

Before requesting a share of the seized assets, a state or local law enforcement agency must first become a member of the DOJ Equitable Sharing Program. To participate in the program, agencies sign and submit an Equitable Sharing Agreement and Certification report to MLARS. The agreement must be submitted annually, and by signing and submitting the agreement, the officials of the participating agency certify that it will comply with the equitable sharing guidelines and statutes.

### **The Office of the Special Narcotics Prosecutor for the City of New York**

Founded in 1971, OSNP is overseen by the Special Narcotics Prosecutor, and comprised of the Special Investigations Division, Trial Division, and Alternative Sentencing Division. OSNP is staffed by Assistant District Attorneys, assigned by New York City's five District Attorneys' Offices, and is responsible for felony narcotics investigations and prosecutions in the five boroughs of New York, New York, that are initiated by federal, state, and local law enforcement agencies.<sup>5</sup>

### **OIG Audit Approach**

The objective of the audit was to assess whether OSNP properly accounted for equitable sharing funds and tangible property, and used such revenues for allowable purposes, as defined by applicable guidelines. We tested compliance with

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<sup>4</sup> The adoption of property seized by state or local law enforcement under state law is only allowable if the property directly relates to public safety concerns, including firearms, ammunition, explosives, and property associated with child pornography. Property that does not fall under these four specific categories may not be adopted without the approval of the Assistant Attorney General for the Criminal Division.

<sup>5</sup> These agencies include the U.S. Drug Enforcement Agency; U.S. Postal Service; New York State Police; New York Drug Enforcement Task Force; Port Authority Police; OSNP Investigations Division; and the New York City Police Department's Organized Crime Control Bureau, Patrol Bureau, and Organized Crime Investigations Division.

what we considered to be the most important conditions of the DOJ Equitable Sharing Program. We applied the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (the Guide), updated in July 2014, as our primary criteria, as well as subsequent Equitable Sharing guidance issued by MLARS, for which equitable sharing participants are held accountable. The Guide identifies the accounting procedures and requirements for tracking equitably shared monies and property; establishes reporting and audit requirements; and defines the permissible use of equitably shared resources. To conduct the audit, we tested OSNP's compliance with the following:

- **Accounting for equitable sharing resources** to determine whether standard accounting procedures were used to track equitable sharing assets.
- **Compliance with audit requirements** to ensure the accuracy, consistency, and uniformity of audited equitable sharing data.
- **Use of equitable sharing resources** to determine if equitable sharing cash and property were used for allowable law enforcement purposes.
- **Equitable Sharing Agreement and Certification Reports** to determine if these documents were complete and accurate.
- **Requests for equitable sharing funds** to ensure adequate controls were established.

Appendix 1 contains additional information on this audit's objective, scope, and methodology.

Based on our review, we found that OSNP: (1) did not comply with the DOJ Equitable Sharing Program accounting procedure requirements, (2) received funds on behalf of the New York Drug Enforcement Task Force (NYDETF), which was not allowed according to the Guide, and (3) did not maintain accurate and complete DOJ Equitable Sharing Program inventory records.

### **Accounting for Equitably Shared Resources**

Although equitable sharing funds were properly deposited into a separate revenue account, we found that OSNP's accounting procedures did not comply with the DOJ Equitable Sharing Program requirements. Specifically, we found that OSNP was not using the City of New York's accounting system. We also determined that OSNP should not have received and spent equitable sharing funds on behalf of the NYDETF, under its DOJ Equitable Sharing Program. We discuss these issues in greater detail in the following section.

#### *City of New York's Accounting System*

According to an MLARS Equitable Sharing Wire, dated July 20, 2015, equitable sharing funds are required to be maintained by the entity that manages

the agency's appropriated funds and follow their jurisdiction's approval and procurement policies for all expenditures.<sup>6</sup> The wire also "...prohibits an individual other than the jurisdiction's financial manager from maintaining a checkbook or other financial instruments related to equitable sharing." OSNP is funded through City of New York appropriations and accounts for its appropriated funds using the City of New York's accounting system. However, instead of using the City of New York's accounting system to manage its equitable sharing funds, OSNP used off-the-shelf, commercial accounting system software. Therefore, we determined that OSNP was not in compliance with the DOJ Equitable Sharing Program requirement.

According to OSNP officials, the City authorized the five District Attorneys' Offices and OSNP to manage equitable sharing funds separately from appropriated funds, and this decision was reviewed and approved by the Department of Justice. However, OSNP did not provide us with adequate documentation to support this position. Managing equitable sharing funds through an accounting system different than the one used to manage an agency's appropriated funds increases the risk of potential fraud and misuse, which is precisely the reason for the DOJ Equitable Sharing Program mandate. As a result, we recommend the Criminal Division ensures OSNP's equitable sharing receipts and expenditures are managed using the City's accounting system, as required.

#### *New York Drug Enforcement Task Force*

OSNP is a member of NYDETF, along with the New York Police Department (NYPD) and the New York State Police (NYSP).<sup>7</sup> For equitable sharing purposes, MLARS identifies this task force as an informal task force. According to the Guide, one significant distinction between a formally chartered task force and an informal task force is that equitable sharing funds cannot be disbursed to the informal task force itself.<sup>8</sup>

Although the NYDETF is a formal DEA task force, it is not a chartered DOJ task force and is therefore not eligible to receive and expend equitable sharing funds. According to an NYDETF Memorandum of Understanding (MOU) between all of the participating agencies, equitable sharing funds generated from task force seizures are to be disbursed to each of the three state and local law enforcement agencies after \$2.6 million is disbursed to OSNP each year for anticipated OSNP, NYSP, and NYPD "leased vehicles and associated fuel and maintenance/repair costs," or fleet management expenditures. OSNP was to use any excess funds for

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<sup>6</sup> MLARS issued the first Equitable Sharing Wire on March 22, 2010. These wires provide program participants with important and substantive information regarding program policies and procedures.

<sup>7</sup> According to the DEA website, the NYDETF is one of the first drug enforcement task forces. OSNP officials told us the current members of the task force signed the initial MOU in 2005.

<sup>8</sup> In order for a task force to receive and expend funds, a task force has to be a DOJ Equitable Sharing Program participant approved by MLARS.



future fleet management expenditures or other task force expenditures as agreed upon by OSNP and the NYDETF leadership.

According to the Guide, “cash transfers of shared funds from one state or local law enforcement agency [that is a DOJ Equitable Sharing Program participant] to another are permitted.... The agency transferring the funds is responsible for verifying that the recipient agency is eligible to receive sharing.” We determined that to meet the MOU, the process of disbursing the funds for the fleet and related costs was accomplished through a waiver of funds by NYSP and NYPD, with OSNP receiving the funds directly rather than a transfer of funds to OSNP after those agencies received their share of the disbursement. Therefore, we believe OSNP’s receipt of equitable sharing funds in this manner circumvents the internal controls established by the Guide, and leaves the equitable sharing funds vulnerable to potential mismanagement.

