

EXAMINING SYSTEMATIC MANAGEMENT, AND  
FISCAL CHALLENGES WITHIN THE DEPART-  
MENT OF JUSTICE

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HEARING  
BEFORE THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTEENTH CONGRESS  
FIRST SESSION

MARCH 21, 2017

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## **EXAMINING SYSTEMIC MANAGEMENT AND FISCAL CHALLENGES WITHIN THE DEPART- MENT OF JUSTICE**

**TUESDAY, MARCH 21, 2017**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to call, at 1:00 p.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Chabot, Issa, Gohmert, Chaffetz, Marino, Collins, DeSantis, Buck, Roby, Johnson of Louisiana, Biggs, Coiners, Nadler, Lofgren, Jackson Lee, Johnson of Georgia, Jeffries, Cicilline, Jayapal, and Schneider.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian and General Counsel; Stephanie Gadbois, Senior Counsel; Aaron Hiller, Minority Chief Oversight Counsel; Susan Jensen, Minority Senior Counsel; Veronica Eligan, Minority Professional Staff Member; and Regina Milledge-Brown, Minority Crime Detailee.

Chairman GOODLATTE. Good afternoon. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time. We welcome everyone to this morning's hearing on Examining Systemic Management and Fiscal Challenges within the Department of Justice. I will begin by recognizing myself for an opening statement.

The Department of Justice is comprised of approximately 40 components, which together encompass a broad array of national security, law enforcement, and criminal justice responsibilities. Its mission: to enforce the law and defend the interests of the United States according to the law, to ensure public safety against threats, foreign and domestic, to provide Federal leadership in preventing and controlling crime, to seek just punishment for those guilty of unlawful behavior, and to ensure fair and impartial administration of justice for all Americans. That confirms the sacred duties entrusted to it by the American people.

The Department of Justice's growing workload presents challenges for a Congress increasingly constrained by the contraction of discretionary budget authority. With each passing year, the rapid growth of mandatory outlays driven by entitlement programs squeezes resources available for critical Federal operations, many of which are anything but optional. Under the current C.R., the DOJ's discretionary budget is approximately \$29 billion. It sup-

ports more than 117,000 positions. Eight percent of those are attorneys; 20 percent are agents; 18 percent are correctional officers; 4 percent intelligence analysts, and the remaining 50 percent includes other analysts, technologies specialists, and security professionals.

Operationally, law enforcement activities make up nearly half of DOJ's efforts, with prisons and detention representing 30 percent of its work and litigation, 12 percent. Despite its vital mission and the ever-evolving nature of threats to the United States, the Department of Justice has not undergone a reauthorization since 2005. As a result, nearly all of the agency's authorizations for appropriations expired in 2009. Today's hearing is an opportunity for the committee to conduct initial review of DOJ to set the stage for more targeted hearings that will be the basis of a DOJ reauthorization project.

The Government Accountability Office and DOJ's Office of the Inspector General are two very valuable resources for the Judiciary Committee, which takes its oversight responsibilities very seriously. The audits and evaluations these two organizations undertake can be Congress' best and sometimes only true measure of how well a Federal program or agency is operating. In recent years, the OIG has exposed or substantiated incidences of misconduct among Federal employees, rooted out and overseen the recovery of millions of dollars in improperly expended grant funding, and identified numerous costly inefficiencies. Meanwhile, GAO investigations have targeted the mismanagement of Federal resources, detected agency failures to comply with Federal laws, and identified multiple opportunities for reducing duplication and overlap of Federal programs.

It is for these reasons that I am pleased to welcome our two witnesses to the Judiciary Committee today. The Honorable Michael Horowitz is the Inspector General for the United States Department of Justice. Since 2012, Mr. Horowitz has overseen a nationwide workforce of more than 450 special agents, auditors, inspectors, attorneys, and support staff, whose mission is to detect and deter waste, fraud, and abuse and misconduct in DOJ programs and personnel, and to promote economy and efficiency in department operations. Since 2015, Director Horowitz has simultaneously served as chair of the Council of the Inspectors General on Integrity and Efficiency.

Diana Maurer has been a director in the U.S. Government Accountability Office's Homeland Security and Justice Team since 2009, and currently leads DAO's work-reviewing, justice, and law enforcement issues. Director Maurer's recent work includes reports and testimonies on the Federal Prison System, the Secret Service, the Department of Justice's grant programs, the FBI's use of facial recognition technology, and audio video policies at the Supreme Court. Director Maurer has testified several times before congressional committees on national drug control policy, FBI whistleblower protection, DHS management, and nuclear smuggling, among other issues. Director Maurer's career began with the GAO back in 1990 at GAO's regional field office in Detroit.

I look forward to hearing from both of you so that the committee may learn how Congress can best respond to the challenges you

spotlight and work to achieve greater efficiency and accountability at the Department of Justice. Your meticulous efforts on behalf of all Americans, concern about how tax dollars are being spent, are greatly appreciated, and I encourage you to keep up the fine work.

It is now my pleasure to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte. I join you in welcoming Inspector General Horowitz and Detroiters Diana Maurer as witnesses today.

I understand, Chairman Goodlatte, that you have framed this hearing around management and fiscal challenges at the Department of Justice. Like our witnesses from the Government Accountability Office and the Office of Inspector General, I believe that meaningful oversight of the Department of Justice requires us all to be good stewards of taxpayer funds. There are many areas we can pursue, including the disproportionate amount of the department's budget that is consumed by prison spending. In addition, the Inspector General has issued a report specifying serious problems with privately-operated prisons which do not maintain the same level of safety and security as Bureau of Prisons facilities, and which do not provide an adequate level of rehabilitative services.

These are troubling issues that many of my colleagues, including the gentlewoman from Texas, Sheila Jackson Lee, and I have focused on over the years. However, given the roles our witnesses play in more pressing developments at the Department of Justice, I would also like to focus my time today on a few more discreet issues. First, on the topic of fiscal management, I wonder if our witnesses can speak to the budget priorities of the Trump administration. I hope that you will feel free and able to do that. This committee has oversight of the United States Secret Service, an agency that provides protection to the President every time he travels to New York or Florida for the weekend, and to his family, as they travel the world to advance the interests of the Trump organization. It seems to me that the GAO is the right organization to evaluate the cost of that protection to the taxpayer, and to place that cost in the context of a proposed budget that makes deep cuts to a number of important programs.

Secondly, on February 17, 2017, my colleague Mr. Jeffries and I wrote a letter which was joined by many of my colleagues, to you, Mr. Inspector General, and in that letter we asked your office to investigate two matters. One, whether the Trump administration has engaged in any improper effort to intimidate or threaten whistleblowers, and secondly, whether Attorney General Sessions has a conflict of interest that requires his recusal from any matter involving contact between Russian officials and the Trump campaign. I hope that you will discuss both those matters.

Let me be clear: I do not condone the leaks of classified information to the press, but the President has gone out of his way to intimidate virtually any individual hoping to expose misconduct in the Trump administration, including, but not limited to, random searches of personal cell phones and general harassment via Twit-

ter. I know that the Inspector General agrees that whistleblowers are key to identifying waste, fraud, and abuse, and I hope his office is looking into the matter.

And finally, on March 16, 2017, I again wrote to the Inspector General, this time asking about improper contacts between the White House and the Department of Justice. We know that the White House Chief of Staff has called the Deputy Director of the FBI, asking them to come and publicly knock down reports he did not like. We also know that President Trump placed a phone call to Preet Bharara, former U.S. Attorney for the 7th District of New York, the day before the administration summarily fired all 46 sitting U.S. Attorneys. And we know that these calls are in direct violation of standing guidance at the Department of Justice, prohibiting contact between its investigators and the White House except in extraordinary circumstances. To their credit, none of these officials complied with pressure from the White House. Knowing the department's rules about such contacts, Mr. Bharara did not even take the call. Nevertheless, I feel that the White House has ignored this important policy, and that further investigation by the Inspector General is warranted.

And so, I look forward to our discussion on these matters and others today, and I thank the chairman, and I yield back.

Chairman GOODLATTE. The chair thanks the gentleman, and would advise the committee that we have about 7 minutes remaining in this vote. There are three votes in this series, and the hearing will resume immediately following the votes, and I apologize to our witnesses for this delay, but it is unavoidable. Thank you.

[Recess.]

Chairman GOODLATTE. The committee will reconvene. When the committee recessed, we were completing opening statements by the chairman ranking member. Without objection, all other members' opening statements will be made a part of the record.

Chairman GOODLATTE. And we welcome our distinguished witnesses and if you will please rise we will begin by swearing you in. Do you and each of you solemnly swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God? Thank you very much. You may be seated.

Let the record show that the witnesses answered in the affirmative.

Your written statement will be entered into the record in its entirety and we ask that you summarize your testimony in 5 minutes. And you see the timing light in front of you on the table. When it switches from green to yellow, you will have 1 minute to conclude your testimony. And when the light turns red, it signals your 5 minutes have expired. And Inspector General Horowitz, we will start with you. Welcome.



**STATEMENTS OF MICHAEL HOROWITZ, INSPECTOR GENERAL,  
UNITED STATES DEPARTMENT OF JUSTICE; AND DIANA  
MAURER, DIRECTOR, HOMELAND SECURITY AND JUSTICE  
ISSUES**

**STATEMENT OF MICHAEL HOROWITZ**

Mr. HOROWITZ. Thank you. Thank you, Mr. Chairman, Ranking Member Cummings—Member Conyers, I am sorry—and members of the committee. Thank you for inviting me to testify today, and thank you for your steadfast support for our oversight work and the strong bipartisan support last year for the IG Empowerment Act, which passed in December. In our most recent top management challenges report, we identified nine major management and fiscal challenges for the department.

First, safeguarding national security, and ensuring privacy and civil liberties protections. Next, enhancing cybersecurity in an era of increasing threats. Three, managing an overcrowded Federal Prison System in an era of limited budgets and continuing security concerns. Next, strengthening the relationships between law enforcement and local communities through partnership and oversight. Next, helping to address violent crime through effective management of department antiviolenence programs.

Next, ensuring effective management and oversight of law enforcement and promoting public trust. Next, monitoring department contracts and grants. Then, managing human capital and promoting diversity with a workforce increasingly eligible to retire. And finally, using performance-based management to improve department programs.

In these tight budget times, it is particularly important the department ensure it is using every dollar of taxpayer funds in the most effective and efficient way possible. Each year, our audits, reviews, and investigations result in our identifying wasteful spending, questioning costs, and recovering tens of millions of dollars. For example, this past year we reported on the DEA's and the Defense Department's wasteful spending of nearly \$90 million on a plane that never flew any of the missions for which it was intended. We also identified over \$100 million in health care spending the BOP could save each year by reimbursing outside healthcare providers at no more than the Medicare rate.

The recommendations we have made over the years have led to significant improvements in department operations. The department must take prompt action to implement our open recommendations in a timely manner. The department also needs to ensure its strong support for whistleblowers. I have seen firsthand how whistleblowers have exposed waste and fraud and brought to light wrongdoing. Unfortunately, I have also seen instances of retaliation against whistleblowers.

Whistleblowers perform an invaluable public service when they come forward with evidence of waste, fraud, abuse, and mismanagement and they should never face reprisal for doing so. My office will continue to do what we can to assist whistleblowers, address claims of whistleblower retaliation, and educate department employees on the importance of whistleblowing and on whistleblower rights. The department must do the same.

Finally, let me mention one other challenge facing the department, and that is promoting public trust involving the oversight of its prosecutors. Several commentators and judges, including Judge Kozinski of the Ninth Circuit, have questioned whether there is sufficient independent oversight of prosecutors. While the OIG investigates alleged misconduct by department law enforcement agents, under the Inspector General Act, alleged misconduct by department attorneys when acting in their capacity as lawyers is instead handled by the department's Office of Professional Responsibility, an office that lacks the OIG statutory independence and does not provide the same level of transparency.

The OIG has long questioned this differing treatment of lawyers. We continue to believe that public trust would be enhanced by giving our office the same authority that every other Federal Inspector General has to inspect allegations of misconduct by any agency employee including lawyers. Thank you.

I look forward to working with this committee on these challenges and I would be pleased to answer any questions the committee may have.

Chairman GOODLATTE. Thank you, General Horowitz. Director Maurer, welcome.

#### **STATEMENT OF DIANA MAURER**

Ms. MAURER. Thank you. Good afternoon Chairman Goodlatte, Ranking Member Conyers, and other members and staff. I am pleased to be here today to discuss the findings from our recent work conducted at the Department of Justice. DOJ's law enforcement, national security, and criminal justice missions are vital to the Nation. And like other departments, DOJ faces a challenging budget environment. Given this reality, it is especially important for the department to run its programs and activities in the most effective and efficient manner. My statement for the record today summarizes the findings from 18 GAO reports that collectively provide 65 recommendations to help DOJ better manage its resources and enhance its programs.

Our work highlights four themes for the committee to keep in mind as you oversee the department. First, implementing GAO's recommendations helps DOJ. In recent years, we have experienced some resistance, particularly in our recommendations related to law enforcement. Specifically, DOJ disagreed with or failed to take action on 12 of our 28 recommendations related to law enforcement while only fully implementing five. DOJ has been more responsive to our recommendations on the care and custody of Federal prisoners and inmates fully, implementing seven of seventeen while actions are underway on eight of the others. DOJ has shown the most progress in the grants area, fully implementing 15 of our 17 recommendations. Many of these were designed to help DOJ assess results and reduce the risk of duplication across the more than 200 grant programs it implements annually. DOJ largely did what we asked them to do and they have seen the benefits. For example, we recently reported good coordination of DOJ and HHS grants to combat human trafficking.

A second theme is that DOJ often needs to develop a better understanding of whether its efforts are succeeding. The Smart on

Crime Initiative has a series of measures to track progress, but in many cases, we found they were confusing or lacked measurable targets. The FBI's use of facial recognition technology disregards a key measure of accuracy, potentially limiting its ability to support investigations and unnecessarily involving innocent people. The Bureau of Prisons has increased its use of halfway houses and home confinement, but does not track the information it needs to help measure the outcomes of these alternatives to incarceration.

A third theme from our work is that DOJ can improve the transparency of its programs and operations. Of course, the department has valid reasons for protecting ongoing investigations or prosecutorial strategy from disclosure, but we have found instances where DOJ should have been more transparent.

For example, we found that the ATF aggregated specific kinds of information about the purchasers of firearms in violation of an Appropriation Act restriction. DOJ still has not issued a required report related to that finding to the President, the Congress, and the GAO. DEA needs to do more to address our recommendations to better inform distributors of controlled substances about DEA guidance and resources.

DOJ can also do a better job more clearly explaining how it collects and plans to use the proceeds from billions of dollars in fines, fees, and penalties it collects annually. DOJ and the FBI have also not responded to the recommendations we made 2 years ago to improve the handling of FBI whistleblower complaints.

Finally, DOJ can do a better job bridging the gaps between similar or related programs. For example, the department currently finances two databases, which collect information on missing persons, but continues to refuse to explore options for sharing information between those systems.

In conclusion, Mr. Chairman, we want DOJ to work well. We want the department to get the most from the \$29 billion you the Congress appropriated for its use this year. And I know that is something the department is committed to as well. By implementing our recommendations, having a better handle on whether programs are working, being more transparent where it can, and better bridging the gaps between related programs DOJ can become more effective and efficient.

