AUDIT OF THE UNITED STATES MARSHALS SERVICE COMPLEX ASSET TEAM MANAGEMENT AND OVERSIGHT

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

Audit Report 11-42
September 2011

REDACTED – FOR PUBLIC RELEASE

AUDIT OF THE UNITED STATES MARSHALS SERVICE COMPLEX ASSET TEAM MANAGEMENT AND OVERSIGHT

EXECUTIVE SUMMARY*

The Department of Justice (DOJ) may seize and then compel forfeiture of assets used in or acquired through illegal activity.[1] Such assets may include cash, bank accounts, vehicles, jewelry, stocks, real estate and operating businesses. The United States Marshals Service (USMS) Asset Forfeiture Division manages and disposes of properties seized and forfeited by federal investigative agencies and U.S. Attorneys nationwide. As of March 2011, the USMS held seized assets estimated to be worth over $3.8 billion, with cash and other financial instruments comprising about 93 percent of these assets' estimated value.

The Complex Asset Team within the Asset Forfeiture Division works with USMS district personnel to help secure, appraise, and dispose of assets requiring specialized commercial expertise, including operating businesses, complicated financial instruments, and large commercial real estate properties. In recent years, the size and complexity of the Complex Asset Team's asset portfolio have grown with the greater sophistication of multimillion-dollar financial crimes – such as those perpetrated by high-profile, white-collar criminals including Bernard Madoff – that yield forfeitable assets. Mismanagement of these complex seized assets can diminish the value of seized assets, result in excessive asset management costs, and expose the government to lengthy litigation with potential claimants. Any improprieties associated with asset forfeitures also can generate public distrust that can undermine the legitimacy of asset forfeiture as a tool for combating crime.

The DOJ Office of the Inspector General (OIG) recently conducted an investigation into an allegation that Leonard Briskman, the lead career official with the Complex Asset Team, owned a private appraisal business that presented a conflict of interest with his official USMS duties, which

---

* The full version of this report contains information that may be protected by the Privacy Act of 1974, 5 U.S.C. § 552(a) or may implicate the privacy rights of identified individuals. Therefore, the Office of the Inspector General redacted portions of the full report to create this public version of the report.

[1] Seized assets are assets taken via administrative or judicial action pending an appeal process, while forfeited assets are assets officially forfeited to the government under a final order or decree of forfeiture.

involved valuing and selling assets. The investigation did not substantiate the allegation made against Briskman, but concerns about potential irregularities in the USMS's management of complex assets prompted the OIG to conduct this audit of Complex Asset Team operations between 2005 and 2010.

OIG Audit Approach

The objective of this audit was to assess how the USMS managed and oversaw seized and forfeited assets that USMS district offices referred to the Complex Asset Team. Considering that some complex assets require years to manage and dispose of properly, the audit reviewed a five-year period beginning in January 2005 (about the time Briskman started his outside asset valuation business) and ending in April 2010 (when the USMS transferred Briskman out of the Complex Asset Team). We interviewed Briskman, Asset Forfeiture Division executives, Complex Asset Team employees, and over 25 other officials involved with the DOJ Asset Forfeiture Program in the Washington, D.C., metropolitan area and the Southern District of New York. Our audit also included a review of the Asset Forfeiture Program's asset tracking system, the Consolidated Asset Tracking System (CATS), as well as Briskman's files at the time of his administrative transfer.

To assess the adequacy of internal controls employed by the Complex Asset Team, the audit analyzed USMS policies and procedures and reviewed the Team's asset files to evaluate its methods for tracking, appraising, and selling assets. We also reviewed the management techniques Asset Forfeiture Division executives employed to ensure that necessary controls guided the operations of the Complex Asset Team. Appendix I contains a more detailed description of our audit objective, scope, and methodology.

Results in Brief

The Complex Asset Team is responsible for helping USMS district offices manage and safeguard unique and complicated assets such as operating businesses, financial instruments, and commercial real estate properties. The responsibilities of the Complex Asset Team therefore span various phases of the DOJ asset forfeiture process, including pre-seizure planning, recordkeeping, valuation, and disposition. This audit identified numerous deficiencies in the procedures the Complex Asset Team implemented to track, safeguard, value, and dispose of complicated and valuable assets. Moreover, we determined that even though the types of assets that the Complex Asset Team helps manage are commonly those most at risk of mismanagement, the USMS Asset Forfeiture Division did not

vigorously oversee Complex Asset Team decisions on how to administer assets.[2]

Pre-seizure planning is designed to identify potential obstacles in the asset forfeiture process that may expose the government to unnecessary risk, such as seizing assets with limited equity and becoming involved in protracted litigation with third-parties who may have larger interests in the assets. As such, pre-seizure planning is necessary to help the USMS and other DOJ Asset Forfeiture Program partners guide complex assets, such as operating businesses, through the forfeiture process. Our audit determined that because the Complex Asset Team has not instituted consistent pre-seizure planning procedures, the government has assumed responsibility for assets with significant liabilities that constrain the ability of the government to dispose of these assets.

Our audit found that the Complex Asset Team did not consistently track and document how assets it was responsible for were managed, appraised, and disposed. The Complex Asset Team provided us a list of 55 assets it disposed of between 2005 and 2010. The final values listed for each asset ranged from $1 to $49 million. Our review of this list revealed at least eight assets for which the ultimate purchaser or the final sale price was not recorded. Further, of the 55 disposed complex assets listed, we were able to locate corresponding files for only 47 of the assets. Additionally, our file review identified files related to 35 additional assets that were not detailed on a Complex Asset Team inventory of all assets.

Further, we found the Complex Asset Team also lacked procedures to ensure that team members charged with valuing an asset were prevented from also selling the same asset. In multiple instances, Briskman valued and sold the same asset himself, without sufficient supervisory oversight or review by other team members. Additionally, in an effort to simplify the asset disposal process, Briskman did not publicly announce the sale of some complex assets, which we found limited the ability of the general public to purchase assets. Briskman also made these decisions without sufficient oversight by his supervisor. This lack of transparent procedures and

[2] Assistant Director Eben Morales stated that the USMS Asset Forfeiture Division lacked the expertise and resources necessary to oversee Complex Asset Team decisions effectively. Morales stated said that upon assuming his role as leader of the program in 2007, he requested an independent workforce analysis of the Asset Forfeiture Division, which included the Complex Asset Team operations. Subsequent USMS budget requests also sought funding for additional Complex Asset Team employees and contractors who would work in USMS district offices and have ancillary complex asset duties. However, because Morales said he was unable to change how Briskman documented and communicated asset decisions, we do not believe these new positions would have improved how the Complex Asset Team and Asset Forfeiture Division managers worked together.

oversight in the asset valuation and disposition process caused an Assistant U.S. Attorney (AUSA) from the Southern District of New York to lose confidence in the Complex Asset Team's ability to sell two assets derived from the Bernard Madoff criminal case.[3] To ensure transparency and oversight in asset disposal and valuation functions, these duties should be segregated so that appropriate asset valuation and solicitation procedures are not compromised for the sake of an expedient sale.

Given the deficiencies our audit identified in Complex Asset Team operations, we reviewed the Asset Forfeiture Division's overall management of the Team. We found that Briskman's direct supervisor, Assistant Director of the Asset Forfeiture Division Eben Morales, did not implement formal approval structures for decisions involving complex assets, which afforded Briskman the final authority to make significant asset decisions with little or no oversight.

We also determined that Complex Asset Team decisions and operations – specifically those regarding assets restrained instead of formally seized – were not subject to internal or external reviews. Although Morales told us he was aware of this oversight deficiency, he had not addressed it at the time of our audit.

Additionally, we found that the limited staff and resources of the Complex Asset Team were disproportionate to its responsibilities. From 2005 to 2009, the number of staff varied between two and four individuals. Although Morales took steps to increase accounting and valuation expertise within the Asset Forfeiture Division at-large by requesting and hiring additional employees and contractors, including 14 forfeiture financial specialist contractors beginning in 2009, these efforts were primarily designed to ensure financial compliance in USMS district offices rather than to improve the capabilities of the Complex Asset Team. Further, because complex assets require legal counsel, the burden of identifying legal issues fell upon the Complex Asset Team without any proactive review by the USMS Office of General Counsel.

In our report, we make 20 recommendations to assist the USMS and Justice Management Division (JMD) in improving Asset Forfeiture Division operations with specific attention to ensuring the transparency of Complex Asset Team operations.

[3] According to Morales, AUSAs up until this point had only provided positive feedback regarding Briskman's performance.

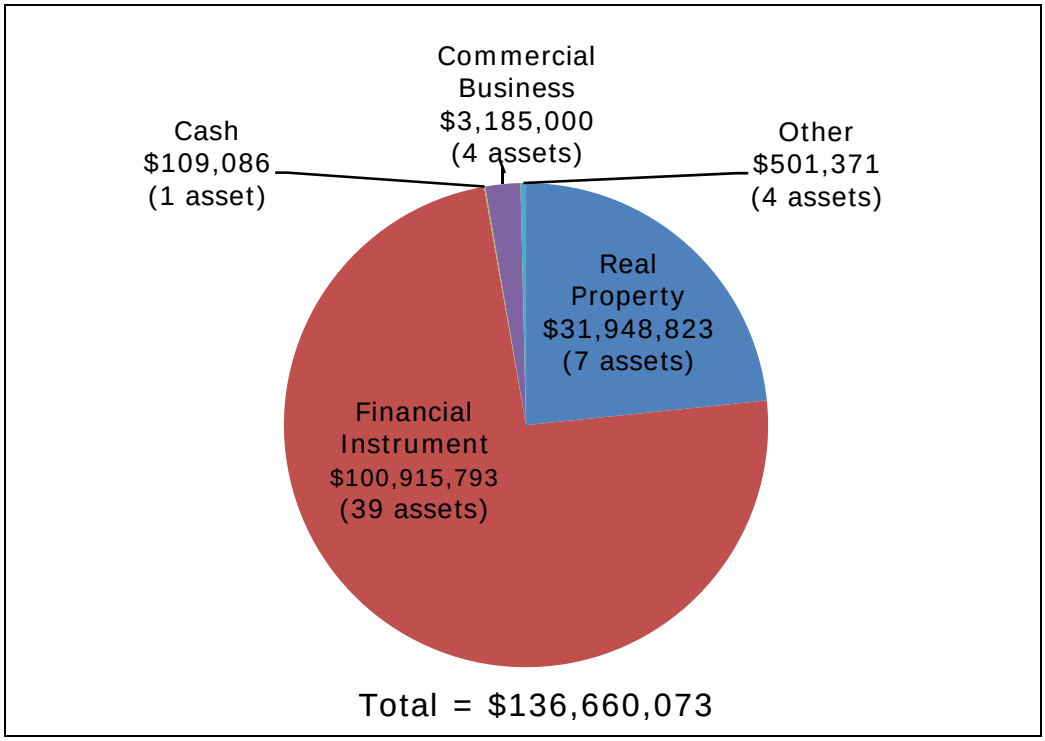
Our report contains detailed information on the full results of our review of USMS management of complex assets. The remaining sections of this Executive Summary summarize in more detail our audit findings.

Background

Three DOJ components manage particular aspects of the Asset Forfeiture Program. The Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) implements policies governing DOJ asset forfeiture revenue. The Justice Management Division's Asset Forfeiture Management Staff (AFMS) administers CATS – which other DOJ components use to enter and track asset information. AFMS also administers the Assets Forfeiture Fund (Fund), which holds proceeds from the sale of assets. The USMS is responsible for managing, valuing, and disposing of seized and forfeited assets.

Within the USMS Asset Forfeiture Division, the Complex Asset Team works with USMS district offices to manage and dispose of assets that require specialized knowledge and expertise, including operating businesses, various financial instruments (such as stocks, bonds, and bank accounts), and commercial or high-value real property. The Team also may assist on any asset that presents a particular challenge to the districts. As shown in the chart below the Complex Asset Team disposed of approximately $136 million in complex assets between January 2005 and August 2010.

ASSETS DISPOSED BY THE COMPLEX ASSET TEAM
(JANUARY 2005 to AUGUST 2010)



Source: Records compiled by the USMS Complex Asset Team

The Complex Asset Team has become responsible for administering increasingly intricate and valuable assets. For instance, the Complex Asset Team recently became responsible for administering assets seized as a result of investigations into multi-million dollar financial frauds. Since 2005, this Team consisted of Briskman and up to four other staff members, until Briskman's administrative transfer in April 2010.

Pre-Seizure Planning

To manage and dispose of complex assets successfully, the USMS, the U.S. Attorney's Office (USAO) responsible for prosecuting the case, and the investigative law enforcement agency should conduct pre-seizure planning to mitigate the risk that the government will assume unnecessarily difficult problems. To ensure effective pre-seizure planning, the Complex Asset Team should begin the planning process as soon as the USAO or investigative agency becomes aware that complicated or potentially high-value assets will be targeted for forfeiture. According to DOJ and USMS policies, the Complex Asset Team and other Asset Forfeiture Program partners must consider the following questions during pre-seizure planning: (1) What is being seized? (2) Should the asset be seized? (3) How and when will the asset be seized? (4) Are there any anticipated management and disposition problems? (5) Is publicity anticipated with regard to the seizure? (6) Is the asset an operating business or a complicated financial instrument?

According to Asset Forfeiture Program and USAO pre-seizure planning guidelines, the USMS should be notified once assets are targeted for forfeiture. However, our review of USMS records could not ascertain whether the Complex Asset Team was consistently notified by USMS district offices, USAOs, or investigative agencies that an asset was about to be seized. The Complex Asset Team's interagency responsibilities and specialized experience handling different types of assets make it unique among the other participants in the Program. We believe that the Complex Asset Team can perform a critical role in different aspects of the asset seizure and management process, especially when deciding to seize an asset and in building institutional knowledge needed to help the Asset Forfeiture Program handle future assets efficiently and effectively. Unique, complicated, or unpredictable assets should therefore be referred to it when local USMS districts do not have the skills or experience to manage the assets easily. Furthermore, USAOs and investigative agencies should consult with the Complex Asset Team when assets of this nature are considered for seizure.

When the Complex Asset Team received pre-seizure planning requests for assistance with assets, it did not employ a standard process to track these requests. We consequently could not determine whether USAOs, investigative agencies, or USMS district offices consistently notified the Complex Asset Team that a unique or complicated asset was about to be seized or if the Team adequately addressed all pre-seizure assistance requests. Therefore, we recommend that the USMS develop standard procedures that require the Complex Asset Team to track pre-seizure notices

received from USAOs, investigative agencies, or USMS district offices and assistance provided with regard to these assets.

Prior to the government taking control of an operating business, the Complex Asset Team should collaborate with USAOs or investigative agencies to develop a business plan for the asset that outlines how the business should be handled and safeguarded through the forfeiture process. USMS policies generally describe that these business plans should: (1) assess the financial status of the asset, (2) determine whether the asset should continue operating, (3) clarify the responsibilities of various agencies involved in the seizure or restraint, and (4) assess whether the USMS needs additional resources to manage and dispose of the asset properly.

USMS personnel who worked with Briskman said that he believed formal operating business plans might result in limiting the discretion required to make future asset management decisions. In addition, Briskman stated that it was often very difficult to obtain financial records prior to taking control of an asset. As a result, Briskman explained that he regularly used his business experience and on-site observations to determine the viability of businesses targeted for the purpose of advising other members of the Asset Forfeiture Program. For example, while on-site at a particular facility with agents investigating the owner of a waste management corporation, Briskman said he assessed the economic viability of the business by noting the number of garbage trucks traveling back and forth.

The Complex Asset Team did not employ a consistent approach to preparing pre-seizure operating business plans. Although the lack of available information prior to seizure or restraint can hinder the Complex Asset Team's ability to conduct a thorough analysis of an operating business prior to restraint or seizure, the Complex Asset Team should still document its attempts to obtain the information necessary to prepare a business operating plan that addresses USMS policy requirements. The informal approach Briskman employed to assess the viability of assets prior to restraint or seizure risked overlooking important factors. Specifically with regard to the waste management facility noted above, neither Briskman's reliance on observations of on-site activity nor subsequent administrative activity identified the effect legal restrictions and tax liabilities would have on the sale of the business. Instead, we found that the effect of these issues

became apparent only when the USMS tried to dispose of the business about a year later.[4]

The USMS should therefore ensure that the Complex Asset Team prepares pre-seizure business plans consistently, and it should also require that responsible officials evaluate the sufficiency and completeness of these reviews.

Complex Asset Team Recordkeeping

In March 2010, the USMS formally updated its guidelines to define a "complex asset" as a(n) operating business, commercial real estate, or financial instrument (including marketable and non-marketable securities, interests in partnerships and insurance policies) that may have value. According to CATS, between January 2005 and December 2009, the USMS disposed of about 10,000 assets worth over $3.52 billion that would have been categorized as complex assets under the March 2010 definition. However, according to USMS headquarters records, between 2005 and 2010 the Complex Asset Team disposed of only 55 assets with a value of $136 million referred to it by district offices. This means that the Complex Asset Team's asset portfolio constituted just a fraction of the total number of seized or restrained businesses and financial instruments, assets that USMS policy now defines as complex.

Because the Complex Asset Team has been involved in only a fraction of assets that meet the categorical complex asset definition, there is a risk that district offices are administering and disposing of businesses, commercial real estate properties, and complicated financial instruments without soliciting the input of the Complex Asset Team. According to Asset Forfeiture Division personnel, many USMS district offices do not have the personnel with the experience and skills required to manage and dispose of these assets properly. We therefore recommend that the USMS clarify its policy – specifically its definition of complex assets – to ensure that district offices know what types of assets merit Complex Asset Team assistance.

The USMS was not able to provide to us asset files for 8 of the 55 assets it reported disposed by the Complex Asset Team between 2005 and 2010. As a part of the audit, we also reviewed documents at USMS

[4] Once the waste management corporation was forfeited in February 2009, the USMS began selling discrete portions of the business. The USMS then determined that it could not sell certain parts of the business without addressing how to handle the corporation's liabilities, such as state and local taxes. As a result, portions of the corporation remained unsold at the time of the audit.

headquarters and identified 35 additional files that appeared to be for assets that were not on the Complex Asset Team asset list.[5] We subsequently asked Asset Forfeiture Division managers and Complex Asset Team members for any additional information regarding the 35 files identified. To date, the USMS has not provided us information to: (1) explain the disparity between the original inventory of 55 assets and the 35 additional files we found at USMS headquarters or (2) demonstrate that it has properly safeguarded and accounted for assets pertaining to the 35 files we identified.

We determined that the Complex Asset Team did not maintain a comprehensive log of the requests from USMS district offices, USAOs, and investigative agencies for assistance with assets during the seizure and forfeiture process. We also found that the Complex Asset Team did not maintain organized and complete records of its own activities. As a result, the Complex Asset Team could not determine the extent of its involvement in requests for assistance, nor could the OIG assess the appropriateness of the Team's asset management decisions. To ensure that district offices receive Complex Asset Team advice on all assets that require its specialized assistance, the USMS should develop procedures to require the Complex Asset Team to track incoming notifications, requests, and referrals of assets consistently. In addition, because CATS is the primary tracking system employed by the DOJ Asset Forfeiture Program, we recommend that JMD update CATS so that local USMS district offices and the USMS Asset Forfeiture Division can use CATS to identify whether an asset is a complex asset that is being managed by the Complex Asset Team.

Asset Valuation and Dispositions

The Complex Asset Team is charged with both appraising assets at fair market value and finding buyers for forfeited assets. Adequate internal controls regarding asset administration should preclude the same person from both appraising and selling the same asset. This is because an appraiser is responsible for determining the fair market value of an item while the seller is primarily interested in securing buyers for an item. The seller's interest in quickly finding a buyer can conflict with the appraiser's interest in setting a fair price.

[5] Complex Asset Team files were labeled by case name or descriptive title. To determine what asset each of the 35 files pertained to, we reviewed the files for CATS asset identification numbers, which we then used to identify the asset. We could not identify the associated asset identification number in 14 of the 35 files and therefore were not able to determine the particular asset the file pertained to (or even whether the file pertained to a particular asset).

We determined that the Complex Asset Team did not employ procedures that segregated appraisal duties from selling functions. Briskman both valued and disposed of the same assets himself. We did not find evidence to suggest that this lack of segregation of duties resulted in personal gain for Briskman. However, we believe that the USMS should implement strong internal controls by having different Complex Asset Team members perform appraisal and selling duties.

We also found that the Complex Asset Team lacks clear guidelines regarding how to value different types of assets properly. According to internal USMS policy, a professional assessment of the value of any business, including commercial properties, is required before an asset can be sold. Briskman explained that, as a certified appraiser, he personally performed many complex asset appraisals in order to minimize the cost of obtaining asset values from outside valuation professionals. However, when determining asset values, neither Briskman nor the Complex Asset Team followed formal appraisal procedures. We believe that the lack of formal procedures undermined the integrity of the valuations performed by the Complex Asset Team. Our audit therefore recommends that the Complex Asset Team develop standard asset valuation procedures.

According to federal statutes, the government is to dispose of forfeited assets publicly or otherwise by "commercially feasible means." Generally, this means that the sale of forfeited assets should be a public process whereby market forces can work to determine the value of an asset. We found a general lack of procedures governing the Complex Asset Team's asset disposal process, which often resulted in a lack of public exposure for forfeited assets.