As further demonstration of this vulnerability, we found that OSNP established a separate account to track the task force-related expenditures that had a balance exceeding budgeted, annual fleet management expenditures included in the MOU. According to documentation provided by OSNP, an annual average of \$1.8 million was expended for the NYDETF expenses. Additionally, OSNP’s documentation showed that between July 1, 2013, and June 30, 2016, the balance in this account increased to approximately \$6 million. As a result, it appears that equitable sharing funds were being spent at a lower rate than anticipated, resulting in a significant balance of unused equitable sharing funds not being applied to the program, as intended. We believe, had the funds been distributed appropriately, this excess balance may not have occurred. While the MOU included a statement allowing excess funds to be returned to participating agencies, such action had not taken place according to the documentation we were provided during our audit. We brought the matter of OSNP’s use of a separate account to MLARS’s attention during the course of our audit, and MLARS stated that it would follow up on the matter.

We conclude that the mechanisms by which OSNP was receiving equitable sharing funds on behalf of the NYDETF resulted in an informal task force receiving direct disbursements of equitable sharing funding, in violation of the DOJ Equitable Sharing Program rules. We discussed this issue with MLARS, and it agreed that the NYDETF was an informal task force, but it did not agree that OSNP was receiving funds on behalf of task force participants because the NYDETF was not a DOJ Equitable Sharing Program participant and could not receive disbursements. As a result, we recommend that MLARS ensure the NYDETF sharing agreement and disbursements to OSNP comply with the Guide, including those disbursements that have not been spent by OSNP.

### *Equitable Sharing Receipts*

The Equitable Sharing Guide requires that law enforcement agencies use standard accounting procedures to track the DOJ Equitable Sharing Program receipts. As of March 31, 2015, law enforcement agencies participating in the DOJ

Equitable Sharing Program are required to use the USMS's E-Share portal. E-Share enables a participating agency to receive payments by direct deposit and receive an e-mail notification of the deposit. Additionally, DOJ equitable sharing funds must be accounted for separately from other funds.

We reviewed OSNP's equitable sharing receipts for July 2012 through June 2015 to determine if the funds were properly accounted for and deposited. We reconciled the agency's accounting records to DOJ records of equitable sharing funds provided to the agency. According to MLARS DOJ Distribution Reports, OSNP received 697 E-Share receipts totaling \$20,605,509 between July 1, 2012, and June 30, 2015, as shown in Table 1 below. OSNP also received two equitable sharing tangible assets during this period.

**Table 1**  
**OSNP Equitable Sharing Receipts**  
**July 1, 2012 through June 30, 2015**

Fiscal Year	Cash or Proceeds
2013	\$6,885,678
2014	8,192,175
2015	5,527,655
<b>Total:</b>	<b>\$20,605,509</b>

Note: Totals may not sum due to rounding.

Source: DOJ Consolidated Asset Tracking System

For our audit, we reviewed 70 receipts totaling \$7,538,171, by comparing the E-Share Receipts in OSNP's accounting system to the DOJ CATS Report. To determine whether receipts were deposited timely and into separate revenue accounts, we reviewed the electronic fund transfers, as well as OSNP's accounting records. We found that all 70 receipts were transferred into OSNP's account in a timely manner.

### **Compliance with Audit Requirements**

The Equitable Sharing Guide requires that state and local law enforcement agencies that receive equitable sharing cash, proceeds, or tangible property perform an audit consistent with the Single Audit Act Amendments of 1996 and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. OMB Circular A-133 requires non-federal entities to prepare a Schedule of Expenditures of Federal Awards, which is included within the entity's Single Audit Report, for the period covered by the auditee's financial statements, provided that it expended \$500,000 or more in federal funds in a given year. We determined that ONSP was in compliance with the Single Audit requirement.

To determine whether OSNP accurately reported DOJ equitable sharing fund expenditures on its Schedule of Expenditures of Federal Awards, we reviewed OSNP's accounting records and Single Audit Reports for FYs 2013, 2014, and 2015.

We found that based on its accounting records, OSNP accurately reported DOJ equitable sharing fund expenditures on the Schedule of Expenditures of Federal Awards, for FYs 2013, 2014, and 2015.

## **Use of Equitable Sharing Resources**

The Guide and subsequent guidance require that equitable sharing funds or tangible property, received by state and local agencies, be used for law enforcement purposes. Law enforcement agencies can also transfer cash to another law enforcement agency. However, the transferring agency must verify that the recipient agency is eligible to receive equitable sharing funds. In addition, the recipient law enforcement agency must use the funds in accordance with the Equitable Sharing Guide. Although the Equitable Sharing Guide previously prohibited state and local law enforcement agencies from making cash transfers or donations to support community-based programs, the Interim Policy Guidance allows for the transfer of up to \$25,000 in shared funds, annually, to community-based programs whose missions are supportive of and consistent with a law enforcement effort, policy, or initiative.

### *Use of Equitable Sharing Funds*

According to its accounting records, between July 1, 2012, and June 30, 2015, OSNP expended DOJ equitable sharing funds totaling \$3,581,284, to enhance its investigative activities and capabilities. Other than transfers to other program participants, the most common expenditures included payments to confidential informants; drug-buy money; vehicle expenses; extradition related travel; and travel to attend training, conferences, and seminars.

We judgmentally selected 43 expenditures totaling \$993,331, or 27 percent of the total funds expended, to determine if the expenditures of equitable sharing funds were allowable and supported by adequate documentation. To determine whether the expenditures were adequately supported, we reviewed invoices, purchase orders, receiving reports, and contracts that OSNP maintained to support its expenditures. Based on our review, we determined that the specific OSNP DOJ equitable sharing fund expenditures, which did not include expenditures made for the NYDETF, were supported by adequate documentation and for appropriate uses.

### *Accountable Property*

We examined whether accountable property purchased with equitable sharing funds was properly inventoried and at its assigned location. We judgmentally selected nine expenditures totaling \$449,281, as well as two vehicles that OSNP acquired from seizures. Our sample included vehicles, GPS devices, and forensic equipment.

Based on our review, we determined that OSNP did not have adequate controls in place to ensure that this property was accounted for properly. Of the nine expenditures, we determined that in 2015, OSNP transferred three of the

expenditures, totaling \$311,654, to a different funding source. We found that OSNP updated its accounting record to reflect the above mentioned adjustment, but failed to update its inventory list. As a result, we determined that OSNP's equitable sharing program inventory did not accurately reflect equipment purchased with DOJ equitable sharing funds.

According to an OSNP official, OSNP uses a requisition log to maintain the inventory of equipment purchased with equitable sharing funds. At the end of the year, OSNP cross-references the requisition log with the department's inventories, and updates the equitable sharing logs with any new requests. While OSNP updates its inventory for new equipment, it does not appear that OSNP accounts for adjustments to ensure the inventory list accurately reflects accountable property that was purchased with DOJ equitable sharing funds.

