DEPARTMENT OF JUSTICE
OFFICE OF THE INSPECTOR GENERAL

Audit of the Money Laundering and Asset Recovery Section's Administration of the Equitable Sharing Program

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21-117

SEPTEMBER 2021

EXECUTIVE SUMMARY

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Objectives

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated an audit to assess the Money Laundering and Asset Recovery Section's (MLARS) administration of the Equitable Sharing Program. The objectives of the audit were to: (1) evaluate MLARS's administration and oversight of the Equitable Sharing Program, (2) assess MLARS's oversight of participants' management and use of program funds, and (3) assess MLARS's compliance with regulations and guidelines governing the Equitable Sharing Program. The audit covered the administration efforts of MLARS from October 1, 2017, through September 30, 2020.

Results in Brief

According to MLARS, there are currently over 6,000 Equitable Sharing Program participants who received nearly $1 billion in equitable shared funds during the period covered by our audit. We found that, while MLARS played an important role in ensuring the integrity of the program, it needs improvements in several key areas that would increase the efficiency and effectiveness of its efforts. Specifically, MLARS's procedures for following up on overdue annual Equitable Sharing Agreement and Certification (ESAC) forms was inadequate and ineffective. We also found that MLARS's compliance reviews were not sufficiently based on its internal risk assessment, were poorly documented, and lacked a consistent method for tracking recommendations to program participants. Further, MLARS's policy on recovery of misspent funds lacked sufficient detail to ensure consistent application and accurate status of the recovery. Finally, we found that MLARS's training of program participants was inefficient and not effective in increasing compliance with program requirements.

Recommendations

Our report contains 11 recommendations to improve MLARS's administration and oversight of the Equitable Sharing Program.

Audit Results

Through the DOJ Equitable Sharing Program, law enforcement agencies that participate jointly with the DOJ on investigations that lead to federal forfeiture of cash, property, or other proceeds derived from illegal activities can request a share of the forfeited assets to support its law enforcement operations. MLARS is responsible for the organization and facilitation of the Equitable Sharing Program.

Equitable Sharing Agreement and Certification Forms

Participants in the Equitable Sharing Program are required to submit annual ESAC forms that detail receipts and expenditures of equitable sharing funds and provides an affidavit of compliance with regulations and other key aspects of an agency's administration of equitable sharing funds received. MLARS relies on the data within these forms as a primary source for its administration and oversight of equitably shared funds.

We found that more than 27 percent of ESACs in the 3 years we reviewed were not submitted timely, averaging over 3.5 months late. We identified more than 450 agencies that submitted ESACs more than a year late during this time. As of September 2020, of the 6,190 agencies in the Equitable Sharing Program, more than 21 percent had overdue or yet to be accepted ESACs.

MLARS followed up on overdue ESACs through emails and phone calls. However, these attempts were sporadic and, at times, MLARS was unsuccessful in reaching the agency. In addition, we identified several overdue ESACs that were not followed up on for more than a year after the original due date. Finally, we noted that there were no consequences associated with failure to submit timely ESACs, beyond being ineligible to receive additional equitable sharing funds. By MLARS's own admission, this sometimes results in agencies not submitting ESACs until they anticipate receiving additional equitable sharing funds, which limits MLARS's ability to provide timely and effective oversight of program funds.

Compliance Reviews

MLARS performs compliance reviews of participating agencies to evaluate the administration of equitably shared funds. Teams review an agency's expenditures and generated revenues, as well as evaluate key aspects of procurement practices and internal controls.

MLARS applies a Risk Intelligence Model (RIM), using ESAC data, to identify agencies with higher risk factors, such as uncategorized expenditure of equitable share funds. However, we found the agencies ranked as the highest risk were not always selected for compliance reviews. Additionally, only one third of the agencies selected for a compliance review demonstrated any risk factors, while another third of the agencies were selected based on geographic proximity to another agency receiving a review.

Additionally, we found that some compliance review files were inadequate to document the scope of the review. For example, we were unable to determine which elements of an agency's administration and internal controls were evaluated. We also observed that compliance review documentation lacked evidence of review, despite a designated field on the form for such review.

Maintaining accurate and complete records of activities and evaluations is a critical component in the oversight of the Equitable Sharing Program because it helps to ensure that MLARS compliance reviews are thorough, which in turn helps to ensure that participating agencies are appropriately using and safeguarding the funds distributed through the program.

MLARS Follow Up on Review Recommendations

MLARS used individual spreadsheets, maintained within compliance review files, for tracking recommendations made during compliance reviews, and maintained an additional spreadsheet for tracking questioned costs identified during compliance reviews and OIG audits.

During our audit, we found that several compliance review files did not contain the recommendation tracking spreadsheet, even though recommendations were made during the reviews. Additionally, we found several errors and omissions in our review of the questioned cost tracking sheet.

Overall, we found that MLARS's method of using separate spreadsheets for tracking recommendations and questioned costs was inefficient and potentially hinders MLARS's ability to ensure that agencies take necessary corrective actions and are compliant with program requirements.

Remedying Misspent Funds

When a participating agency is found to have misspent equitable sharing funds, MLARS can apply one of three options to remedy the finding. In situations deemed egregious or criminal, MLARS can require the agency to return the funds to the Department, either through repayment or through an offset against future funds to be shared with the agency. In situations deemed by MLARS to be minor and non-egregious, MLARS can allow funds to be returned to the agency's own equitable sharing account, allowing the agency to spend the funds in the future. Finally, MLARS has the discretion and authority to waive recovery of misspent funds entirely.

We found that MLARS's policies and procedures for making determinations to waive the recovery of questioned costs were not comprehensive and did not provide a clear explanation or examples of what factors should be considered in making such a determination. Additionally, MLARS did not seek review or advice outside of the unit making such determinations. We believe that the absence of detailed policy, including the requirement of documentation explaining the rationale and considerations taken into account when making a determination not to seek recovery of misspent funds, may lead to inconsistencies in determining which misspent funds to waive and which to recover.

MLARS Participating Agency Training Program

As part of MLARS's oversight of the Equitable Sharing Program, it provided in-person training sessions for program participants around the country. The training provided agencies with an overview of the program, proper use of funds, and other administrative activities critical to participation, such as ESAC submission.

We found that MLARS's focus on in-person training was inefficient and has not resulted in increased compliance with program requirements. We believe this is due, in part, to the training not being attended by participating agency finance personnel and those responsible for the administration of equitable sharing funds.

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Introduction

The Department of Justice (DOJ) Office of the Inspector General (OIG) completed an audit of the Money Laundering and Asset Recovery Section's (MLARS) administration of the Equitable Sharing Program. The objectives of the audit were to: (1) evaluate MLARS's administration and oversight of the Equitable Sharing Program, (2) assess MLARS's oversight of participants' management and use of program funds, and (3) assess MLARS's compliance with regulations and guidelines governing the Equitable Sharing Program. The audit covered the administration efforts of MLARS from October 1, 2017, through September 30, 2020.

Background

The Comprehensive Crime Control Act of 1984 authorized the implementation of the DOJ's Asset Forfeiture Program (Asset Forfeiture Program). The Asset Forfeiture Program is a nationwide law enforcement initiative targeted at removing the tools of crime from criminal organizations, depriving wrongdoers of the proceeds of their crimes, recovering property that may be used to compensate victims, and deterring crime. A key element of the Asset Forfeiture Program is the Equitable Sharing Program, through which a law enforcement agency can request a share of federal forfeiture assets, to support its law enforcement operations, that resulted from its participation on a joint investigation with the DOJ. As shown in Table 1, during the period covered by our audit, there were over $916 million in federally forfeited assets shared with participating agencies through the Equitable Sharing Program.

Table 1

Equitable Sharing Funds Transferred to Participating Agencies

Fiscal Year	Funds Transferred
2018	$ 407,499,002
2019	$ 262,719,352
2020	$ 245,929,455
Total	$ 916,147,809

Source: OIG compiled from data provided by MLARS.

According to MLARS, as of September 2020, there were over 6,000 active participants in the Equitable Sharing Program, who held a total of over 1 billion dollars in equitably shared funds on hand. Through this program, the Department of Justice has the opportunity to enhance cooperation among federal, state, local, and tribal law enforcement by providing valuable resources to state and local law enforcement agencies.

The DOJ Equitable Sharing Program

Although several DOJ agencies are involved in various aspects of the seizure, forfeiture, and disposition of equitable sharing revenues, three DOJ components work together to administer the Equitable Sharing Program – the United States Marshals Service (USMS), the Justice Management Division (JMD), and the Criminal Division's MLARS. The USMS is responsible for transferring asset forfeiture funds from DOJ to the receiving state or local agency. JMD manages the Consolidated Asset Tracking System (CATS), a database used to track federally seized assets throughout the forfeiture life cycle. Finally, MLARS tracks membership of state, local, and tribal law enforcement participants, updates the Equitable Sharing Program rules and policies, and monitors the allocation and use of equitably shared funds.

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

To request a share of forfeited assets, a state, local, or tribal law enforcement agency must first become a member of the DOJ Equitable Sharing Program. Agencies become members of the program by signing and submitting an annual Equitable Sharing Agreement and Certification (ESAC) form to MLARS. As part of each annual agreement, officials of participating agencies certify that they will use equitable sharing funds for allowable law enforcement purposes. The Guide to Equitable Sharing for State and Local Law Enforcement Agencies, issued by MLARS in April 2009, the Interim Policy Guidance Regarding the Use of Equitable Sharing Funds (Interim Policy Guidance), issued by MLARS in July 2014, and The Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide to Equitable Sharing), issued in July 2018, outline categories of allowable and unallowable uses for equitable sharing funds and property.

Money Laundering and Asset Recovery Section (MLARS)

MLARS leads the DOJ's asset forfeiture and anti-money laundering enforcement efforts. MLARS provides leadership by: (1) prosecuting and coordinating complex, sensitive, multidistrict, and international money laundering and asset forfeiture investigations and cases; (2) providing legal and policy assistance and training to federal, state, and local prosecutor and law enforcement personnel, as well as to foreign governments; (3) assisting Departmental and interagency policymakers by developing and reviewing legislative, regulatory, and policy initiatives; and (4) managing the DOJ's Asset Forfeiture Program, including distributing forfeited funds and properties to appropriate domestic and foreign law enforcement agencies and to community groups within the United States, as well as adjudicating petitions for remission or mitigation of forfeited assets. MLARS is comprised of seven units and associated teams.

The Program Management and Training Unit (PMTU)

Within MLARS, the Program Management and Training Unit (PMTU) is responsible for several nationwide law enforcement initiatives, working groups, and programs, including the transfer of forfeited funds to victims of crime, the Equitable Sharing Program, and real property transfers. Each of these programs involves the transfer of hundreds of millions of dollars to victims, as well as state, local, and tribal law enforcement, and requires consistent nationwide policies and oversight to ensure that forfeited proceeds are distributed in accordance with laws, regulations, and policies that govern them. The PMTU is also responsible for the oversight and nationwide training of all federal prosecutors, agents, analysts, and support staff on asset forfeiture, money laundering, and financial investigations, which includes the development of curricula, training tools, and educational materials. In addition, the PMTU is responsible for asset forfeiture and money laundering communications, including the development and publication of Equitable Sharing Program communication materials and guidance.

