



***Performance Audit***

***Office of the Sheriff***

***Federal Asset Forfeiture Program***

***Durham County Internal Audit Department***

***October 2, 2015***



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October 2, 2015

Mr. Wendell Davis,  
County Manager

Mr. Michael Andrews,  
Durham County Sheriff

Dear Mr. Davis and Sheriff Andrews

Durham County Internal Audit has completed its audit of controls regarding the Sheriff Office's participation in the Federal Asset Forfeiture Program. The Sheriff has reviewed the report and his comments are attached.

The audit did not result in findings concerning accounting and reporting practices employed by the Office of the Sheriff. However, an issue surfaced regarding the administration of electronic signatures may need attention. The report does not make a recommendation, but the auditor's opinion is that the Sheriff's Office and the County may benefit from a structured policy to control electronic signatures.

Internal audit appreciates the assistance and cooperation of representatives in the Sheriff's Office, the County's financial department, and advice and counsel of attorneys in the County Attorney's Office.

Sincerely,

Richard Edwards,  
Internal Audit Director

CC: Audit Committee  
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## INTRODUCTION

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The Audit Oversight Committee approved this audit in the fiscal year 2016 Annual Audit Plan. This audit reviewed the Office of the Sheriff's (Office) participation in the Federal Asset Forfeiture program whereby the Office and the United States Justice Department work collaboratively to investigate criminal activity or when the Office requests that the federal government "adopt" or take over a seizure and proceed with federal forfeiture. The forfeiture program, operating under the Comprehensive Crime Control Act of 1984 and administered by the U.S. Justice Department, has returned more than \$4.5 billion to more than 8,000 state and local law enforcement agencies, according to the "Guide to Equitable Sharing for State and Local Law Enforcement Agencies." Durham County's Office of the Sheriff received a total of \$109,243.67 from the program during fiscal years 2014 and 2015. Assets forfeited under this program are shared with local government law enforcement agencies based upon a formula that considers participation of the local agency. The numbers of investigative hours, investigation initiators, complexity, etc., are factors considered in determining the amount to be shared with the local agency.

Local agency participants must follow rules established by the Justice Department. Rules address how local budgets are effected by program revenues as well as how revenues are accounted for and spent. Each year, as precursor for program participation, local agencies complete an agreement and certification form attesting to its understanding of participation requirements and willingness to comply. Signatures on the form certified that the local law enforcement budget was not supplanted by forfeiture program funding. Federal rules mandate that revenue can be used to supplement budgets but cannot replace budgets. For example if the County's law enforcement budget was \$100,000 in fiscal year 2014, the Sheriff could not request \$25,000 from the program and reduce the County budget to \$75,000 in fiscal year 2015.

Because the justice department has restrictions on how revenues can be used, they are maintained in the County's financial records as restricted funds. The funds are not included and accounted for in the County's general fund, and do not have limits or other restrictions on when they can be spent. The primary restriction is that they be used for matters per the federal guidelines. The Office spent \$42,361.50 for an automobile, weapons and related items, and a dog, items that comply with the program guidelines. Including unspent funds from prior years, \$106,001.67 remains in the account.

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## **AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY**

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Fieldwork for the audit engagement was conducted between August 3, 2015 and September 22, 2015. Audit objectives were to review the Office's controls to (1) account for, (2) report, and (3) appropriately use program revenues. The focus was on fiscal years 2014 and 2015. To conduct the audit we:

1. Reviewed program statutes and instructions.
2. Reviewed program files maintained by the Office.
3. Compared program files with files maintained by the County's finance department.

We conducted this audit in accordance with generally accepted government auditing standards. The standards require that I plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on audit objectives. I believe the evidence obtained provides a reasonable basis for the findings and conclusions based upon the audit objectives.

Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.<sup>1</sup>

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## **CONCLUSIONS**

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The Offices' Asset Forfeiture program participation complies with federal requirements in regards to federal and county financial requirements. Purchases were made in accordance with program guidelines and revenues and expenditures were appropriately and accurately reported and recorded in the County's financial system. Participation in the program requires an "Equitable Sharing Agreement and Certification Form" that indicates the local parties understand and agree to terms under which the program operates. This form was not properly endorsed by appropriate signatures or signatory agreement. Although the Office complied with purchase, use, and other program requirements, the lack of appropriate signatures jeopardized the Sheriff's opportunity to obtain funds through the program although

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<sup>1</sup> Comptroller General of the United States, *Government Auditing Standards*, Washington D.C: U.S. Governmental Accountability Office, 2011, p.17.

this was not the result. However, this situation raised a concern regarding the County's approach to electronic signatures.