In addition to the accountable property purchased with equitable sharing funds, OSNP received two vehicles that were seized through the DOJ Equitable Sharing Program. We reviewed OSNP's inventory list to determine whether OSNP properly accounted for these vehicles, and found that these vehicles were not accounted for in OSNP's equitable sharing inventory list, but were accounted for in OSNP's investigative inventory. By not maintaining a proper inventory, OSNP cannot ensure that its property is adequately safeguarded and used for its intended purposes.

Based on the issues identified above, we recommend that OSNP develop policies and procedures to ensure that OSNP's inventory list accurately reflects accountable property that was acquired and/or purchased through the DOJ Equitable Sharing Program.

## **Equitable Sharing Agreement and Certification Reports**

The Guide requires participating law enforcement agencies to annually submit an Equitable Sharing Agreement and Certification (ESAC) report within 60 days after the end of the agency's fiscal year. In addition, the head of the law enforcement agency and a designated official of the governing body must sign the ESAC. By signing the ESAC, the signatories agree to follow the statutes and guidelines that regulate the DOJ Equitable Sharing Program and certify that the law enforcement agency will comply with these guidelines and statutes.

On October 18, 2013, MLARS issued an Equitable Sharing Wire reemphasizing the signatory requirements on the ESAC reports. Specifically, the wire stated that "no person from the law enforcement agency can sign as the governing body, nor can any person from the governing body sign for the law enforcement agency head." Instead, the governing body head is to be the head of the entity that allocates funds and approves the law enforcement agency's budget.

To ensure that the appropriate agency officials properly prepared, signed, and submitted the reports, we reviewed OSNP's ESAC reports for FYs 2013, 2014, and 2015. For FY 2013 and 2014, the forms were signed by the Special Narcotics

Prosecutor and the Chief Assistant District Attorney, as the agency head and the governing body head, respectively; however, MLARS determined that the governing body head should have been the Mayor of New York. For the FY 2015 forms, MLARS advised OSNP to have the Mayor of New York sign the ESAC report. While the City of New York and OSNP did not agree with MLARS' position that required the Mayor to sign as the governing body head, both entities agreed to have the Mayor sign the agreement, effective FY 15. As a result, we determined that no further actions are required.

To verify the accuracy of the ESAC reports, we compared the total amount of equitable sharing funds received, according to OSNP's ESAC reports, to the total amount disbursed on DOJ's CATS report for FYs 2013, 2014, and 2015. We found that the amount of equitable sharing funds reported on the ESAC report matched the amount in OSNP's general ledger.

According to the Guide, ESAC reports are required to reflect the participant's actual expenditures. To determine whether OSNP reported actual expenditures on its ESAC reports, we examined OSNP accounting records and determined it spent a total of \$8,997,738 for FYs 2013-2015, including \$5,416,454 for the NYDETF fleet management expenditures. We determined that the total amount of expenditures reflected in OSNP's accounting records matched the amount reported on the ESAC reports.

## **Requests for Equitable Sharing Funds**

The Equitable Sharing Guide states that all participating agencies must complete a Form DAG-71 when requesting its portion of equitable sharing funds.<sup>9</sup> According to guidance in place during most of the audited period, the agency that submits the DAG-71 should maintain a log and copies of all DAG-71s.<sup>10</sup> In addition, the Guide requires that the DAG-71 log be updated when an E-Share notification is received.

OSNP's Forfeiture Coordinator is responsible for tracking all seized assets for both federal and state seizures. Seizures are identified using an internal seizure report prepared by the Investigations Division. The Forfeiture Coordinator prepares OSNP's DAG-71, which is based on the internal seizure report. Once the DAG-71 is submitted, OSNP enters the seizure into a database, the Asset Forfeiture log, which is then used to track DAG-71 forms and USMS disbursements of equitable sharing

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<sup>9</sup> After the seizure in a joint investigation or adoption in an adoptive case, a state or local agency may request a share of the property by submitting a Form DAG-71, Application for Transfer of Federally Forfeited Property, to the federal seizing agency.

<sup>10</sup> According to guidance issued on March 31, 2015, all agencies are now required to submit DAG-71s electronically through the MLARS e-Share Portal. According to MLARS, due to the implementation of this new technology, agencies are no longer required to maintain a manual log of DAG-71s.

funds. The log is updated when the Asset Forfeiture Coordinator receives an E-Share notification.

We compared OSNP's Equitable Sharing Log to DOJ's Distribution Report to ensure that OSNP captured all elements required in the Equitable Sharing Guide. Based on our review, we found that all of the required elements were captured by in OSNP's log.

### *Supplanting*

According to the Guide, equitable sharing funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Equitable sharing resources are not to be used to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the equitable sharing funds. If, for example, a police department receives \$100,000 in equitable sharing funds only to have its budget cut \$100,000 by the city council, the police department has received no direct benefit whatsoever. Rather, the entire city has received the benefit of the equitable sharing funds.

In determining whether OSNP supplanted equitable sharing funds, we examined its total budget for 3 fiscal years – FY 2013 through FY 2015. We found that OSNP's budget, appropriated by the City of New York, increased during the years tested and equitable sharing funds appeared to supplement the budget. As a result, no further analysis was warranted.

### **Conclusion**

We found that OSNP failed to comply with three of the five areas we tested. Specifically, we found OSNP: (1) did not use the City's accounting system to account for its equitable sharing funds as required by the Guide, (2) received funds on behalf of the NYDETF, which was not allowed according to equitable sharing guidance, and (3) did not maintain accurate and complete DOJ Equitable Sharing Program inventory records. As a result, we made three recommendations to improve OSNP's participation in the DOJ Equitable Sharing Program.

## **Views of Responsible Officials**

We discussed the results of our review with officials from the Office of the Special Narcotics Prosecutor throughout the audit and at a formal exit conference. Their input on specific issues has been included in the appropriate sections of the report.

## **Recommendations**

We recommend that the Criminal Division:

1. Ensure OSNP's equitable sharing receipts and expenditures are managed using the appropriate accounting system, as required.
2. Ensure the NYDETF sharing agreement and disbursements to OSNP comply with the Guide, including those disbursements that have not been spent by OSNP.
3. Ensure OSNP develops policies and procedures to ensure that it maintains an inventory list that accurately reflects accountable property acquired and/or purchased through the DOJ Equitable Sharing Program.

## **OBJECTIVE, 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 our audit objective.

### **Objective**

The objective of the audit was to assess whether the Office of the Special Narcotics Prosecutor of New York City (OSNP) accounted for equitable sharing cash and tangible property properly, and used such revenues for allowable purposes as defined by applicable regulations and guidelines. We tested compliance with what we considered to be the most important conditions of the DOJ Equitable Sharing Program. We reviewed laws, regulations, and guidelines governing the accounting for and use of DOJ equitable sharing receipts, including the Guide to Equitable Sharing for State and Local Law Enforcement Agencies, updated July 2014. Unless, otherwise stated in our report, the criteria we audited against are contained in these documents.