As detailed throughout this report, the PMTU is responsible for the administration and oversight of the Equitable Sharing Program. In performing its responsibilities, the PMTU reviews and conducts follow-up on ESAC submissions by participating agencies. Additionally, the PMTU performs risk assessments and compliance reviews, as well as training of participating agencies.

Office of the Inspector General Audit Approach

The objectives of the audit were to determine whether MLARS's administration and oversight of the Equitable Sharing Program and its participating agencies is adequate and in compliance with the regulations and guidelines of the program. To accomplish these objectives, we interviewed MLARS staff to obtain an understanding of oversight policies and procedures. Additionally, we examined records of key oversight activities, and evaluated efficiency and effectiveness in monitoring the activities of participating agencies. Finally, we reviewed MLARS's communication and training programs to determine its impact on oversight objectives.

The results of our analysis are discussed later in this report. Appendix 1 contains additional information on this audit's objectives, scope, and methodology. Appendix 2 contains a summary of recent OIG audits of equitable sharing recipients.

Audit Results

Our audit determined that, while MLARS's compliance program plays an important role in ensuring the integrity of the administration and oversight of the Equitable Sharing Program, it needs improvement in several key aspects that would increase the efficiency and effectiveness of its efforts. Specifically, we found that MLARS's procedures for following up on overdue annual Equitable Sharing Agreement and Certification forms, submitted by participating agencies to report their compliance with fund use requirements, are inadequate and ineffective. We additionally found that agencies selected by MLARS's to undergo compliance reviews are not reflective of its Risk Intelligence Model outcomes and are poorly documented, and that MLARS lacks a reliable method to consistently track the recommendations made to participating agencies. Finally, we determined that MLARS's training of program participants is inefficient and has not resulted in participating agencies' increased compliance with program requirements.

Equitable Sharing Agreement and Certification (ESAC) Forms

In order to receive any distribution of funds through the Equitable Sharing Program, participating law enforcement agencies must comply with the use and reporting requirements set forth in the Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies. On an annual basis, participating agencies are required to submit Equitable Sharing Agreement and Certification (ESAC) forms to MLARS. The ESAC includes an agency's annual affidavit of program compliance and details an agency's receipts and expenditures of equitably shared funds for the period. ESACs are required to be submitted within 2 months of the end of an agency's fiscal year, regardless of whether funds were received or maintained during the year. An agency is considered compliant once the ESAC is received, reviewed, and approved. MLARS does not allow extensions to the required deadline and unless timely, agencies become non-compliant and, as such, ineligible to receive new equitable sharing funds until all ESAC certifications are received and approved.

ESACs are required to be submitted through the eShare Portal, which is an online tool that allows agencies to obtain information regarding equitable sharing requests and distributions made by DOJ. This information assists with reconciling deposits to an agency's equitable sharing account, as well as tracking and obtaining the status of pending sharing requests.

The ESAC submission and verification process is managed by the Agreement, Certification, and Audit (ACA) Team. MLARS stated that the ACA Team, when fully staffed, consists of 6 contract employees responsible for the oversight of the over 6,000 participating agencies. However, as discussed in the Staffing Levels section of this report, we observed that staffing levels for the ACA team fluctuated for the 2 years we evaluated, resulting in the team being understaffed for the entire period. During periods of understaffing, the team supervisor will reassign agencies to other team members to ensure coverage. Once an ESAC is submitted, the assigned ACA team member reviews the submission for accuracy, utilizing information from other DOJ systems, historical records, as well as publicly available information, such as submitting agency websites.

During our audit, we found that MLARS relies heavily on ESAC data as the primary source of information used to administer and oversee the program. For example, when we requested a listing of program participants, MLARS provided us a list of agencies, grouped by ESAC submission compliance status, pulled directly from the eShare Portal, and informed us that this was the only available listing of program participants. As discussed later in the report, MLARS uses ESAC data for risk assessments and its determination of which agencies should receive detailed compliance reviews. Due to its reliance on this data, the timeliness and accuracy of this information is critical to MLARS oversight activities, and, consequently, late and missing submissions resulted in agencies not being included within annual risk assessments. As reflected in Table 2, as of September 2020, of the over 6,000 participating agencies, over 21 percent were not in compliance with ESAC submission requirements, amounting to 1,323 agencies with equitable sharing fund balances totaling over $220 million. Of these non-compliant agencies, 332 had ESACs that were overdue by more than a year.

Table 2

Participating Agencies by Compliance Status as of September 2020

Participating Agency Status	Number of Agencies	Last Reported Equitable Sharing Funds On-Hand
Compliant	4,867	$ 909,052,934
Non-Compliant (ESAC Submission Overdue or Not Reviewed and Accepted Less Than 1 Year)	991	$ 214,006,512
Ineligible (ESAC Submission Overdue Greater Than 1 Year)	332	$ 6,210,932
Total	**6,190**	**$ 1,129,270,378**

Source: OIG compiled from ESAC submission data provided by MLARS.

We reviewed data from 12,216 ESACs, submitted by agencies whose fiscal year ended between October 2017 and September 2019, and completed an analysis to determine whether the ESACs met the required submission timeframe. We found that more than 27 percent of the ESACs were not submitted timely and were on average 3.5 months late. In addition, over 450 ESACs were submitted more than a year after they were originally due. In one instance, we identified an agency that received and spent equitable sharing funds in 2008, but did not submit an ESAC until August 2019, over 10 years after it was originally due. We discussed the issue with an MLARS official who told us that this example was an extreme case but that it is not uncommon for agencies to not submit ESACs until they are involved in another case in which they intend to receive a portion of equitable sharing funds. When that happens, the participating agency then takes the necessary steps to achieve compliance with program requirements. As outlined below, we found that MLARS's procedures for following up on overdue ESACs was not effective and did not incorporate consequences for agencies that failed to submit ESACs on a timely basis. We also discuss the significance of ESACs to MLARS's oversight process.

Ineffective Follow-Up on Overdue ESACs

We asked MLARS to describe procedures for addressing overdue submissions and were told that with the creation of the eShare Portal in 2016, enhancements were made to MLARS's follow-up procedures, including automatic, system generated emails, sent at the end of the submitting agency's fiscal year, to remind them of the 2-month submission requirement. We were also told that ACA team members, who among other things are responsible for maintaining up-to-date contact information for agencies, email and call agency heads and financial contacts with such reminders.

To observe this in practice, we selected three agencies that, as of October 2020, had not submitted their FY 2017 ESACs, and had a combined total of over $194,000 in equitably shared funds on hand.[1] We requested that MLARS provide us with a list of all communication with these agencies and noted that the eShare Portal automatically generates three emails to both the head of the agency and the finance contact on record. The first email is sent at the end of the agency's fiscal year. The second and third are sent in the 2 months that follow. No further emails are automatically generated from the eShare Portal until the end of the agency's next fiscal year, when the process begins again. The system generated emails inform the agency of the 2-month ESAC submission requirement and explain that the agency will be deemed noncompliant until such time that the agency submits and MLARS reviews and accepts the form. The email further states that agencies that remain non-compliant for more than 12 months become ineligible and that all pending equitable sharing payments will be permanently extinguished. Beyond the system generated emails, we found that one agency did not receive any additional communication from MLARS. The second agency's police chief received a phone call 16 months after the ESAC was overdue, followed by an email 5 months later, and a second email 5 months after that. For the final agency, the only non-system generated communication was an email to the police chief and financial contact over 2 years after the ESAC was originally due.

Based on our observations, we expanded our testing to include overdue ESACs for FYs 2015 and 2016 that were still outstanding in the eShare Portal. We identified a total of 96 ESACs representing over $7.2 million in equitable sharing funds. We selected 11 agencies with the highest on-hand balances and requested that MLARS provide a listing of all communication documenting its efforts to follow up on the outstanding submissions. We found that, as of October 2020, only 1 of the 11 agencies had submitted its outstanding ESAC, while 2 of the agencies had incorrectly completed their previous ESAC form, which resulted in an inaccurate fund balance, and the remaining 8 agencies still had overdue ESACs. When we reviewed the communication logs for these remaining agencies, we found that six did not have any recorded communication prior to 2019. Additionally, we observed that, on several occasions, the ACA team was unsuccessful in establishing contact with an agency representative. According to the communications log, the ACA team left messages or sent emails but did not document any responses received.

We discussed our observations with MLARS management and were told that they were aware of the late and outstanding submissions and have taken steps to evaluate the cause of the problem. They also explained that they believe that the main reason for the high number of late submissions is the 2-month submission requirement. Many agencies have expressed difficulty in completing the form and obtaining the municipal budgetary data and approvals within the 2-month time frame, especially in larger cities where accounting records are often not closed and finalized within the 2-month submission period. MLARS told us that they have considered expanding the submission timeframe to allow agencies more time in submitting ESACs.

Regarding follow-up on ESACs that are several years overdue, MLARS acknowledged its challenges, citing the turnover of leadership and financial staff at the agencies as contributing factors to the difficulties in making

[1] As of October 2020, MLARS reported that 109 agencies had overdue fiscal year 2017 ESACs. At the time of these agencies' last ESAC filings they had a total of over $1.2 million in equitable sharing funds on hand.

contact with the agency to resolve the issue. MLARS said that it initiated efforts to increase the frequency of follow-up, through automatically generated communications, which would allow the ACA team to focus on agencies with the highest fund balances on hand.

Although the Guide to Equitable Sharing outlines sanctions for continued noncompliance with program requirements, such as requesting agencies to return equitable sharing funds to the DOJ, MLARS relied entirely on the ability to withhold additional equitable sharing funds as incentive for agencies to submit their overdue ESACs. Consequently, MLARS told us that some agencies only submit their overdue ESACs when they anticipate receiving additional funds. We discussed the use of enhanced sanctions with MLARS and were told that it had internal discussions to consider the use of sanctions, but to date no further actions have been taken.

The timeliness and accuracy of ESAC submissions is critical to MLARS's oversight activities, and the lack of timely submissions may hinder its ability to effectively administer and oversee the activities of participating agencies. MLARS's heavy reliance on ESAC data to monitor the activities and compliance of participating agencies amplifies the importance of timely submissions. There is a potential that misused equitable sharing funds, and critical compliance requirements such as ensuring equitable sharing funds are properly included in independent audits under the Single Audit Act, are not being addressed in a timely and effective manner. We recommend that MLARS enhance its efforts in addressing participating agencies that fail to meet the ESAC submission deadlines. This includes enhancing its communication efforts with agencies as soon as a submission deadline is missed and working more closely with agencies to ensure compliance with submission deadlines. We also recommend that MLARS amend its policies to add meaningful consequences for agencies that fail to submit timely ESACs.

Compliance Reviews

MLARS's Compliance Review Team (CRT), which is made up of seven contract employees, is responsible for completing compliance reviews of participating agencies' equitable sharing expenditures and generated revenues. The CRT completes both full reviews, which are performed onsite or remotely, as well as limited scope reviews that focus on a specific cost element or area of compliance. As part of its reviews, the CRT traces transactions from accounting ledgers to supporting documentation, conducts interviews with agency staff, and performs an analysis of an agency's internal controls, bookkeeping, and procurement practices to ensure compliance with equitable sharing requirements and regulations.

Between October 2017 and September 2019, the CRT completed a total of 90 reviews, including 24 full and 66 limited scope reviews. We analyzed 21 completed reviews, including 12 full reviews and 9 limited scope spot reviews, and examined the factors considered in selecting an agency for review, as well as the review process. Our review included the: (1) work performed and documented in the CRT review file; (2) retention of supporting documentation; (3) final report; and (4) resolution of recommendations. We determined that MLARS's selection of agencies was often reactive rather than based on assessed risk. Additionally, the CRT review files lacked adequate documentation of the procedures completed.

