



Audit No. 02-04

**AUDIT OF SEIZED ASSET FUND AND CRIMINAL
EXPENSE FUND**

City of Albany, New York

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Conducted by Tom Nitido, City Comptroller, and Debra Pullano, Deputy Comptroller for Auditing.

I. SUMMARY

We reviewed and audited the City of Albany's Police Department policies, procedures and practices related to funds and property received from the Law Enforcement Trust Fund (hereafter referred to as *Seized Assets*) and expenditures from the *Criminal Expense Fund*. We carried out the review and audit using generally accepted government auditing principles.

Seized Assets are property and funds confiscated from criminal enterprises, which are remitted to the City pursuant to federal and state law to be used for law enforcement purposes.

The Criminal Expense Fund is a cash account maintained by the Police Department for a variety of law enforcement purposes for which a purchase order is impractical. The source of the funds is a City account within the Police Department's budget. Expenses include the cost of picking up prisoners from other jurisdictions, paying informants, and other ongoing expenses associated with criminal investigations.

Seized Assets and *Criminal Expense Fund* expenditures are distinct because they have traditionally not been subject to the oversight and auditing standards afforded funds received and expended from other City accounts. We are presenting the audit and review for these accounts together because of this lesser oversight and because funds from these sources have been used for substantially similar purposes.

For both *Seized Assets* and *Criminal Expense Fund* spending there were significant deficiencies related to accounting practices, record keeping and appropriate use of funds. Most of the findings contained in this audit are caused by a lack of internal controls. Recently, there have been substantial improvements in record-keeping and internal policies and procedures related to *Seized Assets* and the *Criminal Expense Fund*. However, we recommend a number of additional measures for both accounts to improve the accounting practices, procedures, and oversight.

II. SCOPE

A. The scope of our inquiry for *Seized Assets* included:

- Use of and accounting of forfeiture monies;
- Disposal of seized and forfeited assets;
- Use of forfeited and Seized Assets placed in service;
- Expenditures of "buy money"; and
- Compliance with federal Annual Certification Reports.

B. The scope of our inquiry for the *Criminal Expense Fund* included:

- Use of funds;
- Record keeping and accounting of funds used; and
- Reconciling of funds remitted from the City account to actual expenditure of cash from the *Criminal Expense Fund*.

III. METHODOLOGY

The following are the procedures followed in auditing *Seized Assets* and the *Criminal Expense Fund*:

A. *Seized Assets*

- Interviewed Police Department personnel and consultants including the following: Police Chief James Turley, Sergeant Jay Chambers, Consultant William S. Ferber; and Consultant Anthony Pasciutto as well as other personnel involved with *Seized Asset* funds.
- Reviewed the Police Department's records of disbursements from the years 2000, 2001, 2002, 2003, and the first five months of 2004.
- Sampled 25% of all disbursements from the accounts taking into account dollar amount and types of expenditures.
- Reviewed expenditures to assess compliance with federal guidelines.
- Examined cancelled checks to determine that the payee on the check was the payee on the disbursement log.
- Compared City (general ledger) records of funds remitted to Police Department personnel to deposits in Seized Assets account to verify funds were deposited.
- Reviewed documentation of invoices including receipts and packing slips. In cases of credit card payments, requested and examined invoices and back up for items on credit card bills.

- Examined transfers between accounts. (*Seized Assets* funds are deposited into the "holding" account and transferred to the checking account upon approval from the U. S. Department of Justice or the Albany County District Attorney).

B. *Criminal Expense Fund*

- Assessed Police Department records relating to disbursements for the years 1998, 1999, 2000, 2001, and 2002 to determine if records of purchases reconciled to funds disbursed.
- Reviewed records to determine adequacy of supporting materials.
- Evaluated records to determine if expenditures were a permissible use of public funds.

IV. PROCEDURES

A. *Seized Assets*

1. Funds seized as part of a criminal activity are first counted and then are recounted in the presence of personnel from the Office of Professional Standards. These funds are then deposited in a "holding account" if they are not needed as evidence.
2. The Police Department applies for release of a share of the funds through the federal or state programs.¹
3. Upon notification of their share, the Police Department transfers the approved portion of the funds to their checking account for uses consistent with federal standards.
4. The Police Department maintains records of purchases from their checking account.
5. A portion of the funds is converted to cash, which is held in a safe at a police station for use in drug buys and other expenses related to ongoing investigations. This "buy money" is accounted for separate from other seized funds. (One person is now charged with accounting for and distributing funds.)