### **Scope and Methodology**

Our audit concentrated on, but was not limited to, equitable sharing funds received by OSNP from July 1, 2012, through June 30, 2015. The U.S. Department of the Treasury administers a similar equitable sharing program. Our audit was limited to equitable sharing revenues received through the DOJ Equitable Sharing Program.

We performed audit work at OSNP headquarters located in the City of New York, New York. We interviewed OSNP officials and examined records, related revenues, and expenditures of DOJ equitable sharing funds. In addition, we relied on computer-generated data contained in the DOJ Consolidated Asset Tracking System (CATS) to identify equitably shared revenues and property awarded to OSNP during the audit period. We did not establish the reliability of the data contained in CATS as a whole. However, when viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations included in this report are valid.

Our audit specifically evaluated OSNP's compliance with three essential equitable sharing guidelines: (1) Equitable Sharing Agreement and Certification reports, (2) accounting for equitable sharing receipts, and (3) the use of equitable sharing funds. In planning and performing our audit, we considered internal controls over DOJ equitable sharing receipts established and used by OSNP.

In the scope of this audit, OSNP had 697 cash/proceeds receipts totaling \$20,605,509. In the same period, OSNP had expenditures totaling \$3,581,284.



We judgmentally selected and tested a sample of 70 receipts totaling \$7,538,171, and a sample of 43 expenditures totaling \$993,331. A judgmental sampling design was applied to capture numerous aspects of the disbursements reviewed, such as dollar amounts. This non-statistical sample design does not allow projection of the test results to all receipts and disbursements.

Our audit included an evaluation of OSNP's most recent annual audits. The results of this audit were reported in the Single Audit Report for FYs 13-15, beginning on July 1, 2012, and ending on June 30, 2015. The Single Audit Report was prepared under the provisions of Office of Management and Budget Circular A-133. We reviewed the independent auditor's assessment, which disclosed no control weaknesses or significant noncompliance issues.

We discussed the results of our review with officials from OSNP throughout the audit and at a formal exit conference. As appropriate, their input has been included in the relevant sections of the report.

**THE OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR FOR  
THE CITY OF NEW YORK RESPONSE  
TO THE DRAFT AUDIT REPORT**



**Office of the  
Special Narcotics Prosecutor  
for the City of New York**

Bridget G. Brennan, Special Narcotics Prosecutor

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February 27, 2017

Mr. Thomas O. Puerzer  
U.S. Department of Justice - Office of the Inspector General  
701 Market Street, Suite 2300  
Philadelphia, Pennsylvania 19106

Dear Mr. Puerzer:

This letter is in response to the United States Department of Justice (DOJ) Office of the Inspector General (OIG) Draft Audit Report (the Draft Report) of the Office of the Special Narcotics Prosecutor for the City of New York (OSNP) received on February 1, 2017.

Before addressing the three findings and recommendations contained in the Draft Report, it is important to note the conclusions of that report with respect to OSNP's compliance with the requirements and protocols set forth in the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (the Guide). The Draft Report concluded that:

1. OSNP's DOJ equitable sharing fund expenditures were supported by adequate documentation and for appropriate uses as set forth in the Guide;
2. OSNP accurately reported to DOJ equitable sharing fund expenditures as required;
3. the total amount of expenditures reflected in OSNP's account records matched the amount reported in the Equitable Sharing Agreement Certification Reports;
4. OSNP's Equitable Sharing Log captured all elements required by the Guide;
5. a review of 70 sharing receipts to determine if funds were properly accounted for and deposited found that the funds were properly accounted for and deposited in a timely manner; and
6. equitable sharing funds received appeared to supplement OSNP's budget as required by the Guide.

The Draft Report also included three findings and recommendations to which we respond below.

## First Finding

While noting that equitable sharing funds were properly deposited into a separate revenue account, the Draft Report found that by not managing equitable sharing and expenditures through the New York City (the City) Financial Management System (FMS), OSNP's accounting procedures did not comply with the Equitable Sharing Program requirements.

### Response: Disagree

OSNP was fully compliant with the Guide's accounting procedures and requirements in place during the audit period. The period covered by the OIG Audit began on July 1, 2012 and ended on June 30, 2015. During that time period the accounting procedures and internal controls with regard to equitably shared monies were set forth in Section IX of the Guide. The OIG audit made no findings that SNP failed to comply with those requirements which controlled during the covered audit period. Instead, the Draft Report referenced a July 20, 2015 Equitable Sharing Wire (the July wire) which set forth new requirements not contained in the Guide during the covered audit period.

The July wire states that "equitable sharing funds must be maintained by the entity that manages the agency's appropriated funds..." As a non-mayoral independent agency that has no direct reporting lines to the mayor,<sup>1</sup> we manage our appropriated funds and accordingly are in compliance with the July wire. While City appropriations constitute the largest source of funding for OSNP, we make independent decisions on how to allocate and expense these funds. For example, we determine our agency head count and make our own hiring decisions, we process our own procurement, and we have our own fiscal department that monitors our fiscal controls. By contrast, City funds allocated to mayoral agencies such as the NYPD are maintained and managed by the City Office of Management and Budget (OMB). For example, these agencies could not expense and hire staff without approval from OMB.

In fact, the Draft Report explicitly concedes that OSNP "is responsible for managing" its appropriated City funds ("OSNP is funded through City of New York appropriations, and *is responsible for managing these appropriations* using the City's accounting system (emphasis added), page 4 of the Draft Report). Because OSNP manages its appropriated funds the July wire dictates that OSNP should maintain its equitable sharing funds. The fact that OSNP may manage its appropriated funds "using" the City system does not require that we use the City system for equitable sharing and expenditures. The July wire states no such requirement, and we disagree with the conclusion that those funds need to be maintained or managed through the City system.<sup>2</sup>

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<sup>1</sup> OSNP was created by the New York State Legislature in 1971. Pursuant to that state statute, the agency head, the Special Narcotics Prosecutor for the City of New York, is appointed by and reports to the five independently elected District Attorneys of New York City.

<sup>2</sup> Although we do not maintain equitable sharing funds in the City's accounting system, we do follow the same agency approval and procurement policies for all expenditures. We informed OIG of this fact when they started this audit and provided them with all relevant documentations.

OSNP's dealings with the City as well as the Criminal Division Asset Forfeiture and Money Laundering Section (AFMLS) also reflect an understanding of our independent status, and both the City and AFMLS have long been fully aware<sup>3</sup> that OSNP maintains and manages equitable sharing and expenditures apart from the City system.

In connection with this audit, OSNP provided OIG with a January 29, 2013 letter from [REDACTED] Assistant Deputy Chief, Programs Operations at AFMLS to [REDACTED] First Deputy Criminal Justice Coordinator for the City, stating that the equitable sharing funds that are "awarded directly" to the five City District Attorney's Offices (the DAs) and OSNP would be in compliance with Single Audit Act reporting requirement if the DAs and OSNP conduct and transmit "standalone annual audits as issued by their independent auditors."