Selection of Agencies for Compliance Review

According to MLARS officials, selecting an agency for review has been based on several factors. CRT reviews were often initiated based on a news story, whistleblower complaint, or a specific concern identified during annual ESAC reviews. MLARS officials also stated that many agencies were selected based on their proximity to another agency selected for review, reducing the necessary costs associated with performing a single review. MLARS also utilized its Risk Intelligence Model (RIM) to analyze risk among the participants of the Equitable Sharing Program.

Based on our review of the documentation provided by MLARS for the CRT reviews, about a third were selected based on annual ESAC reviews; another third of the agencies were selected based on outside information received by MLARS, such as a news media story or whistleblower complaint; while the final third was selected solely based on geographic proximity to another agency receiving a review.

MLARS used its Risk Intelligence Model (RIM) to analyze risk among the participants of the Equitable Sharing Program. The RIM uses revenue and expenditure data from 2 years of ESACs to generate a risk score of 0 (low risk) through 100 (high risk), which is then used to create a risk ranking of all agencies. The RIM model was developed about 7 years ago with contractor assistance, and MLARS management told us that the RIM has evolved over time, with its weighting and criteria being adjusted to better identify risks associated with the Equitable Sharing Program.

As shown in Table 3, we completed an analysis of the RIM results for FYs 2017, 2018, and 2019. We observed that the average risk score was very low and that only a handful of agencies were ranked with a high level of risk. For example, in 2019 the average risk score of all the agencies was less than half a point (out of a possible 100 points), and only 11 agencies received a risk score greater than 25.

Table 3

Risk Intelligence Model (RIM) Scores for FY 2017 through 2019

	2017	2018	2019
Total Agencies Evaluated	6,808	6,529	6,092
Median Risk Score	0.01	0.01	0.02
Average Risk Score	0.39	0.44	0.45
Agencies with Risk Score of 25 Points or Higher	13	12	11

Source: OIG analysis of annual RIM reporting for FY 2017 through FY 2019.

We compared the agencies that MLARS ranked as higher risk to the agencies that received compliance reviews and found that those ranked as the highest risk were not always selected for CRT reviews. Specifically, we determined that during the 3-year period, of the 11 agencies that appeared at least once in the top 10 of the annual RIM rankings, only 4 received a CRT review, while another 2 were audited by the OIG, leaving 5 higher risk agencies that did not receive a review during that time.[2] Of the CRT reviews we examined during our testing, the average RIM score was 6.36 (out of 100), with an average ranking of 982

[2] MLARS told us that one additional agency had been reviewed by the Treasury Executive Office for Asset Forfeiture, in 2017, which was a factor in its decision not to perform a review of that agency.

out of the over 6,000 agencies evaluated that year. We believe these ratings demonstrate a lack of appropriate reliance on the RIM in selecting agencies for compliance reviews.

We discussed MLARS's lack of reliance on the RIM in selecting agencies for review. MLARS told us that the CRT reviews are just one of the tools used in its oversight of participating agencies, and that training sessions (discussed in the Training section of this report) and in-person, one-on-one meetings allow MLARS to informally follow-up with agencies to discuss the administration and use of equitably shared funds. During our audit, we requested additional documentation regarding the in-person follow-up meetings. MLARS officials stated that because the meetings were informal, there were no specifically written policies and procedures establishing what oversight was provided, and there were no established agendas or minutes retained to document what guidance or recommendations were provided to agency personnel. While MLARS stated that these informal meetings are a tool for providing guidance to participating agencies, without documenting those discussions, MLARS cannot measure the impact of those meetings and it cannot reliably hold agencies accountable for a subsequent failure to follow the guidance provided.

In addition to the RIM not being fully utilized for determining which agencies should receive compliance reviews, we identified a significant shortcoming of the RIM model. Specifically, because the RIM is based entirely on data submitted in an agency's annual ESAC, agencies that fail to submit ESACs for 2 consecutive years are not included in the RIM. For example, we identified 235 agencies that failed to submit both their 2018 and 2019 ESACS. As a result, those 235 agencies were not included in the 2019 RIM.

A thorough and well documented risk evaluation process is critical to MLARS's oversight of the Equitable Sharing Program. The RIM's sole reliance on ESAC submissions, combined with MLARS's lack of documentation outlining other risk factors considered, does not provide an adequate understanding of risk for the agencies receiving equitable share funds. A more comprehensive risk assessment that documents all the risk factors considered when selecting an agency to receive a compliance review, is needed. Therefore, we recommend that MLARS make modifications to the RIM that creates a more comprehensive determination of risk and considers other risk factors such as the timeliness of ESAC submissions and agency attendance of training. In addition to enhancing the RIM, we recommend MLARS focus more of its compliance efforts on the higher-risk agencies identified in the RIM.

Documentation Procedures for Compliance Reviews

Documentation for compliance reviews is organized and retained in an electronic file for each CRT performed. The file includes supporting documentation of testing performed, communications with the agency, and close-out documentation. As previously discussed, we selected 21 completed CRT reviews and examined the associated electronic files. We found that many were incomplete, missing material aspects of testing and documentation, and lacked documentation of review and management approval.

In discussing the files with MLARS officials, we found that MLARS had only limited written policies and procedures in place for properly documenting compliance reviews. Specifically, there was limited written guidance or requirements for the types of documentation to be reviewed and retained in the files, as well as limited procedures for how evidence of supervisor and management approval of work completed, and resultant decisions are captured within the retained documentation. CRT team members informed us that their work was completed and documented primarily on an Excel spreadsheet, called the Testing Matrix, and the spreadsheet included various tabs containing templates and steps to be completed by staff during review.

Based on our review of CRT files, we determined that 10 of the 21 files did not include a Testing Matrix as part of the electronic file. An additional three files had Testing Matrices that were incomplete with no documented explanation as to why. Of the 11 files that included Testing Matrixes, only 3 had evidence of review, while the remaining 8 had no such evidence despite there being a place on each tab for the person completing the review to place their name.

In our analysis of the nine limited scope reviews performed by MLARS, we found that eight contained very little documentation in the file aside from recommendation close out documentation, with only one of the nine including a copy of the final review report in the files. In examining the documentation in the files, we were unable to determine what cost elements were evaluated during the reviews, what testing was completed, or the final findings of the testing that occurred.

We discussed our findings with MLARS management and were told that a Testing Matrix is typically only completed when the CRT is conducting a full scope compliance review and all elements of the agency's administration are being evaluated. Additionally, MLARS management stated that many of the limited scope reviews are generally minor single scope issues, resulting from escalations from the ESAC review or other referrals to the CRT. Some of these reviews will test only one element or may not result in any testing by the CRT. However, our review of the supporting documentation within the CRT review files showed that MLARS did not document why the review was initiated or the scope of the review and that MLARS generally lacked sufficient documentation to understand what elements of the agency's administration were being evaluated. We believe these to be critical components of an adequate compliance review program that would allow for future follow up and oversight of the agencies.

Because the documentation supporting compliance reviews was limited, we believe MLARS's compliance review process was not consistently implemented. We also believe that the inconsistencies were the result of a lack of policies and procedures on how the reviews should be performed and documented. Therefore, we recommend that MLARS develop detailed policies and procedures for the completion of CRT reviews, including documentation requirements and expectations for file organization and retention.

MLARS Follow-up on Recommendations

Once a CRT review is completed, a corrective action plan, including recommendations for areas of improvement, is provided to the agency. MLARS then works with the agency in completing the corrective action plan, with the recommendations and the corrective actions taken by agencies tracked in separate spreadsheets maintained within each individual electronic CRT review file. As action items are completed and the agency provides MLARS with supporting documentation of completion, MLARS records the closure of action items within the individual tracking log.

Because CRT review recommendations are only tracked within the individual review file, there is a risk for recommendations to go unaddressed as no master listing is maintained for all CRT reviews performed. Likewise, maintaining separate recommendations hampers MLARS's ability to perform analysis and identify trends and commonalities throughout the program and leverage that information to proactively assess risk and address challenges. Additionally, in our review of the 21 completed CRT reviews, where each review included corrective actions identified, we found 10 of the review files did not include the close out tracking spreadsheet. As a result, it was not clear how close out activities were being monitored for those reviews.

When questioned costs were identified during CRT reviews, we found that MLARS tracked the funds in a separate Cost Tracking Log (Log).[3] The Log also included questioned costs identified during OIG audits. MLARS told us that the log is updated, as needed, to reflect how the questioned costs are to be remedied. The possible remedies, depending on the specific incident, include: (a) the return of funds to the Asset Forfeiture Account, either through direct repayment or through the offset of equitable sharing funds to be shared with the agency in the future; (b) return to the agency's own equitable sharing account; or (c) MLARS may make the decision to waive recovery of the funds.

We reviewed MLARS's Cost Tracking Log from 2018 to 2020 and compared it to CRT reviews and OIG audit reports for the period. We determined that the information in the Log did not always match the information in the reports. Specifically, four OIG audits that identified questioned costs were not listed in the Log, including two audits where MLARS recovered the funds from the agency. Additionally, the amount of questioned costs listed in the Log for one of the audits was understated by almost $300,000. For the CRT reviews, we determined that, of the eight reviews identifying questioned costs, only two were listed in the Log.

We discussed the issue with MLARS officials who agreed that the Log was not accurate and not properly maintained. MLARS stated that the Log was a spreadsheet that required manual updating throughout the process of addressing corrective actions. MLARS subsequently updated and provided us with an accurate version of the Log.

We believe compliance reviews are a critical aspect of management and oversight of the Equitable Sharing Program. By not having a centralized tracking system for recommendations that maintains accurate and up to date records of the outstanding corrective actions, internal control measures, or a quality control system related to this information, MLARS's ability to ensure that an agency is complaint with program requirements and directed corrective actions is hindered. We recommend that MLARS implement a centralized system for tracking all review recommendations, including those that identify questioned costs.