The informal valuation and disposal procedures employed by the Complex Asset Team under Briskman led an AUSA from the Southern District of New York to question whether the team or the USMS could properly manage and dispose of two assets seized as part of the Bernard Madoff criminal forfeiture case: over one million shares in PetCare Rx (PetCare), an online pet prescription firm, and a 5 percent share of the Delta Fund, an investment portfolio of foreign technology companies. In preparing to sell these assets, Briskman said that he did not publicly announce the sales because he believed the potential market of buyers was restricted by the nature of existing partnerships tied to the assets.[6] Therefore, Briskman

[6] Briskman said he believed that only licensed brokers could publicly offer shares in closely held, private companies and limited partnerships. However, the USMS Office of General Counsel issued an opinion in May 2010, after Briskman's transfer, stating that securities regulations permit the government to offer shares in closely held companies and limited partnerships publicly in certain circumstances.

attempted to sell them to existing partners. When Briskman informed the AUSA handling the Madoff case of his proposed sales, the AUSA resisted both of Briskman's proposals because the AUSA believed his methods for valuing the assets, locating buyers, and negotiating sales were not transparent.

We believe that the Complex Asset Team's informal approach to the valuation and disposal of assets undermined its perceived competency among DOJ Asset Forfeiture Program partners. In fact, after the conflict of interest allegation was made against Briskman, the AUSA handling the Madoff forfeiture case requested and received approval to hire an external contractor to restart the disposition process for these Madoff assets instead of working with the Complex Asset Team. Because the standards governing public offerings of certain complex assets are not straightforward, we recommend that the USMS implement detailed policies outlining the circumstances in which the Complex Asset Team should employ a public process to dispose or sell assets.

Complex Asset Team Oversight

Given the level of the procedural deficiencies we found within the Complex Asset Team, we reviewed the management approach employed by USMS Asset Forfeiture Division leadership over the Team. The current Assistant Director of the Asset Forfeiture Division, Eben Morales, served in a supervisory role over Briskman throughout our audit scope. Briskman provided Morales with case updates by sending a monthly summary containing a brief description of the status of each case actively managed by the Complex Asset Team. However, we did not find evidence that Briskman provided Morales with accurate and sufficiently detailed information about complex asset activity. We found that Briskman's monthly asset activity reports were often brief summaries that lacked critical details and at times were inaccurate.

Additionally, the Asset Forfeiture Division did not apply a formal approval structure for decisions involving complex assets with the highest value and risk. Briskman had the final authority on many significant asset decisions, including how to dispose of complex assets. We found that Morales and his management team did not need to approve many of Briskman's decisions, and therefore Morales and his team were not in a position to: (1) identify potential problems readily, (2) ensure that the Complex Asset Team adhered to applicable procedures, or (3) oversee whether asset administration duties were delegated appropriately. In fact, Morales said he realized that complex asset files were inadequate and recognized that Briskman generally had too much individual responsibility.

However, Morales also said that despite repeatedly directing Briskman to improve his procedures, he was unable to compel the Complex Asset Team to remedy many of its practices – most particularly its inadequate asset management recordkeeping. We believe that the lack of visible problems combined with Morales's hands off management style may have contributed to the team's continued inadequate recordkeeping.

To ensure effective oversight of complex asset decision-making, we recommend the USMS ensure that the Complex Asset Team develops a standardized and accurate record of its asset management activities to provide to Asset Forfeiture Division management. Further, the USMS should evaluate the level of authority granted to the position of Complex Asset Team Leader and develop a tiered-approval structure that includes documenting Asset Forfeiture Division leadership approval for asset management decisions related to high-value assets.

Further, we found that a large part of the Complex Asset Team asset portfolio – specifically those assets restrained or frozen instead of formally seized – was not subject to internal or external reviews. Even though Asset Forfeiture Division management was aware of this lack of review, it did not address the Complex Asset Team's known internal control and recordkeeping deficiencies.[7] Therefore, we recommend that the USMS establish an internal review regimen tailored to assess the handling of restrained or frozen assets administered by the Complex Asset Team.

We also found that the limited staff and resources of the Complex Asset Team were disproportionate to its responsibilities. We note that Asset Forfeiture Division management recognized the need to bolster the legal, accounting, and valuation knowledge available to Complex Asset Team employees. Although Morales initiated a number of staffing and program changes including hiring 14 forfeiture financial specialist contractors, only one change – the hiring of additional Complex Asset Team employees in 2009 – specifically augmented Complex Asset Team competencies during Briskman's tenure. While the 14 forfeiture financial specialist contractors had extensive experience relevant to forfeiture, their primary assignment during Briskman's tenure was to assist USMS district offices and not the Complex Asset Team. Further, although many complex assets require legal counsel, the burden of identifying legal issues fell upon the Complex Asset Team without any proactive review by the USMS Office of General Counsel.

[7] Given the poor state of the records, the OIG was unable to quantify whether restrained or frozen assets lost value.

Conclusion and Recommendations

The Complex Asset Team must manage and subsequently dispose of the most complicated types of assets the federal government seizes. Between 2005 and 2010, the small staff of the Complex Asset Team disposed of over $136 million in assets, yet it operated in an environment lacking the procedures to guide its actions and decisions pertaining to seized and forfeited assets. Difficulties with inter-agency pre-seizure planning and limited-scope business plans may expose the government to unnecessary risk when the USMS administers complex assets. Further, a lack of effective asset tracking and reliable recordkeeping undermined the operations of the Complex Asset Team because the Team could neither identify its historical workload nor generate important performance-based information such as the sale price and ultimate purchaser of assets.

Additionally, internal control deficiencies further affected the Complex Asset Team's ability to value and dispose of multiple assets in a transparent manner. Because the Complex Asset Team did not maintain reliable records, the OIG was unable to verify the adequacy of many Complex Asset Team asset administrative and disposition decisions. The inability of Asset Forfeiture Division managers to address these issues further exacerbated internal control deficiencies within the Complex Asset Team.

Our audit work and findings resulted in 19 recommendations for the USMS and 1 recommendation for JMD. Once implemented, these recommendations will improve the accounting for and management of seized and forfeited complex assets. As the entity responsible for safeguarding assets through the forfeiture process, the USMS should ensure that the Complex Asset Team develops a more robust internal-control environment that will enable it to track the status of assets and improve procedures governing asset valuation and disposition. Further, USMS Asset Forfeiture Division managers must take a more active role in ensuring the implementation of such improvements by more closely reviewing Complex Asset Team operations.

AUDIT OF THE UNITED STATES MARSHALS SERVICE COMPLEX ASSET TEAM MANAGEMENT AND OVERSIGHT

TABLE OF CONTENTS

CHAPTER ONE
INTRODUCTION

The Department of Justice (DOJ) may seize property associated with violations of federal law and take title to that property through a process known as asset forfeiture. Asset forfeiture is a means of punishing and deterring criminal activity by depriving criminals of property used or acquired through illegal activity. Seized and forfeited properties may include businesses, cash, bank accounts, vehicles, vessels, airplanes, jewelry, art, and real estate. As of March 2011, DOJ held seized assets with an estimated value of $3.8 billion, with cash and other monetary instruments comprising nearly 93 percent of this amount.

The administration of the DOJ Asset Forfeiture Program primarily involves three components. The Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) establishes program policies and directives with regard to the proper distribution and use of asset proceeds. The Justice Management Division's (JMD) Asset Forfeiture Management Staff (AFMS) maintains the Consolidated Asset Tracking System (CATS), which other DOJ components use to enter and track asset information. The AFMS also administers the DOJ Assets Forfeiture Fund, which holds the proceeds from asset sales.[8]

The U.S. Marshals Service's (USMS) 94 district offices are generally responsible for safeguarding seized assets until they are forfeited. The Asset Forfeiture Division at USMS headquarters helps district offices administer assets. Within this division, the Complex Asset Team assists USMS efforts to secure and appraise assets such as operating businesses and financial instruments that require specialized management and accounting skills.

In April 2010, the USMS referred to the DOJ Office of the Inspector General (OIG) a notice of a potential conflict of interest that it received from an official with the Office of the U.S. Attorney for the Southern District of New York. The referral stated that Leonard Briskman, a lead career official with the Complex Asset Team, owned a private asset valuation business. Because Briskman's official duties with the USMS involved the appraising and selling of assets, his private business activity presented a potential conflict of interest. Before notifying the OIG of this allegation, the USMS

[8] Deposits to the Assets Forfeiture Fund are used to pay for all necessary investigative and administrative expenses associated with property seizures, management, forfeitures, and disposals. Fund deposits may also be used to fund victim compensation programs and provide equitable sharing revenue to state and local law enforcement agencies.

reassigned Briskman to other duties that did not involve asset administration.

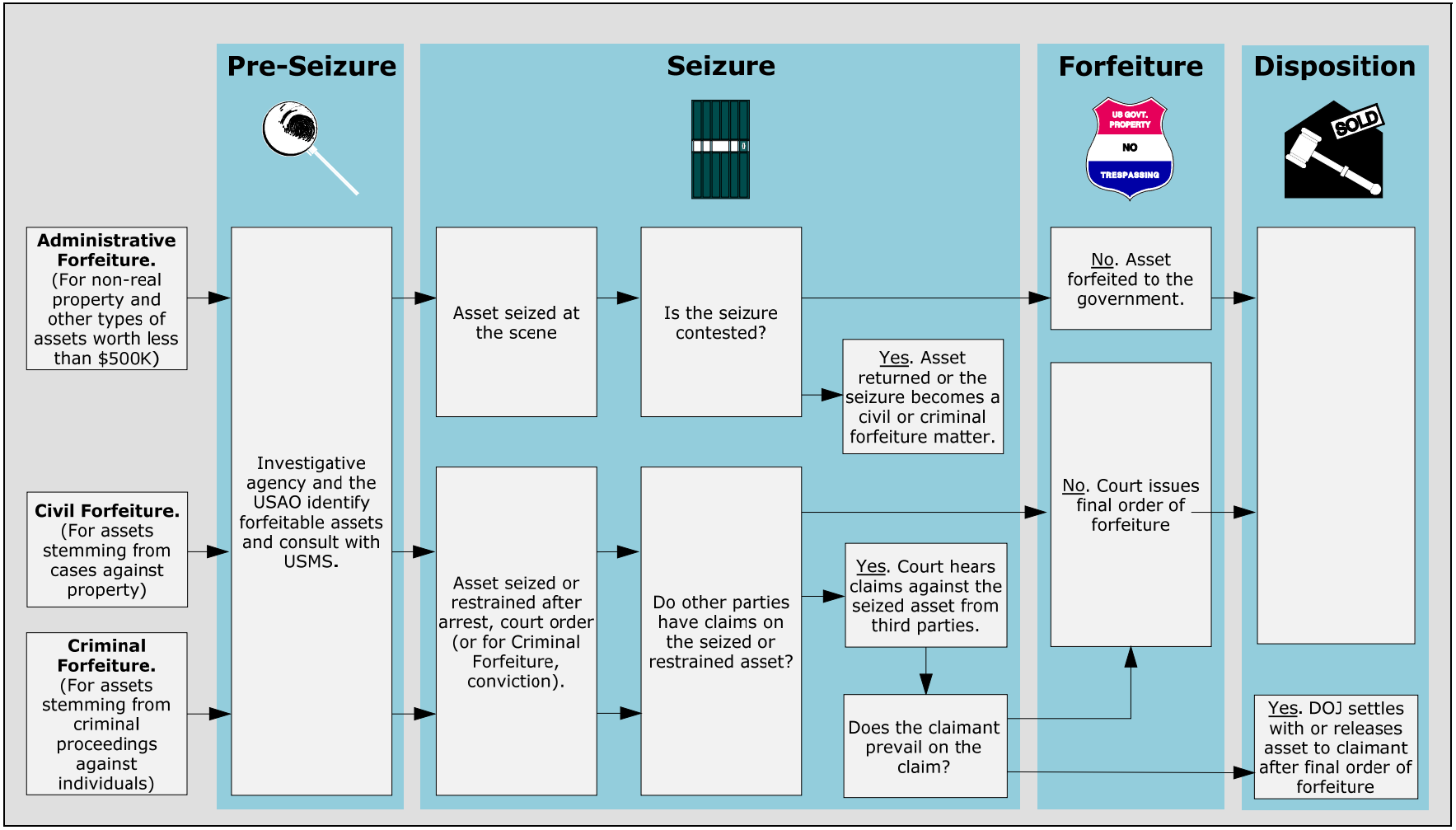
The OIG subsequently opened an investigation into the conflict of interest allegation. The investigation found that Briskman owned a private firm that valued businesses and appraised individual assets in distressed situations. Briskman reported an average of approximately $5,700 in annual income for the 5-year period 2004-2009. The investigation determined that Briskman did not direct asset valuation business to his private firm from his position with the USMS or otherwise use his position with the USMS to obtain business. He did not reference his official position in materials available to the public about his private firm. In addition, he listed this outside business activity on his annual financial disclosure forms that he was required by the Office of Government Ethics to submit to the USMS. By reviewing Briskman's financial records and interviewing individuals who worked with him in his private capacity, the investigation concluded that there was no evidence that Briskman's private business activities constituted a financial conflict of interest with his official USMS duties. However, the investigation determined that Briskman did not obtain authorization to engage in the outside employment, and USMS personnel failed to follow up on and address the information Briskman provided on his annual financial disclosure forms.

Asset Seizures and Forfeitures

When investigative agencies believe that an asset was derived from or involved in the commission of crime, they may begin forfeiture actions by seizing the property pursuant to lawful searches and arrests, or by referring the matter to United States Attorneys' Offices (USAO), which may then seek court orders to seize or preliminarily restrain the asset.[9] Seized assets cannot be officially forfeited until they are named in a final order or decree of forfeiture. As shown by Exhibit 1-1, there are three primary ways in which the ownership of an asset may be transferred to the government via forfeiture: (1) administrative, (2) civil, or (3) criminal forfeiture.

[9] Courts may issue preliminary restraining orders rather than seizure warrants in an effort to preserve an asset's value during litigation. Such orders typically prohibit owners from dissipating or devaluing a particular asset and may require that the government oversee and approve transactions involving the asset. Assets subject to preliminary restraining orders are referred to as "FIRE" assets because they are frozen, indicted, restrained, or encumbered.

EXHIBIT 1-1: OVERVIEW OF THE SEIZURE AND FORFEITURE PROCESS



Source: OIG analysis of the asset forfeiture process

Cash, contraband, and vehicles may be administratively forfeited without court involvement when owners (usually criminal defendants) or other third parties do not object to the forfeiture.[10] However, when an owner or third party contests a seizure a final determination on the asset is made through a civil or criminal forfeiture proceeding.

Assets may be forfeited through either civil or criminal proceedings if a court determines the seized or restrained asset was linked to a crime. Unlike a criminal forfeiture action, a civil forfeiture proceeds directly against the asset and does not depend on a criminal conviction or even an indictment of the owner. Upon conviction or a finding that the property is subject to forfeiture, assets remain seized under a preliminary order of forfeiture while defendants or other third parties appeal the impending forfeiture. Once all appeals have been heard, the court can issue a final order of forfeiture, at which point the asset is officially forfeited to the government. Usually, the USMS may only sell an asset after it is officially forfeited.[11]

USMS Asset Forfeiture Division

Prior to its reorganization in early 2011, the USMS Asset Forfeiture Division was comprised of four different teams, each charged with administering specific types of assets.[12]

[10] Administrative forfeiture generally applies only to personal property valued at less than $500,000. Real property cannot be forfeited administratively.

[11] Courts may approve interlocutory sales prior to verdict to preserve the value of assets. The money from the sale of such assets then becomes subject to forfeiture.

[12] The 2011 reorganization is discussed in more detail on page 8 of this report.

EXHIBIT 1-2: USMS ASSET FORFEITURE DIVISION TEAMS

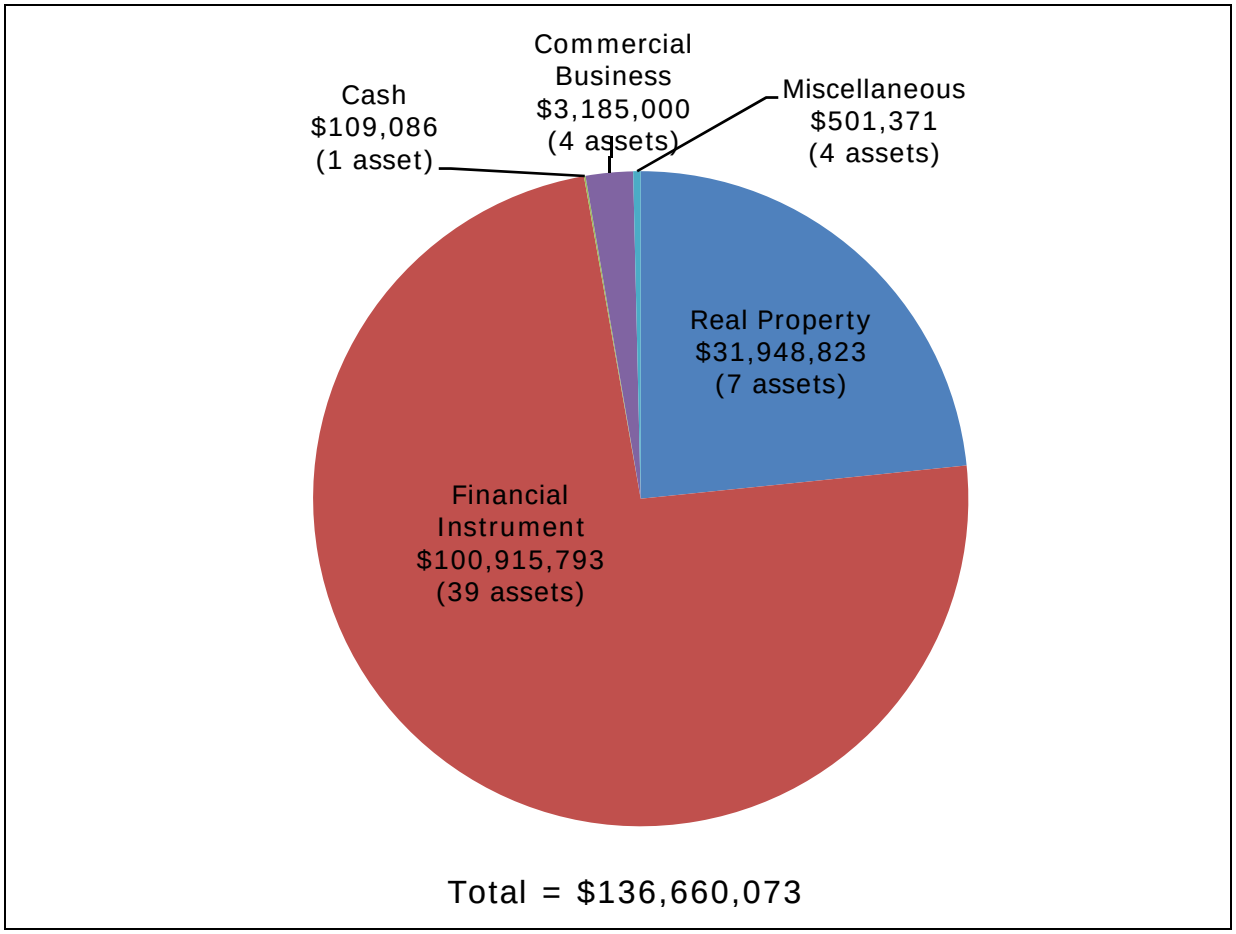
Personal Property Team. Maintained and disposed of personal property assets, such as automobiles, airplanes, and collectibles. In some cases, the Personal Property Team established national contracts to help with the safeguarding and sale of certain assets.
Cash Team. Reviewed activity involving deposits of wired funds and checks from investigative agencies or vendors.
Real Property Team. Managed contracts to maintain and sell real estate assets. This team obtained real estate brokerage services through a national contract, while property maintenance was performed through localized contracts overseen by USMS district personnel. The team also took over responsibility from the districts for price and sales decisions after a final order of forfeiture was issued.
Complex Asset Team. Managed and sold assets that required specialized commercial knowledge and expertise for their maintenance, valuation, and sale. Examples of assets that fell under the purview of this team included operating businesses, financial instruments, commercial real estate properties, and any other asset that USMS district officials believed warranted particular attention due to specific challenges in its management or disposal.

Source: USMS

Complex Asset Team

From its inception in 1998 until 2003, the Complex Asset Team consisted only of Leonard Briskman. In 2004, the USMS provided Briskman a contractor to assist with asset administration responsibilities. Until August 2009, the number of staff varied between two and four individuals. As of March 2011, the Complex Asset Team had three staff members: one full-time employee and two contract employees. According to summaries prepared by the Complex Asset Team, between January 2005 and August 2010, it disposed of 55 assets with an estimated value of over $136 million, as shown in Exhibit 1-3.

EXHIBIT 1-3: ASSETS DISPOSED BY THE COMPLEX ASSET TEAM (JANUARY 2005 TO AUGUST 2010)



Source: USMS Complex Asset Team

The size and complexity of the Complex Asset Team's asset portfolio has grown with the greater sophistication of the crimes that yield forfeitable assets. For example, the Complex Asset Team asset portfolio includes seized items associated with multimillion-dollar financial crimes, including those perpetrated by stock broker Bernard Madoff, investment lawyer Scott Rothstein, and banker and political fundraiser Hassan Nemazee.[13] Assets forfeited in these cases include real property, conveyances, financial instruments, and business interests purchased by the defendants with their ill-gotten gains. The Complex Asset Team has also been responsible for managing the sale of 25 affiliated waste disposal companies forfeited from organized crime figure James Galante. At the time of their restraint, these companies had an assumed value of approximately $60 million.[14]

Due to the complexity of a number of assets seized under these cases, the associated risk of mismanaging complex assets can be substantial. For instance, upon forfeiture of the Galante assets, the USMS became custodian of a multi-million dollar waste disposal enterprise responsible for multiple routes in the states of Connecticut and New York. Along with the Assistant U.S. Attorneys (AUSA) responsible for the forfeiture, the Complex Asset Team hired contractors to run the operating businesses and monitors to oversee the financial integrity of and limit Galante's influence over the enterprise.