More importantly, subsequent to issuance of the July wire, both the City as well as AFMLS have worked cooperatively with OSNP and the elected DAs with respect to the filing of Equitable Sharing Agreement and Certification (ESAC) Reports in 2015 and in 2016. In August of 2015, the City sought guidance and clarification regarding these filing and that guidance was provided by AFMLS. The guidance sought by the City specifically related to the fact that the City does not manage OSNP's equitable sharing, or that of the independently elected DAs, and City officials sought clarification with regard to the implications of the City signing our ESAC reports as the "Governing Body." The correspondence between a representative of the DAs, OMB and AFMLS, which was provided to OIG, makes it abundantly clear that, after the issuance of the July wire, AFMLS and the City were well aware that OSNP continues to manage equitable sharing outside the city system, had no objection and, in fact, assisted with our ESAC report filings in both 2015 and 2016.<sup>4</sup> The documentation provided to OIG further supports our conclusion that the AFMLS's wire issued on 7/20/15 does not require that we maintain and manage equitable sharing funds through the City system.

The OIG recommendation that OSNP manage its equitable sharing and expenditures using the City system was premised on its determination that "OSNP's equitable sharing funds were at risk of potential fraud and misuse because the funds were not managed" using the City FMS system. The

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<sup>3</sup> Contrary to the assertion in the Draft Report on page 4, OSNP never stated to the OIG auditors that the City had explicitly "authorized" OSNP to manage equitable sharing funds separately from appropriated funds.

<sup>4</sup> The August 20, 2015 correspondence from a DA representative stated explicitly that "...since they (the City) do not manage our accounts, as you know, or those of our four other colleague District Attorney's Offices in the City or that of the Office of the Special Narcotics Prosecutor. The part they had questions about is the language in the Governing Body...." This point was again reiterated later in the correspondence, "...since the City neither manages our or any of our colleague offices' accounts..., the City is a bit concerned about moving forward and signing the certifications without first getting that clarification and limitation regarding their portion of the certification...." In response to this request for clarification, AFMLS responded on August 25, 2015 stating that, "The governing body head is certifying your appropriated resources have not been supplanted as a result of your equitable sharing funds. In addition, and as you state in your email below, the governing body is not vouching for the accuracy of the numbers submitted, the categorization of expenses, the permissibility of expenses under the guidelines, questions about civil rights discrimination claims or settlements, or other policies and procedures under the guidelines -- since that was all covered within the agency head certification...."

Draft Report, however, provided no support or analysis for that conclusory determination. Certainly, the audit and its findings did not suggest any concrete indication whatsoever of potential fraud or misuse.

OSNP informed OIG when it started the audit that our agency follows the accounting and internal control requirements set by the City even though our equitable sharing funds are not maintained in the City's accounting system. In fact, our protocols ensure a level of protection from fraud or misuse that would likely not be accorded if we were to maintain our equitable sharing funds using the City's accounting system. As OIG is aware, OSNP's equitable sharing and expenditures is the subject of an annual independent A-133 single audit. Such an annual independent audit would not be required if our equitable funds were maintained through the FMS system. Based on our experience, this regularity of auditing is not what we might expect to receive as part of the City's annual A-133 single audit in light of the fact that we are a small agency among hundreds of city agencies. As an independent non-mayoral agency, we believe our internal controls coupled with an independent complete A-133 single audit performed on an annual basis has helped protect our office from any risk of potential fraud and misuse of equitable sharing funds. And we strongly disagree with OIG's conclusory assertion that our equitable sharing funds are at greater risk of potential fraud and misuse because we do not use the City's accounting system.

While we disagree with this finding and do not think alternative corrective actions are required, we are prepared to engage as necessary in follow-up discussion with AFMLS regarding the applicability of the July wire to OSNP as well as our agency protocols and controls to address the risk of fraud or misuse.

## **Second Finding**

The Draft Report concluded that OSNP's receipt and expenditure of equitable sharing funds on behalf of state and local law enforcement pursuant to a formal Memorandum of Understanding (MOU) of the Drug Enforcement Administration's (DEA) New York Drug Enforcement Task Force (NYDETF) was impermissible according to the Guide and would only be permissible if the NYDETF was a "chartered DOJ task force."

### **Response:** Disagree

The Draft Report finds that the NYDETF sharing disbursements to and expenditures by OSNP for fleet management costs pursuant to the terms of a formal MOU do not comply with the Guide and recommends that the Criminal Division ensure compliance. It is our understanding, however, that the Criminal Division (specifically AFMLS) was consulted at the time the arrangement for vehicle leasing costs was first included in the MOU in 2005. Moreover, AFMLS was again consulted when the MOU was modified in 2011. In the 2011 modification, SNP agreed to pay for fuel and maintenance and repair costs, in addition to the cost of leasing, for the vehicles driven by the state and local law enforcement officers assigned to the NYDETF, and the other parties agreed to waive their share of forfeited funds until SNP was paid \$2.6 million to cover these costs. The MOU further provided that SNP would place any portion of this \$2.6 million that exceeded the actual leased car costs incurred by OSNP into an escrow account. The DEA has informed this office that the draft modifications were provided to AFMLS. On March 10, 2011, Ms. Jennifer Bickford approved the proposed

modification, by email to DEA, and noted that AFMLS had approved sharing pursuant to the agreement in the past.<sup>5</sup> As the Draft Report notes on page 5, AFMLS is the author of the Guide and is responsible for establishing DOJ Equitable Sharing Program rules and policies. If and to the extent any provision(s) in the NYDETF MOU may vary from the requirements of the Guide, such variance seems immaterial in light of AFMLS' approval of the arrangement.

Moreover, OIG's determination that "OSNP received and expended equitable sharing funds on behalf of the state and local task force participants *which is only permissible* if the task force was an equitable sharing program participant approved by AFMLS," (emphasis added) does not account for the fact that DOJ policy authorizes such activity even if the task force itself has not been approved to participate in the program. A state or local law enforcement agency may transfer shared funds to another state or local law enforcement agency subject to only three conditions: the agency receiving the funds must be in compliance with the Agreement, Audit and Certification provisions of the Guide, the funds must be used in accordance with the permissible use provisions of the Guide and both agencies must report the transfer on the annual Agreement and Certification form. See Guide to Equitable Sharing For State and Local Law Enforcement Agencies, April 2009 (as subsequently amended online), Interim Policy Guidance, Section V.B.1.k. Consequently, OSNP may receive shared funds from task force participants and transfer shared funds to task force participants. The arrangement in the MOU, approved by all task force participants and AFMLS, simply obviates the hundreds of inter-agency transfers that would otherwise be required to accomplish the same permissible objective.

While we disagree with this finding and do not think alternative corrective actions are required, we are prepared to engage as necessary in follow-up discussion with AFMLS and the DEA regarding the NYDETF MOU compliance with the Guide and to follow AFMLS guidance in this matter.