Remedying Misspent Funds

MLARS is responsible for the compliance, accounting, and auditing of funds within the Equitable Sharing Program as part of its oversight and administrative responsibilities. This includes resolution of impermissible expenditures and any other findings, such as from OIG audits. As summarized in Figure 1 below, MLARS's Standard Operating Procedures (SOP) include guidance for decisions on the recovery of funds that are identified as misspent.[4] The misspent funds may result from issues ranging from criminal activity to non-egregious violations of program rules or requirements. According to its SOP, when an agency's actions are determined to be egregious, direct, and intentional violations of the program requirements or law, MLARS requests that the agency return the funds to the Asset Forfeiture Fund. MLARS

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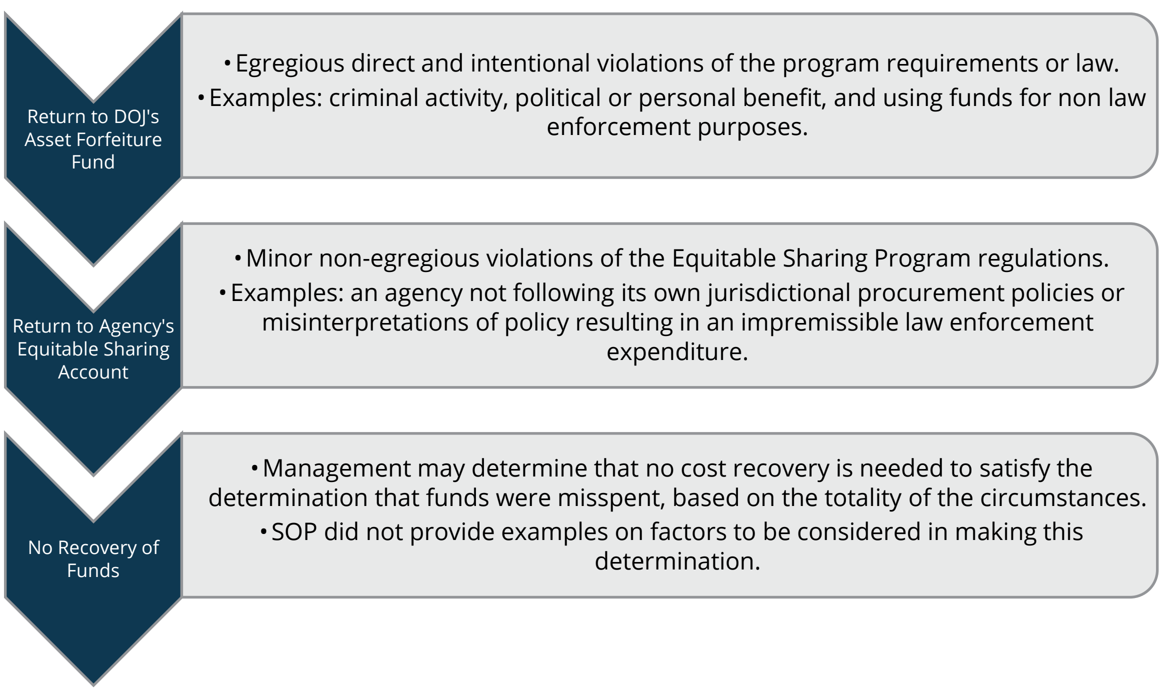
[3] Questioned costs are expenditures that do not comply with legal, regulatory, or contractual requirements or are not supported by adequate documentation at the time of the review or audit.

[4] Misspent funds are expenditures of equitable sharing funds that have been determined to not comply with legal or regulatory requirements.

provided examples of such violations including using funds for criminal activity, political or personal benefit, or non-law enforcement purposes. The SOP also states that when misspent funds are minor, non-egregious violations of regulations, agencies can reimburse their equitable sharing account, allowing for future use. For example, an agency not following its own jurisdictional procurement policies or misinterpreting a policy resulting in an impermissible law enforcement expenditure, may be required to return the misspent funds from its budget to its equitable sharing account. Finally, MLARS's SOP states that "Management may occasionally determine that no cost recovery is needed to satisfy the findings based on the totality of the circumstances." However, the SOP does not provide any examples or additional information on what factors might result in MLARS not pursuing recovery of the funds.

Figure 1

Options for Recovery of Misspent Funds



Source: OIG summary of the Cost Recovery portion of the Equitable Sharing Program Standard Operating Procedure.

We discussed with MLARS officials the differences between non-egregious situations requiring return of misspent funds to an agency's equitable sharing account and MLARS's decision to waive identified misspent funds and not seek recovery. MLARS officials informed us that the decision to not seek recovery of misspent funds is made after considering the circumstances associated with the misspent funds, as well as the impact on the agency and any issues that may be created regarding the relationship between the agency and the DOJ if recovery of the funds was sought. As an example, we examined the determinations made in response to an OIG audit in which a participating agency misspent or was unable to support over $450,000 in equitable sharing funds. MLARS agreed with the OIG that the funds were misspent and required the agency to return $150,000 to the DOJ Asset Forfeiture Fund. MLARS then waived the remaining $300,000 and recovery was not sought. MLARS cited three reasons for not seeking recovery: (1) the questionable expenditures occurred under an elected official who was no longer in office and responsible for the Equitable Share Program at the agency, (2) there was no reasonable method to recover the remaining funds from the County, and (3) creating an offset of future forfeiture proceeds might encourage the agency to aggressively pursue cases to satisfy the outstanding balance, and this was not the intent of the program.

In addition, MLARS officials told us that they did not have written policies and procedures or other guidance that drives the decision to recover or waive costs. They explained that the determination is made during the follow-up phase of a review or audit, when the Program Manager and Deputy Chief of the PMTU consider the circumstances and provide their recommended action to the Chief of the PMTU who makes the final decision. PMTU does not seek review or advice from others within MLARS or the DOJ in making determinations to not seeking recovery of misspent funds. Additionally, we were informed that there is no formal process for documenting the factors considered when making determinations. Because of the limited information available regarding the example above, we were unable to fully evaluate MLARS's process for addressing the misspent funds.

We believe that by not having detailed policy guidance that outlines procedures for decisions regarding the recovery of misspent funds, as well as a lack of specific documentation as to the rationale and considerations in those decisions, there is greater likelihood of inconsistencies in determining which misspent funds are waived and which funds should be pursued for recovery. Additionally, we believe that seeking evaluation of the decision not to seek cost recovery outside of the PMTU—for example, by MLARS legal counsel or by higher level supervisors—will increase transparency and lead to consistent application of policy and procedures. Such an external evaluation would be especially important in matters involving high dollar amounts, such as our example above concerning $300,000 in misspent or unsupported funds. Therefore, we recommend that MLARS make improvements to its SOP to include specific details as to the situations and factors considered when making determinations regarding misspent funds. This update to the SOP should also include specific requirements for documenting the factors considered and the rationale for determinations made. Additionally, we recommend that MLARS implement monetary thresholds that would elevate the approval required for the decision to not seek recovery of misspent funds outside of the PMTU in the event of significant amounts of misspent funds being waived.

MLARS Participating Agency Training Program

During our audit, we evaluated MLARS's training program provided to participating agencies and found that the training provided by MLARS was not effective in decreasing incidents of noncompliance with the requirements of the Equitable Sharing Guide. Furthermore, MLARS reliance on providing predominantly in-person training, was inefficient and did not capitalize on other available training resources, resulting in a significant portion of participating agencies, including agencies identified as higher risk by MLARS, not receiving any follow-up training during the 3 years we examined.

As part of MLARS's oversight of the Equitable Sharing program, it is responsible for developing and providing training for the over 6,000 active program participants. The training provides participating agencies with an overview of the Equitable Sharing Program, proper use of funds, administrative activities (such as budgeting, bookkeeping, and proper internal controls), and using the eShare Portal and completion of the annual ESAC certification form.

MLARS typically delivers its training several times a year through a voluntary, 3-hour, in-person session. MLARS officials told us that training locations are varied to target specific geographic areas, focusing on locations near agencies that have not received in-person training within the previous couple of years, as well as locations near clusters of agencies in order to minimize travel. MLARS identifies a local agency to host the class and invites agencies in the surrounding area to attend. MLARS also participates in equitable sharing information sessions and training classes at various law enforcement conferences throughout the year. MLARS told us that it recommends that agency personnel responsible for administration of the funds and ESAC submissions attend the training. MLARS told us that only about half of the participants are finance staff, while the rest are typically higher-ranking law enforcement officials.

We examined documentation regarding 28 in-person training sessions, completed between October 2017 and September 2019, where MLARS provided in-person training to 922 of the over 6,000 participating agencies. MLARS also told us that it participated in training sessions at an additional 33 law enforcement conferences during that same time, however the agencies that attended these conference-based trainings were not documented since MLARS was neither the host agency nor facilitator for these conferences. In reviewing MLARS's training costs, we found that $57,500 was budgeted for both 2018 and 2019, and those budgets were almost entirely for the costs of MLARS and contractor staff to travel to training locations.[5]

To evaluate the effectiveness of training provided to program participants, we selected 102 agencies that received training between October and December 2016. We compared the amendment rate of ESACs submitted by training recipients to the overall amendment rate of ESAC submissions between October 2017 and September 2019.[6] We determined that almost 20 percent of all ESACs submitted during this period required amendments prior to being accepted by the ACA Team. We found that the agencies that attended in-person training had an ESAC amendment rate of almost 32 percent, about 12 percent higher than the overall amendment rate. Similarly, these agencies submitted 29 percent of their ESACs late during the period we examined compared to the 27 percent for the universe, as a whole. Based on our analysis, the training offered by MLARS did not appear to have any impact on the agencies submitting accurate or timely ESACs.

Additionally, we evaluated the training sessions attended by agencies that were identified with a higher risk score by the Risk Intelligence Model (RIM). We observed that 16 agencies received a RIM score of 25 or greater during 2017 through 2019. However, 5 of the 16 agencies did not attend an in-person training session during that same period.

We asked MLARS management whether they offered alternative methods for training, other than in-person training, such as online training. We were told that, besides the online user guides and walkthrough

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[5] During the audit, MLARS told us that the actual travel expenditures for staff conducting training classes was only 43 percent of the budgeted amount. However, these totals did not include travel costs for trainings that were added on to trips conducted for other purposes, such as attending conferences or meetings with participating agencies. Therefore, we were unable to determine the full amount spent by MLARS in conducting trainings during the period evaluated.

[6] ESACS are evaluated by the ACA team prior to being accepted. If errors, omissions, or misclassifications are discovered during the evaluation, the ESAC is marked "Amendment Requested" in the eShare system and the submitting agency will need to resubmit a new ESAC with the corrections or updates. During our interviews with MLARS staff, we were told that while amendments to ESACS can be requested by the submitting agency, the majority of the amendments are requested by the ACA team due to missing information or misclassified expenditures.

tutorials for entering data into the eShare Portal, the only other web-based training that was offered was a 2018 module that covered program changes related to task forces. MLARS officials also stated that there have been discussions about developing an online training module, however, such training was not pursued any further until the recent COVID-19 pandemic, which limited in-person trainings.

Given the number of agencies MLARS is attempting to train, as well as the varied compositions of participating agencies, we believe that MLARS needs to revise its approach to training for Equitable Sharing Program participants and implement a mechanism to target and better serve those agencies that would benefit from a training agenda tailored to its specific needs. In particular, we believe that providing targeted training directly to financial personnel and those responsible for the administration of equitable sharing funds, that provides a deeper level of detail, would be a more effective delivery of the requirements of the program. Therefore, we recommend that MLARS provide targeted training for financial personnel and those responsible for the administration of equitable sharing funds. We also recommend development of web-based training, or other remote mediums, that would allow for all participating agencies to receive training on a recurring basis. Finally, we recommend that MLARS develop a training schedule that mandates cyclical training for all participating agencies, with advanced training to mitigate the risk of funds being misspent for those agencies identified as higher risk.

Staffing Levels

During our audit, we noted that the staffing levels of the ACA team and CRT did not appear to meet the full staffing levels as detailed under the respective contracts with MLARS. We then compared the number of contract employees billed for these two teams, from October 2017 through September 2019, to anticipated contract staffing levels.

The ACA team, per the contract, was supposed to include six contract employees. We determined that for the 2-year period reviewed, the ACA team was, on average, understaffed by 24 percent. During the period, the team was never fully staffed and did not reach full staffing until November 2019. We also observed that due to high turnover, of the six positions on the ACA team, only two individuals had been in their position for more than a year.

The CRT was also significantly understaffed during the period of our review. At the beginning of our audit, we observed that only three of the seven positions were filled on the CRT. The Team Lead position was unfilled for 11 of the 24 months, and the other staff positions were 31 percent understaffed during this period.