Mr. Chairman, thank you for the opportunity to testify today. I look forward to your questions.

Chairman GOODLATTE. Thank you very much. We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself.

General Horowitz, the Executive Office for Immigration Review will be playing a large role in the implementation of new Presidential directives, especially as the Attorney General has been directed to immediately assign immigration judges to detention facilities and we have heard that the directive is to ensure that no courtroom in a detained facility is ever closed. So, my first question to you is does the Executive Office for Immigration Review have a sufficient number of immigration judges available to staff every detention facility?

Mr. HOROWITZ. Mr. Chairman, while we have not done recent work on that figure, on that issue, when we did do work back in

2012 in our report we found a number of significant challenges facing the Executive Office in how they handled cases, how long it took, whether they, in fact, had enough judges. And that is going to be a challenge, I think, for EOIR going forward.

Chairman GOODLATTE. What implications would the shortage of immigration judges have on the already growing backlog of non-detained immigration cases pending nationwide?

Mr. HOROWITZ. It has several different impacts. One is obviously it takes longer for a detainee whether they are in custody or not in custody to get before a judge so their case can be resolved. And in any instance, justice delayed is not something we want to see happen. So, you have that delay.

You have increased costs if they are being detained by DHS, which has to house detainees who are incarcerated. And you then end up in a situation where the longer someone is in the country, whether in jail or not, it becomes more challenging to collect evidence, gather information, and reach a resolution.

Chairman GOODLATTE. Director Maurer, each of the President's Executive orders on border security immigration enforcement mandate that the Attorney General devote appropriate resources to "establish prosecution guidelines to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border." At present, does each U.S. Attorney's Office have the necessary resources to prioritize criminal immigration prosecutions?

Ms. MAURER. Certainly one of the primary challenges facing any U.S. Attorney or any prosecutor from that perspective is determining where to apply their scarce resources for investigations and prosecutions. We have not done our own independent work to assess the adequacy of the resources that are available to U.S. Attorneys, but changing in priorities like these does potentially present a challenge to them. Although it is not one that they are very used to having to handle.

Chairman GOODLATTE. Thank you. Inspector Horowitz, the House Judiciary Committee investigation found that the Department of Justice engaged in a practice of structuring settlements with financial institutions and others in a manner that required the institutions to make donations to third party non-victim groups. Can you contrast the level of DOJ oversight that takes place with respect to DOJ grant awardees and the recipients of mandatory donations from DOJ settlements?

Mr. HOROWITZ. Certainly. For grant oversight, that is something that each grant-making agency within the department does. They are responsible for direct oversight, and of course, we are there to oversee their oversight efforts as well as how the grant recipient handled the money.

For settlements, we generally do not have a role in oversight, because those are settlements reached by private—by the parties. The payments are made, oftentimes pursuant to a monitorship. And so, the oversight is often outsourced to a third-party monitor to watch over that. So, it is a completely different regime in terms of oversight.

Chairman GOODLATTE. And much less oversight with regard to the settlements, is it not?

Mr. HOROWITZ. Well certainly it is not the kind of oversight that the Congress has set up that we do. And so, I do not know specifically what is done, but it is certainly not the same kind of oversight that we are doing.

Chairman GOODLATTE. One of the DOJ's mandatory donation settlements explicitly provided that "the parties understand and agree that neither will monitor the use of the contribution by the recipient." Does this concern you from an oversight perspective?

Mr. HOROWITZ. I do not have direct knowledge of that, but any time someone writes an agreement that there will not be monitoring and oversight that concerns me.

Chairman GOODLATTE. And would that be the case with an ordinary government grant?

Mr. HOROWITZ. That would not be the case.

Chairman GOODLATTE. That would not be something—

Mr. HOROWITZ. Absolutely not.

Chairman GOODLATTE [continuing]. Government agencies would do or you would condone?

Mr. HOROWITZ. I can assure you we would be all over that if there was an effort to do it on the grant side.

Chairman GOODLATTE. So are these payments really then grants with no oversight?

Mr. HOROWITZ. Well, I am not sure whether you can even call them grants frankly. But if they are being done with those kind of provisions, there seems to be no oversight.

Chairman GOODLATTE. And would it be appropriate for Department of Justice lawyers to draft mandatory donation provisions in a way that makes conservative leaning legal aid groups ineligible or vice versa?

Mr. HOROWITZ. I would be concerned by a provision that did either, that conditioned grants on political positions.

Chairman GOODLATTE. What discipline would be appropriate if DOJ lawyers purposely drafted mandatory donation terms to keep conservative leaning legal aid groups from benefitting?

Mr. HOROWITZ. Well, I will focus on either way. But obviously, you would want to look on what the provisions were in place that regulated that kind of conduct. It goes back somewhat to my opening statement, which is that would go presumably to the Office of Professional Responsibility not to the OIG for review. But certainly, if prosecutors were conditioning dollars on political positions, that would seem to be in violation of department policies and regulations.

Chairman GOODLATTE. Thank you very much. My time has expired. The chair recognizes the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Inspector General Horowitz, I suppose, on February 17th, along with Mr. Jeffries and several other members of this committee, along with the ranking member, Mr. Conyers, I wrote to ask you to investigate whether the Trump administration, this is a quote, "Whether the Trump administration has engaged in any improper effort to intimidate or threaten whistleblowers under your jurisdiction or others who are seeking to expose misconduct by Trump administration officials."

Does your office plan to look into this matter? Is the conduct of the Trump administration so far with respect to “disloyal” staff give you cause for concern?

Mr. HOROWITZ. So, we are reviewing Congressman Cummings’ and Congressman Jeffries’ letter and considering what if, any, actions to take and we will be responding to that. What I can do is assure you and all the members of the committee that, as I said in my opening statement, we take whistleblowing seriously. And if we get reports of efforts to silence or intimidate whistleblowers, we will certainly consider how to respond to that action. But we are looking at the request.

Mr. NADLER. Your answer is you are looking into it?

Mr. HOROWITZ. Yes.

Mr. NADLER. Okay, thank you. Last Friday, a number of us wrote to you again and asked you to investigate reports of several improper contacts between the White House and the Department of Justice. Every Attorney General since the Carter administration has had guidance in place to limit contact between independent investigators and the political leadership of the administration. It seems that both President Trump and his Chief of Staff have ignored this guidance. Can I count on your office to look into this matter?

Mr. HOROWITZ. So, we just got the letter as you indicated, Congressman, on Friday and are looking at it. I obviously was aware from news reports of the allegations and we will get back to you on that and assess whether there is something for us to do. Keep in mind, and this is important to the discussion, the Inspector General’s Office—my office—does not have oversight authority over the Executive Office of the President or White House entities. So, our oversight there would be as to any contacts by the FBI or other organizations from that side of the contact.

Mr. NADLER. Well, you have jurisdiction over contacts to the FBI.

Mr. HOROWITZ. We would not have authority—and this has played itself out in prior reviews of ours in administrations of both parties—which is our ability to get information from White House entities in reviews we have done, Fast and Furious, other reviews, has been denied because our jurisdiction would be over DOJ employees. That does not mean we cannot look at what the contacts were from the point of view from the FBI. But I just want to note that we do not have the authority on that side.

Mr. NADLER. Does the fact that these conversations have taken place give you cause for concern?

Mr. HOROWITZ. An allegation that there was communication inconsistent with department policies would be a cause for concern, Congressman.

Mr. NADLER. Well, these are not allegations. These are undenied, are they not?

Mr. HOROWITZ. Well, I say that because I have not reviewed them.

Mr. NADLER. Okay.

Mr. HOROWITZ. I have read the press reports about them.

Mr. NADLER. Okay. To change the subject, your office has issued a number of reports about the department’s use of privately operated contract prisons to confine Federal inmates. I note that in Au-

gust of last year you found that, "In most key areas, contract prisons incurred more safety and security incidents" than comparable institutions run directly by the Bureau of Prisons. I think it is also fair to say that contract prisons have been rather lax, shall we say, in the medical area.

I am concerned about indications from Attorney General Sessions that the department will continue to rely on these private facilities. Can you summarize your work in this area so far and give us some reasons why the department might need to take corrective action?

Mr. HOROWITZ. Certainly. So, we issued, as you noted, the report last year about our oversight of how the BOP was overseeing contract facilities, looked at various measures, identified several, and concluded that when you looked at those measures, contract prisons, the track record of contract prisons was worse than the track record of the BOP. It compared unfavorably in the measures we looked at using the data the BOP—

Mr. NADLER. Did you look at medical outcomes and medical treatment too?

Mr. HOROWITZ. And, in addition, specifically as to medical issues, we identified concerns there as well including—and I was going to mention—several of the audits and contract audits we have done of specific private prisons where we have identified concerns and cost overcharges. The Reeves County review that we did 2 years ago comes to mind where we identified about \$4 million that the government collected in charges that should not have occurred. We have an ongoing audit of the use by the Marshals Service of the Leavenworth facility. And in those, we have looked at staffing issues as well as outcomes and have found areas, in the Reeves Report, for example, in particular areas of concern.

Mr. NADLER. You found that in medical outcomes there was a considerable difference?

Mr. HOROWITZ. Well, what we found was the staffing of medical positions were not consistent with what the contracts required and so I am thinking of the Adams County work that we did last year, the contract audit that we issued, and the Reeves County audit that we issued before that.

Mr. NADLER. My last question, very briefly, is you found that they were not providing as many medical staff members as the contract called for?

Mr. HOROWITZ. Correct.

Mr. NADLER. Have they, therefore, been required to disgorge some of their money back to the Federal Government?

Mr. HOROWITZ. And that is part of the \$4 million recovery that BOP gathered as a result of our audit. And it is certainly one of the recommendations that we have put forward is not just to worry about collecting the back pay but fixing the problem.

Mr. NADLER. And have you noted differences in medical outcomes because of this?

Mr. HOROWITZ. We did not go to that point, Congressman, as part of the audit.

Mr. NADLER. Do you not think that that is a rather important point to go to?

Mr. HOROWITZ. It is. Although I will say from our standpoint as we considered it, it would be challenging for us to look at a case

file of an outcome. We would then have to get a different medical opinion and consider whether you could essentially determine the outcome might have been different had there been different medical treatment. And that, from our standpoint, would have been a challenge. I do not have doctors, for example, on my staff.

Mr. NADLER. Okay. Thank you very much. My time is expired.

Mr. JOHNSON of Louisiana [presiding]. Thank you. The chair recognizes Congressman Biggs from Arizona for 5 minutes.

Mr. BIGGS. Thank you, Mr. Chairman. Director, in an audit or an assessment that the GAO performed with regard to VOCA grants in April 2015, it was determined that grantees were spending less than 20 percent on average of each grant they received during the original 12-month project period. And I am wondering if you can tell us why that was, what steps are being taken to make sure the grantees are distributing the money appropriately.

Ms. MAURER. Sure, absolutely. As a general proposition, it was taking the Department of Justice a long time to work through its own processes of getting the money from the Congress through its own system and out to the grantees. That was a big part of the problem. We made recommendations in our report that DOJ evaluate its administrative processes and figure out ways to streamline them so the grantees had more time to implement the grants. They are in the process of implementing those recommendations, but have not done so fully.

Mr. BIGGS. They have not done so yet?

Ms. MAURER. They have not, not fully. No.

Mr. BIGGS. Are they in the process of doing them?

Ms. MAURER. They are in the process, yes.

Mr. BIGGS. Okay. How much longer before they complete that process?

Ms. MAURER. Hopefully as soon as possible, but that is really on them.

Mr. BIGGS. Okay. Thank you. And Inspector General, a 2015 OIG report concluded that an Assistant U.S. Attorney mishandled sensitive but unclassified information by transmitting it to a personal email account. Was that attorney disciplined?

Mr. HOROWITZ. It is my understanding that that attorney was disciplined. Although I note we do not handle the discipline. We send it to the component for them to decide the discipline.

Mr. BIGGS. Right. What is the appropriate discipline for a person—

Mr. HOROWITZ. Well, frankly, one of the issues we have found over the years is that the department handles discipline differently depending on the components. And it is a recommendation we have made in the past about trying to get more consistent tables in place or other policies in place. And so, I think, obviously in every circumstance it would depend on a variety of factors. But it is obviously an area of concern that that attorney or any attorney would act in that manner.

Mr. BIGGS. And back to you, director. Drug court programs are one of the central elements to address opioid addiction. The DOJ through the Bureau of Justice Assistance maintains a drug court grant program. And HHS through the Substance Abuse and Mental Health Services Administration maintains another. Can you com-



ment on the existence of any overlap between those two programs, their respective differences, and their respective success rates or who is measuring those rates?

Ms. MAURER. Sure. Several years ago, we issued a report on the DOJ's side of the drug court's program and we found that, generally speaking, they seemed to have a positive impact in terms of reducing the amount of drug use as well as having positive impacts on recidivism. We have not looked specifically at the coordination between HHS and DOJ in their respective programs. I would note that the way it is laid out, it should be happening. They say that they have a common coordination structure, but we have not looked at that independently.

Mr. BIGGS. Have you thought about looking at that? I mean I would just like to know what is going on with it.

Ms. MAURER. I think it is a valid issue for oversight, but we would need a request from Congress to conduct that work.

Mr. BIGGS. Okay, thank you. The Burn JAG, I guess, is a grant program that provides States, tribes, and local governments with funding for law enforcement prosecution, et cetera. To what degree—and this is for each of you if you would each take a moment to respond to this—to what degree can efficiencies be achieved by reducing the number of programs that duplicate the allowable uses under Burn JAG?

Ms. MAURER. There is that potential. Obviously, that is a political decision because grant programs by and large stem from laws that Congress has enacted and the President signed. We have found examples where it may help eliminate some of those administrative barriers. It definitely places an additional challenge on the Department of Justice when there are allowable uses under JAG as well as in a parallel program.

For example, we issued a report on the Bulletproof Vest Partnership Act Program a few years ago. They had requirements for how State and local—or how local law enforcement received that grant money that was different for the requirements under burn JAG. It required some additional steps for DOJ to put some commonality across those requirements. So, it is not necessarily a bad thing to have parallel programs. It just puts additional burden on DOJ to administer them appropriately.

Mr. BIGGS. So, I guess, director, any advice on how we can—if you are running parallel programs and they sometimes complement, sometimes perhaps conflict just a little bit, any suggestions on how we streamline that? Make it easier to use?

Ms. MAURER. I think the real challenge falls back on the department itself. It is incumbent upon them to manage the array of grant programs that the Congress has established for the department to use. Certainly, transparency is part of that. Certainly, enhanced coordination and collaboration within DOJ is part of that. And that is backed by oversight from the Congress, the IG, and the GAO.

Mr. BIGGS. Inspector General?

Mr. HOROWITZ. I would echo what the director said. I think one of the challenges we face—I know we regularly discuss with GAO some of the challenges they face in looking at grant programs, which is are they overlapping? Are they duplicative? Or are they

filling different gaps? And that is a challenge because there is not as great a transparency as there should be. Our hope is the data act allows greater transparency over time. I think it will to some extent. The IG Impairment Act includes exemption from the Computer Matching Act. We are hoping that within the IG community we can have some of the tools that the GAO has had for several years to try to look at data more broadly.