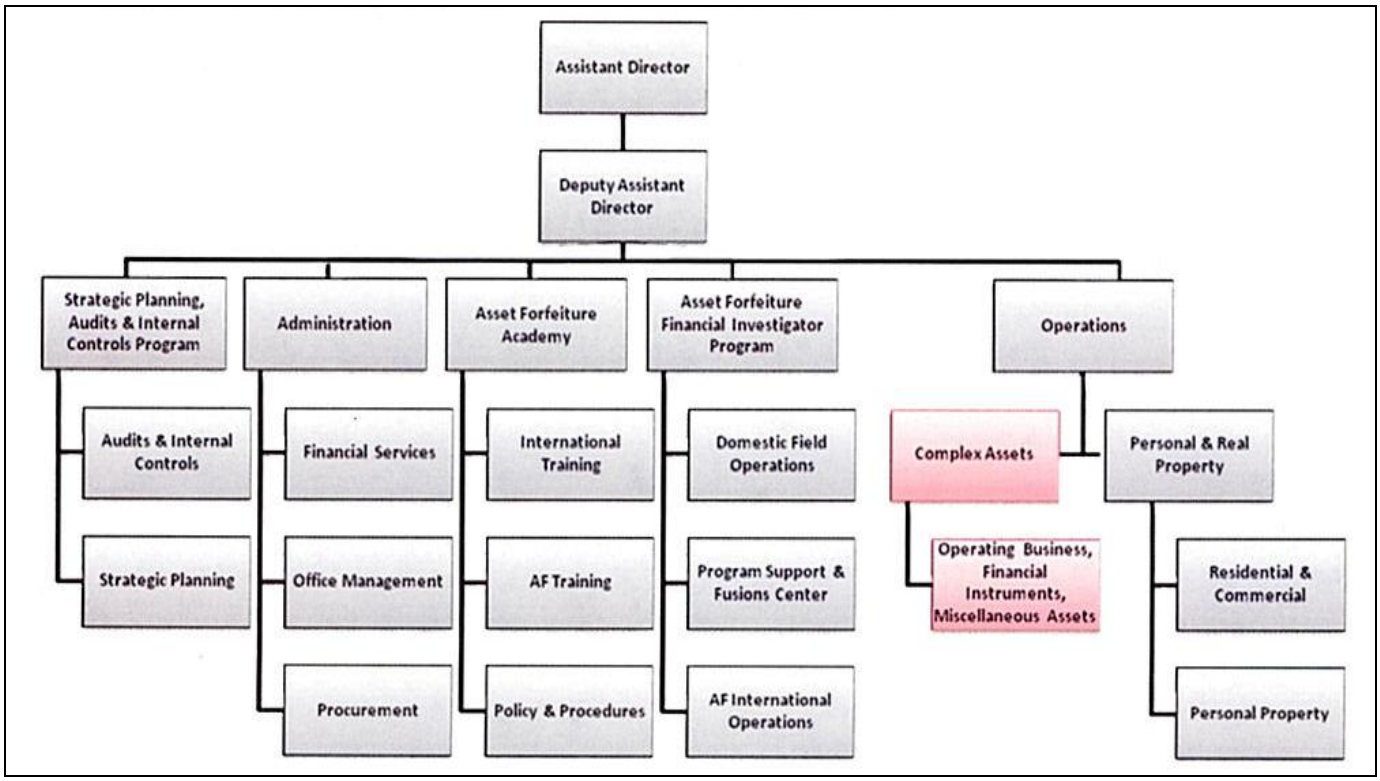
2011 Asset Forfeiture Division Reorganization

In early 2011, after the initiation of our audit, the Asset Forfeiture Division underwent a substantive reorganization that moved the Complex Asset Team from the direct supervision of Assistant Director Morales to the supervision of the Asset Forfeiture Division's Operations Branch, as shown by Exhibit 1-4.

[13] In March 2009, Bernard Madoff pled guilty to 11 counts in connection with a scheme to defraud clients in his investment business, Bernard L. Madoff Investment Securities. As part of the forfeiture order, multiple cars, boats, real property, and financial instruments were seized from Madoff. Madoff is currently serving a 150 year sentence. In January 2010, Scott Rothstein pled guilty to racketeering, mail fraud, and wire fraud charges stemming from his operation of a $1.2 billion Ponzi scheme. He is currently serving a 50-year sentence. In March 2010, Hassan Nemazee pled guilty to bank and wire fraud charges for his involvement in defrauding various banks of over $292 million. Nemazee is currently serving a 12-year sentence.

[14] James Galante pled guilty to a charge of racketeering as well as tax and wire fraud charges. Galante forfeited his ownership in the 25 waste disposal companies as well as other real and personal property. He is currently serving an 87-month sentence.

EXHIBIT 1-4: 2011 ASSET FORFEITURE DIVISION



Source: USMS

Note: Following the reorganization, the Cash Team and Personal Property Team merged and responsibility for commercial real estate moved to the Residential and Commercial Team.

According to USMS officials, this reorganization will provide the Complex Asset Team with additional opportunities to collaborate with other members of the Asset Forfeiture Division and therefore help it manage cases that include different types of assets. The Complex Asset Team will be headed by an assistant program manager who will supervise three full-time case coordinators. A dedicated forfeiture financial specialist and two contractor records examiners will also support the Complex Asset Team. As of March 2011, the Complex Asset Team only consisted of one case coordinator and the two contractor records examiners.

OIG Audit Objective and Approach

Considering that the OIG investigation identified concerns regarding Briskman's official USMS duties, the objective of this audit was to assess how the USMS managed and oversaw seized and forfeited assets referred by its district offices to the Complex Asset Team. The audit analyzed asset files to assess the adequacy of Complex Asset Team internal controls, especially with regard to tracking, appraising, and selling assets. The report divides our review into five chapters that largely follow the Complex Asset Team's

intake, administration, and disposition process. Chapter 2 discusses pre-seizure planning; Chapter 3 reviews recordkeeping issues; Chapter 4 focuses on the valuation and disposal of assets; and Chapter 5 sets forth issues with management oversight.

Mismanagement of these complex seized and forfeited assets can diminish the value of the assets, result in excessive asset administration costs, and expose the government to lengthy litigation with potential claimants. Any improprieties associated with asset forfeitures also can generate public distrust that can undermine public confidence in the legitimacy of asset forfeiture as a tool to combat crime, fund equitable sharing, and compensate victims of financial crime. Therefore, our audit assessed the Asset Forfeiture Division oversight of decisions involving the appraisal and sale of high-profile and valuable assets. We compared the procedures maintained by the Complex Asset Team to controls employed by other asset-handling groups within the USMS Asset Forfeiture Division. Our audit included interviews with Briskman, Asset Forfeiture Division executives, Complex Asset Team employees, and over 25 other officials involved in the DOJ Asset Forfeiture Program.

The methodology of our review of internal controls and management oversight was also predicated on the findings of a prior OIG audit conducted in 1998 on the Bicycle Club Casino in Bell Gardens, California. The USMS took over 7 years to manage and dispose of the seized interest in the casino. The OIG audit identified two primary conditions that caused this delay. First, Asset Forfeiture Program participants did not communicate effectively regarding how to manage the asset during seizure. Second, the DOJ performed almost no planning before seizing the casino, which besides delaying the sale of the asset, also led to exorbitant costs that eroded much of its value.[15] To address these issues, the audit recommended that DOJ asset forfeiture participants follow Department policy on pre-seizure planning and develop formal disposal plans for future problem assets. After the audit, the USMS hired Leonard Briskman to begin assisting USMS local districts and other Asset Forfeiture Program partners with the pre-seizure planning and management of financial instruments and ongoing businesses. Briskman later became the head of a unit that would become the Complex Asset Team.

[15] Subsequent litigation by minor-interest holding partners in the casino resulted in a multi-million dollar verdict against the DOJ.

CHAPTER TWO
PRE-SEIZURE PLANNING

To ensure successful complex asset management, investigative agencies, USAOs, and the USMS must make appropriate decisions regarding future asset management plans often before an asset is seized. The DOJ Asset Forfeiture Program refers to these decisions as "pre-seizure planning" and has established policies directing USMS Asset Forfeiture Division personnel to participate in discussions with USAO and investigative agency officials. Exhibit 2-1 details the kinds of questions and the level of analysis that adequate pre-seizure planning by the USMS should involve.

EXHIBIT 2-1: PRE-SEIZURE PLANNING ANALYSIS

What is being seized? To determine the scope of the seizure, who owns the asset, and what seizing the asset will entail. For example, if a business is being seized, does the asset include the building in which it operates, the property on which it is located, the inventory of the business, bank accounts, accounts receivable, and accounts payable? For businesses, the USMS should also consider its ownership structure, potential legal claims, and whether the business involves an area that may be inappropriate for government involvement (such as gambling or pornography).

Should the asset be seized? To determine the likelihood the asset will decline in value during seizure, and if so, what actions can be done to mitigate the decline in value. Will the asset require more resources to manage and oversee than the asset is worth?

How and when is the asset going to be seized? To determine if the seizure needs to be conducted immediately or if a restraining order would be sufficient to preserve the government's interest.

What management and disposition problems are anticipated? To anticipate and address logistical issues such as specialized maintenance, management, or disposition procedures that the asset may require once it is seized.

Is publicity anticipated with regard to the seizure? To ensure that appropriate DOJ personnel are advised of the seizure and the anticipated public relations concerns.

Source: Asset Forfeiture Policy Manual, 2010

The USMS consultation during pre-seizure planning is especially important when the USAO or an investigative agency is considering seizing a unique, complicated, or unpredictable asset that requires careful attention or specialized knowledge to maintain its value. Such assets include operating businesses and complicated financial instruments such as stocks, bonds, and bank accounts.

Unique, complicated, or unpredictable assets should be referred to the Complex Asset Team when local USMS district personnel do not possess the experience or skills necessary to manage them easily. Our discussions with a number of Asset Forfeiture Program personnel indicate that while instances of pre-seizure planning have increased in the past 5 years, in many cases, pre-seizure planning still does not occur. Asset Forfeiture Division officials told us that they often receive very little notice from other investigative agencies or from USAOs that an asset requiring specialized skills or administration is about to be seized. We believe that such "last minute" notices make it very difficult for the USMS to provide adequate guidance during the pre-seizure planning phase.

Pre-Seizure Asset Notification

According to Asset Forfeiture Program and USAO pre-seizure planning guidelines, the USMS should be notified once assets are targeted for forfeiture. Further, according to USMS guidelines, the Complex Asset Team should be notified whenever an asset that requires specialized commercial knowledge is about to be seized. However, our review of USMS records could not ascertain whether the Complex Asset Team: (1) was consistently notified by USMS district offices, USAOs, or investigative agencies that an asset was about to be seized, (2) responded to all pre-seizure planning requests, or (3) provided complete and accurate advice pertaining to the asset that was being considered for seizure. We found that the Complex Asset Team did not have an independent process to track pre-seizure planning requests and subsequent discussions. Moreover, its records did not always detail what pre-seizure advice it provided to the requesting USAO or investigative agency prior to a seizure. We therefore recommend that the USMS develop standard procedures that require the Complex Asset Team to track pre-seizure requests received from and assistance provided to USAOs and investigative agencies.

In some cases, investigative agencies or USAOs may encounter circumstances requiring the immediate seizure of an asset or simply find previously unknown assets at the time of a suspect's arrest. In such circumstances, the Complex Asset Team will not always have sufficient time to perform comprehensive pre-seizure planning. However, when this occurs,

we believe it is important that the referring local USMS district office, USAO, or investigating agency understand that the Complex Asset Team should still perform abbreviated planning to ensure that an asset is received and safeguarded properly by the USMS.[16] We therefore recommend that the USMS develop and provide standard operating procedures for abbreviated post-seizure reviews of assets, as appropriate, when the Complex Asset Team receives little or no notice prior to receiving assets from USAOs, investigative agencies, or USMS district offices.

Pre-Seizure Operating Business Plans

DOJ Asset Forfeiture Program policy states that whenever agencies consider seizing an operating business, agencies should attempt to use the "least intrusive means available" to obtain control of the asset. This means that DOJ should assess whether the asset could be controlled by other means – such as a protective or restraining order – instead of outright seizure. Prior to the government taking control of an operating business, the Complex Asset Team should collaborate with USAOs or investigative agencies to develop a business plan for the asset that outlines how the business should be handled and safeguarded through the forfeiture process. USMS policies generally describe that these business plans should: (1) assess the financial status of the asset, (2) determine whether the asset should continue operating, (3) clarify the responsibilities of various agencies involved in the seizure or restraint, and (4) assess whether the USMS needs additional resources to manage and dispose of the asset properly.

We interviewed current and former Complex Asset Team members to ascertain how pre-seizure plans were performed on assets that are operating businesses. USMS personnel who worked with Briskman said that he believed formal operating business plans might result in limiting the discretion required to make future asset management decisions. We found that the USMS often had difficulty obtaining the necessary financial information needed to assess an operating business that was being considered for seizure. This is because prior to seizure, businesses are often operated by a criminal defendant, conspirator, or third-party that is not obligated to provide business records or financial statements to the USMS.

Briskman told us that this made it very difficult to assess the financial aspects of a business with certainty. Briskman explained that he therefore relied on his nearly 50 years of experience in business administration as well

[16] The USMS recently began an initiative to place special criminal investigators in USAOs to further encourage coordination between the USMS and prosecutors in pre-seizure planning and aid investigations of additional forfeitable assets; however, it is too early to determine the effect of this program on complex assets seized on short notice.

as on-site observations to review businesses. For example, Briskman said that while on-site at a particular facility with agents investigating Galante and his waste management corporation, Briskman assessed the economic viability of the business by noting the number of garbage trucks traveling back and forth. He said he believed his observations and experience provided him enough evidence to show that at least in this case the asset, the garbage facility, was "a very viable business."

We found the informal approach Briskman employed to assess the viability of assets prior to restraint or seizure risked overlooking important factors. Specifically with regard to the waste management facility noted above, neither Briskman's reliance on observations of on-site activity nor subsequent administrative activity identified the effect legal restrictions and tax liabilities would have on the sale of the business. Instead, we found that the effect of these issues became apparent only when the USMS tried to dispose of the business in 2010.[17]

The Complex Asset Team under Briskman therefore did not employ a consistent approach to preparing pre-seizure operating business plans. As demonstrated by the example of the Galante waste management enterprise, this informal approach risks overlooking factors that might result in the government assuming responsibility for assets that will be difficult to dispose. Although the lack of available information prior to seizure or restraint can hinder the Complex Asset Team's ability to conduct a thorough analysis of an operating business prior to restraint or seizure, the Complex Asset Team still needs to document its attempts to obtain the information necessary to prepare a business operating plan.

Lacking a documented standard guide regarding how the Complex Asset Team should conduct and document a business review, the USMS cannot ensure that the Complex Asset Team makes well-informed decisions and appropriately advises USAOs and investigative agencies on future seizure decisions. We therefore recommend that the USMS ensure that the Complex Asset Team documents how it prepares required pre-seizure business plans. Further, we recommend that the USMS require that responsible officials review Complex Asset Team business plans to ensure that they are complete and based on sufficient evidence.

[17] Once the waste management corporation was forfeited in February 2009, the USMS began selling discrete portions of the business. The USMS then determined that because the government assumed responsibility for the business, and the business had significant liabilities (such as state and federal taxes), the government could not sell certain parts of the business without addressing how to handle the business's liabilities. As a result, portions of the corporation remained unsold at the time of the audit.

Recommendations

We recommend that the USMS:

1. Develop standard procedures that require the Complex Asset Team to track pre-seizure requests received from and assistance provided to USAOs and investigative agencies.

2. Develop and provide standard operating procedures for abbreviated post-seizure reviews of assets, as appropriate, when the Complex Asset Team receives little or no notice prior to receiving assets from USAOs, investigative agencies, or USMS district offices.

3. Ensure the Complex Asset Team documents required pre-seizure business plan reviews.

4. Require that responsible USMS officials review Complex Asset Team business plans to ensure that they are complete and based on sufficient evidence.

CHAPTER THREE
COMPLEX ASSET TEAM RECORDKEEPING

Under Asset Forfeiture Program policies, the USMS is responsible for maintaining seized assets and disposing of forfeited assets. For most types of assets, USMS policy establishes well-defined roles and responsibilities for USMS district offices and headquarters teams. However, USMS policy related to complex assets inconsistently defines what types of assets should be considered "complex," resulting in widely varying levels of control and oversight between the Complex Asset Team and district offices. In effect, the Complex Asset Team only handles assets that district offices find difficult to administer and for which they request the Complex Asset Team's specialized knowledge and skills.

As previously stated, the Complex Asset Team does not always receive prior notice of an impending seizure and therefore cannot help develop a pre-seizure plan with investigative agencies, USAOs, or district offices before an asset becomes the USMS's responsibility to manage and safeguard. When this occurs, the Complex Asset Team still needs to be prepared to help with or even assume full responsibility for maintaining an asset's value. It is therefore important that the Complex Asset Team tracks asset referrals, maintains complete files that record asset administration and planning decisions, and accounts for any seized financial instruments transferred to and held in USMS-controlled bank accounts.

Defining and Identifying Complex Assets

In March 2010, the USMS formally updated its guidelines to define a "complex asset" as a(n) operating business, commercial real estate, or financial instrument (including marketable and non-marketable securities, interests in partnerships and insurance policies) that may have value. According to a CATS asset query, between January 2005 and December 2009, the USMS disposed of about 10,000 assets with a combined value of $3.52 billion that appeared to meet the March 2010 categorical definition of a complex asset.

However, based on USMS headquarters records, between 2005 and 2010, the Complex Asset Team handled and disposed of only 55 assets with a value of approximately $136 million referred to it by district offices. The Complex Asset Team's portfolio of 55 assets actually constituted just a fraction (less than 1 percent) of the approximately 10,000 seized or restrained businesses and financial instruments, assets that USMS policy now defines as complex.

Because the Complex Asset Team has been involved in only a fraction of assets that meet the categorical complex asset definition, there is a risk that district offices are administering and disposing of businesses, commercial real estate properties, and complicated financial instruments without soliciting the input of the Complex Asset Team. Because the March 2010 USMS definition of complex asset categorically defines nearly 10,000 separate assets as complex, it appears that district offices are not adequately identifying assets that require Complex Asset Team assistance. We therefore recommend that the USMS clarify its policies to define more specifically the attributes of complex assets and develop procedures for determining when and how assets should be classified as complex assets. Such policy updates should ensure that district offices know what types of assets merit Complex Asset Team assistance. Once the policies are revised, we furthermore recommend that the USMS: (1) coordinates with JMD to update CATS so that the pertinent USMS personnel can use it to identify whether an asset is a complex asset (and therefore managed by the Complex Asset Team), (2) reconciles the assets referred to the Complex Asset Team with assets that meet the updated definition in CATS, and (3) follows up with the appropriate district office regarding the status of such assets not yet in the Complex Asset Team portfolio.

Tracking of Assets Referred to the Complex Asset Team

We attempted to identify which assets Briskman administered in order to select a sample of assets and ascertain how they were managed. We found that neither CATS nor the Complex Asset Team tracked asset referrals or notifications between DOJ Asset Forfeiture Program partners and the Complex Asset Team. Furthermore, we determined that CATS was not used to identify whether a USMS district office or the Asset Forfeiture Division managed an asset.[18] Briskman stated that he often received incoming notification and referrals via informal telephone calls and e-mails and did not have a formal intake process.[19]

[18] Once an asset is seized or restrained, investigative agencies or USMS local district offices enter asset information in CATS by category type, such as, aircraft, real property, jewelry, commercial business, vehicles, or financial instruments.

[19] Briskman instead compiled a monthly report that summarized Complex Asset Team activity. However, Briskman failed to track all asset referrals or other requests for assistance from local USMS district offices in these reports.

Because there was no log identifying all assets referred to the Complex Asset Team, the USMS attempted to reconstruct a universe of assets that the Complex Asset Team handled between January 2005 and August 2010.[20] However, a senior Asset Forfeiture Division official conceded that compiling this universe was difficult because the remaining team members lacked the historical knowledge of Complex Asset Team activity and therefore had to use whatever records were available. Nevertheless, the USMS identified at least 110 assets handled by the Complex Asset Team from 2005 to 2010, including 55 assets which were disposed of or sold during Briskman's tenure, generating more than $136 million.

By failing to ensure that the Complex Asset Team tracks notifications, assistance requests, or referrals it receives, USMS leadership lacks assurance that the Complex Asset Team provided the dedicated and specialized skills necessary to maintain the asset values. We therefore recommend that the USMS develop procedures that require the Complex Asset Team to track consistently incoming notifications, requests, and referrals of assets – even if such advice concerns assets that are not ultimately administered by the Complex Asset Team. In addition, because CATS is the primary tracking system employed by the DOJ Asset Forfeiture Program, we recommend that upon receipt from the USMS of procedures for identifying assets as complex, JMD update CATS so that local USMS district offices, and the USMS Asset Forfeiture Division can use it to identify whether an asset is a complex asset that is being managed by the Complex Asset Team.