B. *Criminal Expense Fund*

1. The Police Chief submits to the City Comptroller requests for funds needed for informants and other cash expenditures related to criminal investigations. These funds are collectively known as the *Criminal Expense Fund*, but are a subset of a large account that includes petty cash and meal reimbursement for detectives working overtime, and some travel related expenses. (These other uses were not reviewed as part of this audit.) City checks are issued payable to the chief or deputy chief of police.

¹ Federal law allows states to adopt their own programs. The state and federal programs differ in their standards for distribution of funds.

2. Since 2002, receipts totaling the requested amount must accompany requests for funds.
3. The payee cashes the check and transfers the cash to the individuals who maintain the cash and records.
4. The cash is maintained in a Police Department safe². It is used for a variety of purposes including the cost of picking up prisoners (including transportation and meal expenses), and payments to informants.

V. BACKGROUND

A. *City of Albany Purchasing Policies and Procedures*

Typical purchases from City accounts require a request for purchase or requisition from a department head. (Depending on the size of the purchase, price quotes or competitive bidding may be required.) Subject to purchasing requirements and availability of funds the City's purchasing agent issues a purchase order, places the order with the vendor and sends the vendor a voucher. After the vendor delivers goods or provides the service they provide an invoice and signed voucher. The department head reviews and signs the voucher, combines it with the invoice and the original purchase order, and forwards it to the purchasing agent. The purchasing agent sends the signed voucher along with the invoice and a copy of purchase order to the Comptroller. After auditing the voucher, the Comptroller approves payment. The Treasurer then authorizes the payment, issues a check, and sends it to the vendor.

- *Seized Assets*: Because they are maintained apart from City accounts, they are not subject to the aforementioned procedures and internal controls. *Seized Assets* are property and funds claimed by the Police Department pursuant to federal standards and state law. Unlike all other funds, *Seized Assets* are not maintained under the City's accounting system and purchasing process. Rather, funds are remitted directly to the Police Department and kept in and disbursed from a separate account. As a result, these funds are not subject to appropriation in the City's budget. Purchases do not require a requisition or a purchase order issued by the purchasing department. The Comptroller does not audit purchases and the Treasurer does not issue checks for payment.
- *Criminal Expense Funds* consist of cash drawn from a City account in the Police Department's budget, but once drawn, these funds have not been subject to oversight and controls required of most City funds. These funds are drawn from a City "Criminal Expense" account, which also funds meals for staff working overtime, and petty cash.

Prior to 2002, The Police Department issued vouchers for fixed dollar amounts (generally \$1,500) made payable to the individual who is Chief of Police. The Police Department maintains funds as cash. While the Police Department maintained some records of disbursements, until 2002 no detail of purchases were provided or required

² The Police Department has indicated that while in the past multiple persons had access to the safe, beginning in 2002 only the individual who is charged with overseeing the account has access to the safe.

prior to receipt of funds. Beginning in 2002, the Comptroller required that any funds paid to the Police Department have receipts or other signed supporting materials. However, unlike most purchases, no prior authorization for purchases is required.

B. *Federal Guidelines - Seized Assets*

The federal Comprehensive Crime Control Act of 1984 provides for the sharing of federal forfeiture proceeds with local law enforcement agencies. The primary purpose of the program is law enforcement: to deter crime by depriving profits and proceeds of illegal activities to criminals. Assets seized may be shared with local law enforcement agencies through either the federal program or state-based programs adopted pursuant to federal law.

The program provides for seizures of cash (shared funds) and real property.

Guidelines issued by the U.S. Department of Justice detail *permissible* and *impermissible* uses of funds and property.³

The federal guidelines state that priority should be given to supporting community policing activities, training, and law enforcement operations calculated to result in further seizures and forfeitures.

The following are the categories of **permitted** uses:

- ❑ Activities calculated to enhance future investigations;
- ❑ Law enforcement training;
- ❑ Law enforcement equipment and operations (body armor, firearms, cellular telephones, computer equipment, and vehicles);
- ❑ Detention facilities;
- ❑ Law enforcement facilities and equipment;⁴
- ❑ Drug education and awareness programs;
- ❑ Pro rata funding (support of multi-agency items or facilities, such as a portion of the City's computerized payroll system); and
- ❑ Asset accounting and tracking.

Impermissible uses include:

- ❑ Payment of existing salaries;
- ❑ Uses of property by non-law enforcement personnel;
- ❑ Payment of non-law enforcement expenses;
- ❑ Expenses uses not specified in DAG-71;⁵
- ❑ Uses contrary to the rules regulations or laws of the state or locality;

³ U.S. Department of Justice, *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, March 1994.