But frankly, our hope is that the agency and the grant making components we oversee collect more data and make it more transparent because that allows not only for our oversight, but for better congressional oversight, better oversight by all the stakeholders out there who want to see the money going in the right place and not in duplicative ways.

Mr. BIGGS. And the Congress might need to act to facilitate that?

Mr. HOROWITZ. Correct. That is right.

Mr. BIGGS. Thank you, Mr. Chairman.

Mr. JOHNSON of Louisiana. Thank you. The chair recognizes Ms. Lofgren from California for 5 minutes.

Ms. LOFGREN. Hello. Thank you and I think this is a worthwhile hearing. I am interested, Director Maurer, in your written testimony you state that the Department of Justice and the FBI had failed to do proper testing of the FBI's new facial recognition technology, particularly as it related to error rates.

And the Department of Justice disagreed with that finding. Basically, as I understood it, their answer was that basically the false positives were not possible because there was a ranking only. And that did not make any sense to me. And in fact, as we looked at it, NIST, which is the gold standard of technology actually looked at this very issue in 2014 and did a report studying commercial facial recognition including the technology Morpho, which is the vendor used by the FBI.

And NIST, their report said that the false positive is absolutely a necessary part of determining the system accuracy. They found that in a database of 1.6 million photos Morpho's system failed to rank the correct individual as the best match 9.1 percent of the time. I mean, that is pretty significant. But even more serious, they failed to place the correct individual within even the top 50 7.1 percent of the time. So, this is a system that you rely on to your detriment.

NIST also found that the error rate increases as the database size increases. And so, if we add all the photos the FBI has access to—that does not mean they are using all of them at this point—that is 440 million photos and the error rate would be, I would guess, I mean, extrapolating unacceptably high.

So, I have several concerns about this. First, that the FBI apparently has no idea that the people it is being pointed to may not, in fact, be the people that should be identified. They apparently do not have the technological know-how to understand this error rate issue. And I guess the other question I have is why the FBI—they do some things very well—technology is not one of the things they are known to be the very best at. Why would they not reach out to the group that is the best when it comes to standard setting and technology like NIST to get some help on this. Can you answer those questions?

Ms. MAURER. Sure. First off, as a general proposition, we absolutely agree with your overall concern about the FBI's approach to accuracy and its use of facial recognition technology, which is a reason why we highlighted it in our report. And you are also correct that we agree that it is important for the FBI to consider the false positive rate in assessing the accuracy of its systems.

One, because NIST, as you also correctly pointed out, says it is a best practice for the use of facial recognition technology. We think that would enhance the FBI's ability to take advantage of what is a potentially very useful tool for carrying out its law enforcement mission. In addition to that, by not adequately testing for false positives, the FBI makes it more likely that they are going to unintentionally bring innocent people into investigative leads. That has very real-world implications for people who may be approached by the FBI at home or at their place of work.

We were, frankly, quite concerned about the FBI and the DOJ's response to our report, and we hope that they reconsider their position on accuracy and the FBI's use of facial recognition technology.

Ms. LOFGREN. Just to follow up on that, thank you for that answer. I understand that a couple of years ago the FBI also ran a pilot program using photographs from the Department of State passport photos of Americans, which is a huge number. And if you extrapolate the false positives on that, you are right. Innocent people will be fingered, but people who are of concern are going to be missed. So, I guess the question is are you intending to do further work with the DOJ and FBI? Or is that really up to the Congress to push them a little bit on this?

Ms. MAURER. Absolutely at a minimum we will continue to follow up on the status of our recommendations. We made six in that report. They only agreed fully with one. We are going to keep hounding them on the other five until they take action. But if we want to do additional detailed work on this, we would require a new request from Congress.

Ms. LOFGREN. All right. Well, that is something I think maybe the committee ought to look at. I do not think there would be a division along partisan lines on that topic. Just a further question, which I did not see in the report. Maybe I missed it. There are alternative methods for identifying technological in addition to fingerprints and facial recognition in terms of iris scans and the like that are now being used at entry points and the like. Is the FBI really, number one, set up to use that data? And have we looked at the reliability of that data as compared to facial recognition?

Ms. MAURER. We know that, generally speaking, the FBI is pursuing other uses of personally identifiable information to help support their mission. We have not looked in specifically at those kinds of technologies. That could be something that could be part of future work.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. JOHNSON of Louisiana. Thank you. The chair recognizes Mr. Collins from Georgia for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. I do not have a lot here, but I do want to explore something that is concerning. There has been an investigation going on that is looking into examinations regarding asset seizures and forfeiture—civil asset forfeiture from

2007–2014. Mainly it revolved around gun stores of the like dealing with IRS and others. I have a constituent, this Clyde Armory—this has been something that has been discussed a great deal in the Ways and Means Committee. We have been looking into this.

But there was something that I wanted, Mr. Horowitz. I wanted to discuss a little bit with you about this because it was initiated by the IRS, but it was litigated by the U.S. Attorney's Office. And I know there is this situation going on. And when Mr. Koskinen testified before Ways and Means last Congress about the IRS basically extorting the small business owner, they stated this. They said, "The IRS did not do that. The negotiations on settlement once it goes to court are in the realm of Justice Department and U.S. Attorney." Just some quick questions here. Can you provide me an update on this investigation and its scope? And when are you anticipating completing it?

Mr. HOROWITZ. If I understand which one it is, Congressman, and I am not sure—

Mr. COLLINS. This is the exemption regarding asset seizure and forfeiture activities from fiscal year 2007 to fiscal year 2014.

Mr. HOROWITZ. We have an asset seizure review going on, but it is not focused specifically on firearms. It is focused more on DEA action.

Mr. COLLINS. Well, in general. Okay, but would it catch firearms? Would it catch other assets and forfeitures or just simply drugs?

Mr. HOROWITZ. Mostly, what we found was most of the seizures that are going on in the department are on the DEA side and we were mostly looking at dollars.

Mr. COLLINS. Well, this is dollars as well. I mean, we had a gentleman who owned a store. IRS along with the background came in, seized assets. He ended up getting—basically got extorted for half the money on something that was—at the end of the day was not there. So, if it is not there, I think it is something we need to look into.

Mr. HOROWITZ. Right. And I anticipate us getting that report out in the next couple of weeks by the way.

Mr. COLLINS. Okay. Let me jump to the other. When DOJ, in your investigation maybe the DEA or others—when DOJ litigates on behalf of other agencies, who is ultimately responsible for the decisions made at litigation?

Mr. HOROWITZ. I will speak generally from my experience having been a prosecutor many years ago, which is ultimately it is the litigating authority at DOJ that makes the final decisions on what happens in the courtroom including resolution of the matters in the courtroom. That was my experience.

Mr. COLLINS. How much do you think DOJ actually—I mean, getting these—one of the concerns it seems like also they get to DOJ—before it actually gets to DOJ for prosecution, there is a lot of concern concerning IRS agents in particular and others in their discretion and how they are using that discretion with seizure authority and others. Is there ever a ceding of discretion to another agency by DOJ to say, "Look, we are not going to do this except when it gets to the court phase." Or, is there a collaboration beforehand?

Mr. HOROWITZ. Frankly, it often depends on the relationships and how close the working relationships are. You will find occasions where cross agency work between civil or criminal prosecutors and components outside the department is close and other times you will find they are not having a history of a close—

Mr. COLLINS. Well, I would love to see this. And civil asset forfeiture is something that actually that bridges both Republican and Democrat, this is a bipartisan, you know, very much of a concern. And it seems to me that there has been way too much latitude especially in the IRS around, on business it seemed to be politically motivated. Gun shops, other things, you know, and not even getting into the choke point issues on some other things that they were doing. But this is an issue that is concerning because here was a legitimate business that does a lot of cash influx. But it was—the assumption is you are guilty, prove you are innocent. And it is the IRS using authority that is tenuous at best and then having DOJ back it up into the arena of judgments and other things.

So, I mean, I think I am interested to see what this report is, but if it really does not hit on some of the others besides DEA activities, if we are not getting into IRS, then I would almost say that we need to look into both sides. I mean, there is legislation already moving on this. So, I just wanted to get some clarification. Because from Mr. Clyde and my position, here is a man who is basically extorted by the Federal Government for money, which he did, nothing wrong, at the end of the day had to go back and get. So, I think these are the issues that we need to continue to follow up on.

Mr. HOROWITZ. And completely understand the concern and as DOJ IG I have authority over the four DOJ law enforcement components. IRS obviously not being one of them. So, it—

Mr. COLLINS. Well, when it comes to DOJ that is the concern I have. There seems to be a ceding of authority from DOJ. We will take whatever you give us. We are not really concerned. And we just sort of enforce whatever you are asking us to enforce. That is at least the perception that you are the strong arm of the extortion sting that is going on. With that, Mr. Chairman, I yield back.

Mr. JOHNSON of Louisiana. Thank you, Mr. Collins. The chair will now recognize the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Let me thank both of you for your service. I think, Mr. Horowitz, you have been before this committee before and I want to reintroduce myself to Ms. Maurer. And thank you for the work. You are often before our committees and we appreciate it very much.

I have a series of questions and I want to lay the groundwork by indicating my interest in oversight over a series of executive orders that have been rendered since the administration of the 45th president. This has come about because of the implementation part of those orders. So, let me first start, Mr. Horowitz. We have been discussing and there will be a letter coming, but let me just ask the question. As you know, there have been newspaper reports that there was undue influence on a memo both constructed by the Homeland Security Department and the Department of Justice as a basis of the Muslim ban. Are you aware of those reports?

Mr. HOROWITZ. I have certainly seen news reports in that regard.

Ms. JACKSON LEE. And so, would the Inspector General be investigating that undue influence? Or what would legitimately provoke you to do so?

Mr. HOROWITZ. So, with regard to any actions by DHS or discussion in DHS—

Ms. JACKSON LEE. No, this is Department of Justice. Department of Justice.

Mr. HOROWITZ. In terms of the Department of Justice—

Ms. JACKSON LEE. The memo was constructed by both the DOJ and Homeland Security.

Mr. HOROWITZ. I just want to make clear on the DHS side—

Ms. JACKSON LEE. No, I am very clear on that.

Mr. HOROWITZ. Right. With regard to any actions by attorneys, one of the things we have talked about for years is the fact that we do not have authority over decision making by attorneys acting in their capacity as attorneys. That would be in the province of the Office of Professional Responsibility.

So, I do not know of whether anything is under review there or not and whether they have even gotten a referral or an allegation before them. But, anything that would come our way that would regard conduct by an attorney acting as an attorney in that capacity, we would have to look, whether under the IG Act, we even have jurisdiction to consider it.

Ms. JACKSON LEE. So the idea would be what was the undue influence to construct the document in the way that was constructed. Whether there was sufficient evidence or information that would warrant that kind—so that is sort of a technical aspect. So, I would then commend you to look at it and determine your jurisdiction, but to determine whether in the implementation something went awry with undue influence that generated that memo that generated that particular order.

Let me quickly go to Ms. Maurer. It has been reported that Eric Trump's recent business trip to Uruguay cost taxpayers nearly \$100,000 in hotel bills alone. It has also been reported that providing security for the First Lady to maintain a residence in New York City costs nearly double the amount it takes to fund the entire National Endowment for the Arts, a program that the President has proposed we eliminate in the name of budget priorities. Ms. Maurer, does the GAO plan any work in this area? What do you plan to study and when will you release your results?

Ms. MAURER. Yes, we have received some requests from different parts of the Congress to look at different aspects of that issue. For example, the House Homeland Security Committee has asked us to look at Secret Service's travel costs during the Presidential campaign. We also have a request that we recently received from Senate Judiciary and Senate Homeland Security to look at the issue of the cost incurred for Secret Service protection of the President's children when they are traveling overseas to directly address that.

Ms. JACKSON LEE. So will you look at those issues?

Ms. MAURER. We will definitely look at the cost incurred by the Secret Service and report on those sometime later. We have not yet started that work, so we cannot really give you timeframes.

Ms. JACKSON LEE. Thank you. Mr. Horowitz, let me give you two questions if you would answer. Under the immigration Executive

order, ICE officers have been given undue responsibilities or authority. They have sort of enhanced their authority and on occasion ICE officers have found themselves on church grounds and in courthouses, all is technically against the law, and have made decisions on issues that have, in essence, violated due process or ignored various petitions.

Number one question is whether or not you will be looking at that implementation from ICE officers' perspective. Then second, you may know the case of Daniel Chung who was forced to drink his own urine after he was left in a cell for 5 days without food or water.

He lost 15 pounds. College student. This was done at a DEA raid of a house in 2012. We know that you have released a report. My question is, has the DEA followed these recommendations? Has the DEA implemented a record keeping method to track detainee movement? Because they forgot he was in the cell.

Have they increased video monitoring of cell areas? Have they implemented training regarding the operation of the holding cell area? What has the DEA done to ensure its agents do not initiate improper investigations and instead report incidents to the Office of Professional Responsibility? So, if you can answer the new ICE, seemingly, expanse of their responsibilities and the question about the DEA.

Mr. HOROWITZ. So, on the ICE issue, unless they interacted with any of the DOJ components, I would have to contact and refer that to my colleague at DHS OIG because of his authority over ICE. So, I can follow up and ask him what he is—

Ms. JACKSON LEE. We have authority over internal enforcement, which is part of ICE's work.

Mr. HOROWITZ. Right, but that, ICE being part of the Department of Homeland Security at this point, I would have no jurisdictional authority to look at that under the IG Act. So, the DHS IG has authority over ICE and I will—

Ms. JACKSON LEE. You would not have dual authority?

Mr. HOROWITZ. No, we do not, actually.

Ms. JACKSON LEE. All right. Then go to the other, with the DEA too.

Mr. HOROWITZ. With the second one, I appreciate your following up on that. Let me get the current status to you. These changes have occurred because I know you followed up on these issues since they occurred in 2012. Other members have followed up and let me get right back to you on that.

That, I agree with you, was a terrible situation, should not have happened. There needs to be a reform and I know that you have taken a lead on that. So, I appreciate it.

Ms. JACKSON LEE. Thank you very much. I yield back. Thank you for your service.

Mr. JOHNSON of Louisiana. Thank you and the chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chair, appreciate the witnesses being here. I want to ask the Inspector General: with regard to the activity of the Civil Rights Division of the Justice Department, it has been considered rather historic, and I was noting the one Texas Federal judge was so shocked by the Federal Civil Rights Division

attorney's repeated lies that he ordered a blistering five part remedy that would supervise ethics training for hundreds of Justice lawyers, but he noted in his opinion the 132 ethical violations DOJ has admitted just in the past 4 years.

Pretty staggering, and when that is taken into consideration with the allegations that DOJ used settlements to wrench funds from defendants that it pursued to go to friends. In fact, one indication was the American taxpayer had been robbed in this article of, at least, \$3 billion dollars where DOJ directed settlement funds to go to reported nonprofits. Have you looked at that at all? How much money DOJ has spent pursuing litigation that resulted in money going to nongovernment nonprofits?

Mr. HOROWITZ. We have not taken a review of the costs involved, and the settlements that resulted, and how it was spent. I know that has been an area of concern for members of this committee, as well as the Appropriations Committee, and something we can take under advisement.

