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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 28, 2017

Lt. Col. George P. Beach II
Superintendent
Division of State Police
1220 Washington Avenue, Building 22
Albany, NY 12226

Re: Seized Assets Program
Report 2017-F-21

Dear Superintendent Beach:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Division of State Police (Division) to implement the recommendations contained in our audit report, *Seized Assets Program* (Report 2013-S-46).

Background, Scope, and Objective

The Division's mission is to serve, protect, and defend the people of New York State while preserving their rights and dignity. During the course of an investigation or an arrest, law enforcement agencies may seize assets, including cash, personal property, real property, vehicles, or other items that are suspected of being used to conduct criminal activity, are the proceeds from a criminal activity, or were purchased with the proceeds of a criminal activity.

The Division's Asset Seizure Unit (Unit) is responsible for ensuring proper processing and tracking of asset seizures, even when another law enforcement agency takes custody of the seized assets. Assets are considered in pending status until a forfeiture determination is made. If a judicial or administrative process determines the assets should be forfeited, the Division is responsible for ensuring it receives the correct share of the forfeited assets. Funds received from forfeited assets are to be used to enhance law enforcement efforts. As of October 2017, the Division was tracking 3,193 pending seized assets valued at \$582.4 million.

Our initial audit report, which was issued on December 23, 2014, covering the period April 1, 2011 through September 19, 2013, determined whether the Division properly accounts for seized assets and whether it obtains the requested share from forfeited assets. We concluded that the Division did not properly account for or track seized assets. Specifically, our audit found that:

- The Division did not maintain complete and/or up-to-date information on case disposition status, number and value of assets, and amount of proceeds received in its Asset Seizure Tracking System (System).
- Of 107 seized assets the Division's records noted were pending disposition, 56 were actually closed. The 56 forfeited assets were valued at \$992.7 million; the Division received \$12.2 million.
- For 13 assets, the difference between what the Division expected to receive and what it actually received totaled about \$1.4 million. In one instance, the Division received \$840,000 less than it anticipated. Generally, the Division does not receive explanations of distributions for cases it does not administer, nor does it question the amounts it receives.
- The Division had custody of more than \$700,000 in seized assets classified as abandoned. When rightful owners cannot be located, the Division should turn the assets over to the Office of the State Comptroller's Office of Unclaimed Funds.
- Individual troops did not always report asset seizures to Division headquarters. During our site visits, we identified 16 cash seizures totaling \$39,967 and three vehicles that were not reported to Division headquarters.

The objective of our follow-up was to assess the extent of implementation as of November 8, 2017 of the six recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found the Division has largely implemented the six recommendations identified in our prior audit report. We do note, however, that portions of Recommendations 2 and 4 could not be fully implemented as the federal agencies do not share the information needed for the Division to implement every aspect of the recommendations.

Follow-Up Observations

Recommendation 1

Ensure the Asset Seizure Tracking System is regularly updated for changes in status including timely recording of the amount received for forfeited assets.

Status - Implemented

Agency Action - An office assistant was transferred to the Unit to update the System for closed, new, and pending cases from January 2016 through April 2017. This responsibility was then assumed by a Unit secretary, who tracks forfeiture payments the Division receives and updates the System on a monthly basis. We reviewed 18 cases totaling \$683,402 and found all were properly accounted for in the System. It took an average of only 28 days to update the System with payment information for forfeited assets.

Recommendation 2

Ensure the Division obtains the requested share of any proceeds from forfeited assets by:

- *Reconciling the amounts received with the amounts requested by obtaining and reviewing the calculation used to determine the Division's share. Question the amount received when the difference is greater than a pre-established variance;*
- *Obtaining an accounting of proceeds that were distributed to the Special Narcotics Prosecutor in accordance with the Task Force Agreement and appropriately change the status of these seized assets to "closed;" and*
- *Following up on pending cases to determine whether they are closed.*

Status - Implemented

Agency Action - The Division has established relationships with many District Attorneys across the State, and communicates with them regularly to determine if cases are closed and to collect its share of assets. The Division has also made attempts to collect its share of proceeds from asset seizure cases under the jurisdiction of the U.S. Department of Justice (DOJ), the U.S. Treasury (Treasury), and various counties in New York State. Between January 1, 2016 and October 31, 2017, the Division has received \$4.3 million from various counties.

For asset seizures completed by DOJ and Treasury, the Division receives monthly distribution reports containing a listing of actual payments the Division received for the month. Other than the asset ID number, asset description, amount received, and date received, the Division does not receive any other additional information on the seizure or the case. DOJ and Treasury will not, nor are they required to by State or federal law, provide any detailed information about their calculations of the Division's share of the seized asset. Therefore, the Division cannot recalculate the amount it is owed without additional information on the seizure.

For federal cases in which the Division is a member of a task force governed by a Memorandum of Understanding (MOU), the Division's share of forfeitures is specified in the MOU. For federal cases that are not governed by an MOU, the Division's share of forfeitures is based on the number of hours worked by Division members compared with the numbers of hours worked by the other law enforcement agencies. The percentage is applied to the net forfeiture amount, which is the forfeiture amount less offsets such as restitution payments to victims, payments to confidential informants, and federal expenses to maintain the asset. Since DOJ and Treasury do not share the hours worked by other law enforcement agencies, offset amounts, or net forfeiture, the Division cannot verify that it received the correct payment amounts.