### **Third Finding**

The Draft Report found that OSNP did not include all properties acquired in its consolidated inventory list and failed to update the list for adjustments made. The Draft Report recommended that OSNP develop policies and procedures to ensure that it maintains an inventory list that accurately reflects accountable property acquired and/or purchased through the equitable sharing program.

#### **Response: Agree**

OSNP does have inventory policies and procedures in place and has provided OIG with copies of said documentation. We agree that our current system is dated and does not offer certain functionalities needed to track all the information required for audit trail purposes. We have updated our inventory procedures to ensure that the consolidated inventory list includes all required changes. We are also in the process of acquiring a more sophisticated inventory system so we can consolidate departmental

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<sup>5</sup> On several occasions during the audit process, OSNP encouraged OIG to reach out directly to legal counsel at New York DEA. This suggestion was made in light of the fact that counsel at DEA drafted the 2005 MOU and the 2011 revision, counsel at DEA had been in direct contact with AFMLS, and counsel at DEA was in the best position to explain the history of the MOU and provide supporting documentation.

databases into an agency-wide inventory system. This upgrade will help ensure that all properties acquired and/or purchased through the equitable sharing program are tracked accurately and our policies and procedures are followed.

Please let me know if you require any additional information in connection with the final audit report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven Goldstein', written in a cursive style.

Steven Goldstein  
Chief Assistant District Attorney  
Office of the Special Narcotics Prosecutor

**THE CRIMINAL DIVISION'S MONEY LAUNDERING AND ASSET  
RECOVERY SECTION RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice

Criminal Division


*Money Laundering and Asset Recovery Section*

*Washington, D.C. 20530*

MAR - 8 2017

**MEMORANDUM**

**TO:** Thomas O. Puerzer  
Regional Audit Manager  
Philadelphia Regional Audit Office  
Office of the Inspector General

**FROM:** Jennifer Bickford, Deputy Chief   
Program Management and Training Unit  
Money Laundering and Asset  
Recovery Section

**SUBJECT:** DRAFT AUDIT REPORT of the New York City Office of Special Narcotics  
Prosecutor Equitable Sharing Program Activities

In a memorandum dated February 1, 2017, your office provided a Draft Audit Report for the New York City Office of Special Narcotics Prosecutor (OSNP), which included actions necessary for closure of the audit report findings. The Money Laundering and Asset Recovery Section (MLARS) concurs with recommendations 1 and 3; however, MLARS disagrees with recommendation 2.

Recommendation 2: Ensure the New York Drug Enforcement Task Force (NYDETF) sharing agreement and disbursements to OSNP complies with the Guide, including those disbursements that have not been spent by OSNP.

The Office of Inspector General (OIG) Draft Audit Report of OSNP states that OSNP received and spent shared funds that should not have been disbursed to OSNP. This statement is inaccurate and does not comport with MLARS's established policies or procedures. Shared funds are disbursed to compliant members of the Equitable Sharing Program (Program) after a review by the appropriate decision-maker for the sharing request. There is no information in the Audit Report detailing a review of DAG-72 approvals or OSNP's compliance status; so it is not apparent how the OIG reached the conclusion that funds were disbursed to OSNP in error.

OIG correctly states that the NYDETF is not eligible to receive sharing. MLARS does not recognize NYDETF as a Program participant eligible to receive Department of Justice (DOJ)



equitable sharing funds either directly or indirectly. However, the NYDETF consists of various law enforcement agencies, including OSNP personnel, which have entered into a Memorandum of Understanding (MOU) that dictates how forfeitures resulting from work contributed to NYDETF are to be shared. The *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (April 2009) (*Guide*), Section VII.C addresses this scenario and provides that the sharing decision-maker will generally honor pre-arranged task force agreements when determining sharing. OSNP contributes a substantial amount of resources and administrative support to the task force and OSNP's share proportionately and fairly reflects these contributions. Awarding higher percentages to an agency based on increased contributions and administrative support is common and does not violate the spirit or letter of MLARS' policies. Therefore, there is no basis to suggest that funds should not have been disbursed to OSNP.

OIG incorrectly states that OSNP was not entitled to receive funds for anticipated fleet management costs. Pursuant to the *Guide*, Section V, shared funds received by OSNP must be used in accordance with the *Guide* for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency. OSNP may permissibly use any or all of its shared funds to support the NYDETF as long as the purchases are permissible and any tangible items remain in the command and control of OSNP. In addition, agencies can earmark shared funds for specific expenditures. Costs associated with vehicles are permissible under the *Guide* V.B.1.d—law enforcement equipment—so OSNP is permitted to earmark any funds on hand for such an expenditure.

Although not included in the recommendations, OIG determined that OSNP established a sub-account to which NYDETF members had direct and indirect access. The *Guide*, Section V.B.2.g prohibits equitable sharing funds from being maintained in petty cash, secondary, or sub-accounts. This policy was further clarified in an *Equitable Sharing Wire* in July 2015. Maintaining funds for NYDETF operational expenses in a sub-account is impermissible and funds to be used in support of the NYDETF must be earmarked within OSNP's single DOJ equitable sharing account or accounting code.

Upon receipt of the final audit report, MLARS will work with OSNP to correct recommendations 1 and 3 and will require OSNP to consolidate the identified sub-account into OSNP's primary equitable sharing account. MLARS is available to discuss its policies and procedures regarding this matter.

cc: Denise Turcotte  
Audit Liaison  
Criminal Division

Richard P. Theis  
Assistant Director  
Internal Revenue and Evaluation Office  
Justice Management Division

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

The OIG provided a draft of this audit report to the Criminal Division's Money Laundering and Asset Recovery Section (MLARS) and the Office of the Special Narcotics Prosecutor for the City of New York (OSNP) for review and official comment. MLARS's response is incorporated as Appendix 3 of this final report, and OSNP's response is incorporated as Appendix 2. In response to our draft audit report, MLARS did not concur with one of the OIG's three recommendations, and as a result, the status of the audit report is unresolved. The following provides the OIG analysis of the response and summary of actions necessary to resolve the report.

### Recommendations to the Criminal Division:

- 1. Ensure OSNP's equitable sharing receipts and expenditures are managed using the appropriate accounting system, as required.**

Resolved. MLARS concurred with our recommendation and stated that it would work with OSNP to address the recommendation.

OSNP did not concur with our recommendation, contending that it was in compliance with the MLARS requirement because it is an independent, non-mayoral agency responsible for managing its appropriated funds. It also noted that our report recognized that OSNP is responsible for managing its own funds and that its equitable sharing receipts were deposited in a separate bank account, as required by the Guide.

However, our audit report does not take issue with OSNP's statement that it manages its own appropriated funds or that it is in compliance with the requirement that equitable sharing funds be deposited in a separate bank account. Rather, this finding is focused on the MLARS requirement that an agency must use the same accounting system for equitable sharing receipts that it uses for managing its appropriated funds. The OSNP uses the City's financial system to manage its appropriate funds, but uses a different accounting system to manage its equitable sharing receipts. Therefore, we concluded, and MLARS agreed, that OSNP was not in compliance with the requirement set forth in the Criminal Division Equitable Sharing Wire.