Complex Asset Team Files

After Eben Morales, the Assistant Director of the Asset Forfeiture Division, received notice of the conflict of interest allegation regarding Briskman, Morales assigned a group of Asset Forfeiture Division employees and contractors to review Complex Asset Team files in an attempt to organize the files so that they could be comprehensible to a third-party. According to Morales, he did this because he believed that Briskman's files were inconsistent, incomplete, and inadequate with regard to how the records detailed decisions made as to the handling, valuation, and disposition of assets. As a result, the asset files made available for our review were not kept in Briskman's original form.

[20] In late 2009, the Complex Asset Team started tracking asset activity.

To obtain a universe of Complex Asset Team operations, we requested a listing of all assets disposed by the Complex Asset Team between January 2005 and August 2010. The Complex Asset Team reviewed its files and reconstructed a record of 55 assets that it believed were disposed of during this time period. The Complex Asset Team provided such a listing; however, a senior Asset Forfeiture Division official cautioned that those who compiled the list did not have complete historical knowledge of asset activity during the entirety of our scope and thus had to compile some of the data from incomplete historical records.

Even after Asset Forfeiture Division personnel organized the asset files maintained by the Complex Asset Team, we found that the USMS was still unable to determine from its files what actions the Complex Asset Team performed for each asset. For instance, the files did not detail management decisions made between the Complex Asset Team and the referring investigative agency, USAO, or USMS district office. Moreover, asset records prepared by remaining members of the Complex Asset Team did not uniformly indicate the buyer names, results of asset valuations, dates of sales, or final sale prices.

In order to verify the universe of the 55 disposed assets on the Complex Asset Team list mentioned previously, we attempted to locate corresponding files for these assets among Briskman's records that the remaining members of the Complex Asset Team provided to us. We found corresponding files for only 47 of the disposed assets on the Team listing. Exhibit 3-1 lists the 8 assets that were reportedly administered in some way between 2005 and 2010 by the Complex Asset Team, but for which we could not identify files detailing Complex Asset Team involvement with the asset.

EXHIBIT 3-1: LISTED ASSETS WITHOUT SUPPORTING COMPLEX ASSET TEAM FILES

Asset Description	Associated Case Name	Referring USMS District	Estimated Value of Assets ($)
Oil Wells	U.S. v. Gary Marcus Smith	Northern Alabama	1,500,000
Life Insurance Annuities	U.S. v. Steve Warshak	Southern Ohio	42
Boat Equipment	U.S. v. Charles E. Hays Jr.	Western Wisconsin	282,475
Private Equity	U.S. v. Tone Grant	Southern New York	418,176
Brokerage Account	U.S. v Rod Stringer	Northern Texas	449,029
Brokerage Account	U.S. v Rod Stringer	Northern Texas	16,311
Brokerage Account	U.S. v Rod Stringer	Northern Texas	8,626
Brokerage Account	U.S. v Rod Stringer	Northern Texas	972,158
Total Estimated Value for Assets Without Support			

Sources: CATS and Complex Asset Team records

During our file review, we found that some files were labeled with ambiguous asset names, such as “Property Easement,” “Nevada Matters,” and “Horse.” Our review also identified an entire drawer of documents labeled “Unclear.” We found 35 files that that we determined fell within our scope (2005 to 2010) but were not included on the original list of assets provided by the Complex Asset Team. These files are shown in Exhibit 3-2.

EXHIBIT 3-2: UNLISTED ASSETS WITH COMPLEX ASSET TEAM FILES

Asset Type	Associated Case or File Name	Seizing USMS District	Estimated Value of Assets ($)
Financial Instrument	Neal Jones: Enterprise Bankcorp	Northern Virginia	1,981
Financial Instrument	Neal Jones: Enterprise Bankcorp	Maryland	1,981
Cash	Carmichael Convention Center	Middle Alabama	5,000
Cash	Carmichael Convention Center	Middle Alabama	1,781
Real Property	Carmichael Convention Center	Middle Alabama	107,300
Real Property	Carmichael Convention Center	Middle Alabama	57,000
Money Judgment	Carmichael Convention Center	Middle Alabama	1,000,000
Cash	Carmichael Convention Center	Middle Alabama	454,921
Financial Instrument	Nevada Matters	Nevada	1
Financial Instrument	BHSR: Financial Access Solutions	Northern Texas	60,000
Financial instrument	Steve Warshak (Nationwide Life Insurance)	Northern Iowa	508,072
Real Property	Santos Case	Rhode Island	340,000
Financial Instrument	Jessica Wolcott (eGold)	Southern New York	1
Cash	Beck and Cole	Southern Texas	100,000
Cash	Beck and Cole	Southern Texas	25,000
Cash	Beck and Cole	Southern Texas	100,000
Financial Instrument	Kenneth Mackay	Western North Carolina	40,116
Financial Instrument	Kenneth Mackay	Western North Carolina	47,875
Financial Instrument	Kenneth Mackay	Western North Carolina	47,242
Financial Instrument	Kenneth Mackay	Western North Carolina	300
Financial Instrument	Stay the Night	Eastern Virginia	Unknown
Unknown	Arabian Horse	Eastern Virginia	Unknown
Unknown	Dana Jarvis	New Mexico	Unknown
Unknown	Bank Fees – Guernsey	Unknown	Unknown
Unknown	Karen B. Whitt – A.G. Edwards	Southern California	Unknown
Unknown	Beardsley Case	Middle Florida	Unknown
Unknown	Benton, IL	Southern Illinois	Unknown
Unknown	Campbell's E-mail	South Carolina	Unknown
Unknown	Pendland - Nelson Case	Unknown	Unknown
Unknown	Kathy M. Lynn	Northern Texas	Unknown
Unknown	826 Collins Rest	Eastern Michigan	Unknown
Unknown	Bro-Med	Southern Georgia	Unknown
Unknown	Firestone Auto – Ft. Lauderdale	Middle Florida	Unknown
Unknown	Capital Auto Tint	South Carolina	Unknown
Unknown	Property Easement	Eastern Michigan	Unknown

Sources: CATS and Complex Asset Team Files

Note: Consulted sources did not identify the Asset Type and Seizing USMS District for the assets noted as "Unknown" above.

To determine what asset each of the above 35 files pertained to, we reviewed the files for CATS asset identification numbers, which we then used to identify the asset when possible. We could not identify the associated asset identification number in 14 of the 35 files and therefore were not able to determine the particular asset the file pertained to (or even whether the file pertained to a particular asset). We asked Asset Forfeiture Division management and Complex Asset Team members to explain the disparity between the assets described on the Team listing and the files located by the OIG. During the audit, these USMS personnel were unable to provide additional details to explain why these assets were not contained in the post-Briskman Complex Asset Team portfolio listing. Accordingly, without further explanation the OIG cannot determine what role the Complex Asset Team had in administering the assets listed in Exhibit 3-2.

Because the records maintained by the Complex Asset Team were disorganized and incomplete, the Complex Asset Team was not able to determine the extent of its involvement, and the OIG was unable to assess the appropriateness of the Team's asset management decisions. Considering that the Complex Asset Team receives asset referrals and consultation requests from each of the 94 USMS districts, several different federal investigative agencies, and USAOs from across the United States, detailed asset recordkeeping is important. A member of the Complex Asset Team stated that these groups often need to stay informed of the status of an asset as the case with which it is associated proceeds through the court. However, this team member also told us that an Assistant U.S. Attorney (AUSA) had recently reported that she had not received any update on a high-profile asset from the Complex Asset Team in years.

Without detailed asset records, we were unable to verify whether the Complex Asset Team communicated the status of assets back to local officials. Therefore, we recommend that the USMS implement policies that standardize the asset files maintained by the Complex Asset Team. Once developed, such procedures should: (1) provide asset file templates for Complex Asset Team members; (2) ensure asset files contain up-to-date information regarding asset valuation and disposal decisions; (3) facilitate and memorialize discussions with federal investigative agencies, USAOs, and USMS district offices; and (4) offer a regimen by which Asset Forfeiture Division officials periodically sample files for completeness and accuracy.

Contributing to the inadequacy of the process used to track assets is the fact that there is an unclear delegation of responsibilities for record maintenance between the USMS districts and the Complex Asset Team. Throughout the audit, USMS Asset Forfeiture Division officials told us that each local USMS district office – instead of the Complex Asset Team – is responsible for administering assets seized under its respective geographic jurisdiction. Asset Forfeiture Division officials told us that therefore, even when the Complex Asset Team makes the primary business decisions for the management and disposition of seized assets, the "official" asset files reside at the local USMS district office and not at USMS headquarters.

Nevertheless, the Complex Asset Team is charged with making the primary asset management and disposition decisions for assets that are referred to it by local USMS districts. At the very least, the Complex Asset Team should have documented the advice and rationale for any management decisions offered to USMS districts, USAOs, and investigative agencies regarding the administration of assets. Moreover, because USMS headquarters has the responsibility to oversee USMS activities in all forfeiture actions against businesses and to coordinate significant decisions regarding financial instruments with USMS district offices, the Complex Asset Team should record the detailed planning and communication between USMS headquarters and district offices regarding these types of assets.

The Asset Forfeiture Division asserted that local USMS districts are ultimately responsible for complex asset recordkeeping. However, in our judgment, this does not excuse the Complex Asset Team from its important responsibility to record its asset management and disposition decisions and the rationale for these decisions. We believe the current arrangement can create an environment in which neither the USMS district offices nor the Complex Asset Team maintains complete and accurate records that memorialize the reasons for important complex asset administration decisions. Therefore, we recommend the USMS ensure that when the Complex Asset Team handles the day-to-day management and works to sell an asset, the Team should also maintain and update the official asset file until final disposition.

Tracking Assets Held In Bank Accounts

The Asset Forfeiture Division's practice is often to transfer seized financial instruments from their respective banks or brokerage houses to a central storage banking location. According to an Asset Forfeiture Division official, this is performed to simplify the tracking and accounting of these types of assets. By having the same financial institution hold the seized financial instruments in their original form with their original terms intact, the Asset Forfeiture Division attempts to avoid allegations of mismanagement of seized financial instruments.[21]

The Asset Forfeiture Division provided us with a list of 26 financial instruments managed by the Complex Asset Team, the corresponding bank account numbers of these assets, and the relevant CATS identification numbers for all financial instruments held in these accounts. However, the Complex Asset Team was able to provide us the account information for only 19 of these financial instruments. The Complex Asset Team was unable to provide us bank statements for the seven remaining accounts that were contained on its original listing, and it did not recognize one of the accounts listed on the original document it provided to us. As a result, we were unable to trace and ascertain the appropriateness of each deposit and withdrawal made to these accounts.

Further, a USMS contractor tested financial instruments held in external bank accounts and did not identify any unauthorized account withdrawals. This testing nevertheless determined that changes in asset account balances were not periodically updated in CATS, which the contractor determined led to CATS underreporting the value of these financial instruments by $3 million. Although the corrective adjustments were made to CATS following this testing, we remain concerned that the Complex Asset Team and broader Asset Forfeiture Program lack the capability to track asset bank account activity effectively. Without appropriate tracking of this information, the USMS cannot ensure that appropriate decisions related to financial asset management were made. Therefore, we recommend that the USMS develop a more robust tracking system for assets held in bank accounts that confirms the account's existence and activity.

[21] When a financial instrument is forfeited, it is liquidated and deposited into the Assets Forfeiture Fund. If the financial instrument is not forfeited, it is returned to the owner in its original form.

Recommendations

We recommend that the USMS:

5. Clarify its policies to define more specifically the attributes of complex assets and develop procedures for determining when and how assets should be classified as complex assets. Such policy updates should ensure that district offices know what types of assets merit Complex Asset Team assistance.

6. Ensure that the Complex Asset Team (1) coordinates with JMD to update CATS so that the pertinent USMS personnel can use it to identify whether an asset is a complex asset (and therefore managed by the Complex Asset Team), (2) reconciles the assets referred to the Complex Asset Team with assets that meet the updated definition in CATS, and (3) follows up with the appropriate district office regarding the status of such assets not yet in the Complex Asset Team portfolio.

7. Develop procedures that require the Complex Asset Team to track consistently incoming notifications, requests, and referrals of assets – even if such advice concerns assets that are not ultimately administered by the Complex Asset Team.

8. Implement policies that help standardize the asset files maintained by the Complex Asset Team by (1) providing asset file templates for Complex Asset Team members; (2) ensuring asset files contain up-to-date information regarding asset valuation and disposal decisions; (3) facilitating and memorializing discussions with federal investigative agencies, USAOs, and USMS district offices; and (4) offering a regimen by which Asset Forfeiture Division officials periodically sample files for completeness and accuracy.

9. Ensure that when the Complex Asset Team handles the day-to-day management and works to sell an asset, the Team maintains and updates the official asset file until final disposition.

10. Develop a more robust tracking system for assets held in bank accounts that confirms the account's existence and activity.

We recommend that JMD:

11. Upon receipt from the USMS of procedures for identifying assets as complex, JMD update CATS so that local USMS district offices and the USMS Asset Forfeiture Division can use it to identify whether an asset is a complex asset that is being managed by the Complex Asset Team.

CHAPTER FOUR
ASSET VALUATIONS AND DISPOSITIONS

An adequate internal control environment should preclude the same person from appraising and selling the same asset. While the appraiser strives to value an asset at a fair market price, the seller is charged with quickly securing buyers for assets. The seller's interest in quickly finding a buyer can conflict with the appraiser's interest in identifying a fair price. Because the Complex Asset Team performs both asset appraisal and sale functions, it should take care to ensure that the same Complex Asset Team member not value and dispose of the same asset.

Appraising Assets

Once an asset is seized, it is the responsibility of the investigative agency to provide a preliminary assessment of its value in CATS. We were told that preliminary valuations are estimates based on the investigative agency's knowledge at the time of seizure. Because the types of assets – private stock holdings, commercial businesses, limited partnership agreements – that most often require the assistance of the Complex Asset Team are difficult to assess, the initial valuations offered by investigative agencies can be inaccurate. A Complex Asset Team member told us that such examples routinely occur when investigative agencies seize stock certificates. In many of these instances, investigative agencies either record the face value of the stock or denote a nominal value in CATS as the preliminary value of the asset. Both of these preliminary valuation techniques, however, do not provide an accurate indication of the fair market value of the asset. Before such assets can be sold, it is critical that some other party who specializes in appraising such assets subsequently conducts and documents a professional and complete appraisal.

Once the Complex Asset Team receives referrals or requests to handle assets, it is generally responsible for ensuring that the initial value of an asset is accurate. However, we determined that the Complex Asset Team maintains only minimal guidelines regarding how it should properly ascertain the value of an asset. Members of the Complex Asset Team were not consistently able to describe the methods they should use to value different types of assets. Further, Complex Asset Team members could not tell us if or when a third-party valuation is required.

According to internal USMS policy, a professional assessment of the value of any business, including commercial properties, is required before an asset can be sold. Briskman told us that because he was a certified appraiser, he personally performed most business valuations for the Complex Asset Team.[22] Briskman explained that he avoided hiring external appraisers because they could be expensive and he believed that the corresponding cost reduced the funds that could be realized for the Assets Forfeiture Fund. Assistant Director Morales stated that because Briskman was a professional appraiser, Briskman believed it made little sense to hire a contractor to value an asset that Briskman found to be valueless.

To ascertain the value of assets, the Complex Asset Team stated that it performed what it called "market research" – which included examining price catalogs, commercial valuation formulas, and historical property valuations. Nevertheless, neither the Complex Asset Team nor the USMS maintained formal market research procedures for the appraisal of complex assets, and the Complex Asset Team did not maintain comprehensible records of the market research that it performed. Therefore, we recommend that the USMS develop detailed procedures for Complex Asset Team members to follow when appraising the value of specific types of assets which should include a requirement that the Complex Asset Team maintain consistent and comprehensible records of the information and techniques used to value assets.

Asset Dispositions

According to statutes that govern federal asset forfeiture activities, the government has to offer for public sale or otherwise dispose of assets by "commercially feasible means." Generally, this means that the sale of forfeited assets should be a public process whereby market forces can work to determine the value of an asset. According to a USMS Asset Forfeiture Division official, buyers for a seized asset should only be solicited after a federal court issues a final order of forfeiture for the asset.

The Complex Asset Team did not have adequate procedures in place to guide the proper "commercially feasible" disposal of assets in its care. As a result, Briskman sometimes spoke with and vetted potential buyers prior to receiving final forfeiture orders for assets – even though without a final order of forfeiture, the assets did not yet belong to the government and therefore were not the government's to sell. Briskman said he did this in

[22] Briskman said he could only recall one asset for which the Complex Asset Team requested an independent valuation: over 1 million common shares of PetCare Rx stock seized as a result of the Bernard Madoff investigation.

order to line up buyers for assets quickly and to help ensure that when assets were finally forfeited they were ready to be sold. A member of the Complex Asset Team also told us that Briskman sold assets in this way to maximize returns because the worth of an asset, at least historically, tends to depreciate while an asset is held in the government's possession.[23] Nevertheless, by speaking with and vetting potential buyers for an asset, we believe Briskman risked appearing as though he was soliciting buyers before receiving that asset's final order of forfeiture.

However, because Briskman also appraised the same assets for which he solicited and selected the buyers, the USMS cannot be certain that Briskman's desire to expedite the sale of assets as the person responsible for disposition did not affect his asset valuations. Therefore, we recommend that the USMS ensure that different Complex Asset Team personnel are responsible for valuing and disposing of the same asset.

An AUSA with the Southern District of New York specifically cited two instances in which she believed the Complex Asset Team was not following rigorous disposition procedures.[24] Both instances involved assets that were seized as a part of the highly publicized Bernard Madoff criminal case. The first asset was composed of over one million common shares of the online pet prescription firm, PetCare Rx (PetCare). The second asset was a 5 percent investment in an array of foreign technology companies offered by the investment vehicle Delta Fund. The Complex Asset Team originally did not plan to publicly announce the sale of either of these assets. Briskman stated that he did not believe that the Complex Asset Team could publicly announce the sale of these assets because the nature of existing partnerships tied to these assets limited the potential market of buyers.[25] Briskman consequently proposed selling the assets to existing partners – a company executive for the PetCare asset and an existing investor for the Delta Fund share, respectively – prior to receiving a final order of forfeiture for these assets.

---

[23] Depreciation can be caused by many factors both internal and external to the seized asset, such as a pre-existing financial situation of a business, market influences, and the fact that USMS involvement can reduce the potential market value of an asset.

[24] Assistant Director Morales told us that up until this time he had only received positive feedback from AUSAs regarding Briskman's work with complex assets.

[25] The USMS Office of General Counsel issued an opinion in May 2010 (after Briskman's transfer) stating that securities regulations permit the government to offer shares in closely held companies and limited partnerships publicly in certain circumstances.

Based on his negotiations, Briskman informed the AUSA handling the relevant portions of the Madoff forfeiture case that he wished to sell the PetCare and Delta Fund assets to these potential buyers. The AUSA subsequently rejected both of Briskman's proposals because she believed, at least in part, that the methods used to solicit buyers and sell the assets were not transparent and could limit the potential market for and the sale value of the assets. Because the AUSA considered Briskman's handling of the sale of these assets to be inadequate, negotiations with the potential buyers were cancelled.

When the allegation was made regarding Briskman's conflict of interest, the U.S. Attorney's Office pulled all Madoff assets from the Complex Asset Team and hired an external contractor to restart the disposition process for the PetCare and Delta Fund assets. Therefore, in this case, the perceived inadequacy of the Complex Asset Team's asset disposition process did not actually affect the integrity of the sale of these assets because an AUSA intervened to prevent what she believed to be a non-transparent sale of the assets.

As mentioned previously, to ensure that an asset is sold at a fair value, those charged with appraising the value of a particular asset need to be held at arm's length from those soliciting potential buyers or selling the asset. Basic internal control principles dictate limiting the risks of undetected errors and or fraud by segregating among available employees duties such as maintaining custody; approving, recording, and reporting related asset transactions; and disposing of assets. Nevertheless, we found that Briskman did not adhere to this principle. Even when other personnel were assigned to work with him on the Complex Asset Team, Briskman both valued and solicited buyers for the same assets.

According to the AUSA who is working on the Madoff case, the Complex Asset Team's lack of transparent disposition procedures in part undermined her confidence in the Complex Asset Team's ability to manage and dispose of complex assets effectively. Therefore, similar to our recommendation regarding the appraisal of assets, we recommend that the USMS develop policies that provide sufficiently detailed and relevant guidance addressing what asset disposition techniques are appropriate for specific types of complex assets including limited-partnership interests. Such policies should provide instructions to the Complex Asset Team regarding what types of assets merit public sales and what methods constitute "commercially feasible" disposition.

Recommendations

We recommend that the USMS:

12. Develop detailed procedures for Complex Asset Team members to follow when: (1) appraising the value of assets, which should include a requirement that the Complex Asset Team maintain consistent and comprehensible records of the information and techniques used to value assets and (2) disposing or selling specific types of complex assets including limited partnership interests.

13. Ensure that different Complex Asset Team personnel are responsible for valuing and disposing of the same asset.

CHAPTER FIVE
COMPLEX ASSET TEAM OVERSIGHT

Asset Forfeiture Division Assistant Director Eben Morales told us that for years he had been aware of weaknesses in the Complex Asset Team's internal controls and recordkeeping procedures. Morales also acknowledged that Briskman had too much responsibility and was often too deeply involved in the asset and case details when he should have delegated certain responsibilities to other members of his team.