⁴ Costs associated with basic and necessary facilities, government furniture, safes, file cabinets, telecommunications equipment necessary to perform official law enforcement duties.

⁵ DAG-71 is the U.S. Department of Justice form used for applying for *Seized Assets*.

- ❑ Non-official government use of shared assets (creates the appearance of use for political or personal purposes); and
- ❑ Extravagant expenditures. (This is defined as any expense that would create the appearance of extravagance, waste, or impropriety).

Federal guidelines place special emphasis on prohibiting uses that would supplant existing resources. Under federal law, 80 percent of the seized funds are retained by the local agency and 20 percent by the federal government.

C. State Law - Seized Assets

The New York State (NYS) General Municipal Law specifies the use of purchase orders, price quotes, written quotes and competitive bidding on municipal purchases, based on the nature of the purchase and dollar amount. Because the *Criminal Expense Fund* and *Seized Assets* have been expended outside of the City's purchasing and policy procedures, the use of these funds has not complied with standards of the General Municipal Law.

Section 1349 of the NYS Civil Practice Law and Rules (CPLR) details how forfeited property is to be disposed.⁶ The CPLR provides for portions of the funds to be used for the Substance Abuse Fund (established pursuant to section 97-w of the NYS Finance Law), the district attorney, the local law enforcement agency, and where applicable, other participating law enforcement agencies.

The Police Department determines whether to apply for release of funds through the federal or state program.

VI. DATA SUMMARY

A. Seized Assets

A sample of at least 25 percent of the transactions in each year was selected. Supporting materials were requested and reviewed to verify the receipt of goods or services.

Table 1. is a summary of the number of transactions, sample size, and number and percentage of the samples missing proper documentation. Table 2. summarizes total expenditures, the sample as a percentage of expenditures, and the dollar amount of sample lacking adequate supporting documentation.

⁶ Property is defined as including "real property, personal property, money, negotiable instruments, securities, or any thing of value or any interests in a thing of value."

Table 1.

Year	Total transactions	Samples	Samples missing documentation	% Missing documentation
2000	143	36	6	17%
2001	85	21	7	33%
2002	136	34	2	6%
2003	180	45	23	51%
2004 *	92	23	9	39%
TOTAL	636	159	47	30%
*2004 expenditures through 5/26/04				

Table 2.

Year	Expenditures	Total sample \$	Total unsupported of sample \$	% Lacking supporting documentation
2000	\$ 79,309	\$ 39,471	\$ 10,934	28%
2001	\$ 144,617	\$ 44,731	\$ 6,591	15%
2002	\$ 114,291	\$ 32,381	\$ 970	3%
2003	\$ 233,978	\$ 81,513	\$ 48,993	60%
2004 *	\$ 174,142	\$ 72,941	\$ 17,606	24%
TOTAL	\$ 746,337	\$ 271,038	\$ 85,095	31%
*2004 expenditures through 5/26/04				

Supporting records were unavailable for 30 percent of the records sampled. This 30 percent accounted for 33 percent of the dollar amount sampled.

B. Criminal Expense Fund

From 1998 to 2004 expenditures from the *Criminal Expense Fund* totaled \$163,416. Approximately 52 percent of these funds were spent through cash disbursements to the Police Department. The remaining funds were used for distinct purchases and reimbursement, particularly meal stipends to personnel working overtime.

Expenditures declined significantly beginning in 2002 when the Comptroller began requiring detailed back up and receipts for all cash disbursements. For example, from 2001 to 2002 spending from the City account declined from almost \$37,000 to just under \$21,000 and cash disbursements declined from more than \$16,000 to just over \$8,000. The decline between 2003 and 2004 was even more significant.

This reduction in expenditures does not indicate that prior purchases were inappropriate or that former purchases ceased. Rather, many of these same purchases may have been shifted to the *Seized Assets* funds.

Table 3.

Year	Budgeted Amount	Total Expense	Cash Disbursed	Supporting Receipts	% Lacking Supporting Documentation
1998	\$ 20,000	\$ 23,083	\$ 16,500	\$ 16,888	-2%
1999	\$ 20,000	\$ 31,387	\$ 22,456	\$ 20,286	10%
2000	\$ 20,000	\$ 34,591	\$ 18,899	\$ 11,447	39%
2001	\$ 20,000	\$ 36,990	\$ 16,130	\$ 3,266	80%
2002	\$ 20,000	\$ 20,627	\$ 8,187	NA**	0%
2003	\$ 20,000	\$ 13,781	\$ 3,583	NA**	0%
2004	\$ 20,000	\$ 2,958	\$ 0	NA**	0%
*Supporting receipts exceed 100% because some unused funds were returned, but not noted.					
** Beginning in 2002 receipts were required in advance of funds					

VII. FINDINGS/RECOMMENDATIONS

A. Findings/Recommendations: Seized Assets

1. **Condition:** *Seized Assets* revenues and expenses are not accounted for on the City's general ledger.