OSNP also contended that the criteria used for this finding was outside the audit's scope. While our specific testing concentrated on activity between July 2012 and June 2015, the scope of our audit was not limited to that timeframe and included an assessment of OSNP's controls over its equitable sharing funds. This assessment revealed that OSNP has not revised or updated its accounting system to comply with the July 2015 requirements, which is the subject of this recommendation.

Furthermore, our report did not claim that OSNP officials explicitly stated that the City authorized it to use a separate accounting system, as asserted by OSNP. Our report only refers to OSNP's representation to us that the City authorized OSNP to use a separate accounting system. However, as disclosed in the draft audit report, OSNP officials were not able to support their contention with adequate documentation. Neither the e-mails between the Queens District Attorney and the Criminal Division, nor the letter from the Criminal Division authorized OSNP to conduct standalone Single Audits or supported OSNP's assertion that the City authorized it to use a separate accounting system. In its response, OSNP asserts that the Criminal Division was aware of and approved OSNP using a separate accounting system to manage equitable sharing funds because the Criminal Division e-mail stated that the standalone Single Audits would comply with the DOJ Equitable Sharing Program requirements because the funds were awarded directly to the five District Attorneys and OSNP. As we previously told OSNP officials, its assertion is not supported by the letter, and the Criminal Division agrees with our recommendation that OSNP use an appropriate accounting system as required by the Guide.

OSNP further stated in its response that correspondence between a representative of the District Attorney's Office, OMB, and the Criminal Division regarding OSNP's 2015 and 2016 Equitable Sharing Agreement and Certification reports makes it "abundantly clear" that, after issuance of the July 2015 Wire, the Criminal Division and the City were well aware that OSNP continued to manage its equitable sharing funds outside of the City's accounting system, had no objection and, in fact, assisted with OSNP report filings. We reviewed this correspondence and found no indication that the correspondence mentioned or referenced the use of a separate accounting system and therefore does not support OSNP's claim that the Criminal Division approved its system of accounting.

OSNP did not concur that its equitable sharing funds were at risk of potential fraud and misuse because of its use of City-established accounting and internal control requirements for its equitable sharing funds. However, OSNP's implementation of the City's controls are incomplete and inadequate if equitable sharing funds are not accounted for using the City's accounting system, because any of the City's monitoring activities to test those controls would not be applied to the equitable sharing funds as these funds fall outside the purview of the City's financial system at large. Because the funds were managed outside of that system, the intended controls cannot be applied to the fullest, designed extent. Therefore, we concluded that the funds were put at higher risk of potential fraud and misuse.

This recommendation can be closed when we receive evidence that OSNP's equitable sharing receipts and expenditures are managed using an accounting system compliant with the DOJ Equitable Sharing Program's requirements.

**2. Ensure the NYDETF sharing agreement and disbursements to OSNP comply with the Guide, including those disbursements that have not been spent by OSNP.**

Unresolved. Both the Criminal Division and OSNP did not concur with our recommendation. We made this recommendation because we believe potential risks stem from how funds were disbursed to the NYDETF. Specifically, through a Memorandum of Understanding (MOU), task force members “waived” their right to equitable sharing disbursements, up to a certain amount, for funds to go directly to OSNP, which we found was in violation of the Equitable Sharing Guide. To reduce the risks, we believe that OSNP should follow the Guide’s policies for how agencies are allowed to receive shared funding.

The OIG and MLARS agree that the NYDETF is an informal task force, as defined by MLARS in its Equitable Sharing Guide, and that the NYDETF is not allowed to receive equitable sharing funds because it is not an authorized DOJ Equitable Sharing Program participant. We found that OSNP received equitable sharing funds on behalf of the NYDETF and that these receipts represented direct payments to the NYDETF, which was not permissible because the NYDETF was not an equitable sharing program participant eligible to receive and spend equitable sharing funds. Additionally, the Guide states that “cash transfers of shared funds from one state or local law enforcement agency [that is a DOJ Equitable Sharing Program participant] to another are permitted.... The agency transferring the funds is responsible for verifying that the recipient agency is eligible to receive sharing.” Although the Guide allows participants of an informal task force who are also authorized DOJ Equitable Sharing Program participants to receive equitable sharing funds, no equitable sharing funds are to be disbursed to the informal task force itself, in this case the NYDETF. Therefore, we concluded that the NYDETF, even with OSNP acting on its behalf, was not entitled to receive direct disbursements.

We found that OSNP received equitable sharing funds on behalf of the NYDETF because: (1) the MOU between the DEA, OSNP, NYSP, and NYPD assigned OSNP the responsibility of acting as a fiduciary for the NYDETF; (2) the funds waived by NYSP and NYPD were disbursed directly to OSNP specifically for NYDETF fleet management costs; and (3) OSNP maintained the funds in a separate account, segregated from OSNP’s other equitable sharing funds, which were also maintained outside of the accounting system used to manage and account for its City of New York appropriations. These factors increase the potential risk that these funds may be misused. We further analyze MLARS and OSNP’s responses below.

## *OIG Analysis of MLARS's Response to Recommendation 2*

In its response, MLARS argued that OSNP did not receive and spend shared funds that should not have been disbursed to OSNP and referred to Section VII.C of the Guide to support its assertion. We find MLARS's argument contrary to its agreement that the NYDETF is not a DOJ Equitable Sharing Program participant and therefore not entitled to receive funds. We also do not believe Section VII.C supports their position. Section VII.C states that "The Department of Justice will generally honor written sharing agreements by informal task forces when the informal task force itself is a permanent or semi-permanent entity.... If the informal task force and its pre-arranged percentages are acceptable, separate sharing amounts will be disbursed to each individual law enforcement agency in the task force. *No funds will be disbursed to the informal task force itself.*" (emphasis added)

From the outset of our audit, OSNP asserted and provided documentation, including the MOU, demonstrating that the funds it received on behalf of the NYDETF were transferred from its equitable sharing account to a separate NYDETF account within OSNP's non-City of New York accounting system. This separate account was used only for NYDETF expenses. According to OSNP officials and documentation requested during our audit, transfers to this account were made after OSNP and its staff coordinated with the DEA to identify any disbursements OSNP received as a result of NYSP and NYPD waivers of funds. NYSP and NYPD waived their requests for equitable sharing funds through DAG-71 forms, in accordance with the MOU.<sup>11</sup> As a result, we concluded that the funds were disbursed to OSNP specifically for NYDETF expenses, contrary to the Guide.

MLARS further stated that it is not apparent how we reached our conclusion because we did not review DAG-72 forms or OSNP's compliance status.<sup>12</sup> Neither factor, however, was relevant to our audit finding because the DAG-72 forms are used by Federal agencies to approve equitable sharing requests for funds that are submitted on DAG-71 forms by state and local law enforcement agencies participating in the equitable sharing program. During our audit, we verified disbursements made to OSNP for NYDETF-related investigations in another manner — by reviewing records within the Consolidated Assets Tracking System (CATS), as well as spreadsheets that OSNP prepared to document those disbursements.