Mr. GOHMERT. You know, because in Texas, I looked at Texas law before that indicates that in Texas, if someone uses their official capacity as an attorney for the State of Texas to get someone to pay money to a third party, to anyone, in return for official action, like dismissing a lawsuit, then that would be a felony, a crime, and yet it appears to be something that happened with great regularity at the United States Department of Justice in the last 8 years.

Where, routinely, defendants were pursued and were ultimately coerced. If you will give millions to this, our favorite nonprofit, here, there, yon, then we will dismiss the case and we will have a settlement. So, that is why I was curious. I had never seen if there had been such an Inspector General Report or investigation into this area because, clearly, if something is worth pursuing by the U.S. Department of Justice, you would think it would be on behalf of the taxpayers and would result in at least acquiring enough money to pay their own attorney's fees, rather than using taxpayer funds to pursue defendants so that they could fund their favorite nonprofits. Has anyone made such a request for an investigation?

Mr. HOROWITZ. I do not recall us receiving a request or one of the private litigants sending us specific facts laying out the concerns. I will say, if we did get such a request, if it focused on the conduct of the lawyers and reaching a settlement at the department, that will take me back to what I mentioned earlier, which is the first thing we would have to do is look to see if we had jurisdiction even over those actions. We might, depending upon the facts, but we might not, depending upon the facts because of the limitation on our authority in the IG Act and whether we have to refer that allegation to the Office of Professional Responsibility.

Mr. GOHMERT. And if you did not have jurisdiction, then who would?

Mr. HOROWITZ. It would then go to the Office of Professional Responsibility, which is a component of the department, created by the department. Its director is appointed by the Attorney General and removed by the Attorney General.



Mr. GOHMERT. Right, do you know if anybody with that office has looked into the 132 ethical violations that DOJ admitted in a 4 year period?

Mr. HOROWITZ. I do not know.

Mr. GOHMERT. All right, I see my time is expired, thank you very much.

Mr. JOHNSON of Louisiana. Thank you and the chair would recognize Mr. Johnson of Georgia for 5 minutes.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman. Mr. Horowitz, May 11th will mark the fourth anniversary of a deadly joint drug interdiction operation by DEA agents and Honduran security forces, in which four innocent indigenous people were killed and three others were wounded and it has been at least 3 years since the DOJ and the State Department began conducting a joint review of this incident.

What I would like to ask you is you have been investigating these three incidents, actually, where DEA agents were supposed to be only acting as advisors but, yet, people were shot and killed. Innocent people shot and killed. Can you give us a status report on your initial findings on this investigation and when can the public expect to see the results of this investigation?

Mr. HOROWITZ. I would not get into yet what we found because the report is about to be released. We have been waiting for many, many weeks now to get final classification and other markings from the department and its components so that we know what we can release publicly, because we want to make sure we can let the public see what has occurred, in addition to the members who, obviously, can get all of the information. So, I am hoping that that can be released in the very near term.

I will say, the other thing is, as I think you may know, that held us up for a little bit of time is this review got caught up in the DEA several years ago refusing to provide us with timely access to information and so, for about a year, we were trying to get certain records that we were not being given. That has moved on, and so we were able to finally complete the review towards the end of last year.

Mr. JOHNSON of Georgia. You were able to get those records?

Mr. HOROWITZ. We finally were able to get those records. That is where the IG Impairment Act was so important to have our component understand what Congress expected. I think you will see a very full report about what occurred there and information that, I think, will answer a number of very important questions you and other members have raised.

Mr. JOHNSON of Georgia. Has the legal framework regarding access to information by the Inspector General's Offices impacted the ability for your agencies to conduct reviews?

Mr. HOROWITZ. It has until about a year or so ago. When, finally, we got complete and full cooperation starting from FBI and DEA, but it delayed the Honduras review, or it impacted the Honduras review. It impacted our review of sexual misconduct and harassment by the four law enforcement components, DEA and FBI held up records. It affected our materials witness warrant review. It impacted our mass security letters review. I could go on and on the reviews it impacted, but I am pleased to report that with the IG

Empowerment Act going through, I think in my instance, I am hoping those days are behind us.

Mr. JOHNSON of Georgia. Thank you. Last year, the New Orleans Advocate reported on the Federal case against two DEA agents. The investigation of the DEA's New Orleans office revealed improper conduct within a multiagency drug task force. A member of that task force faces nine counts, including drug trafficking, falsifying seizure reports, and robbery.

Another member operated as a DEA task force officer despite not having the required security clearance. He was allowed to access DEA workspace and transport seized drugs. Does the Inspector General or the Government Accountability office plan to investigate misconduct within multiagency drug task forces?

Mr. HOROWITZ. So, on that issue, as you noted, we were involved in that case, or are involved in that case, that is public given the public filings to date, and I can assure you, we are investigating that aggressively. We are working that with the FBI, and the DEA, and we will pursue all of the information we have gathered in that matter, but I cannot go into, obviously, the details of any investigation, but it is public that we are investigating.

Mr. JOHNSON of Georgia. Any idea when that investigation will conclude?

Mr. HOROWITZ. I would not even begin to suggest, having been a prosecutor myself in my earlier career, it really depends what the information shows and where the evidence takes us, and we will, obviously, want to pursue every lead because, as you noted, these are serious allegations and some of them are now public through the charging documents that have been filed.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman. I yield back.

Mr. JOHNSON of Louisiana. Thank you and the chair now recognizes Mr. Chaffetz of Utah for 5 minutes.

Mr. CHAFFETZ. Thank you. Thank you both for being here. Mr. Horowitz, I want to talk to you about the Bureau of Prisons and the reentry program that is brought up here. You were going to, I think at our request, conduct a review of halfway houses. Is there any sense of update as to the timing of that, something you can share with us?

Mr. HOROWITZ. So, we released a review towards the end of last year, as you know. BOP spends over \$300 million a year on halfway houses, and we looked at that issue, and we were concerned with how it is managing its halfway houses. These are an opportunity, given the wide variety of halfway houses out there across the country, for BOP to look at which ones are operating in the most effective way, whether they have got strong reentry programs, and what we basically found was that there was not meaningful, in our view, efforts to analyze which ones were doing well and which ones were not.

And, in addition, I know GAO has done work on this as well, we found that the people in the greatest need of halfway houses were not necessarily getting there because people who were low risk recidivists, like some white-collar defenders, were actually being placed in halfway houses rather than in home confinement. Thereby using up important bed space and some studies have suggested that that is actually more harmful than helpful because those indi-

viduals then get put in place where violent criminals, and so you have this odd use of limited bed space by the BOP, and something we were very concerned about.

Mr. CHAFFETZ. Now, so, when we talk about the \$400 million for its re-entry programs, is the halfway houses part of that 400 million? Do either of you know?

Mr. HOROWITZ. I am sorry. So, the halfway house program is considered one of the re-entry programs and I think it is fair to say, and the director can tell me otherwise, but I think it is by far the biggest amount of dollars involved.

Mr. CHAFFETZ. Do you have anything you want to, director, add to that?

Ms. MAURER. Absolutely, the work that we did looking at alternatives to incarceration echoes the findings that the Inspector General mentioned about alternatives, such as halfway houses and home confinement.

Mr. Chaffetz. There is no real metrics that they have put into place.

Ms. MAURER. No.

Mr. CHAFFETZ. Selfishly, I did introduce a bill that deals with re-entry. That we have a choice in this country, can make them better criminals or we can actually look at the key metrics that will reduce the rates of recidivism, but if the Bureau of Prisons is not implementing some key findings, things that have been done at the States about work programs, and religious services, and not getting in fights. You know, all these things that States have learned, but you do not see them doing much of anything in that, do you?

Ms. MAURER. Well, to give them some credit, they have established a re-entry division that is focused on better outcomes for their inmate populations, so they are better prepared for entering back into society. If they do not have measures of how well some of those key programs work, hard to know whether they are succeeding.

Mr. CHAFFETZ. I want to jump to the GAO report here, I have got just a minute. The ATF, it says, "to carry out its enforcement responsibility, ATF maintains 25 firearm related databases, 16 of which contained firearm purchaser information from the FFLs." Why do we have so many databases?

Ms. MAURER. That is a great question.

Mr. CHAFFETZ. It scares me if you do not know the answer to that, not because you are not good at what you are doing, but just because they probably do not know why they have 25 either, right? Why did they get there and are they doing anything to address it?

Ms. MAURER. They have explanations for all 16, we did not do an independent assessment of whether they needed 16, or 12, or 35. Generally speaking, the ATF has to balance the need to conduct criminal investigations that involve firearms, with the legal requirement that they not have a consolidated, single database for firearm purchaser information. So, another way of framing that is, they are required by law not to have a single database where all this information is stored.

If they did, it would be in violation of Appropriation Act restrictions that Congress has passed over the years. That was one of the findings of our report, was that in some specific instances they

were inappropriately consolidating information on purchases of firearms and violating the act.

Mr. CHAFFETZ. All right, that is interesting. Well, we will have to go back and explore what the history of that is. Lastly, I just wanted to talk about the FBI whistleblowers. We did pass it. I think it was, in fact, the last bill that we passed in the last congress, this was a bill of mine, FBI whistleblower retaliation, but you conclude by saying, "Department of Justice concurred with these recommendations but, as of March 2017, has not provided documentation of actions taken to address them." So, are they on a trajectory to actually do what the law now requires them to do, or is this the natural time progression that it takes, or are they kind of ignoring this whistleblower protection that is supposed to be in place?

Ms. MAURER. Well, certainly the Congress passing the law and have the President sign it into law was a major step in bringing the FBI's whistleblower protections on par with the rest of the government. So, that was a tremendous accomplishment. I honestly do not know why the Department of Justice has not responded to our recommendations. It is of concern to us, we issued our report 2 years ago. From our perspective, the implementation of those recommendations are not dependent on that piece of legislation. So, we are waiting to hear back from them on that.

Mr. CHAFFETZ. Inspector General, do you have any?

Mr. HOROWITZ. No, Congressman. It is very concerning that there is not swifter action to address these issues for the reasons that you sponsored, and others supported, and got through that whistleblower bill. There was an order issued by President Obama on PBT-19, as you know, that required the department and all the agencies in there to take action within 180 days and the department missed that deadline by many, many, many months, and it is something that the department needs to do a better job of.

Whistleblower issues, as we both have talked about, and I know as you have you have talked about, and the work you have done, they are the lifeblood of the oversight work that we do. They are good, ordinary people who are coming forth and reporting on waste, fraud, abuse, misconduct. They are our eyes and ears and they need to be seen and heard and never be afraid that they are going to be retaliated against.

Mr. CHAFFETZ. Thank you. Thank you, Chairman.

Mr. JOHNSON of Louisiana. Thank you and the chair now recognizes Mr. Jeffries of New York for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chairman and I want to thank the distinguished witnesses for your presence here today, and also for your service to this county. Inspector General Horowitz, you are familiar, of course, with the Second Chance Reauthorization Act, is that right?

Mr. HOROWITZ. I am.

Mr. JEFFRIES. And I believe this act says that the Bureau of Prisons, under the direction of the Attorney General, establish a prerelease planning set of procedures to help prisoners apply for Federal and State benefits upon release. Including Social Security cards, subject to any limitations in the law, is that right?

Mr. HOROWITZ. That is right.

Mr. JEFFRIES. And the act also says that the BOP director shall assist prisoners in obtaining identification. Which could include, beyond a Social Security card, a driver's license, or some other form of official photo identification, birth certificate, prior to release. Is that right?

Mr. HOROWITZ. Yes.

Mr. JEFFRIES. And, in connection with this statute, the Social Security Administration and the BOP, I think, are operating under a memorandum of understanding. Is that right?

Mr. HOROWITZ. That is my understanding, yes.

Mr. JEFFRIES. And have you had an opportunity to review how that memorandum of understanding is functioning in practice, in terms of implementation of the statutory mandates?

Mr. HOROWITZ. We looked broadly at how the BOP was working with other agencies, Social Security, where we found they did have the agreement and it was, as we understood it, a working relationship, but we looked at others where areas, like for veterans, they did not have a similar with the VA and other similar types of government agencies that could help reintegrate individuals with the support they need to get into the communities, that they had not taken those basic steps. It was something we were concerned about. We were concerned, more broadly, also about how they were preparing inmates for release.

Mr. JEFFRIES. You make a set of recommendations in terms of how the BOP could more successfully work with other Federal Government agencies, in terms of facilitating re-entry.

Mr. HOROWITZ. We did and I would have to follow-up and find out precisely where they are now, but that was, in fact, one of them.

Mr. JEFFRIES. Okay. Now, do you recall how many inmates on an annualized basis have requested help securing a Social Security card?

Mr. HOROWITZ. I do not recall as I sit here. I can certainly get that number for you.

Mr. JEFFRIES. And do you have a sense of what the success rate may be, in terms of a percentage?

Mr. HOROWITZ. Our understanding was that the MOU was working well. I do not have a number here that I could tell you what it was, but it informed our decision on looking at why there was not similar agreements with VA and others.

Mr. JEFFRIES. So, from the standpoint of securing additional forms of identification beyond the Social Security card, your concern is that in the absence of an MOU or in absence of any evidence that there are similar working relationships that the BOP is not doing as much as they could potentially be doing in these other identification areas.

Mr. HOROWITZ. Correct, and there is a support network out there where the basics that people could get, whether it is Medicare, Medicaid, veteran's benefits, if you are a veteran coming out of the facility, others, that we found the BOP was not doing a good job informing inmates of and then helping them gather the benefits they were entitled to. Which also would help protect the communities, because you want inmates to successfully reintegrate into

society. That should reduce recidivism rates and so that is a benefit all around.

Mr. JEFFRIES. Am I correct that this past November the DOJ announced that it will begin paying for every Federal inmate to obtain a birth certificate and or a State issued identification card before they arrive at a residential re-entry center?

Mr. HOROWITZ. I recall reading that, I do not know that specifically, Congressman, as I sit here.

Mr. JEFFRIES. Okay, Director Maurer, are you familiar at all with this program?

Ms. MAURER. I am not familiar with the specifics of that program. That goes for broad brush that while BOP has made some great strides on the reentry front, there is a lot more that they still need to do.

Mr. JEFFRIES. Thank you, I yield back.

Mr. JOHNSON of Louisiana. Thank you and last, but not least, the chair recognizes my learned colleague, Ms. Jayapal from Washington, 5 minutes.

Ms. JAYAPAL. Thank you so much, Mr. Chair. Thank you both so much Inspector General and director for your service and for your work.

I want to go back, Inspector General Horowitz, to the medical care issues and say that I am just deeply concerned about the reports that have been coming out around the issues of medical care within the private prisons and the BOP system. And, last year, The Nation magazine obtained records for 103 out of 137 people who have died in BOP private prisons. Only 77 of them provided enough information to actually look at the individual cases, but the conclusions even from those reports were damning: 38 deaths that involved inadequate medical care and inadequate medical care likely contributed to the 25 premature deaths.

And there are a number of cases along these lines, but one was a 41-year-old named Nester Garrai who was at a private BOP facility operated by the Geo Group in Texas, and I mention his case, in particular, because his cellmates yelled for help for 30 minutes after he suffered a massive stroke. And because the doctor was not on site, he lived 45 minutes away and, ultimately, it was almost 6 hours before he went to a hospital and died.

So, your office has conducted several audits on this. You have mentioned it in your statement. My question to you is what specific improvements have you actually seen and required from BOP around medical care?