We discussed our observations with MLARS officials who stated that they were aware of the understaffing issue and believed that it was an unintended consequence of its effort to attract high caliber contract employees and high standard qualification requirements, such as advanced degrees and certain prior experience. Additionally, MLARS told us that in 2018, it completed an analysis of contractor positions within the program and determined that the average contract employee stayed in their position for 18 months. The analysis also looked at exit interviews of contract employees and found that the most common reason for leaving was lack of promotion potential, and many staff were accepting new positions at a higher grade level or positions that included definitive promotion potential.

Based on these findings, MLARS told us that it has been working with both the contracting officer and contractors to identify a solution for better retention of contract employees while maintaining its ability to recruit highly qualified employees. MLARS also told us that it works closely with the supervisors of the ACA team and CRT to anticipate coverage gaps should an employee depart, and to determine the best way to reduce the impact of departures on the teams.

With over 6,000 participating agencies in the Equitable Sharing Program, the workloads of employees on both the ACA team and CRT are significant. As discussed throughout this report, there are administrative issues throughout the processes of both teams that could be further exacerbated if employees are required to take on additional work to cover for understaffing. For example, our audit identified that ACA team members, each responsible for overseeing the activities of hundreds of agencies, often did not follow up on late ESAC submissions for more than a year. Based on our discussions with MLARS, we acknowledge that it is working to address the staffing concerns. While we do not make any specific recommendations to address its retention of contract employees, we believe that addressing the issues identified throughout this report will be difficult to achieve until staffing within the CRT and ACA teams reaches the contract ceilings and is maintained at those levels. Therefore, we strongly urge MLARS to continue its efforts to improve staffing levels.

Conclusion and Recommendations

MLARS oversees the administration of more than 6,000 participating agencies, who received nearly $1 billion in equitable sharing funds during the period of our audit. Based on our audit, we have identified improvements for MLARS's administration and oversight of the Equitable Sharing Program that would increase the efficiency and effectiveness of its efforts. Specifically, we found that annual Equitable Sharing Agreement and Certification forms, which report participating agencies' compliance with fund use requirements, are often not submitted timely, and MLARS's procedures for following up on late submissions are inadequate. We found that agencies ranked as the highest risk were not always selected for compliance reviews. Additionally, we determined that compliance reviews are poorly documented and MLARS lacks consistent tracking of the recommendations made to participating agencies. Further, MLARS's policy on recovery of misspent funds lacks sufficient detail to ensure consistent application. Finally, we determined that MLARS's training of program participants is inefficient and has not resulted in participating agencies' increased compliance with program requirements.

Therefore, we make 11 recommendations to assist MLARS in improving its administration and oversight of the Equitable Sharing Program.

We recommend that MLARS:

1. Enhance its efforts in addressing participating agencies that fail to meet the ESAC submission deadlines. This includes enhancing its communication efforts with agencies as soon as a submission deadline is missed and working more closely with agencies to ensure compliance with submission deadlines.

2. Amend its policies to add meaningful consequences for agencies that fail to submit timely ESACs.

3. Make modifications to the RIM that creates a more comprehensive determination of risk and considers other risk factors such as the timeliness of ESAC submissions and agency attendance of training.

4. Focus more of its compliance efforts on the highest-risk agencies identified in the RIM.

5. Develop detailed policies and procedures for the completion of CRT reviews, including documentation requirements and expectations for file organization and retention.

6. Implement a centralized system for tracking all review recommendations, including those that identify questioned costs.

7. Make improvements to its SOP to include specific details as to the situations and factors considered when making determinations regarding misspent funds. This update to the SOP should also include specific requirements for documenting the factors considered and the rationale for determinations made.

8. Implement monetary thresholds or other factors that would elevate the approval required for the decision to not seek recovery of misspent funds outside of the PMTU in the event of significant amounts of misspent funds being waived.

9. Provide targeted training for financial personnel and those responsible for the administration of equitable sharing funds.

10. Develop web-based training, or other remote mediums, that would allow for all participating agencies to receive training on a recurring basis.

11. Develop a training schedule that mandates cyclical training for all participating agencies, with advanced training to mitigate the risk of funds being misspent for those agencies identified as higher risk.

APPENDIX 1: Objectives, Scope, and Methodology

Objectives

The objectives of our audit were to: (1) evaluate MLARS's administration and oversight of the Equitable Sharing Program, (2) assess MLARS's oversight of participants' management and use of program funds, and (3) assess MLARS's compliance with regulations and guidelines governing the Equitable Sharing Program.

Scope and Methodology

The audit covered the administration efforts of MLARS from October 1, 2017, through September 30, 2020. The activities of MLARS's Program Management and Training Unit (PMTU), the primary unit within MLARS responsible for the management and oversight of the Equitable Sharing Program, were a main focus of our audit.

To accomplish the audit objective, we interviewed PMTU staff and staff from different contractors, who complete much of the day to day operations of the Equitable Sharing Program oversight. During our interviews, we obtained an understanding of the PMTU oversight policies and procedures, as well as challenges the unit faces.

Additionally, to accomplish our audit objectives, we examined the activities completed by the PMTU for Government Fiscal Years 2018 and 2019. This included examining the participating agencies annual certification forms, and the PMTU management and review of those forms. We examined MLARS's selection of agencies to receive detailed reviews of its equitable sharing activities, as well as the efficiency and effectiveness of the reviews completed during 2018 and 2019. We additionally examined the procedures PMTU utilizes to address issues uncovered within the participating agencies' equitable sharing activities, including the determination to pursue or waive recovery of funds determined to be misspent. Finally, we examined the PMTU training program for agencies within the program.

Statement on Compliance with Generally Accepted Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objectives.

Internal Controls

In this audit we performed testing, as appropriate, of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of MLARS to provide assurance on its internal control structure as a whole. MLARS management is responsible for the establishment and maintenance of internal controls in accordance with DOJ policy and procedures. Because we do not express an opinion on

MLARS's internal control structure as a whole, we offer this statement solely for the information and use of MLARS.[7]

In planning and performing our audit, we identified the following internal control components and underlying internal control principles as significant to the audit objectives:

Internal Control Components & Principles Significant to the Audit Objectives	
Control Environment Principles	
	Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.
	Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
Risk Assessment Principles	
	Management should identify, analyze, and respond to risks related to achieving the defined objectives.
	Management should consider the potential for fraud when identifying, analyzing, and responding to risks.
	Management should identify, analyze, and respond to significant changes that could impact the internal control system.
Control Activity Principles	
	Management should design control activities to achieve objectives and respond to risks.
	Management should implement control activities through policies.
Information & Communication Principles	
	Management should use quality information to achieve the entity's objectives.
	Management should externally communicate the necessary quality information to achieve the entity's objectives.
Monitoring Principles	
	Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.
	Management should remediate identified internal control deficiencies on a timely basis.

We assessed the design, implementation, and operating effectiveness of these internal controls and identified deficiencies that we believe could affect MLARS's ability to effectively and efficiently operate, to correctly state financial and performance information, and to ensure compliance with laws and regulations. The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited to aspects of these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

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[7] This restriction is not intended to limit the distribution of this report, which is a matter of public record.

Compliance with Laws and Regulations

In this audit we tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that MLARS'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. Our audit included examining, on a test basis, MLARS's compliance with the following laws and regulations that could have a material effect on MLARS's operations:

- The Attorney General's Guidelines on the Asset Forfeiture Program

- The Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies

This testing included interviewing auditee personnel, analyzing data, assessing internal control procedures, and examining procedural practices. However, nothing came to our attention that caused us to believe that MLARS was not in compliance with the aforementioned laws and regulations.

Sample-Based Testing

To accomplish our audit objectives, we performed sample-based testing of ESAC, compliance review, and participating agency training data and documentation. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

Computer-Processed Data

During our audit, we obtained information from the MLARS's eShare Portal system. We did not test the reliability of that system as a whole, therefore any findings identified involving information from that system were verified with documentation from other sources.

APPENDIX 2: Summary of OIG Reports of Equitable Sharing Recipients from October 2017 through September 2020

OIG Reports	Report Findings
Audit of the Saint Charles (SC) County Police Department's Equitable Sharing Program Activities, O'Fallon, Missouri Issued: August 2020 Report Link	• SC County PD did not fully comply with the requirements of the DOJ Equitable Sharing Program as it did not separately account for its DOJ equitable sharing revenues and had not established policies and procedures to manage its Equitable Sharing Program. • The OIG was able to determine that the Equitable Sharing Agreement and Certification (ESAC) reports submitted during our review period were timely and DOJ receipts were generally reported accurately, we could not reconcile the other reported figures because of the commingled accounting records. • The OIG identified $161,907 in unallowable personnel expenditures and determined that the SC County PD did not exercise adequate internal controls over time and attendance reporting.
Audit of the Alabama Law Enforcement Agency's Equitable Sharing Program Activities, Montgomery, Alabama Issued: June 2020 Report Link	• OIG concluded that the Alabama Law Enforcement Agency properly accounted for its equitable sharing funds and used its funds for allowable purposes.
Audit of the Minneapolis-Saint Paul International Airport Police Department's (MSP Airport PD) Equitable Sharing Program Activities Minneapolis, Minnesota Issued: August 2019 Report Link	• The MSP Airport PD generally complied with the requirements of the DOJ Equitable Sharing Program. • The OIG found that because the MSP Airport PD did not adhere to its established records retention schedule, it did not completely comply with DOJ Equitable Sharing Program guidelines, and some expenditure-related documentation had not been retained.
Audit of the Alexandria Police Department's (APD) Equitable Sharing Program Activities, Alexandria, Virginia Issued: March 2019 Report Link	• The APD generally accounted for DOJ equitable sharing funds properly. • The APD was unable to provide evidence that it obtained the authorization necessary before purchasing two controlled items, resulting in $1,033,558 in questioned costs. • The APD did not have written procedures to guide some of its DOJ equitable sharing activities, which the OIG believes contributed to late Equitable Sharing Agreement and Certification (ESAC) reports and internal control weaknesses.

OIG Reports	Report Findings
Audit of the Houston Police Department's (HPD) Equitable Sharing Program Activities, Houston, Texas Issued: February 2019 Report Link	• The HPD did not fully comply with the requirements of the DOJ Equitable Sharing Program. • The HPD needs to ensure that its staff is aware of, and makes certain improvements to, its policies and procedures. • The OIG identified unallowable and unsupported personnel expenditures that resulted in $2,488 in questioned costs.
Audit of the Bloomington Police Department's (BPD) Equitable Sharing Program Activities, Bloomington, Minnesota Issued: December 2018 Report Link	• BPD did not fully comply with the requirements of the DOJ Equitable Sharing Program. • BPD commingled its DOJ equitable sharing funds with other equitable sharing resources and did not separately account for all expenditures paid for with DOJ equitable sharing funds. • BPD invested DOJ equitable sharing funds into financial instruments that bore market risk. • BPD did not submit accurate annual Equitable Sharing Agreement and Certification (ESAC) reports. • BDP paid expenditures with DOJ equitable sharing funds for which there was no indication of the Chief of Police's authorization. • BPD did not have formalized, written procedures for managing its DOJ equitable sharing activities.
Audit of the Prince George's County Police Department's (PGCPD) Equitable Sharing Program Activities Landover, Maryland Issued: May 2018 Report Link	• The PGCPD used DOJ equitable sharing funds to purchase allowable, law enforcement-related equipment and services. • PGCPD did not submit its annual program agreement and certifications within 60 days after the end of its fiscal year (FY), as required. • PGCPD also tracked interest income under a single accounting code established for both the DOJ and Department of the Treasury (Treasury) equitable sharing interest income. • PGCPD did not post its equitable sharing cash receipts to its accounting records on time. • The Single Audit prepared by Prince George's County for its FY 2015 and FY 2016 inaccurately reported PGCPD's equitable sharing expenditures.
Audit of the Lexington Police Department's (LPD) Equitable Sharing Program Activities, Lexington, Kentucky Issued: March 2018 Report Link	• LPD did not accurately and timely submit the required, annual Equitable Sharing Agreement and Certification (ESAC) reports. • The City of Lexington deposited DOJ equitable sharing funds into a non-FDIC insured money market mutual fund account. • The OIG identified $38,735 in questioned costs for unallowable fringe benefit costs. • LPD used DOJ equitable sharing funds as advance payment for expenditures being reimbursed in the future from other funding sources. • LPD's equitable sharing expenditures were not accurately reflected in the fiscal year (FY) 2016 Single Audit Report.