According to Morales, the Asset Forfeiture Division lacked the expertise and resources necessary to oversee Complex Asset Team decisions and operations. Morales said that upon assuming his role as leader of the program in 2007, he began implementing new initiatives to address Division-wide needs. Considering the Complex Asset Team's lack of recordkeeping and internal controls, this chapter reviews the management approach employed by USMS Asset Forfeiture Division leaders over the Complex Asset Team.

Oversight of Complex Asset Team Decisions

Each USMS employee is guided by a performance work plan that specifically lists the employee's respective functions, duties, and rating metrics. Whereas the other team leaders reported to the Operations Director, Morales told us that he was Leonard Briskman's direct supervisor because the nature of and difficulty in managing complex assets created increased risk for the Asset Forfeiture Division. As the lead of the Complex Asset Team, however, Briskman's performance work plan provided him the "final authority" over negotiating and implementing restraining orders involving assets referred to the Complex Asset Team. Briskman's duties also included providing financial and business advice to investigative agencies and negotiating on behalf of the DOJ with corporate defense attorneys over how to dispose of assets referred to the Complex Asset Team. Briskman, therefore, had wide discretion over asset decisions worth millions of dollars.

According to Morales, the broad scope of Briskman's responsibility as the Complex Asset Team Leader was justified considering the breadth of the work he had to accomplish. Morales stated that this is because careful asset administration has to take into account many different variables that are often unknown at the time of seizure, including the: (1) financial standing of the seized asset or business, (2) complexity of business operations, and (3) asset ownership structure. As a result, Briskman exercised significant discretion in making decisions over how to manage, value, and sell an asset referred to the Complex Asset Team.

We believe that the Complex Asset Team's high level of authority with regard to asset administration obligates an official in Morales's position to review and clearly concur with decisions related to high-value assets. Further, the leadership of the USMS Asset Forfeiture Division should be aware of the assets referred to the Complex Asset Team and should proactively identify potential problem areas that, if not appropriately addressed, could diminish an asset's value. Second, Asset Forfeiture Division management must implement explicit delegations of authority. Third, management must require that a review process exists to ensure the Complex Asset Team applies appropriate procedures throughout the Team's involvement with assets, including pre-seizure monitoring activities.

Inaccurate and Incomplete Monthly Status Reports

We determined that Briskman's primary method of documenting case progress consisted of monthly reports sent to Morales and AFMLS representatives. These monthly reports contained brief, one or two paragraph narratives of the status of cases with complex assets and summarized activities the team performed on those assets that month. We reviewed the monthly status reports from FYs 2009 and 2010 and determined that these reports did not consistently provide complete information about the assets. For instance, the written updates on the status of over $50 million in complex assets forfeited in the Bernard Madoff case conveyed different asset values from month to month but did not always provide explanations for these changes in asset values.

Further, we identified inaccuracies in some monthly reports Briskman compiled. The summaries Briskman provided for many assets stated, "No change from previous report." Yet, when we compared these entries to previous entries for such assets, we noted that some of the entries contained unexplained changes from the previous monthly status report. For example, the listed taxable profit amount for one asset varied from $9.5 million to $12 million between different reports; however, the entries provided to summarize the changes for this particular asset in subsequent reports were "no change from previous report." Further, we noted that the list of all active assets often reused the same text from the previous month, which had the effect of obscuring actual changes in status.

Because the monthly reports were often incomplete and inaccurate, we believe that the reports did not provide sufficient context for Morales to understand the rationale for and concur with Briskman's asset decisions. We therefore recommend that the USMS ensure the Complex Asset Team develops a standardized and accurate record of its asset management activities to provide to Asset Forfeiture Division management. Further, once

CATS is updated to capture asset referrals made to the Complex Asset Team, we also recommend that the USMS ensure that the Asset Forfeiture Division leadership: (1) periodically use CATS to identify assets referred to the Complex Asset Team and (2) reconcile the CATS list against submitted Complex Asset Team activity reports.

No Delegation of Authority Structure for Decisions Involving High-Value Assets

Morales stated that he considered the day-to-day operations of each team to be the responsibility of the team's leader. Although delegation makes sense for routine assets of limited value, we believe the high-value and complicated assets handled by the Complex Asset Team have greater risks of devaluation and associated negative publicity. These increased risks demand more involvement by executive leadership in asset administration, such as approving significant asset management and disposition decisions. Not only should decisions regarding these assets be documented adequately, but also these decisions need to be adequately reviewed and approved when they potentially affect the valuation and safeguarding of high-dollar assets.

Nevertheless, we did not find evidence that Asset Forfeiture Division executives established asset value thresholds requiring that Briskman obtain supervisory approval for even the highest-valued assets. Notwithstanding Briskman's wide-ranging duties, we expected to find at least a tiered-approval structure based on the relative value of assets, which would delegate authority to team members to make decisions involving lower value assets but require enhanced senior supervisory review and concurrence for the valuation or sale decisions for high-dollar assets. In our opinion, the approval structure prevailing during the scope of our audit reflects a lack of sufficiently active management supervision over Briskman's activities that yielded to him an excessive degree of authority over the disposition of complex assets. We believe that the lack of visible problems combined with Morales's hands off management style may have contributed to the team's continued inadequate recordkeeping.

Therefore, we recommend that the USMS evaluate the level of authority granted to the position of Complex Asset Team Leader and develop a tiered-approval structure that includes documenting Asset Forfeiture Division leadership approval for asset management decisions related to high-value assets.

No External Review of FIRE Assets

Periodic assessments should be integrated as part of management's continuous monitoring of internal control. However, the Complex Asset Team largely escaped both internal and external review. Assistant Director Morales told us he had never received any findings during internal USMS or external audits regarding the performance of the Complex Asset Team that would indicate there were serious problems. Yet, we were told by the USMS Office of Compliance Review, which is responsible for overall USMS internal control testing, that it only reviewed district offices and did not review the headquarters units due to a lack of resources.[26]

Additionally, many Complex Asset Team files are not subject to external review because many assets managed by the Complex Asset Team are held for several years in a pre-seizure, Frozen, Indicted, Restrained, or Encumbered (FIRE) status. FIRE assets are not officially seized, but are subject to court orders that can significantly limit an owner's authority over the asset. For instance, the government's monitoring during FIRE status may extend to rejecting financing, investment, or hiring decisions that could affect asset value. Because FIRE assets are not technically under government control, such assets are excluded from the scope of the Assets Forfeiture Fund and the Seized Asset Deposit Fund's Annual Financial Statement audit.

However, we have found multiple instances in which the Complex Asset Team made significant asset management decisions for FIRE assets. For example, as part of a racketeering case against James Galante, the U.S. Attorney's Office in Connecticut obtained a restraining order over Galante's waste disposal companies. These assets were in FIRE status for over 2 years, until the companies were forfeited in February 2009. During those 2 years, the Complex Asset Team conducted continuous on-site reviews of these corporations' business transactions through a court-appointed interim chief executive or contractors with the power to approve payments, invoices, and hiring decisions.

Because of the shortcomings in the Complex Asset Team's internal control environment, Morales repeatedly directed Briskman to improve his procedures but was unable to compel the Complex Asset Team to remedy many of its practices – most particularly its inadequate asset management recordkeeping. Based on our discussions with Morales, and our review of management priorities outlined in the Asset Forfeiture Division's strategic

[26] We note that such reviews, however, were scheduled to occur in FY 2011, after this audit began.

plan, we found that much of the internal control implementation efforts were directed towards limiting and addressing audit findings pertaining to the Assets Forfeiture Fund and the Seized Asset Deposit Fund's Annual Financial Statement audit. However, Morales confirmed that he was aware that FIRE assets managed by the Complex Asset Team were not subject to the financial statement audit. We believe that because the USMS did not regularly conduct internal reviews of all assets and because FIRE assets (which comprised a large part of the Complex Asset Team case portfolio) were not subject to external review, Morales did not prioritize addressing the Complex Asset Team's known internal control challenges until he received word of Briskman's conflict of interest allegation.

The delay in remedying Complex Asset Team internal control deficiencies risked adversely affecting the quality of decisions the Asset Forfeiture Division made regarding the management of assets, including those in FIRE status. Therefore, we recommend that the USMS establish an internal review regimen tailored to assess the handling of all assets, including FIRE assets, administered by the Complex Asset Team.

Legal Review Required in Complex Asset Administration

Handling large, complex assets requires highly skilled professionals experienced in legal decision-making to navigate complex ownership issues and properly account for seized assets. According to an AFMLS official, a private sector company administrating assets similar to those of the Complex Asset Team would have a large number of attorneys on staff. This official also told us that the Complex Asset Team had limited access to such resources.

We found that the Complex Asset Team lacked adequate processes to obtain proactive legal counsel regarding asset management issues. Instead, it would only contact the USMS's Office of General Counsel when a particular legal problem would arise during asset administration or disposal. Because the burden was on the Complex Asset Team to recognize potential legal problems, and the Team itself did not have the legal knowledge to proactively identify these problems, the Complex Asset Team did not solicit legal advice when necessary. Thus, when the Complex Asset Team did not recognize that potential legal problems existed with an asset, the USMS risked that those issues would remain unaddressed and negatively affect the government's interest in the seized asset.

To address the legal risk inherent in managing and selling complex assets adequately, we recommend that the USMS ensure that the Complex

Asset Team regularly consults with the USMS Office of General Counsel regarding the assets in its portfolio.

Forfeiture Financial Specialist Program

Assistant Director Morales stated that staffing on the Complex Asset Team has not been in proportion to the number and intricacy of complex assets handled by the USMS. Briskman told us that he was the only USMS headquarters employee dedicated to work on complex asset issues with district offices between 1998 – when he started working with the USMS – and 2009. Beginning in 2004, the USMS provided between one and four additional personnel, including full-time employees and contractors, to work with Briskman on the Complex Asset Team.

Morales requested a 2008 Asset Forfeiture Division-wide workforce analysis, which was performed by ICF International and highlighted the increasing workload of the Complex Asset Team. Specifically, the analysis identified that the Complex Asset Team, along with the rest of the Asset Forfeiture Division, had capacity and proficiency limitations with regard to financial, business, and accounting skills and experience. The analysis concluded that workloads outstripped the existing capabilities and resources of the Asset Forfeiture Division and negatively affected its ability to support the increasing numbers of complex and problematic cases.

Beginning in 2009 and early 2010, the Asset Forfeiture Division hired 14 contractors to serve as forfeiture financial specialists. These specialists were deployed to USMS district offices in an effort to improve internal controls, review contracts, and provide financial guidance and expertise. According to Morales, the Asset Forfeiture Division also developed the Forfeiture Financial Specialist Program to address many of the aforementioned staffing, internal control, and specialized business knowledge deficiencies throughout the Asset Forfeiture Division, including the shortcomings pertaining to the Complex Asset Team.

However, we found that although the forfeiture financial specialist position description noted that these contractors would, in part, provide pre-seizure assistance on complex assets, these specialists generally had no formal responsibilities with regard to the Complex Asset Team at USMS headquarters.[27] Before the conflict of interest allegation, contractors hired as forfeiture financial specialists reported that they spent most of their time addressing financial statement audit compliance issues at district offices.

[27] In one instance, a forfeiture financial specialist was temporarily transferred to work under Briskman after the forfeiture financial specialist identified problems with complex asset administration while working in the Southern District of New York.

We found that the Forfeiture Financial Specialist Program, as implemented before Briskman was reassigned, was primarily designed to ensure financial compliance in the district offices rather than to improve the capabilities of the Complex Asset Team.

Following the conflict of interest allegation, Morales temporarily reassigned three forfeiture financial specialists from district offices to USMS headquarters to review the internal controls of the Complex Asset Team.[28] As part of their review, which began in April 2010, the forfeiture financial specialists analyzed the Complex Asset Team's business processes and examined the assets managed by the Team. Additionally, the forfeiture financial specialists developed a complex asset summary by reviewing files and interviewing Briskman and current Complex Asset Team members. Given the disorganized nature of Briskman's records, the contractors were unable to determine what asset decisions the Team made during Briskman's tenure.

Upon completion of this review, the forfeiture financial specialists met with Asset Forfeiture Division officials to discuss specific internal control deficiencies with regard to the Complex Asset Team, including weak or lacking: (1) separation of duties, (2) delegation of authority, (3) file documentation, and (4) documentation of standard operating procedures. In March 2011, the Asset Forfeiture Division updated its policies to help improve these internal controls.

The strategy of detailing forfeiture financial specialist contractors to district offices did not address known internal control and professional knowledge deficiencies within the Complex Asset Team itself. We do not necessarily believe that these new positions would have improved how Complex Asset Team and Asset Forfeiture Division managers worked together to document and oversee decisions. Although Morales stated that he sought a number of Division-wide changes in staffing and hiring, we found that only the hiring of additional Complex Asset Team employees in 2009 specifically augmented Complex Asset Team competencies during Briskman's tenure. Recognizing this concern, in March 2011, the Asset Forfeiture Division reported that it would begin assigning at least one of the forfeiture financial specialist contractors to the Complex Asset Team. Because we are uncertain whether this action will address the Complex Asset Team's long-term staffing needs, we recommend that the USMS evaluate whether forfeiture financial specialist contractors should be provided a more definitive role with the Complex Asset Team.

[28] These specialists still maintained their district responsibilities, but would travel several days a month to review Complex Asset Team internal controls at headquarters.

Annual Financial Disclosure Forms

Pursuant to financial disclosure regulations from the Office of Government Ethics (OGE), USMS employees with certain responsibilities are required to file annual financial disclosure forms on which they should report all outside positions and financial interests.[29] According to the USMS policy, employees must also seek formal (written) management approval for outside employment. When necessary, an opinion on outside employment should also be sought from a USMS ethics officer to determine if the employment creates either a financial conflict of interest or an appearance of a financial conflict of interest.

Briskman disclosed his outside interest as a member of a business valuation firm on the annual financial disclosure forms he submitted each year between 2005 and 2009. However, Briskman did not obtain a separate formal approval from his supervisor, Assistant Director Eben Morales. Although Briskman said he believed his financial disclosure report fulfilled all USMS requirements, the USMS Ethics Officer told us that such a disclosure is not tantamount to requesting approval from a manager for outside employment and that separate approval is required.

In addition, the USMS Ethics Officer stated that government policy requires managers to review financial disclosure forms to identify if employees had actual or potential conflicts of financial interest. Assistant Director Morales said that when he reviewed Briskman's financial disclosure reports, he believed he was only required to sign the report to confirm that Briskman completed the report. The USMS Ethics Officer stated that Morales's understanding of the purpose of his signature was incorrect and that a supervisor should substantively review financial disclosures to identify potential conflicts of interest. However, the Ethics Officer also conceded that he has not provided USMS managers sufficient guidance and training over the last 5 years to detail the purpose and extent of managers' responsibilities to review subordinate financial disclosure reports.

[29] Under the OGE regulations, employees whose responsibilities require them to participate personally and substantially through decision or exercise of significant governmental action or activity that may have a direct or substantial economic effect on the interests of any non-federal entity is required to disclose financial interests.

Upon review of the USMS policy, we determined that Briskman erroneously relied on the completion of his financial disclosure reports and the fact that USMS management did not question his reports as tacit approval of his outside position. Briskman did not follow the appropriate mechanism through which an employee should seek approval for outside employment and also did not seek a formal ethics opinion from the USMS Ethics Officer as someone in his position should have done. Additionally, we found that his manager did not conduct a thorough review of Briskman's financial disclosure reports nor did he require Briskman to submit a separate approval request for the outside business listed on the disclosure report.

Further, although the USMS Ethics Office is responsible for review of all completed financial disclosure reports, we found that the Ethics Officer did not identify a potential conflict of interest issue with Briskman's disclosure form until 2009, 4 years after Briskman first disclosed his business.[30] We also found that the USMS Ethics Office contributed to creating an inadequate review process by not providing sufficient training to USMS managers on their role in the financial disclosure process. Therefore, we recommend that the USMS ensure that managers know that they must thoroughly review financial disclosure forms and disclose any potential conflicts of interest to the USMS ethics office.

Recommendations

We recommend that the USMS:

14. Ensure the Complex Asset Team develops a standardized and accurate record of its asset management activities to provide to Asset Forfeiture Division management.

15. Ensure that the Asset Forfeiture Division leadership: (1) periodically use CATS (once it is updated to capture asset referrals made to the Complex Asset Team) to identify assets referred to the Complex Asset Team and (2) reconcile the CATS list against submitted Complex Asset Team activity reports.

[30] The USMS Ethics Officer told us that given the information provided by an OIG investigator, he did not believe that Briskman's outside business interest presented an actual financial conflict of interest, but consultations with Briskman's superior would have been necessary to determine if such a business presented the *appearance* of a conflict of interest. See 5 C.F.R. 2635.502 (2010)

16. Evaluate the level of authority granted to the position of Complex Asset Team Leader and develop a tiered-approval structure that includes documenting Asset Forfeiture Division leadership approval for asset management decisions related to high-value assets.

17. Establish an internal review regimen tailored to assess the handling of all assets, including FIRE assets, administered by the Complex Asset Team.

18. Ensure the Complex Asset Team develops a consistent consultation process with the USMS Office of General Counsel.

19. Evaluate whether forfeiture financial specialist contractors should be provided a more definitive role with the Complex Asset Team.

20. Ensure that managers know that they must thoroughly review financial disclosure forms and disclose any potential conflicts of interest to the USMS ethics office.

STATEMENT OF COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that United States Marshals Service Asset Forfeiture Division's management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. United States Marshals Service Asset Forfeiture Division's management is responsible for ensuring compliance with federal laws and regulations, and applicable Department of Justice requirements relevant to asset forfeiture. In planning our audit, we identified the following laws and regulations that concerned the operations of the United States Marshals Service Asset Forfeiture Division and that were significant within the context of the audit objectives:

- 21 U.S.C. § 853 (2010)
- 21 U.S.C. § 881 (2010)
- 5 C.F.R. § 2635.402 (2010)
- 5 C.F.R. § 2635.502 (2010)

Our audit included examining, on a test basis, United States Marshals Service Asset Forfeiture Division's compliance with the aforementioned laws and regulations that could have a material effect on its operations, through interviewing its personnel, analyzing historical records, assessing internal control procedures, and examining asset management and disposition procedural practices. As noted in the Recommendation sections in this report, we found that the United States Marshals Service Asset Forfeiture Division did not fully comply with requirements set forth in the Department of Justice Asset Forfeiture Policy Manual.

APPENDIX I

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this audit was to assess how the USMS managed and oversaw seized and forfeited assets referred by its district offices to the Complex Asset Team. To accomplish this objective, we examined the internal control environment that governs how the USMS secures, values, operates, and disposes of these assets.

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

Our audit generally encompassed complex asset management and disposal activities from 2005 to the time of former Complex Asset Team Leader Leonard Briskman's administrative transfer in 2010. To accomplish our audit objective, we discussed with Briskman his activities as former leader of the Complex Asset Team. We interviewed USMS Asset Forfeiture Division management (specifically the Assistant Director), other Complex Asset Team staff, and contractors assisting with asset forfeiture duties, including the Forfeiture Financial Specialists. Our review also included discussions with individuals from other Asset Forfeiture Program partner components, including the Asset Forfeiture and Money Laundering Section and the Asset Forfeiture Management Staff. All interviews occurred in Washington, D.C. and Arlington, Virginia – the site of Asset Forfeiture Division headquarters – with the exception of discussions with individuals from the U.S. Attorney's and USMS district offices in the Southern District of New York.

During our audit of the USMS's management of seized and forfeited complex assets, we identified relevant internal policies, assessed historical Complex Asset Team practices, and reviewed files pertaining to complex assets. Throughout the audit, we relied on computer-generated data to obtain necessary information about assets administered by the Complex Asset Team. Such data include CATS reports which detail the approximate

value of assets, USMS records that listed assets and operating procedures, and records from other DOJ asset forfeiture components. CATS is an information technology system separately administered by JMD that the DOJ uses as its primary asset tracking system. Although we did not assess the reliability of such computer-derived information during this audit, we do not believe that our reliance on this data to meet the objectives of our audit affects our findings and recommendations that concern the operation and oversight of the Complex Asset Team.

To obtain an overview of Complex Asset Team operations, we requested a listing of all assets disposed by the Complex Asset Team between January 2005 and August 2010. This asset listing was prepared by USMS personnel after Briskman was reassigned in April 2010. The Complex Asset Team provided such a listing; however, a senior Asset Forfeiture Division official cautioned that those who compiled the list did not have complete historical knowledge of asset activity during the entirety of our scope and thus had to compile some of the data from incomplete historical records. We noted that this listing was missing some data such as the appraiser and ultimate purchaser of the assets, as well as the sale price of some of the assets.

To assess the accuracy and completeness of the Complex Asset Team's recordkeeping we sought to determine whether assets were missing from the USMS-prepared complex asset listing. Because Briskman's records largely consisted of loose, disorganized documents and papers, we were told that the listing was based on the historical memory of current members of the Complex Asset Team and the results of their review of Briskman's files. As such, we were not confident that the list of assets was complete. We therefore independently reviewed files made available to us by the USMS at the Complex Asset Team headquarters.[31] This review identified a number of assets that potentially should have been included in the asset listing and provided us the evidence necessary to find that the USMS needed to improve its recordkeeping efforts. To obtain information about these assets, we searched CATS by asset identification number (if available). We then created our own listing of disposed assets based upon information from the Complex Asset Team listing and supplemented with data from the CATS

[31] Our review applied the contemporaneous definition of a complex asset as any asset administered by the Complex Asset Team. The review therefore sought to locate a corresponding file for every disposed asset on the Complex Asset Team listing, basing our matches on identical CATS identification numbers or case name details. We then examined the remaining files to see if they indicated Complex Asset Team involvement during the scope of our audit and, if so, if the files contained specific CATS identification numbers.

status inquiry reports. We then summed the sales price values from the resulting list to determine a total value of assets disposed by the Complex Asset Team.