Criteria: The City's accounting system (or general ledger) and procurement system should account for and provide oversight of funds consistent with generally accepted accounting principles, state, local, and federal laws. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.⁷

Cause: *Seized Assets* funds and property are received directly by the Police Department and are therefore not recorded on or reviewed by the City's accounting and procurement system. Prior to 2004, the records of the revenues and expenditures related to the *Seized Assets* accounts were not available for review by the Comptroller. Only the year-end balance of the *Seized Asset* bank account was provided to the Comptroller's accounting staff in order to record the amount of cash in the bank account at year-end.

Effect: Funds not accounted for by the general ledger are more vulnerable to misuse. Accounting of these funds does not comply with generally accepted accounting

⁷ U. S. Department of the Treasury, *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, April, 2004.

procedures. Furthermore, the City's financial statements do not reflect all of the City's revenue and expenditures⁸.

Recommendation: *Seized Assets* should remain segregated from general fund revenues, but should be deposited in and expended through the City's general ledger.

Expenditures should be made through the City's purchasing system. Like the Law Enforcement Block Grant, funds should be deposited into a separate bank account and recorded on the City Trust when received. All disbursements should be processed as appropriate through payroll, purchase order, or short warrant⁹. This will assure appropriate oversight and auditing as well as compliance with state and federal laws.

The Police Department should continue to receive cash disbursements for narcotics buys and those expenses related to criminal investigations where the ordinary procurement process is impractical. However, these disbursements should also be made pursuant to a voucher. Cash should be accounted for with appropriate accounting software and regularly reconciled to funds remitted.

2. **Condition:** A substantial percentage of expenditures from 2001, 2002, and 2003 are missing adequate supporting documentation.¹⁰ (See Tables 1. and 2.) Examples include caterer's and restaurant invoices that are only marked "training", copies of credit card bills without seminar/conference information attached, invoices for framing or artwork that do not include justification or explanation, and records of goods purchased containing price quotes but lacking invoices. [Note: procedures implemented by the Police Department in 2004 should result in better documentation of disbursements.]

Cause: The Police Department has had inadequate oversight, accounting, and rationale for use of and accounting of funds.

Criteria: The funds are to be used for only law enforcement purposes. Expenditures of funds must comply with federal guidelines and standards for public expenditures.

Effect: Without proper supporting documentation it is impossible to determine how funds were actually used or to test compliance with the federal guidelines for the uses of *Seized Assets*. The absence of appropriate supporting materials makes it impossible to determine if purchases comply with federal standards or to ensure goods or services were purchased at all.

Recommendation: *Seized Assets* funds should be deposited and expended through the City's accounting and procurement systems. The City has procedures for paying vendors that have appropriate internal controls and documentation of expenses.

⁸ While the City's financial statements should reflect all revenue and expenditures, the amount of funds received and expended from *Seized Assets* do not materially effect the City's financial statements.

⁹ City of Albany procedure for paying vendors, which includes audit and oversight, but which bypasses parts of the procurement processes.

¹⁰ Percentage of sample missing appropriate documentation ranged from 6% (2002) to 51% (2003).

- Condition:** Questionable expenditures. Funds were used for a variety of purposes including retirement dinners, fundraisers, decorations for offices, and a variety of other expenses that, according to federal guidelines, are not among the categories of permitted expenses or are within the categories of prohibited expenses.¹¹ [Note: beginning in 2004 these uses of funds appears to have ended.]

Cause: There has been inadequate oversight, internal policies and procedures.

Criteria: Federal Guidelines detail permitted and prohibited uses of funds, and include several examples. Some purchases fall outside the federal categories of permitted uses. Other expenditures may violate explicit prohibitions on "non-official government use of shared assets" or "extravagant expenditures"¹² creating "any appearance of extravagance, waste, or impropriety."

Effect: The purpose of *Seized Assets* is for law enforcement. When these funds are used for other purposes the funds available for law enforcement are diminished.

Recommendation: Absent a specific recommendation from the U.S. Department of Justice, the Police Department should refrain from the use of *Seized Assets* funds for charitable contributions, retirement parties, and any other questionable expenses.