OIG Reports	Report Findings
Audit of the City of Atlanta Police Department's (APD) Equitable Sharing Program Activities, Atlanta, Georgia Issued: February 2018 Report Link	• APD submitted reports required under the program that were late and also unsigned by appropriate officials. • APD did not track or reconcile equitable sharing requests to equitable sharing receipts. • The OIG questioned 17 expenditures totaling $1,445,864 in equitable sharing funds because the expenditures were not allowable under the program. • The OIG found that a vehicle acquired with equitable sharing funds was not properly recorded in the APD's equitable sharing property records. • APD did not provide us with the City of Atlanta's Single Audit Report for FY 2016 until our audit was nearly complete in December 2017. The Single Audit Report was more than 8 months late because it was held by the independent auditor performing the audit.
Audit of the Port Authority of New York and New Jersey Police Department's (PAPD) Equitable Sharing Program Activities Jersey City, New Jersey Issued: February 2018 Report Link	• (PAPD used the equitable sharing funds for allowable purposes as required by the DOJ Equitable Sharing Program. • PAPD commingled DOJ equitable sharing funds with other sources of asset forfeiture funds, which resulted in our inability to rely on financial management system records during our audit. • PAPD could not adequately support prices paid for equipment purchased using equitable sharing funds and did not review invoices prior to payment.

APPENDIX 3: The Money Laundering and Asset Recovery Section's (MLARS) Response to the Draft Audit Report

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

MEMORANDUM

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

FROM: Kenneth A. Polite
Assistant Attorney General
Criminal Division

KENNETH POLITE Digitally signed by KENNETH POLITE Date: 2021.08.20 17:08:38 -04'00'

SUBJECT: Response to the Office of the Inspector General's July 2021 Draft Audit Report: "*Audit of the Money Laundering and Asset Recovery Section's Administration of the Equitable Sharing Program*"

The Criminal Division submits its response to the Office of the Inspector General's July 2021 draft of its *Audit of the Money Laundering and Asset Recovery Section's Administration of the Equitable Sharing Program* (Draft Report).

I. Introduction

The Department's Asset Forfeiture Program is a nationwide law enforcement program that removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime. One important component of the Asset Forfeiture Program is the Equitable Sharing Program (Program). The Program was created by Congress to, among other things, strengthen law enforcement by promoting cooperation and collaboration between federal law enforcement and state, local, and tribal law enforcement agencies (LEAs or agencies). Both the Department and federal law enforcement agencies rely on the cooperation and assistance of LEAs for many federal criminal investigations. LEAs bring substantial resources, experience, and expertise in partnering with the Department to fight crime, to protect our communities, and to safeguard victims. The Criminal Division's Money Laundering and Asset Recovery Section (MLARS) administers the Program. Program participants include more than 6,000 LEAs. In the past three years the Program has distributed more than $1 billion in equitably shared funds.

Proper management and oversight of the Program is one of MLARS' highest priorities, and MLARS has taken significant steps to ensure that these priorities are accomplished. For example, in 2016, MLARS modernized its Program monitoring systems by automating the submission of the Equitable Sharing Agreement and Certification forms through an online portal. In 2018, in conjunction with the Treasury Executive Office for Asset Forfeiture (TEOAF), MLARS issued an updated joint *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies* (*Guide*), which provided participating agencies with improved policies and procedures governing the submission of sharing requests and the proper use of and accounting for equitable sharing assets. In 2020, MLARS also updated its standard operating procedures (SOPs) to account for the growth in the Program. Also, in 2020, MLARS increased accessibility to important Program training courses to agencies across the Program by offering online webinars.

II. Responses to the Draft Report's Analysis

As set forth below, MLARS concurs in all 11 of OIG's recommendations in the Draft Report. MLARS believes, however, that certain discrete aspects of the Draft Report's analysis and findings would benefit from additional explanation and context.

A. Equitable Sharing Agreement and Certification (ESAC) Process

In the Draft Report, OIG reviewed the compliance status of 6,190 participating agencies as of September 2020 and reported that 991 (16%) of participating agencies were found to be non-compliant for failing to have approved ESACs before the deadline. MLARS believes, however, that these results overstate the extent of agency non-compliance.

To receive any distribution of funds from the Program, agency participants must comply with annual reporting and filing requirements by submitting electronically an ESAC in the eShare Portal.[1] ESAC deadlines coincide with the annual fiscal reporting requirements for all agency participants. An agency must submit its ESAC within two months of the end of the agency's fiscal year. However, timely submission of the ESAC does not complete the ESAC compliance certification process, as MLARS' Agreement Certification and Audit team (ACA team) must review the information and approve the ESAC. MLARS' review and approval process may be affected by the volume of ESAC submissions received and could result in an agency that filed timely being deemed non-compliant until the review is completed. Therefore, agencies identified in the Draft Report as non-compliant included those agencies that, in fact, timely submitted an ESAC within the two-month submission deadline, but the ESACs were pending final review by MLARS' ACA team.

OIG's finding fails to distinguish between agencies that missed the deadline, and those agencies that timely filed their ESACs but remained non-compliant while MLARS' review and approval was pending. This is relevant because more than half of the agencies in non-compliant status during this time period (564 of the 991) had in fact filed their ESACs timely, complying with ESAC submission requirements. The non-compliant designation for these agencies was

[1] The eShare Portal, which is managed and maintained by the Department's Asset Forfeiture Management Staff (AFMS), enables Program participants to submit sharing requests, check the status of current requests, run equitable sharing distribution reports, and complete and submit the agency's annual ESAC. The eShare Portal also provides agencies with reminders regarding their ESAC and DAG-71 submissions, and sharing confirmations, as appropriate.

based solely on the time needed for MLARS' pending review and approval, not on any affirmative finding of a violation of a Program requirement. Moreover, of the remaining 427 non-compliant agencies identified by the Draft Report that failed to meet the ESAC filing deadline, more than half of these agencies (228) filed their ESACs within one month after the deadline.[2] Thus, only 199 non-compliant agencies – representing 3% of all Program participants and 3% of total funds outstanding in the Program – had not filed their ESACs within three months of the end of their fiscal year.[3]

B. Compliance Review Selection and Documentation Process

The Draft Report evaluated MLARS' process for selecting agencies for Compliance Reviews and for documenting the results of those reviews, and made findings that both were deficient. MLARS believes that these findings require additional facts to place them into proper context.

MLARS uses a comprehensive risk-based process to monitor and evaluate Program participants, including determining which agencies to select for compliance reviews.[4] MLARS uses a risk rating model called the Risk Intelligence Model (RIM). The RIM extracts pertinent information from the quantitative data contained in the two most recent years of an agency's ESAC submissions, including the agency's annual revenues and annual expenses. The RIM uses this data to calculate a score, which is then used to rank all agencies nationally and within each state. The RIM scores and agency rankings form the basis for initial selection of agencies for Compliance Reviews. The Draft Report found that because the agencies with the highest RIM scores each year were not always selected for Compliance Reviews, MLARS had failed to focus its compliance efforts on the highest-risk agencies. Specifically, OIG found that during the three-year period between 2017 and 2019, of the 11 agencies that appeared at least once in the top 10 of the annual RIM rankings, only four received a Compliance Review.

This finding, however, ignores that MLARS considers other factors when determining which agencies to select for a Compliance Review. Agencies with lower RIM scores may be considered for a Compliance Review based on other relevant risk factors, including information obtained from public press articles, information obtained from whistleblower complaints, characteristics of the agency (*e.g.*, the agency's size, type, and geographic location), and referrals from other federal agencies. Moreover, MLARS considers whether the agency was the focus of an audit or review by another agency within the past five years. Since 2015, MLARS had opened or closed Compliance Reviews for 7 of the 11 agencies that appeared at least once in the top 10 of the annual RIM rankings, OIG opened or closed audits for 3 of these agencies, and the

[2] These 427 agencies represented 7% of Program participants and 6% of Program funds.

[3] If an agency files an ESAC more than a year after the filing deadline its designation is changed from non-compliant to ineligible. In addition to the agencies discussed in the text that were non-compliant, 332 agencies filed their ESAC over one year late and thus were designated as ineligible. These 332 agencies accounted for 5% of Program participants and 1% of total funds outstanding in the Program.

[4] The overall risk presented across all participating agencies was very low. In 2019, the average RIM score of all the agencies was less than half a point (out of a possible 100 points), and only 11 agencies received a RIM score greater than 25. As OIG found, only a "handful" of agencies were ranked with a high level of risk. Draft Report at 8.

last agency was audited by TEOAF. As a result, all 11 agencies identified by OIG either underwent a review that was concluded between 2015 to present or are currently under review.

The Draft Report also found that the documentation associated with 21 reviews conducted by the Compliance Review Team (CRT) was lacking. This finding, however, incorrectly assumed that every type of review requires the same level of documentation. Under MLARS' policies, the required documentation for each file varies based on the type of review or escalation performed. For example, a full Compliance Review is the most comprehensive type of review and has the broadest documentation requirements. In contrast, all other reviews are limited in scope and tend to focus on a single issue or area of concern and thus require much less documentation for the file.

Of the 21 CRT files audited by OIG, 9 of the files were for full Compliance Reviews, while the remaining 12 files were the result of other, more limited types of reviews. In the Draft Report, OIG found that these 12 review files were deficient because OIG applied the documentation standard for a full Compliance Review. MLARS examined the review files for each of these 12 more limited reviews and found that all 12 included the required documentation consistent with the level of review. MLARS also examined the review files for the 9 Compliance Reviews, and similarly found that the required documentation was included in each review file.

C. <u>Remedying Impermissible Expenditures</u>

The Draft Report recommends that MLARS improve its written policies and procedures on when and in what circumstances MLARS decides to waive the recovery of misspent funds. While MLARS concurs with the recommendation, MLARS notes that it has exercised substantial management and oversight over misspent funds. In particular, MLARS carefully monitors Program participants to ensure compliance with applicable policies and procedures, including those set forth in the *Guide*; OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;* and other applicable federal laws and statutes. Agencies that violate laws, regulations, or polices governing the Program are subject to corrective action. When misspent funds have been identified, MLARS works with the agency to determine whether the funds should be returned to the Assets Forfeiture Fund or the agency's equitable sharing account, or, in limited instances, not be recovered. Factors generally considered when determining an appropriate corrective action plan include the nature, intent, and severity of the infraction; prior Program infractions; dollar amount involved; negative effects on the Program such as a lack of transparency, integrity, or accountability; current status of leadership in place at the time of the infraction; attendance at recent Program training; agency's tenure in the Program; and guidance from another federal agency.