Mr. HOROWITZ. So, what we have seen are the reports back on whether the steps they have taken are sufficient to meet out recommendations and to close them. I would have to go back and get specifics on what is, if any, still remains open on them. I believe there are some that are still open in some of those audits.

We have not, though, gone back, at this point everything is fairly recent in terms of our work, to do any follow-up work on site because, obviously, that would be a further way to assess it. But the first step is seeing if they actually implemented. I would add that the burden is also on the BOP because, as you know from our oversight report of what the BOP is doing, in any of the work we do, really the first line oversight is by the component who is spending

the money. They are primarily responsible; I have got 450 people to oversee 112,000 department employees. I have got a \$93 million budget to oversee a \$28 billion budget.

So, we cannot be the BOP's only oversight on these, but we do make sure through our follow-up, throughout follow-up questions, through their interactions and seeing their interactions with Congress and members, whether they are in fact making the reforms that we think are critical.

Ms. JAYAPAL. One of the issues is around—and your report mentions many times that, you know, the management of costs for the prisons—but one of my concerns is that one of the ways to cut costs is by cutting services and, so, do your recommendations include things like having onsite medical professionals and not cutting costs in specific areas that would actually cause death and better outcomes for our people that are in there?

Mr. HOROWITZ. Yeah, in both our contract prison report, but also actually as to our BOP oversight for its own institutions, we have consistently expressed concern as to whether there is sufficient medical care in the contract prison situation based on the contracts the BOP has written at the BOP institutions based on their own policies and the staffing challenges they have faced that we heard from when we were on the ground at facilities and making sure that that appropriate care is being given to inmates.

That is a constitutional requirement, if you are responsible for an inmate, you have got to give them appropriate medical care, making sure that is present. What our cost-related concerns have been is, interestingly enough, we found that BOP alone among the Federal Government is actually paying, in many instances, multiples of the Medicare reimbursement rates to care for at site prisoners. So, doctors who are treating inmates are actually getting reimbursed potentially at rates higher than the Medicare rate and therefore higher than the rates for treatment of veterans, military families, detainees, Native Americans through the Indian Health Service, all of whom are limited to Medicare.

Ms. JAYAPAL. That was one of my questions, I noticed in your report that there was a work group that was supposed to be established around that. Has there been any progress made on that?

Mr. HOROWITZ. We have not received a report yet of the further progress. I can assure you we are going to follow that. That is a \$100 million-plus costs saving potentially for the Justice Department and, in our view, there is no reason that the same reimbursement rate laws that apply to the Veterans Administration, the Defense Department, Homeland Security, the FBI, and the Marshals Service, by the way, within the Justice Department.

Ms. JAYAPAL. I urge that follow-up and I know my time is over. I will just say that having an MD on site, the penalties for this are actually lower than the cost of paying the doctor's salary. So, it is a huge issue and I hope that you will stay as vigilant as possible. Thank you, Mr. Chair, I yield back.

Mr. JOHNSON of Louisiana. Thank you and the chair recognizes Mr. Cicilline for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman; I thank you to our witnesses. Mr. Horowitz, after the President of the United States repeatedly made and refused to withdraw unsubstantiated claims

that President Obama ordered a wiretap of his phones, the Department of Justice and the FBI were pulled into an investigation of these baseless claims.

That investigation started on, at least, March 10th of 2017 when the House Intelligence Committee asked DOJ for any documents to support the President's false allegations and then continued through March 17, 2017 when the Department of Justice submitted a report to the House and Senate Intelligence Committees in compliance with this request.

This DOJ inquiry happened, despite the fact, that during this time period the White House put forward zero evidence to support this claim that Trump Tower had been wiretapped, and both the House and the Senate Intelligence Committees publicly stated that no such evidence existed.

And so, my question is, is it the Inspector General's responsibility to investigate if department resources are wasted, you particularly spoke about tight budget times, would you consider an investigation into allegations that are demonstrably false to be wasted resources and are you intending to investigate, or have you begun to investigate, whether taxpayer resources were wasted to support the agency's investigation into President Trump's false allegation that President Obama wiretapped Trump Tower?

Mr. HOROWITZ. First of all, in the substance, I only know what I have read in the paper. I am not privy to the classified requests or information back.

Mr. CICILLINE. But, I mean, you are privy to the fact that these are claims that are unsupported by the evidence. There was an investigation that was required by the Department of Justice, which I take it you would agree is a waste of resources in a time of constrained and limited resources, is not normally something you would look into?

Mr. HOROWITZ. Depending upon the issue we, obviously, could look at what the costs would be like of how long it took to gather the information or otherwise. Obviously, heard about and saw parts of yesterday's hearing, but we have not initiated any work in that regard and I would have to consider, frankly, what our role, if any, should ever be in something like that, given our limited resources.

Mr. CICILLINE. I would encourage you, in the discharge of your responsibilities, to do that. I think we are being asked to make serious reductions in a number of different areas because of cost constraints and wasting time by one of the departments as a result of a patently false statement from the President seems to me should be something we understand and try to prevent in the future.

The second question I want to turn your attention to is, after a 27-year career with the Justice Department, acting Attorney General Sally Yates was fired just 10 days into the new Trump administration, reportedly for refusing to defend the President's now unconstitutional Muslim Ban.

However, it subsequently came out that Sally Yates warned the incoming Trump administration that Michael Flynn had discussed sanctions during a conversation with the Russian Ambassador and then lied about it to the Vice President of the United States and, as a consequence, may be compromised or the subject of some ex-



tortion. Subsequently, U.S. Attorney Preet Bharara was one of the 46 Federal prosecutors instructed to resign by the Trump administration.

Two days before he was fired, the ethics watchdog group CREW sent him a letter asking him to investigate whether President Trump's business interests violate the Emoluments Clause and it is also been reported that at the time he was fired Mr. Bharara had been investigating HHS Secretary Tom Price for questionable stock trades.

And so, my question is, does it violate Department of Justice protocol if an employee is fired due to the nature of an investigation in which they are engaged? Can the President or the Attorney General fire a DOJ official because they do not like the target of an investigation that that official is undertaking? And if you believed a DOJ employee were fired because of political considerations, would that be something that your office would investigate?

Mr. HOROWITZ. I do not know enough facts to opine on the first two issues. Clearly, as to the last, if there was evidence presented that an employee was fired to try and shut down an investigation or otherwise interfere with it, that would be, obviously, something serious and we would look at the predicated facts and consider what had occurred.

Mr. CICILLINE. Well, but based on what you already know, do you intend to review this to determine if, in fact, that is the case?

Mr. HOROWITZ. We would, just generally speaking, require before we open an investigation some predicated facts on it beyond—and I am confident if Mr. Bharara or former DAG Yates thought that was an issue here they would not be hesitant to reach out and report that kind of information to me. I mean, it would depend on what we got, what information we got, and what we were told, and what witnesses were reporting to us and claiming to us.

Mr. CICILLINE. And finally, Mr. Horowitz, last Friday, House Democrats wrote to you and asked you to investigate reports of several improper contacts between the White House and the Department of Justice. Every Attorney General since the Carter administration has had guidance in place to limit contact between independent investigators and the political leadership of the administration. It seems that both President Trump and his Chief of Staff have ignored this guidance, and can we count on your office to look into this matter, and does the fact that these kinds of conversations have taken place give you cause and raise some concern with you?

Mr. HOROWITZ. So, I did get the letter Friday late in the day and we are looking at and considering it. I have not made any decisions yet on how to proceed. That is normally something we would consider before making any decisions on but, obviously, if, you know, any instance where there is department policies that have been challenged, put at risk, or action taken that is something we would certainly consider. Thank you.

Mr. CICILLINE. I thank you and thank you for the indulgence Mr. Chairman, I yield back.

Mr. JOHNSON of Louisiana. Thank you, we are almost done. Thank you both for being here. The chair recognizes myself for 5 minutes. In 2016 DOJ OIG issued a report on the DOJ's National Security Division's enforcement and administration of the Foreign

Agents Registration Act, and the report concluded that there was much needed improvements to NSD's enforcement and administration of FARA, the Foreign Agents Registration Act.

Additionally, the report highlights that a number of recommendations have been repeatedly made, this is a quote, "over the years in reports by the Government Accountability Office and its predecessor, the General Accounting Office, and by the public interest organizations and that these recommendations should be seriously considered if the purposes of FARA are to be fully realized."

So, I have begun working to draft some legislation that will try to seek some common sense methods to improve transparency in oversight in foreign donations influencing U.S. policymaking. So, the question I had today, I guess for both of you, is whether you would be willing to commit to working with my office to determine what some of those commonsense efforts might be?

Mr. HOROWITZ. Absolutely, this is an important area. I agree with you that there needs to be some reform in this area.

Ms. MAURER. Absolutely, I would be happy to work with you as well and we would coordinate with our colleagues at the IG that our work is complimentary with each other.

Mr. JOHNSON of Louisiana. Thank you very much for that. In the 2016 report, you also state that the number of FARA registrants has fallen in recent years and I was just curious what you would say the decline is attributable to. If it is due less to active involvement by foreign governments or issues due to a lack of comprehensive FARA enforcement strategy. What do you think about that?

Mr. HOROWITZ. I do not think we saw evidence that would allow us to include the former. I think part of it was enforcement questions, part of it was what appeared to be confusion over the scope of FARA versus the Lobbying Disclosure Act and which applied and where should the registration occur, and the importance of the department making it clear to the public and potential registrants when they needed to come forward and register.

Mr. JOHNSON of Louisiana. Another line of questioning, the role of inspectors general, involves keeping Congress fully and currently informed about fraud and abuse within Federal agencies and programs, and we have discussed a lot of that today. Certainly, includes complete and thorough investigations. But we are aware during the last administration efforts were taken to deny substantial access to requested information to review DOJ and agency corruption, waste, fraud, and abuse, and it was based upon an Office of Legal Counsel legal opinion. So, the question is, where does that stand today and has there been necessary actions taken to try and remedy that problem?

Mr. HOROWITZ. So, with regards to access, I think and it should be the case, that the IG Empowerment Act resolved that. That Congress made it clear what I think all of us thought was already clear, but maybe if you have got to say it twice people listen, and that we have access to records. I think GAO still has issues, frankly, on some of these. I know we compare notes on these questions but we have not had an issue since that passed. Hopefully, that resolves it.

We still think there are steps that could be taken to advance our ability to do oversight like testimonial subpoena authority. Something that was in the bill originally and was taken out, and the bill passed by the House, taken out at the last minute by the Senate bill, which was, ultimately, the bill passed by the House.

We have been discussing with the chair of this committee and other committees that possibility and I would say, just generally speaking in terms of oversight, perhaps one of my biggest concerns is the budget issues. Not having a budget into this fiscal year, not knowing where we are going next fiscal year, we do have a very strong return on investment.

The total amount of money invested in our office, for example, is 0.33 percent of our department's budget. So, we are an extraordinarily small part of the department's budget and that is, frankly, where our concern is on oversight going forward.

Ms. MAURER. Just real quickly, in terms of GAO's access, two quick points. First, I want to thank the Congress, one of the very first bills this Congress enacted was a bill that underscored GAO's statutory right to access, to conduct our works. That was much appreciated.

Secondly, we are dogged and persistent in pursuit of our oversight responsibilities. We, by and large, get what we need to do the work that we do for the Congress. And so, sometimes there are delays at the Department of Justice, but we have been able to work through them.

Mr. JOHNSON of Louisiana. So, there is no current cases where this is negatively impacted your ability to conduct oversight of funds then?

Ms. MAURER. Nothing materially, no.

Mr. JOHNSON of Louisiana. That is it. We are grateful for your time today. This will conclude today's hearing and thanks to both of our witnesses for attending.

Chairman GOODLATTE. Without objection, all members will have five legislative days to submit additional written questions for the witnesses, or additional materials for the record, and this hearing is adjourned. Thank you.

[Whereupon, at 3:32 p.m., the committee adjourned subject to the call of the chair.]

BOB GOODLATTE, Virginia  
CHAIRMAN

JOHN CONYERS, JR., Michigan  
RANKING MEMBER

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Fifteenth Congress

March 30, 2017

The Honorable Michael E. Horowitz  
Inspector General  
United States Department of Justice  
950 Pennsylvania Avenue NW, Suite 4706  
Washington, D.C. 20530-0001

Dear Inspector General Horowitz,

The Committee on the Judiciary held a hearing on "Examining Systemic Management and Fiscal Challenges within the Department of Justice" on Thursday, March 9, 2017 in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers to the Committee by Thursday, April 27, 2017 via email or postal mail to the Committee on the Judiciary, Attention: Alley Adcock, 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Alley Adcock on my staff at 202-225-3951 or by email: [Alley.Adcock@mail.house.gov](mailto:Alley.Adcock@mail.house.gov).

Thank you again for your participation in the hearing.

Sincerely,



Bob Goodlatte  
Chairman

Enclosure

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**HEARING ON EXAMINING SYSTEMIC MANAGEMENT**  
**AND FISCAL CHALLENGES AT DOJ**  
**MARCH 30, 2017**

**Questions for the Record—Inspector General Horowitz**

Agency Compliance with GAO Recommendations

1. A media analysis found that IGs withheld the identities of government wrongdoers in 88% of their reports. Accordingly, we must rely on the employing agencies to impose the proper sanction on the unnamed individuals. Have you studied how often agencies follow OIG recommendations regarding specific individuals, and are you satisfied with the results?

Bureau of Prisons—Reentry

One strategic objective of the BOP is to “provide productive work, education, occupational training, and recreational activities which prepare inmates for employment opportunities and a successful reintegration upon release.”

BOP invests more than \$400 million a year into its reentry programs and requires that most sentenced inmates participate in its Release Preparation Program. Nevertheless, the OIG found in an August 2016 review that BOP had no performance metrics to determine whether its Release Preparation Programs successfully prepare inmates for release. In addition, the OIG noted that BOP has not released comprehensive statistics on the recidivism rate of federal prisoners in more than 20 years.

2. Does BOP have reliable internal statistics on the recidivism rate of federal prisoners that are less than 20 years old?

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- a. Is it your understanding that BOP is working to remedy this breakdown?
- b. What data elements will be key to a robust examination of BOP's recidivism rate and an evaluation of the merits of its Release Preparation Programs?
- c. What are some of the weaknesses in BOP's implementation of its Release Preparation Program that hinder BOP's efforts to successfully transition inmates back into the community?

Duplication and Overlap of Programs

In General

3. Grant recipients awarded funds directly from the Office of Justice Programs and the Office on Violence Against Women may in turn award them to subrecipients. Likewise, states receive victim assistance funding and subgrant their awards as well. In your opinion, do DOJ's efforts to avoid awarding similar grants to the same recipients breakdown at the subrecipient level or is DOJ able to effectively minimize the duplication?
4. What are the inherent oversight challenges of subgranted funds?
5. In your opinion, what are the most significant areas of overlap across DOJ components?

Crime Victims Fund

Crime victim assistance grants administered by the Office of Victims of Crime support domestic violence shelters, rape crisis centers, child abuse programs, and victim service units in law enforcement agencies, prosecutors' offices, hospitals, and social service agencies. These

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programs provide services that include: crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation.

6. Have you reviewed or observed the extent to which this funding overlaps other DOJ grant programs? If so, what are your takeaways?