Our review of the Complex Asset Team management and oversight focused primarily on specific assets that interview subjects and other DOJ officials brought to our attention during our review.

APPENDIX II

UNITED STATES MARSHALS SERVICE RESPONSE TO THE DRAFT REPORT

U.S. Department of Justice

United States Marshals Service

Associate Director for Administration

Alexandria, Virginia 22301-1025

August 24, 2011

MEMORANDUM TO: Raymond J. Beaudet
Assistant Inspector General for Audit

FROM: Steven M. Mertens
Associate Director for Administration

SUBJECT: Response to Draft Audit Report:
United States Marshals Service Complex
Asset Team Management and Oversight

This is in response to correspondence from the Office of the Inspector General requesting comment on the open recommendations associated with the subject audit report.

Thank you for the opportunity to comment on the draft audit report. We have reviewed the 20 recommendations contained in the draft report and have set forth our requests for certain clarifications and responses to Recommendations 1-10 and 12-20. Recommendation 11 is directed at the Department's Justice Management Division (JMD).

The United States Marshals Service (USMS) is proud to report that of the 20 recommendations contained in the draft report, the majority have already been addressed. Many corrective actions were underway prior to the draft report's issuance, some even prior to the initiation of OIG's audit. As documented in the attached response, 17 of the 20 recommendations have been, or are in, the process of being implemented.

It is important to note that the strategic efforts of the USMS Asset Forfeiture Division have led to the successful implementation of many of these recommendations. AFD worked actively and strategically to build the required infrastructure and improve the Complex Assets

Program since late 2007. JMD has also been instrumental in securing additional funding for this project from fiscal year 2008 to 2011.[1] The changes made to the program were time intensive, as each program change must go through the formal program budget process and receive funding prior to implementation. Thanks to these efforts, the infrastructure that now exists has enabled the successful implementation of many improvements to the Complex Assets Program.

Should you have any questions or concerns regarding this response, please contact Ms. Isabel Howell, Audit Liaison, at 202-307-9744.

Attachments

cc: Louise Duhamel
Acting Director
DOJ Audit Liaison Group

[1] Evidence of this was provided to the OIG auditors in numerous formats over the span of the audit, including copies of budget requests and allocations; after actions reports; and exit interview materials.

USMS Response to Draft Audit Report:
United States Marshals Service Complex Asset Team Management and Oversight

Recommendation 1: Develop standard operating procedures that require the Complex Asset Team to track pre-seizure requests received from and assistance provided to USAOs and investigative agencies.

Response (Concur): The Complex Assets Unit has developed the tools to track pre-seizure requests from and the subsequent assistance provided to USAOs and investigative agencies (IA). In June 2010, the USMS Asset Forfeiture Division (AFD) developed the Complex Assets Portal [2], which enables interactive tracking of these requests and assistance provided to the field. The Portal also provides a reporting function to display gathered data. The portal has been fully deployed since December 2010. The USMS also has developed and implemented the Business Information Questionnaire (BIQ) form, which enables the Complex Assets Unit to capture crucial available information regarding businesses targeted for forfeiture that is needed to aid USAOs and IAs in their decisions as to whether it is in the best interest of the government to proceed with the forfeiture action.[3]

Recommendation 2: Develop and provide standard operating procedures for abbreviated post-seizure reviews of assets, as appropriate, when the Complex Asset Team receives little or no notice prior to receiving assets from district offices.

Response (Concur; with clarification): The USMS requests that this recommendation be clarified to read: "Develop and provide standard operating procedures for abbreviated post-seizure reviews of assets, as appropriate, when the Complex Assets Unit receives little or no notice prior to receiving assets from the *USAO, Investigative Agency (IA), or* district offices." In most cases, the lack of notification is not from the USMS district office, but rather the USAO or IA.

The USMS has developed the tools for the standard operating procedures for post-seizure reviews of assets for situations where there is little or no notice prior to receiving assets from the USAO, IA, or district office. This includes the use of the BIQ, which is helpful in determining the viability of businesses targeted, or in the case of this specific recommendation, held by restraining order or seized for forfeiture so that a proactive exit strategy can be developed.

Recommendation 3: Ensure the Complex Asset Team documents required pre-seizure business plan reviews.

Response (Concur; with clarification): The USMS has implemented a process to ensure that the Complex Assets Unit documents pre-seizure business plan reviews. At the outset of an engagement, the Complex Assets Unit obtains information utilizing many tools, including the BIQ, public records searches, database searches, and review of documents obtained by the USAO or IAs. Upon receipt of this information, the assigned team reviews and analyzes the

[2] See Attachment 1 (screenshots from the Complex Assets Portal).
[3] See Attachment 2 (copy of BIQ).

information and generates a formal business plan.[4] The business plan is then presented to and reviewed by the Steering Committee, which is comprised of three Senior Forfeiture Financial Specialists (SFFS) from the Audits and Internal Controls Team. The committee operates in an advisory capacity and provides the Complex Assets Unit with an open professional forum to discuss and understand financial issues and implications that may exist around complex assets and liabilities. The members are independent financial professionals who are not actively involved in the complex case. They inquire and probe for case facts to ensure that proper financial analysis and discovery have been performed. As necessary, additional outside expertise is also consulted with to advise AFD on special financial issues. This process is tracked in the Complex Assets Portal.

Recommendation 4: Require that responsible USMS officials review Complex Asset Team business plans to ensure that they are completed and based on sufficient evidence.

Response (Concur): Beginning in December 2010, the USMS adopted a two-tier, and in certain cases a three-tier, review to ensure responsible USMS officials review Complex Assets Unit business plans for completeness and sufficient evidence. As detailed in the response to Recommendation 3, once a business plan is created, an independent Steering Committee is convened to examine the business plan. Second, the plan is reviewed by the Program Manager of Operations, who oversees the Complex Assets Unit. In certain cases, summaries of these plans are presented to the entire AFD Executive Group for a third level of review. Cases presented for third-level review are based on factors such as complexity, value and lack of precedence, or at the Program Manager's request.

Recommendation 5: Clarify its policies to define more specifically the attributes of complex assets and develop procedures for determining when and how assets should be classified as complex assets. Such policy updates should ensure that district offices know what type of assets merit Complex Asset Team Assistance.

Response (Concur; with clarification): On pages 15-16 of the draft report, it is implied that there were "about 10,000 assets with a combined value of $3.52 [billion]" that were complex assets and yet USMS Headquarters records only reported handling "55 of these assets with a value of approximately $136 million," or "just a fraction (less than 1 percent) of the approximately 10,000 seized or restrained businesses and financial instruments assets that the USMS policy now defines as complex." In actuality, the majority of the cited 10,000 assets referenced were simple financial instruments (e.g., personal and cashier's checks, Certificates of Deposits, money orders, etc.), that were easily liquidated by the District Asset Forfeiture Units and, therefore, did not require the assistance of the Complex Assets Unit. As document in USMS Policy Directive 13.4, *Businesses, Commercial Real Property, and Financial Instruments,*[5] there are standard operating procedures available to districts that instruct them on how to process these assets on their own and also note the availability of the Complex Assets Unit to assist in any transaction. Therefore, although the USMS agrees there was a need to clarify both the definition of complex assets and the role of the Complex Assets Unit, the problem/risk was not as systemic or dire as presented in this report.

[4] See Attachment 3 (sample business plan).
[5] See Attachment 4 USMS Policy Directive 13.4 Businesses, Commercial Real Property and Financial Instruments

Draft USMS Policy Directive 13.4, *Complex Assets*[6], defines complex assets as:

> Assets involving business entities, regardless of operational status, business entities with commercial real property interests,[7] financial instruments,[8] including marketable and non-marketable securities, interests in partnerships, insurance policies that may have value or no value, and intangible assets, (i.e. web sites, web domains, trade names, trademarks, patents, customer lists, and intellectual property rights).

Note: Commercial real property that is not tied to a business entity is not considered a complex asset under the intent of the policy and should be processed in accordance with real property procedures.

This policy is currently undergoing Agency review and is anticipated to be implemented in the near future.

Recommendation 6: Ensure that the Complex Asset team (1) coordinates with JMD to update CATS so that the pertinent USMS personnel can use it to identify whether an asset is a complex asset (and therefore managed by the Complex Asset Team), (2) reconciles the assets referred to the Complex Asset Team with assets that meet the updated definition in CATS, and (3) follows up with the appropriate district office regarding the status of such assets not yet in the Complex Asset Team portfolio.

Response (Concur; with clarification): As defined in the existing standard operating procedures and the newly drafted policy, not all complex assets are managed by the Complex Assets Unit. In many instances, complex assets are managed by District Asset Forfeiture Units with little or no advice and assistance from the Complex Assets Unit.

The USMS is developing suggested modifications to CATS. Once drafted, the USMS will consult with JMD and develop a formal proposal to be submitted to the Department's Asset Forfeiture and Money Laundering Section (AFMLS). In addition, processes have been developed to reconcile CATS with Complex Assets Unit reports. Currently, manual manipulation of certain CATS reports can provide this information. This is a cumbersome process as it requires multiple queried reports to be run on a continuous basis and a side-by-side comparison of the reports must be completed each time to extract the required information as it is not contained on one concise report. Once modifications to CATS are approved, the USMS will work with JMD to develop and deploy a more streamlined approach and automated reconciliation process.

---

[6] See Attachment 5 USMS Policy Directive DRAFT 13.4 Complex Assets

[7] Forfeiture actions involving business entities with commercial real property interests will be administered by the Complex Asset Unit and/or the AFD Real Property Team as necessary.

[8] Pursuant to this policy, the custody, management and disposal of the following financial instruments are delegated to the district office level: personal and cashier's checks, certificates of deposit, postal and commercial money orders, travelers checks, us savings bonds, airline tickets, gift cards, gift certificates, and store-value cards. Of course, district offices may contact the Complex Asset Unit for consultation and assistance with these types of assets at any time.

Recommendation 7: Develop procedures that require the Complex Asset Team to track consistently incoming notifications, requests, and referrals of assets-even if such advice concerns assets that are not ultimately administered by the Complex Asset Team.

Response (Concur; with clarification): Pages 18-21 of the draft report states that there were assets that were "administered in some way" by the Complex Assets Unit but lacked a case file. The report further states that the auditors found "35 files that we determined fell within our scope but were not included on the original list of assets provided." As explained to the auditors, the majority of these "assets" were never in the custody of the USMS, nor were they ever "administered in some way" by the USMS. Rather, these assets were simply the subject of telephone calls or informal inquiries received by Mr. Briskman from the field. Following this informal inquiry, the assets were either handled by the District or were not seized or forfeited as part of a case and, therefore, never received a CATS ID. In these instances, the USMS readily acknowledges that the files kept were insufficient, but disagrees that there was a systemic problem regarding assets that were "administered" without case files or purposely left off the lists provided to the auditors.

As noted in previous responses, in order to improve transparency, the USMS has developed standard operating procedures for tracking the flow of information, including notifications, requests, and referrals. This is achieved through the implementation of the Complex Assets Portal which was fully deployed in December 2010. This portal enables the Complex Assets Unit to document inquiries and correspondence such as telephone calls and meeting notes, and to upload related e-mails for storage and use by the Complex Assets Unit. The portal also enables users to print reports about this information.

Recommendation 8: Implement policies that help standardize the asset files maintained by the Complex Asset Team by (1) providing asset file templates for Complex Asset Team members; (2) ensuring asset files contain up-to-date information regarding asset valuation and disposal decisions; (3) facilitate and memorialize discussions with federal investigative agencies, USAOs, and USMS district offices; and (4) offer a regimen by which Asset Forfeiture Division officials periodically sample files for completeness and accuracy.

Response (Concur): As of March 2011, the Complex Assets Case File standard format[9] has been established and implemented. In addition, AFD has deployed the Complex Assets Portal which enables the Complex Assets Unit to document discussions with IAs, USAOs, and USMS district offices. The Audits and Internal Controls Team, AFD, has been and will continue to work with the Complex Assets Unit to audit case files for completeness and accuracy.

Recommendation 9: Ensure that when the Complex Asset Team handles the day-to-day management and works to sell an asset, the Team maintains and updates the official asset file until final disposition.

Response (Concur): The Complex Assets Unit has developed and implemented a standard format case file. Effective March 2011, the Complex Assets Unit has begun to maintain and update the "official asset file" for those assets that are handled on a day-to-day basis.

[9] See Attachment 6 Standard file format

Recommendation 10: Develop a more robust tracking system for assets held in bank accounts that confirms the account's existence and activity.

Response (Concur; with clarification): Page 23 of the draft report states that it is AFD's "practice . . . to transfer seized financial instruments from their respective banks or brokerage houses to a central storage banking location." This practice rarely has been utilized since the departure of Mr. Briskman. These assets are now transferred only when directed by court order or when there is a compelling reason to believe the financial instrument is not secure in its current location. Moreover, in the event of either scenario, AFD executive leadership must review and approve the transfer. The USMS will work to develop a more robust tracking system for assets held in bank accounts that confirms the account's existence and activity.

Recommendation 11: (To JMD): Upon receipt from the USMS of procedures for identifying assets as complex, JMD update CATS so that local USMS district offices and the USMS Asset Forfeiture Division can use it to identify whether an asset is a complex asset that is being managed by the Complex Asset Team.

Response: For JMD response and requires no action from the USMS.

Recommendation 12: Develop detailed procedures for Complex Asset Team members to follow when: (1) appraising the value of assets, which should include a requirement that the Complex Asset Team maintain consistent and comprehensible records of the information and techniques used to value assets and (2) disposing or selling specific types of complex assets including limited partnership interests.

Response (Concur; with clarification): As reflected in pages 27-28 of the draft report, this recommendation is based in part upon Mr. Briskman's personal opinions and practices in appraising and disposing of certain assets in USMS custody. In contrast, it was and remains the position of the USMS that standard operating procedures regarding how assets are appraised and disposed of must be followed and documented, and that the appraisal and disposal of assets must be performed independently. AFD management counseled Mr. Briskman repeatedly regarding these issues and put requirements in his performance plan to implement and abide by the standard operating procedures.

Updates to existing policies and procedures have been developed to further specify the protocols for appraising and disposing of assets, the requisite documentation for each activity, and the required independence. These updates are currently under review by AFD leadership and will be provided to OIG in future responses.

Recommendation 13: Ensure that different Complex Asset Team personnel are responsible for valuing and disposing of the same asset.

Response (Concur): The tools have been developed to ensure that separate Complex Assets Unit personnel are identified as to the valuation and disposal of an asset. It is also worth noting that in the majority of cases, the valuation of assets is based upon resources independent of the Complex Assets Unit.

Recommendation 14: Ensure the Complex Asset Team develops a standardized and accurate record of its asset management activities to provide to Asset Forfeiture Division Management.

Response (Concur): As stated in response to Recommendation 1, in June 2010, AFD developed the Complex Assets Portal, which enables the Complex Assets Unit to record and track pre-seizure requests from and assistance provided to the field, as well as print reports about this data. Utilizing the Complex Assets Portal, AFD plans to develop a standardized and accurate record of its asset management activities to provide to AFD Management. The USMS will provide OIG with updates on this project in future responses.

Recommendation 15: Ensure that the Asset Forfeiture Division leadership: (1) periodically use CATS (once it is updated to capture asset referrals made to the Complex Asset Team) to identify assets referred to the Complex Asset Team and (2) reconcile the CATS list against submitted Complex Asset Team activity reports.

Response (Concur): The Audits and Internal Controls Unit, AFD, is reviewing CATS as it relates to complex assets, and is assisting in the reconciliation of Complex Asset Unit reports with CATS reports. Currently, this process is time consuming and tedious due to the needed changes in CATS. Once CATS is updated, this process will be further refined and improved. The USMS will provide OIG with updates on this project in future responses.

Recommendation 16: Evaluate the level of authority granted to the position of Complex Asset Team Leader and develop a tiered-approval structure that includes documenting Asset Forfeiture Division Leadership approval for asset management decisions related to high-value assets.

Response (Concur): First, the USMS has implemented a new organizational structure. As documented in the attached revised organizational chart[10], the Complex Assets Unit is no longer a standalone unit that reports to the Deputy Assistant Director, AFD. Instead, it reports to the Program Manager of Operations, similar to the Real and Personal Property Team. As many complex cases include a wide variety of assets, this new organization enables greater collaboration and team work for management of the entire case. Further, once fully staffed, the Complex Assets Unit will be led by an Assistant Program Manager of Complex Assets, and have three full-time Case Coordinators. The team is also now supported by a dedicated Forfeiture Financial Specialist at Headquarters and two contractor records examiners. This infrastructure enables the more effective delegation of authority by position.

Secondly, the Case Coordinator working job description recently was created and implemented. It clearly defines the separation between the responsibilities of the Assistant Program Manager of the Complex Assets Unit and those individuals performing the day-to-day functions.

Lastly, delegation of authority statements have been developed for each position on the Complex Assets Unit that are limited both in scope and number of what is necessary to achieve efficiency while maintaining accountability in day-to-day operations.[11]

[10] See Attachment 7 (Current AFD Organization Chart)
[11] See Attachment 8 (sample DOA)

Recommendation 17: Establish an internal review regimen tailored to assess the handling of all assets, including FIRE assets, administered by the Complex Assets Team.

Response (Concur; with clarification): Prior to fiscal year (FY) 2009, AFD lacked the infrastructure to implement an effective internal review process. The FY 2009 DOJ OIG audit of the Assets Forfeiture Fund Financial statement identified two USMS weaknesses: (1) "inadequate professional accounting skills" and (2) "a lack of an adequate audit and internal controls function." In response, the USMS requested and received funding for additional government positions and, at the time, 14 contractor Forfeiture Financial Specialist positions. Over the next year, the USMS utilized these resources to build the infrastructure of the AFD Audits and Internal Controls Review Unit.

Now that the infrastructure of the AFD Audit and Internal Controls Unit has been developed, AFD will work to implement this recommendation. The USMS will provide OIG updates on our progress in future responses.

Recommendation 18: Ensure the Complex Asset Team develops a consistent consultation process with the USMS Office of General Counsel.

Response (Concur; with clarification): USMS AFD leadership has long recognized the value of legal consultation as it relates to complex assets and, over the years, has taken several actions to address that need. In late 2007, current leadership requested that the Office of General Counsel (OGC) play a more active role in the Complex Assets process. In the spring of 2009, AFD recruited and hired a highly competent Presidential Management Fellow with both a law degree and a Masters in Business Administration as a case coordinator for the Complex Assets Team. This employee joined the Complex Assets Team in August 2009 and works closely with the OGC Asset Forfeiture Team to identify and address legal issues arising from complex assets cases. Since 2009, OGC has also added three attorneys to its Asset Forfeiture Team which devotes a substantial portion of its legal services to complex assets cases. The two recently hired attorneys, one an FSA contractor, have specialized legal experience and expertise in commercial transactions, securities, and corporate legal matters, all of which are critical to complex assets.

OGC and the Complex Assets Team have multiple daily contacts and regular meetings regarding cases and legal issues. Further, OGC provides the Complex Assets Team with legal guidance memoranda and helps develop legal policy related to complex assets. In addition, as part of the FY 2012 Assets Forfeiture Fund budget submission, the USMS requested a new government full-time position to serve as the Asset Forfeiture Commercial Transaction Attorney. This attorney will be located in OGC and fully dedicated to providing pre- and post-seizure legal services in complex assets cases.

Recommendation 19: Evaluate whether forfeiture financial specialist contractors should be provided a more definitive role with the Complex Asset Team.

Response (Concur; with clarification): Contrary to pages 36-37 of the draft report, from the inception of the FFS program, one FFS (located in the USMS Southern District of New York) was dedicated to working pre-seizure and complex asset cases hand-in-hand with the U.S.

Attorney's Office. The other on-board FFS was assigned complex assets as a collateral responsibility.

The USMS evaluated the FFS initiative during its implementation phase in 2009. This evaluation recognized that the 14 FFSs did not have the capacity to effectively perform all four functions originally identified for all 94 USMS Districts.[12] As evidenced by the USMS FY 2010 AFF budget submission which was submitted in August 2009, the USMS took action and requested an additional eight FFSs to be dedicated to complex assets and pre-seizure planning (i.e., the "Jump Team").[13] Funding was approved for FY 2010 and the selection and hiring process continues. Currently there are three FFS Jump Team members on-board located with the Complex Assets Unit, the Southern District of New York, and the Middle District of Florida.[14]

Recommendation 20: Ensure that managers know that they must thoroughly review financial disclosure forms and disclose any potential conflicts of interest to the USMS ethics office.

Response (Concur): AFD Executive Team members have been educated on this and will be reminded annually as the review of forms occurs. In addition, the USMS Ethics Office is developing an online training session for all Agency supervisors regarding the financial disclosure forms and their roles. The training is anticipated to be rolled-out Agency-wide during FY 2012.

[12] The original four functions that all FFS were expected to perform for all 94 USMS Districts were 1) Audit readiness and internal controls; 2) Financial guidance and support; 3) Financial expertise to support complex assets; and 4) Support AF Financial Investigators (1811s)

[13] The eight positions that form the "Jump Team" serve two capacities: 1) supporting the USMS Complex Asset Team; and 2) assisting the Asset Forfeiture Financial Investigators with pre-seizure. The FFS are able to provide financial support and guidance to government complex asset case managers and AF 1811s for large, complex cases by assisting in the review of asset valuations, ownership rights, net equity, and development of possible exit strategies.