D. <u>Agency Training Program</u>

The Draft Report found that MLARS' training program for participating agencies was not effective because those agencies that attended trainings had higher rates of ESAC amendments than those agencies that had not attended trainings. MLARS believes that this data point is not an appropriate measure of training effectiveness. For example, amendments to ESACs often involve corrections to clerical filing errors, additional ministerial updates to financial information not available at the ESAC filing deadline, or updated re-classifications of expenditures. Such amendments are not related to any failure of training. Similarly, the Draft Report found that MLARS' in-person training was not effective because agencies attending in-person training filed late ESACs at a higher rate than those agencies that did not attend in-person training. Again, MLARS believes that reliance upon this data to measure the effectiveness of in-person training is not appropriate, and in any event, the data shows that the Draft Report's conclusion from the data is incorrect. MLARS' data shows that agencies attending in-person training maintained a better overall rate of ESAC on-time filings than program participants as a whole.[5] Lastly, the Draft Report noted that 5 of the 16 highest-ranking agencies from the RIM did not attend training between 2017 through 2019. However, MLARS' records confirm that all but one of these highest-ranking agencies received training between 2017 through 2019, and several attended two or more sessions during that time period.

Moreover, as explained below, MLARS continues to focus on improving the effectiveness of its training program for agency participants. In the past year, MLARS has incorporated expanded web-based training, allowing it to reach those agencies unable to travel because of the pandemic or for budget reasons. This web-based platform enabled MLARS to seamlessly transition to full web-based Program training in March 2020. For the past 17 months during the predominantly telework environment imposed in many jurisdictions, MLARS provided Program training to more than 700 attendees on its web-based platform.

III. Responses to the Draft Report's Recommendations

As noted above, MLARS concurs in each of the recommendations in the Draft Report. MLARS' responses are set forth below.

> *Recommendation 1: Enhance its efforts in addressing participating agencies that fail to meet the ESAC submission deadlines. This includes enhancing its communication efforts with agencies as soon as a submission deadline is missed and working more closely with agencies to ensure compliance with submission deadlines.*

> *Recommendation 2: Amend its policies to add consequences for agencies that fail to submit timely ESACs.*

To promote improved compliance with ESAC deadlines and oversight of agencies that fail to meet those deadlines, MLARS will implement additional policies to ensure greater accountability for Program requirements:

> <u>Reduced time period to ineligible status</u>. In consultation with TEOAF, which administers the Treasury Forfeiture Fund and shares policies in the joint *Guide*, MLARS will update the *Guide* to state that an agency with a balance of equitable sharing of more than $500,000 on its last-reported ESAC may be deemed to be ineligible after being

[5] MLARS' review of the data showed that with respect to the agencies that attended training, their late submission rate was 25.9%. In contrast, the late submission rate for all agencies was 28.3%.

non-compliant for failing to meet the ESAC filing deadline for only six months, as opposed to the existing period of twelve months.

Added sanctions. MLARS is amending its SOPs to add additional sanctions for agencies that become ineligible to participate in the program, including requiring the agency to return its equitable sharing fund balance, barring the agency from being allowed to re-enter the Program, and imposing other sanctions as appropriate under the circumstances.

Increased communication. MLARS is working with AFMS to increase the frequency of eNote communication after an agency has been deemed non-compliant. In addition to these changes, MLARS is amending its SOPs to require the ACA team to email and call non-compliant agencies with equitable sharing fund balances greater than $500,000 after 2 months of non-compliance. These agencies will then be escalated to the Program Manager for additional outreach after 4 months of non-compliance.

Recommendation 3: Make modifications to the RIM that creates [sic] a more comprehensive determination of risk and considers other risk factors such as the timeliness of ESAC submissions and agency attendance of training.

Recommendation 4: Focus more of its compliance efforts on the highest-risk agencies identified in the RIM.

MLARS will revise the methodology for risk assessment to create a more comprehensive determination of risk that incorporates both the RIM risk scores and additional factors. MLARS will continue, however, to use a comprehensive approach to assessing risk based upon a number of factors, including the RIM scores and other qualitative data.

Recommendation 5: Develop detailed policies and procedures for the completion of CRT reviews, including documentation requirements and expectations for file organization and retention.

MLARS is amending its SOPs for CRT reviews to specify the documentation required for reviews other than full Compliance Reviews.

Recommendation 6: Implement a centralized system for tracking all review recommendations, including those that identify questioned costs.

MLARS will implement a new centralized tracking system focused specifically on tracking all review recommendations including those that identify cost recoveries. In addition, MLARS is exploring with AFMS the development of a compliance review module to improve overall organization of review files. This module would house materials directly related to an agency's review and link to the agency's agreement, certification, and audit record. The system also would permit centralized reporting on findings and cost recovery.

> *Recommendation 7: Make improvements to its SOP to include specific details as to the situations and factors considered when making determinations regarding misspent funds. This update to the SOP should also include specific requirements for documenting the factors considered and the rationale for determinations made.*

> *Recommendation 8: Implement thresholds or other factors that would elevate the approval of the decision to not seek recovery of misspent funds outside of the PMTU in the event of significant amounts of misspent funds being waived.*

MLARS is amending its SOPs to provide specific factual scenarios involving misspent funds and guidance on the appropriate options for recovery. These updates will include implementing monetary thresholds that would elevate the approvals to MLARS management for decisions not to seek a return of funds.

> *Recommendation 9: Provide targeted training for financial personnel and those responsible for the administration of equitable sharing funds.*

MLARS already provides targeted training specifically for financial personnel and law enforcement responsible for administering equitable sharing funds. For example, one training titled "Equitable Sharing for Financial Support Staff" encompasses a variety of topics highly applicable to financial personnel and equitable sharing funds administrators. In addition to this focused training, MLARS will create a multi-page field guide to serve as reference for financial personnel and those responsible for the administration of equitable sharing funds. The field guide will be made available to financial personnel via MLARS' public website. MLARS will continue to assess its entire training program to ensure that it remains effective not only for financial personnel and equitable sharing administrators, but also for all agency participants.

> *Recommendation 10: Develop web-based training, or other remote mediums, [that] would allow for all participating agencies to receive training on a reoccurring basis.*

> *Recommendation 11: Develop a training schedule that mandates cyclical training for all participating agencies, with advanced training to mitigate the risk of funds being misspent for those agencies identified as high risk through MLARS compliance reviews.*

MLARS has established a broad web-based training platform and is developing a high-level equitable sharing training module. MLARS is coordinating with AFMS to house the training module so that the system can capture which agencies had at least one user complete the training module, along with the date. Once this upgrade is completed, the equitable sharing training will become a mandatory component of the Program. With respect to agencies identified as higher risk through compliance reviews, MLARS will develop a requirement for both agency staff and leadership to attend the in-depth 3-hour equitable sharing training.

APPENDIX 4: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Audit Report

The OIG provided a draft of this audit report to the Money Laundering and Asset Recovery Section (MLARS). MLARS's response is incorporated in Appendix 3 of this final report. In response to our audit report, MLARS concurred with all 11 of our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved.

Analysis of MLARS's Response

In addition to stating its planned actions on the specific recommendations, MLARS included other information and stated that certain aspects of our analysis and findings would benefit from additional explanation and context. The following addresses selected facets of MLARS's response.

Equitable Sharing Agreement and Certification (ESAC) Process

In its response, MLARS stated that our finding fails to distinguish between agencies that missed the ESAC filing deadline, and those agencies that timely filed their ESACs but were awaiting MLARS's review and approval. Table 2 of this report represents a snapshot of agency compliance status, as classified within the eShare Portal, as of September 22, 2020. The 991 agencies were classified as "non-compliant" in MLARS's eShare Portal based on MLARS's policy and guidance, which states that agencies that do not have an MLARS-approved ESAC by its established due date are non-compliant until an ESAC is both submitted and approved. MLARS further asserted that 564 of the 991 agencies had submitted their ESACS on time, but that staff had yet to review and approve them. The OIG's additional analysis of the eShare Portal data could not confirm this number, instead determining that of the 991 agencies identified by MLARS as non-compliant as of September 22, 2020, 603 agencies (60%) had not submitted their overdue ESACs, 111 (11%) had submitted their ESACS after the date they were originally due, and 252 agencies (25%) had submitted their ESAC on time and were awaiting approval by MLARS staff.[8] We were also unable to verify MLARS's claim that 228 non-compliant agencies submitted their ESAC within 1 month after the deadline, as the information used to complete our analysis was as of September 22, 2020. While MLARS is correct to note that not all of the agencies it lists in the eShare Portal as "non-compliant" were late in submitting their ESAC, we believe this data and the data presented in this report provide ample foundation for our conclusion that MLARS needs to better ensure the timely submission and approval of ESACs, which is a critical component of MLARS' oversight of the Equitable Sharing Program.

In its response, MLARS did not dispute that improvements can be made to improve the ESAC process. Our overall findings and recommendations were made in order to assist MLARS in making meaningful improvements to its administration and oversight of the ESAC process. Recommendations 1 and 2 of our report address the improvements MLARS can make to its ESAC submission and approval process.

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[8] An additional 25 agencies (2.5%) were identified as non-compliant in the eShare Portal, however their annual ESAC was not yet due. We were unable to determine why these agencies were identified as non-compliant, from the available data.

Agency Training Program

In its response, MLARS stated that the OIG's use of ESAC amendment rates, comparing amendment rates of agencies that had attended training sessions to those that had not, was not an appropriate measure of training effectiveness. MLARS further stated that amendments to ESACs often involved corrections to clerical filing errors, updates to financial information not available at the ESAC filing deadline, or an updated re-classification of expenditures. Similarly, MLARS stated that the OIG's use of late ESAC filings for trained and untrained agencies was also not appropriate. We disagree and believe that a valuable method to assess the impact of MLARS ESAC training was to examine the accuracy and compliance with MLARS's requirements of attending agencies. During our audit, we were told by multiple staff that the most common ESAC amendments involved making corrections to expenditures that were misclassified within initial ESAC submissions. Because expenditure categories drive MLARS's oversight activities, including how it assigns risk during the RIM process, the proper classification of expenditures is a critical component of the ESAC certification process. Further, we believe MLARS should expect to see fewer errors and ESAC amendments for those agencies that received training – indeed, we believe that reducing the number of such amendments should be one of the goals of such training. As we discuss in our report, MLARS oversight activity relies heavily on ESAC data. An effectively trained agency should better understand the importance of having accurate data submitted timely, and its ESAC submissions should apply and reflect this knowledge.

In its response, MLARS took exception to some numerical information. First, MLARS stated that it believes that the rate of timely ESAC submissions for trained agencies was incorrectly stated. In our report, we stated that 29 percent of our sample of trained agencies, compared to 27 percent of agency submissions overall, submitted their ESAC late during the period of our review. However, MLARS stated that, based on its review, the late submission rate for trained agencies was 26 percent, and as such, was lower than the 27 percent universe as a whole. We requested MLARS calculation details and were unable to identify the reason for this nominal difference in calculation. Either way, the accuracy and timeliness of ESAC submissions was not substantially improved for those agencies that attended MLARS training.