State & Local Law Enforcement Assistance

The Byrne Justice Assistance Grant Program is the leading source of federal justice funding to state and local jurisdictions. Also known as "Byrne JAG," this flagship formula grant program provides states, tribes, and local governments with funding for a range of activities including law enforcement, prosecution, indigent defense, courts, education, corrections, drug treatment, technology improvement, and crime victim and witness initiatives. It can be used for everything from equipment to officer salaries.

Numerous grant programs make funding available for activities that are also allowable uses of Byrne JAG formula grant awards.

7. To what degree can efficiencies be achieved by reducing the number of programs that duplicate allowable uses under Byrne JAG?

8. In your opinion, recognizing the challenging budget environment we face, is it ever wise from a fiscal perspective to stand up new programs that duplicate allowable uses of Byrne JAG formula grant funding?

Crime Victims Fund

The distribution formula of the Crime Victims Fund provides for the disbursement of a portion of the available funds to eligible crime victim assistance programs through the states. All

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told, the vast majority of available Crime Victims Fund amounts each year are allocated to victim assistance programs. In FY 2015, the Office of Victims of Crime disbursed roughly \$2 billion to the states and territories in victim assistance funding, a sum comparable to the total amount of funds awarded by the Office on Violence Against Women, Office of Justice Programs, and the Office of Community Oriented Policing Services combined.

9. Your office received an extra \$10 million just to support the additional oversight this volume of grants requires. Is the additional funding adequate?

10. What can you tell us about the subgrantees who receive these funds from their states and what are the challenges involved in overseeing such an enormous amount of annual grant funding?

11. What are the challenges in evaluating the efficacy of these grant awards and to what extent do you consider it a role of the OIG to evaluate the effectiveness of grants?

12. How can DOJ assess whether an applicant has the capacity to manage large amounts of grant funding? Do DOJ's grantee selections adequately reflect this reality?

13. How has the steep increase in OVC allocations affected the OIG's work? You've received an infusion of \$10 million supplemental funding to address the additional workload resulting from the need to audit more OVC grants?

#### Grantee Compliance and Grant Efficacy

14. In what percentage of grant audits the OIG completed last year was it revealed that grantees used funds for unallowable expenses?



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15. Do you see any distinction in the level of compliance between recipients of formula grant funding vs. grants that are competitively awarded?

16. Do primary grantees have any role in overseeing the proper use of subgranted formula grant funding, or does oversight fall exclusively to the federal government?

17. How do you select grantees for auditing? Are any selections made at random, or do you always employ a risk assessment in the process? What are the risk factors you employ in targeting your audits?

18. Do you observe any greater degree of compliance in programs that require recipients to invest in the programs by matching their federal funding?

#### Executive Office for Immigration Review

##### Performance

The OIG's October 2012 review of the management of immigration cases the Executive Office for Immigration Review found that performance reports were incomplete and overstated the actual accomplishments of the courts. Your office noted that these flaws in EOIR's performance reporting precluded DOJ from accurately assessing the courts' progress in processing or identifying needed improvements.

Additionally, the OIG report revealed that in January 2010, EOIR abandoned completion goals for cases involving non-detained aliens who do not file asylum applications, which made up about 46 percent of the courts' completions. At that time, the OIG estimated that cases involving non-detained aliens took on average 17½ months to adjudicate, with some cases taking more than 5 years to complete.

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19. Do you have any updated statistics on the average length of time it takes to adjudicate cases involving such aliens?
20. How much confidence do you have in the accuracy of EOIR's performance reporting at this time?
21. To what extent does DOJ currently mandate case completion requirements from EOIR? If they are mandated, what are they and how are those requirements disseminated to the immigration judges in the field?

According to the OIG's 2012 report, from FY 2006 through FY 2010, the overall efficiency of the immigration courts did not improve even though there was an increase in the number of judges. In 4 of those 5 years, the number of proceedings received was greater than the number of proceedings completed.

22. Did you find that this phenomenon was largely attributable to the growing number of cases or something else?

#### Hiring Challenges & Cyber Security

The OIG's March 2016 audit of the FBI's Regional Computer Forensic Laboratory in Hamilton, New Jersey, found that the lack of qualified examiners with advanced training contributed to the material backlog at that facility.

23. In your opinion, is DOJ able to recruit the best talent? What are the key reasons it is challenging to recruit adequate numbers of highly-skilled computer or cyber professionals?
24. According to the OIG's 2016 Audit of the FBI's Cyber Threat Prioritization report, the cyber Threat Review & Prioritization process (TRP) "does not prioritize cyber threats using an

Inspector General Horowitz  
March 30, 2017  
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algorithmic, objective, data-driven, reproducible, and auditable manner.” The report further states that the “TRP may not be agile enough to identify emerging cyber threats.” If that is the case, what can be done to find a more effective process?

Community Relations Service

In 2016, J. Christian Adams (a former DOJ attorney and current political commentator) reported that sources at DOJ had revealed how two officials in the Justice Department’s Community Relations Service (CRS) were responsible for “systemic abuse of power, fraud, waste, abuse, retaliation, bullying, [and] discrimination.” The complaints by federal employees working at CRS, according to Mr. Adams, “allege the use of federal money for personal travel, including one Atlanta manager flying to see a dentist in his hometown of Miami, and a Dallas manager flying to New Orleans on tax dollars to dine at Emeril Lagasse’s restaurant in New Orleans.”

25. Is the Office of Inspector General aware of these complaints? If so, is the OIG investigating the complaints and will you make its findings publicly available?



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548

April 27, 2017

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
House of Representatives

*Department of Justice: GAO Responses to Posthearing Questions for the Record Related to Management and Fiscal Challenges*

Dear Mr. Chairman:

On March 21, 2017, I testified before the Committee on the Judiciary on the Department of Justice's management and fiscal challenges. This letter responds to the 25 questions for the record that you posed. The responses are based on work associated with our previously issued products. Your questions and my responses are enclosed.

If you have any questions about this letter or need additional information, please contact me at (202) 512-8777 or [maurerd@gao.gov](mailto:maurerd@gao.gov).

Sincerely yours,

A handwritten signature in cursive script that reads "Diana Maurer".

Diana Maurer  
Director, Homeland Security and Justice

Enclosure

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**HEARING ON EXAMINING SYSTEMIC MANAGEMENT****AND FISCAL CHALLENGES AT DOJ****MARCH 30, 2017****Questions for the Record - Director Maurer****Agency Compliance with GAO Recommendations**

1. On April 5, 2016, GAO issued a report finding that two HUD officials had attempted to prevent an employee from speaking to the Judiciary Committee in the context of an investigation of Tom Perez. Pursuant to the penalty provided for by law, GAO recommended that HUD "seek to recover these [salary] payments" to the officials implicated for the period comprising the violation. Has GAO been able to determine if HUD complied?

According to HUD officials, as of April 2017, the department is examining the issue but has not yet determined whether it will be seeking to recover the salary payments.

2. GAO reported that, in 2013, 15% of DOJ funding was derived from sources outside of Congress, specifically DOJ collections of fines, fees and penalties.

In 2015, we reported that 15 percent of the Department of Justice's (DOJ) total budgetary resources came from seven alternative sources of funding in fiscal year 2013: (1) Assets Forfeiture Fund, (2) Crime Victims Fund, (3) Diversion Control Fee Account, (4) Federal Bureau of Investigation (FBI) Criminal Justice Information Services Fingerprint Checks fees, (5) Federal Prison Industries, (6) Three Percent Fund, and (7) United States Trustees System Fund.<sup>1</sup>

- a. What is the figure for FY16, broken down by source?

For fiscal year 2016, DOJ reported that the seven alternative sources of funding provided about \$8.1 billion in budgetary resources available to DOJ, after considering limitations, rescissions, recoveries, and unobligated carryover. This represented about 17 percent of DOJ's reported \$48.4 billion in total budgetary resources for fiscal year 2016.<sup>2</sup> Table 1 shows collections and total available resources from the seven DOJ alternative sources of funding for fiscal year 2016.

<sup>1</sup>For a description of these alternative sources of funding, including the laws governing collections and purposes, as well as DOJ fund management, see GAO, *Department of Justice: Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed*, GAO-15-48 (Washington, D.C.: Feb. 19, 2015). For the purposes of our 2015 report, "alternative sources of funding" refers to collections by DOJ and other agencies that are available to DOJ to obligate and expend.

<sup>2</sup>Budgetary resources represent the amount available to enter into new obligations and liquidate them. Budgetary resources are made up of new budget authority and unobligated balances of budget authority provided in previous years. DOJ's total budgetary resources are a total of both annual and mandatory appropriations available during the fiscal year, including all transfers from other agencies, and available collections from fines, fees, and penalties.

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**Table 1: Department of Justice (DOJ) Collections and Total Available Resources from Seven Alternative Sources of Funding for Fiscal Year 2016 (dollars in thousands)**

<b>Funding source</b>	<b>Total available resources<sup>a</sup></b>	<b>Collections<sup>b</sup></b>
Assets Forfeiture Fund	\$1,892,528	\$1,971,800
Crime Victims Fund (CVF)	3,092,000 <sup>c</sup>	1,486,358
Diversion Control Fee Account	561,789	405,915
Federal Bureau of Investigation Fingerprint Checks Fees	670,386	248,086
Federal Prison Industries	733,368	613,541
Three Percent Fund	889,456	368,009
United States Trustees System Fund (USTSF)	246,446 <sup>d</sup>	148,300
<b>Total</b>	<b>\$8,085,973</b>	<b>\$5,242,009</b>

Source: GAO analysis of DOJ information.

Note: For information regarding how GAO defined DOJ's alternative sources of funding, selected these seven funds, and reported on DOJ's financial activities with respect to these sources, see GAO, *Department of Justice: Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed*, GAO-15-48 (Washington, D.C.: Feb. 19, 2015).

<sup>a</sup>Total available resources represent amounts available to DOJ to obligate during fiscal year 2016 that included any unobligated balances available from previous fiscal years. It also considers adjustments such as sequestrations, temporary or permanent rescissions, or obligation limitations to balances.

<sup>b</sup>Collections represent deposits from fines, fees, or penalties received during the fiscal year, regardless of whether amounts were subject to sequestration, rescissions, or other limitations to DOJ's ability to obligate funding.

<sup>c</sup>CVF total available resources are subject to an obligation limitation that is set by law.

<sup>d</sup>USTSF collections are based on reported projections in DOJ's fiscal year 2017 congressional budget submission. USTSF appropriations are set in law through the annual appropriations process. USTSF available resources reflect the appropriated amount and do not include any unobligated balances in excess of the appropriated amount.

In addition to the total resources DOJ had the authority to obligate, DOJ had balances in two of the seven alternative sources of funding totaling about \$6.5 billion that were by law not available for the department to obligate during fiscal year 2016. These are not counted as a part of DOJ's budgetary resources.<sup>3</sup>

DOJ does not separately report collections or unobligated balances for the Crime Victims Fund, FBI Fingerprint Checks Fees, or Three Percent Fund in its congressional budget submissions or annual financial statements. Further, DOJ's congressional budget submissions include projected collections and resources for the current fiscal year because the submissions are compiled before the fiscal year is over. In addition, the amounts reported are typically not reconciled to the financial systems within the Treasury Department that track and report DOJ's accounts. As a result, we requested collections and available resources from DOJ for these sources of funding, which are shown above in table 1.

**b. What sorts of challenges can arise for the system of checks and balances when an agency is funded outside of the annual discretionary budget process?**

Not including budgetary information on funds like the FBI Fingerprint Checks Fees and Three Percent Fund in the President's Budget may pose challenges for congressional oversight. However, Congress has the power to review all funding, and controls the

<sup>3</sup>DOJ reported that the Crime Victims Fund had about \$6 billion that was unavailable for obligation because of an obligation limitation for fiscal year 2016. DOJ also reported that the Assets Forfeiture Fund was subject to a temporary rescission of \$458 million and permanent rescission of \$746 million.

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extent to which amounts can be collected and obligated, including for specific purposes. When providing budget authority, Congress can delegate some flexibility to agencies in how they exercise their authority to use the funds, or Congress can retain more control.

Our work highlighted the options that Congress has used to increase or decrease agency flexibility related to the use of DOJ's seven major alternative sources of funding, which are collections available to DOJ to obligate and expend, such as from fees, fines, and penalties.<sup>4</sup> For example, fees paid by bankruptcy debtors that are deposited into the United States Trustee System Fund (USTSF) are not available until they are appropriated each year. In addition, DOJ is required to transmit a detailed report on collections and expenditures for the USTSF after the end of each fiscal year. On the other hand, excess unobligated balances remaining in the Assets Forfeiture Fund (AFF) are available to DOJ, subject to certain notification procedures, "for any federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of [DOJ]."<sup>5</sup> However, Congress has increased control over the AFF through the annual appropriations process by including an obligation limitation and directing that funds be used for specific activities since fiscal year 2013. As this example shows, Congress always retains the "power of the purse" to appropriate funds and prescribe the conditions governing the use of those funds.

**3. Should we be concerned that the 3% Fund, which allows DOJ to retain a portion of civil penalties that it recovers from defendants, could create inappropriate incentives to pursue marginal cases or inflate fines?**

The DOJ Three Percent Fund is an account composed of 3 percent of amounts collected "pursuant to civil debt collection litigation activities." According to DOJ officials, civil debt litigation activities may include activities such as bringing civil cases to court or conducting administrative activities such as tracking unpaid debts and issuing notices for payments due. DOJ uses the Three Percent Fund to pay for these for these activities, among others. To manage and distribute funding for the Three Percent Fund, DOJ has taken the following steps:

- DOJ established the Collection Resources Allocation Board with two standing committee members—the DOJ Controller and the Director of the Debt Collection Management Staff—and one nonpermanent member, who is currently the Chief Financial Officer of the U.S. Marshals Service. Components represented on the board as nonpermanent members may not receive funding from the Three Percent Fund.
- DOJ has written formal guidance to communicate the broad priorities and the order in which activities are to be funded.
- The Collection Resources Allocation Board issues annual calls for funds for all effected agencies, reviews awards, and develops funding memos that identify the award amounts and the purposes for which awards are to be used.

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<sup>4</sup>GAO-15-48.

<sup>5</sup>28 U.S.C. § 524(c).

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To help ensure the efficient use of resources for the Three Percent Fund, we recommended that the Attorney General develop a policy and implement procedures to regularly analyze unobligated balances and develop collection estimates in order to determine an appropriate reserve amount and inform estimates of future funding needs.<sup>6</sup> DOJ partially concurred, and as of March 2017 was working to improve how it analyzes unobligated funds needed for future fiscal years for the Three Percent Fund. However, during our review, officials representing the Collection Resources Allocation Board stated that they believe that soliciting information from litigating units to develop estimates for collection amounts from year to year may be viewed as inappropriate pressure on litigators. For example, DOJ does not query litigating components for the number of cases that will be settled because the department does not want to be perceived as inappropriately encouraging larger government civil collections.

In our report, we acknowledged DOJ's concern about soliciting information from its litigating units. However, we believe these concerns could be mitigated by developing strategies for projecting collections without a negative perception in order to conduct analyses of unobligated balances to, for example, help estimate future collections or determine future reserve needs. By developing estimates, DOJ would be better positioned to ensure that balances do not fall too low to efficiently manage operations or rise to unnecessarily high levels. Therefore, we consider this recommendation only partially implemented and will keep it open until DOJ develops collection estimates to aid managing the Three Percent Fund.