- Condition:** Vendors are not required to provide the Police Department with federal tax information and the Police Department does not provide vendors with year-end tax information.

Criteria: Governments must collect appropriate federal tax identification (W-9) from vendors. Federal law requires that annual payments over \$600 made to vendors be reported at year-end to the vendor and to the Internal Revenue Service (IRS) for income tax purposes.

Cause: Purchases from *Seized Assets* funds take place outside of the City's accounting system, which is the means by which the City obtains tax information from vendors and reports appropriate expenditures to the IRS.

Effect: The City and its vendors could be out of compliance with IRS procedures for reporting.

Recommendation: *Seized Assets* funds should flow through the City's accounting system.

- Condition:** The federal Annual Certification Report does not include the correct budget amounts for the law enforcement agency.

¹¹ Because federal guidelines lack specificity, quantifying impermissible expenditures is imprecise. Of the sample taken, questioned costs as a percentage of the sample range from 3 percent to 16 percent.

¹² "Receiving agencies should use federal sharing monies prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety." U.S. Department of Justice, *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, March 1994.

Criteria: Signatories certify that the accounting of funds received and spent by the law enforcement agency is accurate and in compliance with the guidelines and statutes that govern the equitable sharing program.

Cause: The Police Department misinterpreted reporting instructions.

Effect: Incorrect budget data was provided to the U.S. Department of Justice and the U.S. Department of the Treasury.

Recommendation: The Comptroller should review the Federal Annual Certification reports prior to being submitted to the federal government.

B. *Findings/Recommendations: Criminal Expense Fund*

1. **Condition:** Receipts and records maintained by the Police Department do not support cash transferred from City accounts. Of approximately \$74,000 disbursed from 1998 to 2001, adequate supporting documentation is available for approximately \$52,000 or 70 percent.¹³

Criteria: Expenditure of public funds must be recorded and supporting documentation maintained. The *Criminal Expense Fund* operates much like a petty cash account and, as such, all expenditures must have corresponding back up. Since 2002 the Comptroller has maintained receipts and authorizes funds based on adequate documentation. The Police Department has since provided detailed documentation of expenditures. In addition, the Police Department reports that access to these funds are now restricted to one individual.

Cause: The Police Department lacked adequate oversight and management of funds remitted to and expended. (This deficiency has been corrected.)

Effect: Without receipts or other supporting material it is impossible to determine if the use of cash is justifiable, proper, or legal. Purchases from City accounts must have adequate backup, usually including invoices.

Recommendation: The Police Department should develop written standards detailing the proper use of funds and required internal documentation, including reconciliation of cash funds to disbursements.

2. **Condition:** The Police Department lacks an accounting system to track and detail the use of cash disbursements from the *Criminal Expense Fund*.

Criteria: Cash disbursements from the City's General Fund require documentation detailing use. The *Criminal Expense Fund* functions as a subsidiary ledger to the general ledger. As such it should have detail that totals to the amount disbursed.

¹³ Lack of documentation applies to funds disbursed from 1998 through 2002. Since 2002, in order to receive funds, the Police Department has submitted receipts to the Comptroller.

Cause: There is a lack of internal written procedures detailing the use and accounting of funds.

Effect: Without ongoing updated accounting of funds used, missing funds might not be identified until long after they were missing or misspent.

Recommendation: The Police Department should use an accounting program to track and detail funds used. Since 2002 the Police Department has maintained a spreadsheet to track use of funds. However, these records should be reconciled regularly to remittances from the City.

3. **Condition:** Numerous questionable expenditures were made from the *Criminal Expense Fund* prior to 2002. These expenditures lack the supporting material necessary to assess whether funds were used for purposes that are appropriate or legal. For example, there were disbursements of \$50 to \$150 to the Commissioner of Public Safety identified as "meals" or "company function" without accompanying receipts detailing use. Records lack any indication that unused funds were returned. Some receipts are illegible, making determining use impossible.

Criteria: The *Criminal Expense Fund* uses City funds and as such must be justifiable based on City policies and procedures and expenditure of public funds generally.

Cause: There are no clear guidelines on the appropriate use of funds and there was inadequate oversight and management of funds.

Effect: Without receipts to document use, it is impossible to determine if funds were used for public purposes. Failure to assure funds are spent in compliance with standards appropriate for public funds can result in inappropriate use of taxpayer funds.

Recommendation: The Police Department should develop written procedures detailing appropriate use and accounting of funds.

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