Recommendation 3

Ensure Division records accurately reflect up-to-date information about all seized assets, including, but not limited to:

- *Requiring that all seized assets be reported to Division Headquarters, even those in the custody of a local or federal law enforcement agency;*
- *Routinely providing reports of all pending seized assets to Division troops for them to update with any status changes;*
- *Updating the seized asset tracking database timely, including when: notifications of dispositions are made; an asset should be returned to its rightful owner; or assets should be turned over to the State Comptroller's Office of Unclaimed Funds; and*
- *Developing formal policies and procedures for returning items, including requiring tracking of all efforts to return property that is not forfeited.*

Status - Implemented

Agency Action - The Division's records show attempts have been made to improve the timeliness of record keeping regarding seized assets. For cases under DOJ jurisdiction, beginning in August 2013, the Division tracks the status of the case via an online portal. The portal allows the Division to track cases from their initial entry to final determination. The Senior Investigators in charge of seized assets are prompted by the portal to enter information regarding the Division's participation in DOJ cases. This ensures that the Division is kept up to date on all DOJ cases and their status. The Division then updates the System with the case information. Once the final determination has been updated in the portal, the Division closes out these cases in its System. The Division's manual includes procedures for tracking and returning seized assets.

Additionally, the Division sent letters to county District Attorneys in September 2016 to determine the status of pending cases. Along with each letter, it attached a listing of the county's outstanding cases. Twenty-two of the District Attorneys have responded to the 2016 letter. The Division plans on sending another letter out in late 2017.

In February 2016, the Division began working with the State Comptroller's Office of Unclaimed Funds unit to develop a policy for returning unclaimed forfeited assets to their rightful owner. The Division now attempts to return a forfeited asset to its rightful owner for a two-year period before transferring the asset over to Unclaimed Funds. The Division has transferred \$970,707 to Unclaimed Funds since July 2017.

Recommendation 4

Review all pending cases in the custody of another law enforcement agency periodically (and at least once a year) to determine the current status of a case and to discuss how distributions of seized assets will be calculated.

Status - Implemented

Agency Action - The Division has made attempts to collect updated case information from DOJ, Treasury, and various law enforcement agencies. As discussed earlier, the Division sent letters to county District Attorneys in September 2016 to determine the status of pending cases. Along with the letter, it attached a listing of the county's outstanding cases. Twenty-two of the District Attorneys have responded to the 2016 letter. The Division plans on sending another letter out in late 2017.

For cases under DOJ jurisdiction, beginning in August 2013, the Division tracks the status of the case via an online portal. The portal allows the Division to track cases from their initial entry to final determination. The Senior Investigators in charge of seized assets are prompted by the portal to enter information regarding the Division's participation in DOJ cases. This ensures that the Division is kept up to date on all DOJ cases and their status. The Division then updates the System with the case information. Once the final determination has been updated on the portal, the Division closes out the cases in its System. Division staff believe Treasury will have an online portal in the future.

For asset seizures completed by DOJ and Treasury, the Division receives monthly distribution reports containing a listing of actual payments the Division received for the month. Other than the asset ID number, asset description, and amount and date received, the Division does not receive any other additional information on the seizure or the case. DOJ and Treasury will not, nor are they required to by State or federal law, provide any detailed information about their calculations of the Division's share of the seized asset. Therefore, the Division cannot recalculate the amount it is owed without additional information on the seizure. Even in those cases where an MOU exists with DOJ and/or Treasury to receive a specified percentage of the seized assets, DOJ and Treasury do not and will not provide enough information to calculate the Division's distribution.

Recommendation 5

Ensure Financial Administration receives and records deposit information in the Account's check register timely.

Status - Implemented

Agency Action - The Division has several bank accounts it utilizes for the seized assets program. One account is used to maintain custody of seized cash for State cases. Depending on the final determination, the seized cash is either returned to the defendant or forfeited and sent to the applicable county's District Attorney's office to be distributed to the State and local agencies. DOJ and Treasury maintain custody of seized cash and assets for federal cases. They make payments to the Division for its share of forfeited federal assets via electronic fund transfers into a holding account. At the beginning of each month, the Division moves prior month payments into other accounts, where they are kept until they are spent.

We selected 11 deposits made in the Division's seized asset account used by investigators during December 2016, April 2017, and August 2017 and compared them with case forms to determine if the deposits were timely. We found two of the deposits were made more than 30 days after the asset seizure. However, these deposits were transferred from another bank because the bank the Division uses for asset seizures is not located in that region. The remaining nine deposits were timely.

Recommendation 6

Complete and document the reconciliation between the deposits made by the Division and the deposits on the monthly bank statement. Follow-up on any discrepancies with the Seized Assets Coordinator.

Status - Implemented

Agency Action – The Division performs monthly reconciliations for both accounts used for seized assets. The account used by Division investigators is reconciled by verifying the deposits on the statements to deposit slips. If there isn't a deposit slip associated with a deposit on the bank statement, Division staff will look for the case form that corresponds to the deposit. For the account utilized by DOJ and Treasury, Division staff match the deposits in the account to the monthly deposit reports received by each respective agency. We selected three months of bank statements for both bank accounts and were able to track the seized assets to the bank statements without exceptions.

Major contributors to this report were Heather Pratt, Amanda Dare, and Molly Kramm. We thank State Police management and staff for the courtesies and cooperation extended to our auditors during this process.

Sincerely,

Nadine Morrell, CIA, CISM, CGAP
Audit Manager

cc: Colonel Corlett, Deputy Supt. for Admin., Division of State Police
Colonel Smith, Asst. Deputy Supt. for Admin., Division of State Police
Mary Kogelmann, Division of State Police