**a. Since Congress established the fund in 2002, how sharply have DOJ civil recoveries increased?**

In our 2015 report, we found that from fiscal years 2009 through 2013, collections for the Three Percent Fund increased from \$83 million to \$158 million—an increase of about 90 percent.<sup>7</sup> Collections in fiscal year 2016 were \$368 million—more than 4 times the amount collected in fiscal year 2009.

**b. What would happen if Congress eliminated the 3% fund?**

If Congress eliminated the Three Percent Fund and did not provide other sources of funding, DOJ would have fewer resources for a variety of activities. Our work showed that DOJ uses these funds for several activities, including managing and undertaking debt collection, as well as the costs of conducting civil and criminal litigation.<sup>8</sup> For example, the Three Percent Fund is currently the sole source of funding for DOJ's Debt Collections Management Staff (DCM) and its information technology systems, such as the Consolidated Debt Collection System (CDCS). DCM is responsible for managing all collections passing through CDCS, including almost all criminal and civil fines, fees, and penalties originating in DOJ and other amounts referred from outside agencies. Such agencies include the U.S. Army and Navy, Federal Trade Commission, U.S. Customs and Border Protection, and Internal Revenue Service, among others. From fiscal years

<sup>6</sup>GAO-15-48.

<sup>7</sup>The Three Percent Fund was established in 1994, and the allowable use of the fund was expanded in 2002. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994, Pub. L. No. 103-121, § 108, 107 Stat. 1153 (1993); 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 11013, 116 Stat. 1758 (2002).

<sup>8</sup>GAO-15-48.



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2009 through 2013, DOJ allocated about \$97 million for DCM programs.

Other Three Percent Fund amounts have gone to DOJ's litigation support activities. For example, from fiscal years 2009 through 2013, the two largest components receiving funding for litigation and other debt collection support were the U.S. Attorneys' offices and the Civil Division, receiving a total of about \$200 million and \$156 million, respectively. In comparison, from fiscal year 2009 through 2013, DOJ-reported appropriations for the U.S. Attorneys' Offices and the Civil Division totaled \$9.6 billion and \$1.4 billion, respectively.

**4. Could you explain in layman terms the effect that the restricted balances in the Crime Victims Fund have on DOJ's reporting of its annual discretionary budget authority? Can you understand why some people would call it a budget gimmick?**

The key issue to understand is the difference between DOJ's total discretionary budget authority for purposes of entering into obligations and DOJ's discretionary budget authority for purposes of scorekeeping in the appropriations process.

- DOJ's total discretionary budget authority generally represents the amount of appropriated funds DOJ receives from Congress. To put it another way, it is generally the amount of money DOJ has been annually provided to carry out the department's responsibilities. For example, in fiscal year 2016, DOJ's total discretionary budget authority was about \$29 billion.
- DOJ's reported discretionary budget authority for purposes of scorekeeping incorporates offsets from the Crime Victims Fund (CVF) and other funds. Scorekeeping is the process of estimating the budgetary effects of pending legislation and comparing them to a baseline.<sup>9</sup>

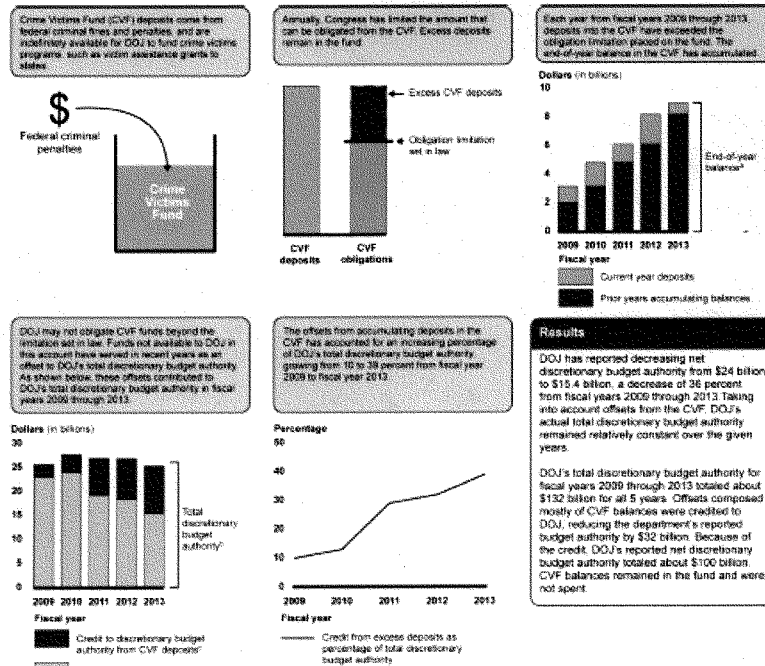
As shown in the figure 6, Congress has imposed a limit on the amount of funds that can be obligated from the CVF each year, creating an unavailable balance. This limitation does not actually draw down any money from the fund. The resulting difference between the total CVF fund balance and the limitation—i.e., the amount that is unavailable for that year—is considered an offset and has been used to provide a credit to DOJ's total discretionary budget. For example, in fiscal year 2013, the CVF had an enacted limitation of about \$780 million, leaving a balance unavailable to DOJ of about \$9 billion. This \$9 billion was the primary contributor of a \$10 billion offset to DOJ's total discretionary budget.<sup>10</sup>

<sup>9</sup>The Congressional Budget Office, the Office of Management and Budget, and the House and Senate Budget Committees are responsible for the scorekeeping process. Scorekeeping guidelines allow certain changes in mandatory spending in an appropriation bill to be scored against the limits faced by congressional appropriations subcommittees, which potentially allows an increase in discretionary spending. Appropriations committees are allocated spending levels. These allocations are then divided among subcommittees in what are known as 302(b) allocations, which are subject to a cap.

<sup>10</sup>A smaller portion of the offset comes from collections from the AFF, which has been subject to both temporary and permanent rescissions in recent years.

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**Figure 6: Crime Victims Fund Deposits, Accumulation of Unobligated Balances, and Impacts on the Department of Justice's (DOJ) Annual Discretionary Budget from Fiscal Years 2009 through 2013**



Source: GAO analysis of DOJ information and DOJ budget summaries. | GAO-15-48

\*End-of-year balances include deposits as well as amounts that were recovered from prior-year obligations. Recoveries for all five years totaled less than \$35 million.

\*Total discretionary budget authority is the sum of all new budget authority amounts provided to DOJ for the fiscal year in the annual appropriations.

\*While most credits to DOJ discretionary budget authority resulted from offsets composed of temporarily unavailable credit from the CVF, a portion of the credit to the annual discretionary budget

In fiscal year 2016, DOJ reported that its total discretionary budget was about \$29 billion. The CVF's limitation offset about 33 percent of DOJ's discretionary budget for scorekeeping purposes for the year. In large part due to the CVF offset, DOJ's reported that its net discretionary budget in fiscal year 2016 was about \$18 billion.

As reported by the Congressional Research Service, offsets to DOJ's total discretionary budget could help the related appropriations subcommittee comply with annual spending limits that it faces, because compliance with these spending limits takes into account the offsets.<sup>11</sup>

<sup>11</sup>Congressional Research Service, "Memorandum: Changes in Mandatory Programs (CHIMPs) and the Crime Victims Fund," (Washington, D.C.: Dec. 17, 2013).

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If the President's proposed 2017 budget and offsets for DOJ are enacted as proposed, unavailable balances from the CVF will offset about 36 percent of DOJ's total discretionary budget authority in fiscal year 2017. Or to state it another way, DOJ's discretionary budget authority in fiscal year 2017 for scorekeeping purposes will be 36 percent or about \$10.5 billion less than its total discretionary budget authority for purposes of entering into obligations.

**5. Can you explain the difference between the effect of a cancellation of balances in a mandatory account and a rescission of such balances?**

The Office of Management and Budget (OMB) uses the terms "rescission" and "cancellation" interchangeably.

Rescissions are legislative actions to reduce an agency's budgetary resources.<sup>12</sup> Rescinded funds are generally taken from an agency and returned to the General Fund of the U.S. Treasury before they are obligated. In general, OMB considers such reductions to be permanent.<sup>13</sup> However, OMB considers rescissions to certain mandatory accounts, like revolving funds, to be temporary. In those cases, the rescinded amounts are considered unavailable for obligation for that fiscal year, but the amounts are available again in subsequent fiscal years to the extent otherwise provided in law. According to OMB guidance, an exception to this is when the legislation makes clear that the amounts from these kinds of mandatory accounts are permanently canceled or rescinded, in which case the amounts are returned to the Treasury.<sup>14</sup>

For instance, the AFF is a permanent indefinite appropriation that is available to DOJ without fiscal year limitation.<sup>15</sup> Under the OMB guidance described above, if Congress enacted a rescission to the AFF, then those amounts would be temporarily unavailable to DOJ during that fiscal year and would become available for obligation again in the following fiscal year.<sup>16</sup> However, if the legislation made clear that the rescission or cancellation was permanent, the amounts would be returned to Treasury.

<sup>12</sup>OMB Circular No. A-11, § 20, at 19-20.

<sup>13</sup>OMB Circular No. A-11, § 20, at 19-20.

<sup>14</sup>OMB Circular No. A-11, § 20, at 20.

<sup>15</sup>28 U.S.C. § 524(c).

<sup>16</sup>GAO, *Justice Assets Forfeiture Fund: Transparency of Balances and Controls over Equitable Sharing Should be Improved*, GAO-12-736 (Washington, D.C.: Jul. 12, 2012).

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### **Bureau of Prisons-Prison Activations**

**In August 2014, GAO reported that BOP was behind schedule in activating six new prisons. You determined this was primarily due to staffing challenges.**

#### **6. How did the choice of prison locations impact the staffing challenges?**

We found that prison locations impact staffing in a number of ways.<sup>17</sup> For instance, during the time of our review, officials from FCI Aliceville stated that the institution's location made it challenging to hire staff because of the low locality pay in Alabama compared with pay in other states. The officials also said that it had been difficult to find local applicants who could pass BOP's pre-employment background check because prospective hires often had disqualifying levels of debt, even though they met the qualifications based on skill. Further, regional BOP officials said that staffing FCI Aliceville and USP Yazoo City was challenging because of their rural locations. Officials from USP Yazoo City said that it was particularly challenging to hire medical staff because of the institution's location and low pay in that area.

#### **7. With the exception of Administrative USP Thomson, were the sites selected by Congress or DOJ?**

Congress directed BOP to investigate specific locations and identify land where institutions could or would be built.

At the time of our review, we analyzed legislation enacted from fiscal years 1999 through 2006, as well as associated reports, and found that congressional conference reports directed BOP to (1) investigate specific locations to determine whether institutions could be built there and (2) identify land where the institutions would eventually be built. For example, the conference report accompanying DOJ's annual appropriations act in fiscal year 2002 directed BOP to begin partial site selection and planning for an institution at a particular location (Berlin, New Hampshire). Further, the conference report accompanying DOJ's annual appropriations act in fiscal year 2000 directed BOP to study the feasibility of constructing an institution in a particular location (Yazoo City, Mississippi).

According to BOP officials, when BOP is congressionally directed to investigate a particular location, BOP generally considers this as direction to focus its efforts on constructing an institution in that specific location.

#### **8. What impact does the delay in activations have on BOP costs?**

We found that while waiting for congressionally directed activation funding (from fiscal years 2010 through March 2014), BOP had obligated about \$25 million from its Salaries and Expenses account to maintain partially activated institutions. For two of the three institutions that were partially activated at the time of our review, we found that BOP had obligated more than it had planned. In particular, BOP officials said that BOP spent between \$1 million and \$4 million each year to maintain a newly constructed or acquired institution while waiting for the congressionally directed activation funding, which supports, among other things, salaries of a core group of staff and the cost of utilities. In addition, BOP had obligated funds from its

<sup>17</sup>GAO, *Bureau of Prisons: Management of New Prison Activations Can Be Improved*, [GAO-14-709](#) (Washington, D.C.: Aug. 22, 2014).

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Buildings and Facilities account to provide a range of modifications after construction was complete. For example, FCI Berlin spent \$150,000 repairing roofs that could not handle the heavy amounts of snowfall and constructing overhangs at exterior doorways to provide protection from the weather.

**9. Going forward, does GAO have any recommendations for mitigating staffing challenges at sites like these?**

In our August 2014 report, we made two recommendations to address staffing challenges.

- First, we recommended that the Attorney General use DOJ's annual congressional budget justification for BOP to communicate to Congress factors that might delay future activations, such as challenges hiring staff and placing inmates associated with the locations of new institutions. DOJ agreed, but has not taken action in response to this recommendation, and we encourage the department to do so.
- Second, we recommended that BOP analyze staffing data at individual institutions in the activation process to assess their progress toward reaching authorized staffing levels and use that assessment to develop effective, tailored strategies to mitigate those challenges. BOP recently took action in response to this recommendation and we closed it as implemented.

**Duplication and Overlap of Programs**

**In General**

**10. For the purpose of GAO's analysis of federal programs, what are the characteristics of unnecessarily duplicative programs, and does DOJ still employ a more narrow definition of duplication than GAO does?**

Overlap occurs when multiple agencies or programs have similar goals, engage in similar activities or strategies to achieve them, or target the same or similar beneficiaries.

Duplication occurs when two or more agencies or programs are engaged in the same or similar activities or provide the same services to the same beneficiaries.

Duplication is not necessarily undesirable. At times, federal agencies intentionally direct multiple federal funding streams to the same recipient for a single or similar purpose. These funding arrangements can avoid unnecessary duplication so long as federal agencies are aware of them or have deliberately planned for grant programs to be complementary.

Unnecessary duplication stems from overlap and lack of coordination. For example, when granting agencies do not identify overlap, assess its impact, or coordinate their activities in acknowledgment of the overlap, there is a heightened risk of unnecessary duplication because one granting agency may not know how its funding decision duplicates another agency. Unnecessarily duplicative programs share several characteristics. They may provide funding for the exact same expenditure. They also may have staff engaging in—or be funding others to engage in—the same or similar activities or providing funding to support the same or similar services to the same beneficiaries.

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At the time of our 2012 report, DOJ defined duplication more narrowly than we did.<sup>18</sup> DOJ also committed to enhancing grant program administration and has implemented all of the recommendations from our 2012 report. We are pleased that the department has implemented all eight of our recommendations. Upon the request of the Committee, we could assess the extent to which the department's recent efforts to improve grant management, including addressing the risk of unnecessary duplication, are working as intended.

**11. Does DOJ currently require all grant applicants to report all federal grant funding (including all DOJ funding) that they are currently receiving or have recently applied for in their grant applications?**

DOJ requires grant applicants to disclose other federal funding obtained or requested that is of a similar or identical nature. This is slightly different than what we recommended, but we believe DOJ's actions met the intent of our recommendation. According to DOJ, requiring all of its grantees to report all federal funding would cause an undue burden on applicants and this information would be duplicative of what is captured in USAspending.gov.