[14] See Attachment 9 (Brochure that further explains the current state of the FFS initiative)

APPENDIX III

JUSTICE MANAGEMENT DIVISION RESPONSE TO THE DRAFT REPORT

U.S. Department of Justice

Justice Management Division
Asset Forfeiture Management Staff
145 N Street, NE
Room 5W.511

Washington, D.C. 20530

SEP 0 1 2011

MEMORANDUM

TO: Troy Meyer
Regional Audit Manager
Washington Regional Audit Manager
Office of the Inspector General

FROM: Candace A. Olds
Director

SUBJECT: United States Marshals Service Complex Asset Team Management and Oversight

Attached, please find the Justice Management Division (JMD) Asset Forfeiture Management Staff's response to a recommendation contained in Draft Audit Report: United States Marshals Service (USMS) Complex Asset Team Management and Oversight.

If you have any questions, or if we may be of any further assistance, please contact Katherine Drew Poppen, Assistant Director for Operations, on (202) 514-0892.

Attachment

cc: Mary Myers
Audit Liaison Specialist
Audit Liaison Group
Internal Review & Evaluation Office

Michael Pannone
Program Analyst
Office of the Inspector General
Washington Regional Audit Office

Attachment

Response to Draft Audit Report:
United States Marshals Service Complex Asset Team Management and Oversight

Recommendation 11: Upon receipt from the USMS of procedures for identifying assets as complex, JMD will update CATS so that local USMS district offices and USMS Asset Forfeiture Division can use it to identify whether an asset is a complex asset that is being managed by the Complex Asset Team.

Response (Concur with Clarification): Upon receipt of the USMS Complex Asset Team's complex asset policy and procedures, the Asset Forfeiture Management Staff will study the feasibility of creating a "complex asset flag" to identify assets that meet the USMS's definition of a complex asset and that are managed by the USM AFD Complex Asset Team. Once the determination is made, the AFMS will work closely with the USMS AFD to implement the recommendation above or develop another more effective solution.

APPENDIX IV

LEONARD BRISKMAN RESPONSE TO THE DRAFT REPORT

The Brownell Firm, PC

Attorneys At Law

1050 17th STREET, NW, SUITE 700
WASHINGTON, DC 20036-5503
VOICE: (202) 822-1701 FACSIMILE: (202) 822-1914
www.thebrownellfirm.com

Bonnie J. Brownell* **Also Admitted in MD*
Christopher R. Landrigan+ *+Also Admitted in VA*
D. Robert DePriest^ *^Also Admitted in NY*

August 19, 2011

Mr. Troy Meyer
Regional Audit Manager
Washington Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
1300 N. 17th Street, Suite 3400
Arlington, VA 22209

Dear Mr. Meyer,

We appreciate the opportunity to provide a response on behalf of our client, Mr. Leonard Briskman, to the draft audit report from the Department of Justice (DOJ) Office of Inspector General (OIG). After review of the draft report, we submitted several factual clarifications and were disappointed to learn that the OIG would not revise their report accordingly. We understand that you have agreed to attach this correspondence as well as the factual clarifications to the final report. (A copy is attached for your convenience.)

We are concerned that the draft report did not appropriately contextualize the role and responsibilities of Mr. Briskman during the three distinct phases of asset management: pre-seizure operations, tracking of assets post-seizure or restraint, and disposition of forfeited assets.

I. Pre-Seizure Operations

During pre-seizure operations, Mr. Briskman responded to questions from investigative agencies (IAs) and Assistant United States Attorneys (AUSAs) regarding the cost-effectiveness of seizing or restraining an asset. The IAs/AUSAs were responsible for determining whether to

seize or restrain[1] an asset and initiated and maintained documentation (such as court orders) regarding these decisions. After considering Mr. Briskman's advice, among other factors, the IAs/AUSAs determined whether to seize or restrain the particular asset. While they typically chose to give great weight to Mr. Briskman's expert opinion, and nearly every official greatly appreciated his assistance, Mr. Briskman's role during this process was that of an advisor.

II. Tracking of Assets Post-Seizure or Restraint

The Complex Asset Team (Team) shared responsibility for recording accurate data in the Consolidated Asset Tracking System (CATS) with the IAs. If the asset had an undisputed fair market value (publically traded marketable securities), the Team would transcribe this value into CATS. If the asset was commercial real estate, the Team would arrange for a certified appraisal. If the asset was a business, stock of minority interests in privately held corporations, or a partnership agreement, the IA placed a value in CATS. The Team monitored the CATS assets and notified the IAs/AUSAs of any information of which they were aware that might suggest the IA or AUSA should consider seizure or forfeiture. Here again, Mr. Briskman acted as an advisor to the IAs/AUSAs.

III. Disposition of Forfeited Assets

The Complex Asset Team was responsible for initiating the sale of a forfeited asset in a commercially feasible way. To do so, the Team utilized public bids, solicitations, and reputable brokerage firms. Complex assets with binding prohibitions against public sales (e.g. minority interests in privately held corporations and limited real estate or equity partnerships) were sold in accordance with these applicable restrictions. When necessary, Mr. Briskman sought the advice of counsel. The proceeds from each sale, with the supporting documentation, were then transferred to the District Offices, who maintained the documentation. The Team sold assets as effectively as possible. They did not value the assets other than transcribing the current price of marketable securities.

IV. Conclusion

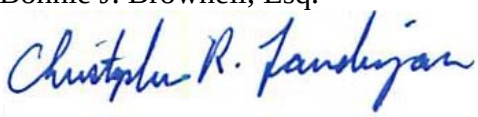
We are hopeful that you will reconsider Mr. Briskman's role and conclude that in context, he provided his extremely valuable expertise and advice to those responsible for seizing, restraining, valuing and forfeiting complex assets. By definition, complex assets are complex, and those seeking Mr. Briskman's advice appreciated and valued his input. We do not comment herein on whether additional resources, policies and procedures are warranted. Our only concern is that your report accurately reflects that policies and procedures in effect to date as well as the substantial value our client has provided to the Agency.

[1] Businesses were virtually always initially restrained rather than seized.

We appreciate your attention to these comments and thank you again for this opportunity to provide comments. Please do not hesitate to contact us if you have any questions or would like to discuss this matter further.

Sincerely,

Bonnie J. Brownell, Esq.



Christopher R. Landrigan, Esq.

Enclosure

The Brownell Firm, PC

Attorneys At Law

1050 17th STREET, NW, SUITE 700
WASHINGTON, DC 20036-5503
VOICE: (202) 822-1701 FACSIMILE: (202) 822-1914
www.thebrownellfirm.com

Bonnie J. Brownell*
Christopher R. Landrigan+
D. Robert DePriest^

**Also Admitted in MD*
+Also Admitted in VA
^Also Admitted in NY

August 12, 2011

Mr. Troy Meyer
Regional Audit Manager
Washington Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
1300 N. 17th Street, Suite 3400
Arlington, VA 22209

Dear Mr. Meyer,

We appreciate this opportunity to provide our factual clarifications on behalf of our client, Mr. Len Briskman, regarding the draft audit report from the Department of Justice (DOJ) Office of Inspector General (OIG). To assist your review and analysis of the management and oversight of the United States Marshals Service (USMS) Complex Asset Team, we have provided several factual clarifications to the quotations within.

We respectfully request that you note these clarifications and revise the audit report as necessary. In addition to providing these enclosed clarifications, Mr. Briskman is available to offer his experience and expertise to assist the OIG as necessary.

We appreciate your attention to these inaccuracies and thank you again for this opportunity to provide comments. Please do not hesitate to contact us if you have any questions or would like to discuss this matter further.

Sincerely,

Bonnie J. Brownell, Esq.

Christopher R. Landrigan, Esq.

Page #	Quotation	Clarification/Correction
iii	"OIG audit determined that … Complex Asset Team has not instituted consistent pre-seizure planning procedures."	The Complex Asset Team always completed pre-seizure planning. Each case was reviewed with the investigative agency (IA) and the Assistant United States Attorney (AUSA). This review would result in a decision as to how to proceed with processing the case and the assets. Due to the nature of the complex assets, the specific procedure in each case would often require a unique approach.
iii	"Briskman valued and sold the same asset."	Briskman never conducted certified business appraisals. All commercial real estate assets were appraised by outside commercial appraisers selected by the District. Business appraisal values were placed into the CATS system by the investigative agencies upon seizure or restraint of assets. Upon occasional request from the AUSA or individuals handling the CATS system, Briskman would provide "rule of thumb" values. Real estate brokers acted as the selling agents for commercial real estate. Listing agreements were signed by both the Districts and the Complex Asset Team.
v	"[T]he Complex Asset Team disposed of approximately $136 million in complex assets between January 2005 and August 2010."	While we are unaware of the exact amount of the sale figures, we are confident that $136 million is inaccurate.
viii-ix	"Specifically with regard to the waste management facility noted above, neither Briskman's reliance on observations of on-site activity nor subsequent administrative activity identified the effect legal restrictions and tax liabilities would have on the sale of the business."	The tax issues did not deter the sale. The business value had fallen considerably due to the recession and lack of management depth. Further, the implication that the Complex Assets Team acted independently and "informally" is untrue: the team had formally contracted with an investment banking firm, [redacted], to sell this particular business.
xi	"[T]he Complex Asset Team did not employ procedures that segregated appraisal duties from selling functions."	See response to page iii above.

xi	"[The Complex Asset Team] lack[ed] procedures governing the Complex Asset Team's asset disposal process, which often resulted in a lack of public exposure for forfeited assets."	All assets were sold in a commercially feasible way. Assets that were solicited for public exposure when possible, such as publically traded securities sold at market prices through reputable brokerage firms at competitive commission rates. Some complex assets had restrictions which precluded exposure to the general public.
xii	Briskman's monthly asset activity reports were often brief summaries that lacked critical details and at times were inaccurate.	Mr. Briskman does not recall his reports lacking critical information.
xiii	"Morales also said that despite repeatedly directing Briskman to improve his procedures, he was unable to compel the Complex Asset Team to remedy many of its practices – most particularly its inadequate asset management recordkeeping."	To Mr. Briskman's knowledge, the Complex Asset Team kept Morales fully updated. Mr. Briskman does not recall Morales repeatedly directing him regarding this issue. Morales asked all the asset forfeiture groups to update their policies. Mr. [redacted], a contract in-house attorney, was revising the Complex Asset Team policies and would frequently collaborate with Mr. Briskman regarding certain procedures. These revisions were being completed when Mr. Briskman was reassigned.
xiv	"[T]he [Complex Asset Team] could neither identify its historical workload nor generate important performance-based information such as the sale price and ultimate purchaser of assets."	Per Agency policy, the District Offices hold all official files of each case. This information included expenses during the pendency, the sales information, copies of sales contracts, purchaser(s), the proceeds from the sale, and all other necessary information related to the case. All sale proceeds were sent to the District of the sale. The Complex Asset Team only used "working files." The data referenced in the report is accessible through consulting the District Offices.
15	"[B]etween 2005 and 2010, the Complex Asset Team handled and disposed of only 55 assets with a value of approximately $136 million."	See response to page v above.
18	Full second paragraph.	See response to page xiv above.
23	"[C]hanges in asset account balances were not periodically updated in CATS."	Assuming this statement addresses the portfolio of publically traded securities, the policy to send updated values to the Districts on a quarterly basis was followed to Mr. Briskman's knowledge.

27	"[T]he Complex Asset Team did not maintain comprehensible records of the market research that it performed."	For publically traded securities, the Working Files usually contained a copy of the Yahoo Finance current stock price. For business, whatever significant information was available on the Web would be placed in the file. Commercial real estate usually had copies of the most recent appraisal. See also response to page xiv above.
27	"Briskman sometimes spoke with and vetted potential buyers prior to receiving final forfeiture orders for assets."	We note that Mr. Briskman never solicited for buyers prior to forfeiture. Interested buyers learning of a potential forfeiture occasionally contacted Mr. Briskman. Mr. Briskman retained their name and information but did not contact them prior to the forfeiture.
28	"Briskman stated that he did not believe that the Complex Asset Team could publicly announce the sale of these assets because the nature of the existing partnerships tied to these assets limited the potential market of buyers."	In the case of the Delta asset, the restriction was due to the partnership agreement (a partner could only sell his or her interest to another partner and only at the Net Asset Value that existed at the time). In the case of the PetCare asset, the restriction was due to the requirement to register with the SEC to solicit the sale of a minority interest in a privately held company. It is unclear in the report whether solicitations may have occurred in either or both of these two specific situations according to OGC.
32	"[S]ome of the entries contained unexplained changes from the previous monthly status report. For example, the listed taxable profit amount for one asset varied from $9.5 million to $12 million between different report; however, the entries provided to summarize the changes for this particular asset in subsequent reports were 'no change from previous report.'"	Changes in status typically referred to changes that may materially change the status of the asset, such as new court orders, management changes, or an asset's significant decrease in value. Mr. Briskman's status was not inaccurate because only profits that decreased – not increased – were typically considered "changes" for purposes of Mr. Briskman's supervisor's consideration.

34	"Morales repeatedly directed Briskman to improve his procedures but was unable to compel the Complex Asset Team to remedy many of its practices – most particularly its inadequate asset management recordkeeping."	See response to page xiii above.
35	"[T]he Complex Asset Team lacked adequate processes to obtain proactive legal counsel regarding asset management issues. Instead, it would only contact the USMS's Office of General Counsel when a particular legal problem would arise during asset administration or disposal. … [T]he Complex Asset Team did not solicit legal advice when necessary."	Mr. Briskman did solicit legal advice when necessary and consulted with attorneys, including the USMS's Office of General Counsel, frequently. The majority of Mr. Briskman's daily conversations were with attorneys concerning particular assets. For active cases, he spoke to the AUSA handling the case sometimes multiple times in a single day. He also frequently spoke to and met with [redacted] of the USMS General Counsel, who specialized in forfeiture matters. Mr. Briskman also frequently consulted with attorneys in DOJ Asset Forfeiture Money Laundering Division (AFML). Mr. Briskman would also often consult with in-house contract attorney [redacted], former head forfeiture attorney at DEA. An individual reporting directly to Mr. Briskman on the team is an attorney as well.

APPENDIX V

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

The OIG provided a draft of this audit report to the USMS, JMD, and former leader of the Complex Asset Team, Leonard Briskman. The USMS response is incorporated in Appendix II, JMD's response is incorporated in Appendix III, and Briskman's response is incorporated in Appendix IV. In this appendix, Part A details our analysis of Briskman's response. This is followed by Part B, which contains a summary of actions necessary to close the report. Part B also incorporates our analysis of portions of the USMS and JMD responses that were not specific to our recommendations.

A. Analysis of Briskman's Response

The attorney for Leonard Briskman provided two responses to the draft report that contained information that did not pertain to our recommendations. The first response, dated August 12, 2011, cites 18 parts of the draft report and offers an explanation or clarification for each. The second response, dated August 19, 2011, provides additional context for the assertions made in the August 12 response and serves as a cover letter. In this section, we address by report section the issues raised in both of these responses. We refer herein to the respective letters from Briskman's attorney as "Briskman's response."

Pre-Seizure Planning

Briskman's August 19 response stated that during pre-seizure planning Briskman simply served in an advisory capacity and fielded questions about assets from investigative agencies and the Assistant U.S. Attorneys (AUSA). The response stated that investigative agencies and the AUSAs – and not the Complex Asset Team – were responsible for deciding during the pre-seizure planning phase whether an asset would be seized or restrained. Briskman's August 12 response stated that the Complex Asset Team always completed pre-seizure planning by reviewing with the investigative agency and AUSA how to proceed with a case and its assets. This response also said that due to the nature of complex assets, the specific pre-seizure procedure in each case would often require a unique approach.

Our report does not state that the Complex Asset Team had anything other than an advisory role in pre-seizure planning. Instead, our report underscores the important role the Complex Asset Team has to assist and consult with investigative agencies and the AUSAs during pre-seizure planning. Because investigative agencies and AUSAs rely on the Complex Asset Team's advice, it is important that the USMS consistently documents pre-seizure planning reviews and the advice the Complex Asset Team provides to all parties deciding whether to seize or restrain an asset.

Briskman's August 12 response stated that pre-seizure planning always occurred during his tenure. However, statements we received from Complex Asset Team members indicated that investigative agencies and AUSAs have not always provided prior or sufficient notice to the Complex Asset Team about potentially complex assets before seizure or restraint. Adequate pre-seizure planning can only occur after the Complex Asset Team receives prior and sufficient notice about such assets. If the Complex Asset Team provided advice or guidance about an asset after it was seized or restrained, this by definition can not constitute pre-seizure planning.

In addition, the report does not dispute Briskman's assertion that the unique nature of each complex asset makes it is difficult to have fixed criteria for pre-seizure planning. Our report simply recommends that the USMS employ a standard approach for documenting pre-seizure advice and business plans provided to the investigative agencies and AUSAs responsible for deciding whether to seize or restrain an asset. This is because we found the Complex Asset Team files, particularly records pertaining to pre-seizure planning, were disorganized and incomplete. Lacking complete and accurate records, we could not verify the frequency or thoroughness of the pre-seizure planning that occurred under Briskman's tenure.

In reference to the forfeited waste management facility associated with James Galante, Briskman's August 12 response stated that tax issues did not deter the sale of this and other associated assets. Briskman's response posited that other variables, including the recession and management issues, resulted in the decline of the value of this and other associated assets. The report recognizes that there may be a number of variables that affect the value of assets and the USMS's corresponding ability to dispose of them. However, following Briskman's transfer from the Complex Asset Team, the USMS determined that because the government assumed responsibility for the businesses, and the businesses had significant liabilities (such as state and federal taxes), the government could not consummate a sales agreement for certain parts of the business without addressing tax liability issues.

Further, the Complex Asset Team should have been positioned to identify earlier that certain legal restrictions and tax liabilities could affect the ability of the government to dispose of these assets. Although the Complex Asset Team did contract with an investment banking firm to assist in the disposition of these assets, the report focuses on the concern that Briskman's informal approach to offering advice and assessing the value of assets prior to restraint or seizure might not account for issues that negatively affect whether the asset can subsequently be administered and sold effectively.

Recordkeeping and Tracking of Assets

Briskman's August 12 response stated that the USMS district offices maintain the official files for each case and that the Complex Asset Team only maintains "working files." Our report recognizes that the Complex Asset Team has not been responsible for maintaining asset records. We believe that this lack of file management responsibility has contributed to the disorganized and incomplete state of records we found at the Complex Asset Team offices at USMS headquarters. Even though many management and disposition decisions, such as how best to maintain and safeguard a particular asset, are made by Complex Asset Team officials, most of the records we reviewed did not specifically document the rationale supporting these decisions. In our opinion, the Complex Asset Team should be responsible for documenting this material because USMS district offices are not positioned to document decisions made by the Complex Asset Team accurately and completely.

Briskman's August 12 response also indicated that it was the Complex Asset Team's policy to send updates to district offices on the values of securities on a quarterly basis. District offices would then presumably update the asset data in the Consolidated Asset Tracking System (CATS). However, due to the disorganized and incomplete state of records, our report notes that we were unable to verify whether the Complex Asset Team communicated the accurate status of assets to local districts. The assertion in Briskman's response is troubling because if the Complex Asset Team is aware of the current value of assets in CATS, it should take responsibility for updating this data in CATS instead of delegating this duty to the district offices.

Specifically regarding the accuracy of data in CATS, Briskman's August 19 response stated that the USMS shares the responsibility to update data with the investigative agency. Briskman's response stated that the Complex Asset Team would update the value of securities in CATS while investigative agencies were responsible for updating the value of businesses, limited partnerships, and interests in privately-held companies. Our report identified a breakdown in updating CATS with the value of assets held in external bank accounts. Specifically, a USMS contractor found that the value of these financial instruments was understated in CATS by $3 million.

Briskman's August 12 response further questioned our methodology in calculating the Complex Asset Team's disposal workload from 2005 until Briskman's transfer in 2010. Due to the disorganized and incomplete recordkeeping of Complex Asset Team, relevant USMS employees could not generate a complete historical record of assets managed by the Team. After multiple discussions with the Complex Asset Team, and a thorough review of available records, we developed a methodology that conservatively estimated the Team's activity at 55 assets disposed with a value of approximately $136 million. Briskman's response explicitly stated that Briskman is unaware of the exact amount of the sale figures, a statement that we believe summarizes the primary issue: the Complex Asset Team under Briskman maintained inadequate records of important decisions and figures relevant to the asset management and disposal process.

Asset Valuations and Dispositions

Briskman's August 12 response asserted that: (1) Briskman never conducted certified business appraisals, (2) all commercial real estate assets were appraised by outside commercial appraisers selected by the local USMS district, (3) investigative agencies placed in CATS the value of business assets, and (4) Briskman would provide "rule of thumb" asset valuations when requested by the AUSA or investigative agencies. Also for commercial real estate assets, the response stated that real estate brokers acted as the selling agents and listing agreements were signed by both district and Complex Asset Team officials. These statements do not negate the issue that Briskman, at least in some circumstances, valued and then sold the same asset.

Given the unique nature of many complex assets, we found that the asset valuation and sale procedures depended largely on the particular circumstances surrounding the asset. The report found that the Complex Asset Team did not maintain formal market research procedures guiding how to value different types of assets. Although outside commercial appraisers valued real estate assets, outside commercial appraisers did not consistently appraise non-real estate assets. While Briskman's August 19 response stated that the Complex Asset Team did not value assets beyond transcribing the current price of marketable securities, Briskman told us in a prior interview that he applied his experience as a certified business appraiser to value complex assets, including businesses. Briskman's August 12 response stated that these valuations did not constitute "certified" business appraisals, yet his "rule of thumb" valuations were entered into CATS by investigative agencies and AUSAs. As a result, Briskman's "rule of thumb" valuations effectively became the value of record within the Department of Justice's official asset tracking system.