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<sup>11</sup> The Form DAG-71, Application for Transfer of Federally Forfeited Property (DAG-71), is the DOJ form submitted by a state or local agency to the federal seizing agency to request a share of seized assets.

<sup>12</sup> Sharing decisions are documented on the form DAG-72, Decision Form for Transfer of Federally Forfeited Property. Authority to make decisions on equitable sharing requests depends on the value of the assets seized and whether the asset is forfeited through administrative or judicial proceedings.

MLARS also said in its response that our report incorrectly stated that OSNP was not entitled to receive funds for anticipated fleet management expenditures. However, the context of our statement was made with regard to OSNP receiving funds *on behalf of the NYDETF* (emphasis added) for fleet management and other costs. As we describe above, this arrangement is inappropriate according to the Guide. To clarify our point, as well as MLARS's position on the matter, we made modifications to the description of our finding in this final report.

During discussions with MLARS about this recommendation, it asserted that all disbursements were specifically made to OSNP and did not have to be used for the NYDETF expenses. We disagree with MLARS on this point because the MOU established the NYDETF as a separate entity and clearly assigned OSNP responsibility for receiving, managing, and accounting for equitable sharing funds on behalf of the NYDETF members. MLARS's response also indicated that the funds received by OSNP were allowable because the funds demonstrated an increased share by OSNP in equitable sharing activities. However, we found that the increased shares were not based on OSNP's actual contribution to equitable sharing activities. Instead, these disbursements were based on NYDETF members waiving their share of direct disbursements, up to \$2.6 million annually, for NYDETF expenses. The amounts waived were higher than the actual cost of expenses, which resulted in a balance of unused waived funds that at one point reached approximately \$6 million. In our opinion, this does not demonstrate OSNP's increased share of equitable sharing activities relative to other NYDETF members, but instead represents compensation in surplus of the intended purpose. Had MLARS ensured that the task force participants adhered to the Guide and received their agreed upon disbursements directly and prior to transferring the funds to OSNP, the risk that participants would have overpaid their share for fleet management would have been mitigated.

We are concerned that MLARS disagrees with the recommendation that it needs to ensure that the NYDETF MOU and disbursements to OSNP comply with the Guide. The actions necessary to address this recommendation have implications for basic controls and measures necessary for any DOJ component to appropriately ensure compliance with the guidance by which it requires its program participants to abide. We are further concerned that MLARS has not provided consistent guidance to OSNP on compliance with the Guide. In several discussions with OIG auditors, MLARS provided conflicting guidance and inconsistent information, including whether the NYDETF was an informal task force. When Department components are not clear with program participants and oversight stakeholders regarding the program requirements, it increases the risk of noncompliance and program mismanagement. We encourage MLARS to consider this in reviewing its position of agreeing with the accounting of equitable sharing funds contrary to its own guidance and outside a recipient's system of controls. We believe that MLARS supports the enforcement of its equitable sharing guide and the enforcement of consistent, clear, and effective program requirements.

## *OIG Analysis of OSNP's Response to Recommendation 2*

In its response, OSNP did not concur with our recommendation. However, it did not provide additional information or documentation to support its non-concurrence. OSNP claimed that the Criminal Division (MLARS, specifically) reviewed the MOU signed by the NYDETF members. During the audit, we requested a copy of the approved MOU to support its assertion that the DEA and MLARS approved the MOU. OSNP could not provide a copy of such approvals, only providing an incomplete e-mail chain that referenced the DEA Legal Counsel's *review* (emphasis added) of the MOU. OSNP did not produce any document or other information containing DEA or MLARS approval.

OSNP also stated that the Guide permits task forces to spend funds on behalf of the state and local task force participants even if the task force is not a DOJ Equitable Sharing Program participant. However, according to the Guide, a task force may only receive and spend equitable sharing funds if the task force applies and is accepted as a DOJ Equitable Sharing Program participant. Because the NYDETF is an informal task force – not recognized as a DOJ Equitable Sharing Program participant, it was not allowed to receive or expend equitable sharing funds. Therefore, when OSNP received funds on behalf of the NYDETF, we concluded that this violated the Guide's policy.

In its response, OSNP asserted that it can receive a transfer of shared funds from the NYSP and NYPD, to which we do not object as both of these entities are approved DOJ Equitable Sharing Program participants. However, this statement does not address the deficiency we identified. Specifically, we determined that the NYSP and NYPD did not transfer funds to OSNP, but instead, the agencies waived their share, and those funds were disbursed directly to OSNP as a *de facto* fiduciary for the NYDETF, which is not an approved DOJ Equitable Sharing Program participant. Further, as discussed previously, OSNP accounted for the equitable sharing funds outside the controls of the City's accounting system.

We had several conversations with MLARS regarding this recommendation. MLARS agreed that the NYDETF is an informal task force and that an informal task force is not allowed to receive direct shares according to the Guide. MLARS also stated and agreed with our concerns regarding the method OSNP was using to account for the NYDETF funds. The focus of MLARS's concerns related to how OSNP accounted for the NYDETF funds after receipt using a subaccount. However, according to MLARS, because an MOU was in place, the method of how funds were distributed to OSNP for the NYDETF's activities was allowed. We believe that the origination of potential risks stems from how those funds were disbursed to the NYDETF, through task force members waiving funds directly into the control of OSNP without the use of an accounting system required by the Guide. The waiver of funds by participants appeared to reduce the oversight those agencies had of their

shared funds, and there appeared to be a resulting accumulation of unspent NYDETF funds. We believe that following the policies for how agencies are allowed to receive shared funding would have eliminated these situations from occurring. As a result, this recommendation remains unresolved as MLARS has not yet agreed to review the process by which OSNP receives the NYDETF funds.

This recommendation can be resolved when we receive and find sufficient the Criminal Division's proposed actions to ensure that the NYDETF sharing agreement and disbursements to OSNP comply with the Guide, including those disbursements that have not been spent by OSNP.

**3. Ensure OSNP develops policies and procedures to ensure that it maintains an inventory list that accurately reflects accountable property acquired and/or purchased through the DOJ Equitable Sharing Program.**

Resolved. MLARS concurred with our recommendation and stated that it would work with OSNP to address the recommendation.

OSNP concurred with our recommendation and stated that the current system is dated and does not offer certain functionalities needed to track all information required for audit trail purposes. In its response, OSNP stated that inventory procedures were updated to ensure that the consolidated inventory list includes all required changes. Lastly, OSNP stated that it is in the process of acquiring a more sophisticated inventory system, which will help ensure that all properties acquired and/or purchased through the DOJ Equitable Sharing Program are tracked accurately.

This recommendation can be closed when we receive an updated policy that ensures property acquired through the DOJ Equitable Sharing Program is accounted for properly.