### **Requested funds could have been in jeopardy**

According to information provided in a discussion with an attorney in the County Attorney's office, the agreement under which the Office and the Department of Justice operated under in 2015 may have been unenforceable by the County against the Department of Justice because it was not signed by those persons authorized by the County to enter into the agreement. The agreement form required the electronic signature of both the "Agency Head" (Sheriff) and "Governing Body Head," (County Manager) and neither of these persons signed the agreement nor was it brought to their attention that they should sign it. In lieu of signatures, the names of both the agency and governing body head were typed into the electronic signature line. The attorney said that although the signatures were inappropriate, a contract or agreement existed between the Sheriff's Office and the Justice Department because of the course of dealing between the parties; however the inappropriate signatures may have rendered it unenforceable. However as noted in the background section, the Office obtained revenue from the program. Thus, the signature issue did not have an effect on program operation.

Manual signatures were required to execute the agreement up until 2015. In an apparent move to streamline the process, the Justice Department revised the form and instructed participants to obtain electronic signature. The customary signature line was removed from the form. Article 40 of North Carolina's "Uniform Electronics Act" (§ 66-312) (9) defines electronic signatures. It states that an "Electronic signature" is an electronic sound, symbol, or process attached to, or logically associated with, a record and executed or adopted by a person with the intent to sign the record. During the process of completing the form, the preparer did not send the document forward for the Sheriff and the County Manager to insert their electronic signatures nor did the preparer obtain permission to type the names of those officials into the electronic signature line.

We did not determine why the form preparer did not obtain signatures or permissions before typing the names of the approving authorities onto the form and submitting it to the Justice Department. The supervisor said she thought signatures had been obtained. Since Internal Audit identified the inappropriate signatures, the supervisor has instructed the preparer to revise the form by obtaining signatures of both a Sheriff's representative and the County Manager. The re-signature process is completed.

A mitigating factor for inappropriate electronic signature may be that the Office of the Sheriff and the County develop policy regarding electronic signatures. Federal and State Statutes have been in existence since June 2000 authorizing and providing guidance on electronic signatures. Currently, electronic signatures are used on about half the County's attorney correspondence with the courts, according to the County Attorney. Internal audit believes that as electronic signatures become more prevalent in doing government business, the Sheriff's Office and the County would benefit from the use of electronic signatures if strong policy and controls are in place to regulate and guide their use.

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## **AUDITOR'S OPINION AND STATEMENT**

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Audit standards do not allow for a recommendation where a cause cannot be established for a condition. Audit standards instruct that recommendations address the cause of an adverse condition; the theory being that once the cause is addressed, subsequent actions will become more consistent with what was intended. Because we did not determine cause, and because of the lack of an effect, this report does not include a recommendation.

However, because electronic signatures are often used in government business and some County departments, i.e. legal, guidance may be required to control the use of such signatures. The Justice Department apparently assuming electronic signatures had wide-spread use in government, converted its forms to an electronic signature format. To keep up with the transition from more traditional document signing processes to more electronic signature use, Internal Audit believes an electronic signature policy would be beneficial and prudent.

## Agency Response



### Office of the Sheriff

*Michael D. Andrews, Sheriff*

TO: Richard Edwards, Internal Audit Director  
FROM: Michael D. Andrews, Sheriff *MDA*  
RE: **Federal Asset Forfeiture Funds Audit**  
DATE: September 29, 2015

The Sheriff's Office has received the Federal Asset Forfeiture Funds Audit Report and agrees with the summarization and finding therein. We thank you for your time and consideration in the audit process as well as the finding that was presented. Per the audit, we have addressed the main concern and have taken steps to mitigate future occurrences. Thank you for assistance, and please feel free to contact us should you need further information.

ksf

cc: Chief Deputy Donald R. Ladd, Jr.  
Kimberly Franklin



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