In addition, MLARS stated that our finding, which identified that 5 of the 16 highest ranked agencies from the RIM did not attend training between 2017 through 2019, was incorrect. MLARS's asserts that its records confirm that all but one of these agencies received training between 2017 and 2019. During our audit, we compared the agencies that MLARS identified as high risk to the list of agencies that received training and determined that 5 of the 16 agencies were not included in the list. After reviewing our finding, MLARS told us that 4 of these 5 agencies had attended training sessions but were not included on the original listing, and MLARS provided us the dates of those sessions. We attempted to reconcile the newly provided information but were unable to verify the training sessions. Specifically, the dates of the trainings were inconsistent with MLARS's records of training sessions that it provided. Additionally, we were unable to reconcile the dates and location of the training with travel records for MLARS's staff.

MLARS also provided additional statements concerning our findings related to its Compliance Reviews and impermissible expenditures. We address these statements in our below discussion of the related recommendations. The following provides the OIG analysis and summary of actions necessary to address each recommendation and to close the report.

Recommendations for MLARS:

1. **Enhance its efforts in addressing participating agencies that fail to meet the ESAC submission deadlines. This includes enhancing its communication efforts with agencies as soon as a submission deadline is missed and working more closely with agencies to ensure compliance with submission deadlines.**

   Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it will implement additional policies to ensure greater accountability for Program requirements. MLARS outlined two changes to its procedures for following up with agencies that have overdue ESACS. MLARS stated that it will: (1) increase the frequency of automated system driven communication for agencies with overdue ESACS, and (2) amend its procedures to increase the staff interaction with overdue agencies that have over $500,000 in equitable sharing funds. This includes procedures to follow up with the overdue agency 2 months after they go into non-compliance status and escalating those communications to the Program Manager after 4 months. As a result, this recommendation is resolved.

   This recommendation can be closed when we receive evidence demonstrating that the addition of the policies outlined in MLARS's response have been made to the standard operating procedures.

2. **Amend its policies to add meaningful consequences for agencies that fail to submit timely ESACs.**

   Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it will implement additional policies to ensure greater accountability for Program requirements. MLARS outlined two additional polices in its response that it states will add meaningful consequences for agencies that fail to submit timely ESACS. MLARS stated that it will: (1) reduce the time before an agency with over $500,000 in equable sharing funds, who fails to submit its ESAC, becomes ineligible to receive additional funds, and (2) add sanctions for agencies that become ineligible, including requiring the agency to return equitable sharing funds and barring the agency from re-entering the Program. As a result, this recommendation is resolved.

   This recommendation can be closed when we receive evidence demonstrating that the addition of the policies outlined in MLARS's response have been made to its standard operating procedures.

3. **Make modifications to the RIM that creates a more comprehensive determination of risk and considers other risk factors such as the timeliness of ESAC submissions and agency attendance of training.**

   Resolved. MLARS concurred with our recommendation. However, MLARS stated the OIG's finding that 4 of the agencies appearing in the top 10 of MLARS's annual Risk Intelligence Model (RIM) rankings received a Compliance Review ignores that MLARS considers other factors when determining which agencies are selected for a Compliance Review. MLARS further stated that agencies with lower RIM scores may be considered for a Compliance Review based on other relevant factors. We believe that the factors identified in MLARS's response are critical elements of a robust and thorough risk assessment and we did not ignore its consideration of these factors. In fact, the focus of our finding in this area is to improve MLARS's documentation of the specific factors that it uses in determining which agencies to select for a Compliance Review. Additionally, MLARS stated that our finding that 4 of the 11 higher risk agencies had not received a compliance review was incorrect and suggested that all of these agencies were reviewed between 2015 and present. However, MLARS included in this tabulation reviews for which the final recommendation closure arising from the review occurred in 2015 or later, even if the review itself occurred prior to 2015. In comparison, the OIG did not count reviews conducted prior to 2015, and we verified that the 4 agencies had not received a compliance review between 2015 and 2020 by verifying the date the review report was issued.

MLARS stated in its response that it will revise the methodology for its risk assessment to create a more comprehensive determination of risk that incorporates both the RIM and additional factors. As a result, this recommendation is resolved.

This recommendation can be closed when we receive documentation of the modifications to the RIM that creates a more comprehensive determination of risk and considers other risk factors such as the timeliness of ESAC submissions and agency attendance of training.

4. **Focus more of its compliance efforts on the highest-risk agencies identified in the RIM.**

Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it will revise the methodology for its risk assessment to create a more comprehensive determination of risk that incorporates both the RIM and additional factors. Because the OIG believes that these improvements are likely to better align MLARS' RIM scores with its oversight priorities, we anticipate that the revisions will result in MLARS focusing more of its compliance efforts on the highest-risk agencies identified in the RIM. As a result, this recommendation is resolved.

This recommendation can be closed when we receive evidence that MLARS is focusing more of its compliance efforts on the highest-risk agencies identified in the RIM.

5. **Develop detailed policies and procedures for the completion of CRT reviews, including documentation requirements and expectations for file organization and retention.**

Resolved. MLARS concurred with our recommendation. However, MLARS stated that our finding about documentation associated with 21 reviews conducted by the Compliance Review Team (CRT) was lacking because it incorrectly assumed that every type of review requires the same level of documentation. MLARS stated that under its policies, the required documentation for each file varies based on the type of review or escalation performed. However, we found that MLARS did not have specific guidance on what documentation should be created and retained within the CRT files. In addition, we found significant deficiencies in the documentation of the reviews we tested, and we were unable to determine what cost elements or compliance areas were examined during the reviews. To avoid these issues in the future, there should be specific requirements for the content of a Compliance Review file, regardless of the scope of the review, and these files should contain basic information such as the planned scope of the review, the specific risk factors identified, what cost elements or areas of compliance were reviewed, what testing was completed during the review, and the results of that testing. MLARS did not address how it will amend its policies and procedures for the completion of CRT reviews. However, MLARS stated in its response that it will be amending its standard operating procedures for the Compliance Review Team to specify the documentation required for reviews other than full Compliance Reviews. As a result, this recommendation is resolved.

This recommendation can be closed when we receive documentation that includes updated policies and procedures for the completion of CRT reviews, including documentation requirements and expectations for file organization and retention.

6. **Implement a centralized system for tracking all review recommendations, including those that identify questioned costs.**

   Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it will be implementing a new centralized tracking system focused specifically on tracking all review recommendations including those that identify cost recoveries. Additionally, MLARS stated that it is exploring the development of a compliance review module to improve the overall organization of files. As a result, this recommendation is resolved.

   This recommendation can be closed when the new centralized tracking system, which captures all review recommendations, including those that identify questioned costs, is operational.

7. **Make improvements to its SOP to include specific details as to the situations and factors considered when making determinations regarding misspent funds. This update to the SOP should also include specific requirements for documenting the factors considered and the rationale for determinations made.**

   Resolved. MLARS concurred with our recommendation. MLARS stated that it has exercised substantial management and oversight of misspent funds. MLARS stated that when misspent funds are identified, it works with the agency to determine whether the funds should be returned to the Asset Forfeiture Fund or the agency's equitable sharing account, or, in limited instances, not be recovered. MLARS also noted that it considers various factors when determining an appropriate corrective action plan. However, we found that MLARS's policy guidance on remedying misspent funds is vague and MLARS did not provide any written documentation demonstrating the factors considered in making the determination to remedy misspent funds. MLARS did not discuss how it plans to address the portion of the recommendation that calls for specific documentation requirements for the factors considered and the rationale for determinations made. Nevertheless, MLARS stated in its response that it will be amending its standard operating procedures to provide specific factual scenarios involving misspent funds and guidance on the appropriate options for recovery. As a result, this recommendation is resolved.

   This recommendation can be closed when we receive the amended standard operating procedure that includes specific factual scenarios involving misspent funds and guidance on the appropriate options for recovery. The amended standard operating procedure should also include specific requirements for documenting the factors considered and the rationale for determinations made.

8. **Implement monetary thresholds or other factors that would elevate the approval required for the decision to not seek recovery of misspent funds outside of the PMTU in the event of significant amounts of misspent funds being waived.**

   Resolved. MLARS concurred with our recommendation. In its response, MLARS stated that it will be amending its standard operating procedures to provide specific factual scenarios involving misspent funds and guidance on the appropriate options for recovery. In conjunction with updates to the standard operating procedures outlined in Recommendation 7, MLARS stated that it will also implement monetary thresholds that will elevate the level of approvals to MLARS management when determinations are made to not seek the return of misspent funds. As a result, this recommendation is resolved.

   This recommendation can be closed when we receive documentation of the amendment to the standard operating procedures to implement monetary thresholds that will elevate, to MLARS management, the decisions not to seek a return of misspent funds.

9. **Provide targeted training for financial personnel and those responsible for the administration of equitable sharing funds.**

   Resolved. MLARS concurred with our recommendation. While MLARS's overall response to this recommendation addresses the concerns identified in the report, the changes detailed in its response did not fully address the findings in the report. We believe that providing targeted training to participating agency staff is a critical component that must not be overlooked.

   MLARS stated in its response that it already provides targeted training specifically for financial personnel and law enforcement responsible for administering equitable sharing funds, and that finance staff make up approximately half of the participants in MLARS's training. However, we found that this training has consisted of a 3-hour voluntary class, and that MLARS training reached only about 15 percent of the total participating agencies during the 3 years we examined. This and our findings throughout the report concerning non-compliance with MLARS program requirements leads us to believe that expanded training for finance staff, and others responsible for the administration of equitable sharing funds, is critical to the effectiveness of MLARS overall training efforts. MLARS additionally stated in its response that it will be developing a guide to serve as a reference for financial personnel and those responsible for the administration of equitable sharing funds. While we believe that this guide will provide a useful source of reference for agency personnel, we do not believe it is an adequate substitute for targeted training of relevant agency personnel. As a result of MLARS's planned efforts regarding its training program, this recommendation is resolved.

   This recommendation can be closed when MLARS provides evidence of targeted training for program participants that provides modules specifically targeted for the role of the individual attending training.

10. **Develop web-based training, or other remote mediums, that would allow for all participating agencies to receive training on a recurring basis.**

    Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it has established a web-based training platform and is developing a high-level equitable sharing training module. MLARS stated that it is also working to develop a system to capture which agencies complete the training module, with the expectation that once the training module and system are developed, training will become a mandatory component of the Equitable Sharing Program. As a result, this recommendation is resolved.

    This recommendation can be closed when we receive evidence that the training module and system to capture attendance have been implemented.

11. **Develop a training schedule that mandates cyclical training for all participating agencies, with advanced training to mitigate the risk of funds being misspent for those agencies identified as higher risk.**

    Resolved. MLARS concurred with our recommendation. As discussed above, MLARS stated that it has established a web-based training platform and is developing a high-level equitable sharing training module. MLARS stated it is also working to develop a system to capture which agencies complete the training module, with the expectation that once the training module and system are developed, training will become a mandatory component of the Equitable Sharing Program. Additionally, MLARS stated that for agencies identified as higher risk, a requirement for both agency staff and leadership to attend an in-depth 3-hour training class will be required. As a result of these proposed changes, this recommendation is resolved.

    This recommendation can be closed when we receive evidence that all agencies participating in the Equitable Sharing program are mandated to and completing cyclical training, and that advanced training targeted at higher risk agencies is in place.