In addition, the report noted that the Complex Asset Team did not maintain comprehensible records of the market research that it conducted to perform valuations. Briskman's August 12 response stated that for publicly-traded securities, the Team's working files usually contained a copy of the Yahoo Finance Web site's current stock price and other information "available on the Web." The response said the files for commercial real estate assets usually had copies of the most recent appraisal. This assertion, however, does not align with the state of Complex Asset Team files we found during our audit. Many of the records amounted to personal notes that did little to justify empirically asset valuation decisions and results. We believe that Briskman's response reinforces our finding that the Complex Asset Team's market research procedures and records were informal. While Briskman may have included copies of appraisals for commercial real estate assets in the asset file, we were unable to identify a clear system for recording market research involving all types of complex assets.

Regarding the disposition of assets, Briskman's August 12 response asserted that Briskman never solicited buyers prior to forfeiture, although interested buyers occasionally contacted Briskman upon learning of a potential forfeiture. Briskman's response stated that, when this occurred, he would retain the contact information of interested buyers but would not contact them prior to the forfeiture. However, the audit identified instances when Briskman apparently was negotiating the sale of two assets seized as part of the Bernard Madoff criminal forfeiture case – shares of PetCare Rx and the Delta Fund. For these assets, negotiations took place despite the fact that a final order of forfeiture had not yet been issued for these assets.

Briskman's responses also contended that the Complex Asset Team sought to sell all complex assets in a "commercially feasible way." The responses stated that, when possible, assets were solicited for public exposure and that publicly-traded securities were sold through brokerage firms at competitive commission rates. Briskman's responses also said that Briskman believed the Complex Asset Team could not publicly announce the sale of particular assets because some had restrictions that precluded a public sale. In particular, the August 12 response stated that Briskman believed these restrictions applied to the two aforementioned Madoff assets: shares of PetCare Rx and the Delta Fund.

Our report recognized that the existing guidance that the government should dispose of forfeited assets through "commercially feasible means" was not straightforward. Following Briskman's transfer, the USMS Office of General Counsel issued an opinion holding that securities regulations permit the government to offer publicly shares in closely-held companies and limited partnerships in certain circumstances. While the Complex Asset Team lacked clear and consistent guidance regarding the appropriate methods to solicit buyers and sell assets, we would expect that the Complex Asset Team be required to provide at least a transparent justification for the methods it used to dispose of complex assets. Regarding the Madoff assets cited above, the AUSA responsible for the case deemed the proposed sales inadequate and non-transparent. The report therefore recommends that the USMS clarify its guidance regarding how the Complex Asset Team should best dispose of different types of assets and when a public sale should be performed.

The report found that separation of duties were not achieved when Briskman was responsible for negotiating the sale of an asset with a recorded value based on his "rule of thumb" valuation technique. The report highlights that when this occurred, Briskman was not in a position to refute potential accusations that asset sale prices were manipulated or that sales of assets were directed to specific purchasers. Although we found no evidence to suggest that Briskman manipulated the valuation or sale of assets, asset valuation and sale procedures must be as transparent as possible. To this end, the internal valuation and sale functions for complex assets should be separated.

Complex Asset Team Oversight

Briskman's August 12 response disagreed with our assertion that monthly reports prepared for Assistant Director Morales lacked critical details and at times were inaccurate. The response asserted that it was not necessary to mention increases in asset values in the monthly reports because such information was not considered relevant. According to the response, Briskman instead believed that these reports should only mention significant declines in asset values, new court orders, and management changes. While such information is relevant to the USMS management, we believe the assertion in Briskman's response missed the larger point that accurate and complete asset information is particularly important due to the absence of a transparent recordkeeping system or tracking mechanism employed for complex assets.

The August 12 response also disagreed that Morales repeatedly directed Briskman to remedy Complex Asset Team deficiencies – particularly its inadequate recordkeeping – and, as a result, was unable to improve internal Complex Asset Team operations. This information was based on discussions with multiple USMS employees, including Assistant Director Morales, and the fact that Briskman's records were disorganized and incomplete. Further, although Briskman's response stated that he was working with an in-house attorney to revise Complex Asset Team policies, we found no evidence to suggest that any new internal controls procedures – such as a segregation of asset valuation and disposal responsibilities or a tiered approval structure based on the relative value of assets – had been developed or implemented prior to our audit.

Briskman's August 19 response stated that Briskman sought the advice of legal counsel when necessary, and Briskman's August 12 response stated that many of Briskman's daily conversations concerning particular assets were with attorneys, including AUSAs. Briskman's responses said Briskman frequently spoke to and met with members of the USMS Office of General Counsel and consulted with attorneys from both the USMS and the Criminal Division's Asset Forfeiture and Money Laundering Section. However, the report noted that Briskman's position granted him the "final authority" over negotiating and implementing restraining orders involving assets referred to the Complex Asset Team and left him responsible for identifying issues requiring legal counsel. We believe that to address asset issues proactively, the Complex Asset Team should be in the position to obtain proactive legal advice regarding asset management and disposition.

B. Summary of Actions Necessary to Close the Report

The following section summarizes the actions that the USMS and JMD have advised they have taken or will take to address the 20 recommendations included in the report.

1. **Resolved.** The USMS concurred with our recommendation to develop standard operating procedures that require its Complex Asset Team to track pre-seizure requests received from and assistance provided to United States Attorneys' Offices (USAOs) and investigative agencies. The USMS stated in its response that it has developed and implemented a Complex Assets Portal (Portal) to track pre-seizure requests and display gathered data. The USMS also stated that it has implemented a Business Information Questionnaire form, which enables the Complex Asset Team to capture information regarding businesses targeted for forfeiture. This recommendation can be closed when the USMS provides the OIG with a sample of entries from its Portal and Business Information Questionnaire forms demonstrating that the Complex Asset Team is consistently tracking pre-seizure requests and similar communications from USAOs and investigative agencies.

2. **Resolved.** The USMS concurred with our recommendation to develop and provide standard operating procedures for abbreviated post-seizure reviews of assets, as appropriate, when the Complex Asset Team receives little or no notice prior to receiving assets from district offices. The USMS stated that it will use the Business Information Questionnaire form to determine the viability of businesses targeted or seized for forfeiture. The USMS stated that this, along with its other processes, will help develop a proactive asset management and disposal strategy. This recommendation can be closed when the USMS demonstrates that it has developed and adhered to standard operating procedures for abbreviated post-seizure review, in specific instances when the Complex Asset Team has assumed responsibility for assets on short notice.

   Additionally, in its response, the USMS requested that we modify the recommendation to reflect the fact that the Complex Asset Team may receive assets on short notice not only from USMS district offices, but also from USAOs and investigative agencies. After reviewing our audit documentation, we have adjusted the language of our recommendation accordingly.

3. **Resolved.** The USMS concurred with our recommendation to ensure that the Complex Asset Team documents required pre-seizure business plan reviews. The USMS stated it has implemented a process to ensure that the Complex Asset Team tracks relevant pre-seizure information, which is then used to generate a formal business plan. The USMS explained that a Forfeiture Financial Specialist Steering Committee will analyze and review this plan and advise the Complex Asset Team regarding potential liabilities surrounding assets. According to the USMS, this process will be tracked in the Portal. This recommendation can be closed when the USMS demonstrates that it is consistently generating and documenting business plan reviews and tracking them within the Portal.

4. **Resolved.** The USMS concurred with our recommendation requiring that responsible officials review Complex Asset Team business plans to ensure that they are complete and based on sufficient evidence. The USMS stated in its response that it has implemented a multi-tiered review process that it believes will ensure that business plans are performed and based upon sufficient evidence. This recommendation can be closed when the USMS provides the OIG with evidence demonstrating that this business plan review process occurs on a consistent basis.

5. **Resolved.** The USMS concurred with our recommendation to clarify its policies to define more specifically the attributes of complex assets and develop procedures for determining when and how assets should be classified as complex assets. According to our report, such policy revisions should ensure that district offices know what types of assets merit Complex Asset Team assistance. The USMS agreed that there was a need to clarify the definition of complex assets and submitted a new, more specific definition. The USMS also provided draft policy regarding the role of the Complex Asset Team, which specifically defined the respective responsibilities of the USMS districts and the Complex Asset Team in the management of complex assets. This recommendation can be closed when the USMS provides evidence that it has finalized this draft policy and that it has been implemented.

   The USMS response questioned the report's statement that there were approximately 10,000 assets with a combined value of $3.52 billion that met the March 2010 categorical definition of "complex asset." While the USMS contended in its response that many of these assets did not warrant Complex Asset Team

involvement, we included this information in the report to demonstrate that the existing definition of complex assets under USMS policy, namely "a(n) operating business, commercial real estate, or financial instrument (including marketable and non-marketable securities, interests in partnerships and insurance policies) that may have value," was overly broad and merited revision to reflect the more discrete universe of assets that the Complex Asset Team actually consulted on or administered.

6. **Resolved.** The USMS concurred with our recommendation to ensure that the Complex Asset Team (1) coordinates with JMD to update CATS so that the pertinent USMS personnel can use it to identify whether an asset is a complex asset, (2) reconciles the assets referred to the Complex Asset Team with assets that meet the updated definition in CATS, and (3) follows up with the appropriate USMS district office regarding the status of such assets not yet in the Complex Asset Team portfolio.

   The USMS stated in its response that it is developing the suggested modifications to CATS and will consult with JMD to develop a formal proposal. This recommendation can be closed when the USMS provides evidence that it is working with JMD to enable USMS headquarters and district office personnel to use CATS to identify complex assets and also determine whether the Complex Asset Team has assumed full responsibility for the asset or if asset management responsibility has been delegated to the district office. To close this recommendation, the USMS must also demonstrate that it is using this new CATS functionality to reconcile the assets referred to the Complex Asset Team against those identified in CATS as "complex".

7. **Resolved.** The USMS concurred with our recommendation to develop procedures that require the Complex Asset Team to track consistently incoming notifications, requests, and referrals of assets – even if such advice concerns assets that are not ultimately administered by the Complex Asset Team. The USMS stated the Portal will track asset notifications, requests, and referrals, as well as document inquiries and correspondence regarding assets. This recommendation can be closed when the USMS provides evidence that such information is consistently captured within the Portal for all assets with which the Complex Asset Team has had involvement, even those not ultimately administered by the Team.

The USMS response expressed concern with the report's discussion of 35 asset records that we identified and found were absent from the Complex Asset Team listing of assets it had administered. The USMS stated that these assets were simply the subject of telephone calls or informal inquiries that Briskman received from the field. The USMS further stated that these assets were either handled by the district offices or never received a CATS identification number because they were not seized or forfeited. However, we believe this may not be accurate given that 21 of these 35 assets did in fact have CATS identification numbers, indicating a formal step in the forfeiture process. While the USMS asserts that these assets were not "administered in some way," we maintain that the Complex Asset Team should have tracked the assets about which it was consulted and also memorialized the advice or assistance provided, regardless of the level of the Team's involvement.

The aim of this recommendation is to ensure that the Complex Asset Team performs tracking functions that allow it to provide evidence supporting the status of each asset and respective USMS headquarters and district office responsibilities in managing the asset. The report does not assert that the USMS "purposefully" left these assets off its listings, but instead referenced these files to highlight inadequate Complex Asset Team recordkeeping practices. We provided the USMS with multiple opportunities during the audit to explain the status of the 35 asset files, yet the USMS was not able to identify the specific circumstances surrounding each asset file. The Complex Asset Team's inability to determine the extent of its involvement with these 35 asset files during the audit supports our assertion that the Team's records were disorganized and incomplete.

8. **Resolved.** The USMS concurred with our recommendation to implement policies that help standardize the asset files maintained by the Complex Asset Team by: (1) providing asset file templates for Complex Asset Team members; (2) ensuring asset files contain up-to-date information regarding asset valuation and disposal decisions; (3) facilitating and memorializing discussions with federal investigative agencies, USAOs, and USMS district offices; and (4) offering a regimen by which Asset Forfeiture Division officials periodically sample files for completeness and accuracy. The USMS stated that as of March 2011, a standard complex asset case file has been established and that the Portal will enable the Team to document discussions with investigative agencies, USAOs, and USMS district offices. Further, the USMS states that its Asset

Forfeiture Division Audits and Internal Control Team will continue to work with the Complex Asset Team to audit case files for completeness and accuracy. This recommendation can be closed when the USMS provides the OIG with evidence, such as examples of complete complex asset case files and Portal entries, that demonstrates relevant case information is consistently collected and sufficiently organized.

9. **Resolved.** The USMS concurred with our recommendation to ensure that when the Complex Asset Team handles the day-to-day management and works to sell an asset, the Team maintains and updates the official asset file until final disposition. The USMS stated that the Complex Asset Team has developed and implemented a standard format case file and that the Team has begun to maintain and update "the official asset file" for those assets that are handled on a day-to-day basis by the Team. This recommendation can be closed when the USMS provides the OIG with evidence that demonstrates that recordkeeping responsibilities have been appropriately delegated between USMS headquarters and the district offices.
10. **Resolved.** The USMS concurred with our recommendation to develop a more robust tracking system for assets held in bank accounts that confirms account existence and activity. The USMS stated that assets are now transferred to a central banking location only when directed by court order or when there is a compelling reason to believe the financial instrument is not secure in its current location. Further, the USMS stated that Asset Forfeiture Division executives must now review and approve the transfer. This recommendation can be closed when the USMS provides evidence that it has implemented a method by which it can track assets held in bank accounts and the activity of these accounts.

11. **Resolved.** JMD agreed with our recommendation to ensure that, upon receipt of procedures from the USMS for identifying assets as complex, JMD will update CATS so that local USMS district offices and USMS Asset Forfeiture Division can use CATS to identify whether an asset is a complex asset that is being managed by the Complex Asset Team. In addressing this recommendation, JMD stated that its Asset Forfeiture Management Staff (AFMS) will study the feasibility of creating a "complex asset flag" to identify assets that meet the USMS's definition of a complex asset. Once this feasibility is determined, AFMS will then work closely with the USMS to implement the indicator or develop a more effective solution. This recommendation can be closed when we receive evidence that

JMD has evaluated the feasibility of creating a "complex asset flag" and has implemented the flag or otherwise developed and implemented what it believes to be a similarly effective solution.

12. **Resolved.** The USMS concurred with our recommendation to develop detailed procedures for Complex Asset Team members to follow when: (1) appraising the value of assets and (2) disposing or selling specific types of complex assets including limited partnership interests. The USMS stated in its response that the Complex Asset Team's past asset valuation, disposal, and documentation practices were based on team member opinions as opposed to USMS standard operating procedures. Further, the USMS stated that updates to existing policies and procedures have been developed to include additional protocols for appraising and disposing of assets, the requisite documentation for each activity, and the independence necessary to perform these duties. This recommendation can be closed when the USMS provides evidence that these policy updates have been implemented and are being followed by the Complex Asset Team.

13. **Resolved.** The USMS concurred with our recommendation to ensure that different Complex Asset Team personnel are responsible for valuing and disposing of the same asset. The USMS stated that it has developed the tools to ensure that different Complex Asset Team personnel work on the valuation and disposal of an asset. The USMS adds that in most cases, the valuation of assets is performed independently from the Complex Asset Team. This recommendation can be closed when the USMS provides evidence that future valuation and disposition functions remain separate.

14. **Resolved.** The USMS concurred with our recommendation to ensure that the Complex Asset Team develops a standardized and accurate record of its asset management activities to provide to Asset Forfeiture Division management. The USMS stated that the Portal will enable the Complex Asset Team to record and track relevant seizure and forfeiture information as well as provide standardized reports of asset management activities to Asset Forfeiture Division management. This recommendation can be closed when the USMS offers evidence that Asset Forfeiture Division management is receiving standardized and accurate records of Complex Asset Team activities.

15. **Resolved.** The USMS concurred with our recommendation to ensure that the Asset Forfeiture Division leadership: (1) periodically use CATS (once it is updated to capture asset referrals made to the Complex Asset Team) to identify assets referred to the Complex Asset Team and (2) reconcile the CATS list against submitted Complex Asset Team activity reports. The USMS stated that the Asset Forfeiture Division Audits and Internal Controls Team is reconciling Complex Asset Team reports with CATS reports, which will become easier once CATS is adjusted to categorize assets as complex. This recommendation can be closed when the USMS provides evidence that the Asset Forfeiture Division leadership periodically uses the updated CATS function to identify assets referred to the Complex Asset Team and reconciles the CATS-identified assets against submitted Complex Asset Team activity reports.

16. **Resolved.** The USMS concurred with our recommendation to evaluate the level of authority granted to the position of Complex Asset Team Leader and develop a tiered-approval structure that includes documenting Asset Forfeiture Division executive approval for asset management decisions related to high-value assets. The USMS provided a revised Asset Forfeiture Division organizational chart, indicating that the Complex Asset Team now reports to a Program Manager of Operations. The USMS stated that, once fully staffed, the Complex Asset Team will be led by an Assistant Program Manager of Complex Assets and will also have three full-time Case Coordinators, a dedicated Forfeiture Financial Specialist at Asset Forfeiture Division headquarters, and two contractor records examiners.

    The USMS cited the fact that it recently created and implemented a working job description for the Case Coordinator position, which separated the responsibilities of the Assistant Program Manager from those of individuals performing the day-to-day functions of the Complex Asset Team. The USMS also stated in its response that delegation of authority statements have been developed for each Complex Asset Team position and provided an example of such a statement. This recommendation can be closed when the USMS provides evidence that demonstrates that Asset Forfeiture Division leadership is reviewing asset management decisions related to high-value assets and documenting its approvals.

17. **Resolved.** The USMS concurred with our recommendation to establish an internal review regimen tailored to assess the handling of all assets, including Frozen, Indicted, Restrained, or Encumbered (FIRE) assets, administered by the Complex Asset Team. While the USMS stated that in past years it had lacked the infrastructure necessary to implement an effective internal review process, it has requested and received funding for additional positions to address this need. The USMS stated that it utilized these resources to build the infrastructure of the Asset Forfeiture Division Audits and Internal Controls Review Unit, which will assist the Asset Forfeiture Division in implementing this recommendation. This recommendation can be closed when the USMS demonstrates that it has implemented an internal review regimen that assesses the Complex Asset Team's handling of all assets, including FIRE assets.

18. **Resolved.** The USMS concurred with our recommendation to ensure the Complex Asset Team develops a consistent consultation process with its Office of General Counsel. In its response, the USMS stated Asset Forfeiture Division leadership requested in 2007 that the USMS Office of General Counsel (OGC) play a more active role in the complex asset process. The USMS also stated that since 2009, its OGC has sought to add attorneys to bolster its skills relating to commercial transactions, securities, and corporate legal matters, allowing it to work with the Asset Forfeiture Division on issues directly relevant to complex asset administration. The USMS moreover stated that the Complex Asset Team has regularly consulted with its OGC and explained that it has requested a new Asset Forfeiture Commercial Transaction Attorney who will be dedicated to providing pre- and post-seizure legal services in complex asset cases. The USMS also stated that in August 2009 a Presidential Management Fellow with both a law degree and a Masters in Business Administration joined the Complex Asset Team and works closely with the OGC Asset Forfeiture Team.

    While the USMS contends the communication between the Complex Asset Team and its OGC has improved in recent years, we note that, based on the evidence available for our audit, the Complex Asset Team did not appear to consistently or proactively obtain legal counsel regarding asset management issues until after Briskman's transfer in April 2010. This recommendation can be closed when the USMS provides evidence that the Complex Asset Team proactively consults with its OGC on applicable and relevant complex asset matters.

19. **Resolved.** The USMS concurred with our recommendation to evaluate whether forfeiture financial specialist contractors should be provided a more definitive role with the Complex Asset Team. The USMS stated that in August 2009, it requested an additional eight forfeiture financial specialists to compose a "Jump Team" dedicated to complex assets and pre-seizure planning. According to the USMS, funding was approved for fiscal year 2010 and as of August 2011, there were three forfeiture financial specialists, staffed in the Complex Asset Team headquarters, the Southern District of New York, and the Middle District of Florida. This recommendation can be closed when the USMS provides evidence that demonstrates these initiatives have been implemented and the forfeiture financial specialists are performing functions that address the relevant internal control deficiencies highlighted in our report.

    The USMS asserted that from the inception of the forfeiture financial specialist program, one specialist was dedicated to working pre-seizure and complex asset cases hand-in-hand with the U.S. Attorney's Office and the other specialist on-board was assigned complex assets as a collateral responsibility. However, our report emphasizes that during the scope of our review, which ended in April 2010, the program generally had no formal or primary functional responsibility with the Complex Asset Team at USMS headquarters. The USMS recognized that the forfeiture financial specialist program during our scope did not have the capacity to support all of its intended duties, and listed complex asset assistance as a tertiary function.

20. **Resolved.** The USMS agreed with our recommendation to ensure that managers know that they must thoroughly review financial disclosure forms and disclose any potential conflicts of interest to the USMS ethics office. The USMS stated in its response that Asset Forfeiture Division Executive Team members have been briefed on this matter and will be reminded annually as the review of disclosure forms occurs. In addition, the USMS stated that its Ethics Office is developing an online training for all USMS supervisors on their role regarding the financial disclosure forms. This recommendation can be closed when we receive evidence that the USMS has developed and provided this instruction.