**12. Grant recipients awarded funds directly from the Office of Justice Programs and the Office on Violence Against Women may in turn award them to subrecipients. Likewise, states receive victim assistance funding and subgrant their awards as well. In your opinion, do DOJ's efforts to avoid awarding similar grants to the same recipients breakdown at the subrecipient level or is DOJ able to effectively minimize the duplication?**

Our work, to date, on potential duplication across DOJ grants has focused primarily on direct recipients of DOJ funding. In general, we have not assessed the potential for duplication at the subgrant and subrecipient level. We would be glad to examine this aspect at the Committee's request.

**13. In your opinion, what are the most significant areas of overlap 1) across DOJ components and 2) between DOJ and other federal government agencies (not including intelligence initiatives)?**

DOJ has four law enforcement components—the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the FBI, and the U.S. Marshals Service (USMS). These components have overlapping jurisdiction over violent crime investigations, specifically when they involve illegal drugs, gang violence, firearms, explosives, arson, and fugitive apprehension. In April 2011, we reported on the extent to which selected agents from each component were clear on their agencies' roles and responsibilities and how the components determine and coordinate roles and responsibilities to avoid unnecessary use of resources.<sup>19</sup>

The majority of agents who responded to our survey reported that they were very clear about their components' roles and responsibilities in areas of shared jurisdiction. However,

<sup>18</sup>GAO, *Justice Grant Programs: DOJ Should Do More to Reduce the Risk of Unnecessary Duplication and Enhance Program Assessment*, GAO-12-517 (Washington, D.C.: Jul. 12, 2012).

<sup>19</sup>GAO, *Law Enforcement Coordination: DOJ Could Improve Its Process for Identifying Disagreements among Agents*, GAO-11-314 (Washington, D.C.: Apr. 7, 2011).

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over one-third of the 259 survey respondents reported experiencing disagreements over the past 5 years with another DOJ component when determining roles and responsibilities during an investigation. Further, 78 percent of those who reported disagreements said that they negatively affected the investigation to some degree, for example by prolonging investigations, calling for unnecessary use of resources, and causing low morale. We recommended that DOJ assess options to better diagnose disagreements in the field and take action to limit the negative impacts. DOJ agreed with our recommendation, but did not provide documentation to demonstrate that the department had taken steps to implement the recommendation.

Over time, we have found that both the DOJ law enforcement components and the law enforcement agencies within the Department of Homeland Security—primarily U.S. Immigration and Customs Enforcement (ICE)—investigate similar types of crime, including crimes related to online child pornography, gang violence, drug trafficking, sex offender registration, and human trafficking. We have identified opportunities to improve coordination between the DOJ and DHS agencies, but we have not evaluated whether the jurisdictional overlap across the agencies results in unnecessary duplication.<sup>20</sup> We could do so upon request from the Committee.

#### **Crime Victims Fund**

**Crime victim assistance grants administered by the Office of Victims of Crime support domestic violence shelters, rape crisis centers, child abuse programs, and victim service units in law enforcement agencies, prosecutors' offices, hospitals, and social service agencies. These programs provide services that include: crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation.**

#### **14. Have you reviewed or observed the extent to which this funding overlaps other DOJ grant programs? If so, what are your takeaways?**

When we conducted our review of DOJ grant management in 2012, we looked at solicitations that DOJ components had let in fiscal year 2010.<sup>21</sup> We found that a number of DOJ components providing funding for victim assistance outside of the programs the Office of Victims of Crime (OVC) was funding. For instance, at the time, we found that while OVC had let 23 solicitations for victims assistance-related programs, the Office of Violence Against Women had let 15, and there were also 4 other components that were making funds available for this purpose through a variety of solicitations.

We recognize that overlapping grant programs across common programmatic areas result, in part, from authorizing statutes, and that overlap itself may not be problematic. However, the existence of overlapping grant programs is an indication that agencies should increase their visibility of where their funds are going and coordinate to ensure that any resulting duplication in grant award funding is purposeful rather than unnecessary. We made eight recommendations to DOJ along those lines and they implemented each of them. We have

<sup>20</sup>GAO, *Combating Gangs: Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, GAO-09-708 (Washington, D.C.: Jul. 24, 2009); and GAO, *Registered Sex Offenders: Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*, GAO-13-200 (Washington, D.C.: Feb. 14, 2013).

<sup>21</sup>GAO-12-517.

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not conducted a similar analysis since that time, but could do so upon request from the Committee.

#### **Legal Assistance**

##### **15. Are you aware of any duplication between DOJ's Access to Justice initiatives and services funded through the Legal Services Corporation or the State Justice Institute?**

DOJ's Access to Justice (ATJ) is charged with helping the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. ATJ staff work within DOJ, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers. For example, in May 2012, we reported that ATJ assisted other DOJ components with developing grant solicitations for indigent defense and training for tribal court personnel, including defenders, prosecutors, and judges.<sup>22</sup> However, to our knowledge, ATJ does not award funding to provide services to indigent persons, whereas the Legal Services Corporation (LSC) and the State Justice Institute can award funding for this purpose.

On the other hand, LSC was created as a private, nonprofit corporation to support legal assistance for low-income individuals on civil legal matters, primarily through federal grants. In June 2010, we made recommendations to LSC on ways to improve oversight of its grantees.<sup>23</sup>

The purpose of the State Justice Institute is to further "the development and adoption of improved judicial administration in State courts in the United States," including through grant programs. We have not evaluated the extent to which there may be unnecessary duplication across grants awarded by LSC and the State Justice Institute. We could do so upon request from the Committee.

#### **State & Local Law Enforcement Assistance**

**The Byrne Justice Assistance Grant Program is the leading source of federal justice funding to state and local jurisdictions. Also known as "Byrne JAG," this flagship formula grant program provides states, tribes, and local governments with funding for a range of activities including law enforcement, prosecution, indigent defense, courts, education, corrections, drug treatment, technology improvement, and crime victim and witness initiatives. It can be used for everything from equipment to officer salaries.**

**Numerous grant programs make funding available for activities that are also allowable uses of Byrne JAG formula grant awards.**

<sup>22</sup>GAO, *Indigent Defense: DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support This Purpose*, GAO-12-569 (Washington, D.C.: May 9, 2012).

<sup>23</sup>GAO, *Legal Services Corporation: Improvements Needed in Controls over Grant Awards and Grantee Program Effectiveness*, GAO-10-540 (Washington, D.C.: Jun. 11, 2010).



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**16. To what degree can efficiencies be achieved by reducing the number of programs that duplicate allowable uses under Byrne JAG?**

There may be opportunities to achieve efficiencies by consolidating certain grant programs, particularly with respect to costs associated with administering multiple grant programs that have a similar goal.

With respect to Byrne JAG, most of the funding is awarded directly to state and local agencies, as well as some tribal agencies, whereas many of DOJ's other grant programs also allow nongovernmental entities (such as nonprofit organizations) to compete directly for funding, which could minimize the risk of unnecessary duplication.

**17. In your opinion, recognizing the challenging budget environment we face, is it ever wise from a fiscal perspective to stand up new programs that duplicate allowable uses of Byrne JAG formula grant funding?**

Before standing up any new program, it would be important to identify a particular unmet need through existing funding, and ensure that the new program is positioned to satisfy it. In addition, it would be critical that administrators of the new program leverage the coordination mechanisms DOJ has recently implemented—in response to our past recommendations—to ensure that the old and new programs were aware of potential overlap and take steps to guard against unnecessary duplication.

**18. DOJ has numerous programs involving DNA analysis and capacity enhancement, including grant programs and programs overseen by the FBI. Do you detect any opportunities for consolidation among these programs? Is there sufficient oversight at DOJ to ensure that these programs are not engaging in any of the same activities?**

As we reported in 2013, DOJ's National Institute of Justice (NIJ) allocated funding for various DNA and other forensic science activities, with the majority of the available \$691 million from fiscal years 2008 through 2012 going to state and local governments to reduce the DNA backlog.<sup>24</sup> Specifically, over this 5-year period, 64 percent of the funding was allocated through initiatives that directly benefited state and local efforts to reduce DNA backlogs and build DNA analysis capacity.

While we did not study the extent to which DNA analysis and capacity enhancement programs overseen by the FBI could be consolidated, we found that NIJ's decision-making process for determining DNA and forensic program funding priorities was not clearly documented. Specifically, we found that NIJ's funding memos in fiscal years 2012 and 2013 did not provide details on the justifications for determining funding for each funding initiative. We recommended that in order to provide greater transparency regarding its funding allocations, NIJ document the rationale for its annual funding priorities. DOJ agreed, and in April 2016, DOJ officials provided us with an updated funding memo format that outlined NIJ's fiscal year 2016 funding priorities. The funding memo included background information on the funding priorities outlined in the appropriation and a list of proposed allocations for each grant program NIJ officials recommended for the NIJ director to approve. Along with

<sup>24</sup>GAO, *Justice Grant Programs: DOJ Could Improve Decision-Making Documentation and Better Assess Results of DNA Backlog Reduction Program Funds*, GAO-13-605 (Washington, D.C.: Jul. 31, 2013). The conference report accompanying the Consolidated and Further Continuing Appropriations Act, 2012 included a provision for GAO to examine the use of funds awarded for DNA analysis and capacity enhancement since 2008. H.R. Rep. No. 112-284, at 247 (Conf. Rep.).

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the funding recommendations, NIJ provided detailed information to support the rationale for funding each grant program. As a result, NIJ's new funding memo format with more robust justifications for funding decisions provides greater transparency to both NIJ management and stakeholders for understanding NIJ's rationale for funding decisions. Therefore, we consider this recommendation to be implemented.

### **U.S. Attorneys & the President's Executive Orders**

**Each of the President's executive orders on border security and immigration enforcement mandate that the Attorney General devote appropriate resources to "establish prosecution guidelines...to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border."**

#### **19. At present, does each U.S. Attorney's Office have the necessary resources to prioritize criminal immigration prosecutions?**

One of the primary challenges facing any U.S. Attorney is determining where to apply his or her resources for investigations and prosecutions. While changing priorities potentially present additional challenges, U.S. Attorneys are accustomed to handling the need to balance competing priorities within available resources. We have not done our own independent assessment of the adequacy of the resources that are available to U.S. Attorneys.

### **Hiring Challenges & Cyber Security**

**The OIG's March 2016 audit of the FBI's Regional Computer Forensic Laboratory in Hamilton, New Jersey, found that the lack of qualified examiners with advanced training contributed to the material backlog at that facility.**

In March 2011, we reported on DOJ's efforts to implement its responsibilities under the PROTECT Our Children Act of 2008, including the provision to address the backlog at the Regional Computer Forensic Laboratories (RCFL).<sup>25</sup> We reported that the FBI had taken the following steps to address the backlog:

- Initiated two new (at the time) RCFLs in Los Angeles and New Mexico,
- Established the Case Agent Investigative Review system, which provides investigators the ability to review results of digital forensic examinations conducted in an RCFL from an FBI computer terminal,
- Developed investigative kiosks that allow law enforcement to extract data from cell phones or loose media in a forensically sound manner and analyze evidence, and
- Expanded use of preview tools to decrease the amount of digital evidence seized and to triage that which is seized for examination.

We also reported on factors that help contribute to the backlog in forensic analysis of digital evidence, such as the increase in the number of people using computers and Internet, the low cost and ease of obtaining digital media storage capacity, and the wide variety and constant evolution of technologies being used by offenders. In addition, according to agency officials, steps taken to ensure the integrity of analysis conducted by forensic examiners can add to the

<sup>25</sup>GAO, *Combating Child Pornography: Steps Are Needed to Ensure that Tips to Law Enforcement Are Useful and Forensic Examinations Are Cost Effective*, GAO-11-334 (Washington, D.C.: Mar. 31, 2011).

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time necessary to complete examinations; and the FBI takes more steps to ensure integrity compared to other agencies (i.e., ICE, DOJ's Child Exploitation and Obscenity Section, U.S. Postal Inspection Service, and U.S. Secret Service). Yet, according to DOJ prosecutors, from their perspective, all of the federal agencies have incorporated a sufficient amount of integrity into their forensic analysis processes, which calls into question whether the additional steps taken by the FBI are necessary.

We recommended that the Attorney General direct the National Strategy for Child Exploitation Prevention and Interdiction Working Group to assess the costs and benefits of the various steps federal law enforcement agencies believe enhance the integrity of forensic analysis of digital evidence in investigating online child pornography crimes. DOJ concurred with the recommendation, but did not provide documentation to show that the department or working group had taken steps to implement the recommendation.

**20. In your opinion, is DOJ able to recruit the best talent? What are the key reasons it is challenging to recruit adequate numbers of highly-skilled computer or cyber professionals?**

Per the Federal Cybersecurity Workforce Assessment Act of 2015, we have ongoing work to review the extent to which federal agencies, including DOJ, have taken steps to identify and assess their cybersecurity workforce needs.<sup>26</sup> We expect to complete this work by December 2018. We have previously published work on government-wide challenges with respect to hiring and retaining skilled cyber professionals.<sup>27</sup>

**21. As cyber becomes a growing national security issue for both the public and private sectors, does DOJ have the technical and legal manpower to target hackers?**

See response to question 20.

**22. Considering the growing number of cyberattacks on U.S. agencies, does DOJ have the IT capabilities and resources it needs to protect its network?**

The DOJ Office of the Inspector General has identified cybersecurity as a top management challenge for the department for fiscal year 2016. Of 23 civilian agencies covered by the Chief Financial Officers Act, DOJ was 1 of 4 agencies that did not report either a material weakness or significant deficiency in information security for financial reporting purposes for fiscal year 2016.<sup>28</sup>

We have not examined the sufficiency of DOJ's IT capabilities and resources for protecting its network.

<sup>26</sup>Federal Cybersecurity Workforce Assessment Act of 2015, Pub. L. No. 114-113, Div. N, Title III, § 305 (Dec. 18, 2015).

<sup>27</sup>GAO, *Cybersecurity: Federal Efforts Are Under Way that May Address Workforce Challenges*, [GAO-17-533T](#) (Washington, D.C.: Apr. 4, 2017); GAO, *IT Workforce: Key Practices Help Ensure Strong Integrated Program Teams; Selected Departments Need to Assess Skill Gaps*, [GAO-17-8](#) (Washington, D.C.: Nov. 30, 2016); and GAO, *Cybersecurity Human Capital: Initiatives Need Better Planning and Coordination*, [GAO-12-8](#) (Washington, D.C.: Nov. 29, 2011).

<sup>28</sup>31 U.S.C. § 901(b).

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**FBI Use of Facial Recognition Technology**

- 23. In 2016, you reported that the FBI hasn't taken steps to determine whether the facial recognition systems used by external partners, such as states and other federal agencies, are sufficiently accurate to support FBI investigations. Do you believe any expansion of the facial recognition system should be suspended until there is evidence that the system is providing accurate results?**

In May 2016, we reported that the FBI had not assessed the accuracy of the external face recognition systems it uses and recommended that the bureau take steps to determine whether it should use the results from these systems to support FBI investigations.<sup>29</sup> In commenting on our draft report in 2016, and reiterated during our recommendation follow-up in 2017, DOJ officials did not concur with this recommendation. DOJ officials stated that the FBI has no authority to set or enforce accuracy standards of face recognition technology operated by external agencies. We disagree with DOJ's position. We continue to believe that the FBI should assess the quality of the data it is using from state and federal partners.<sup>30</sup> Such an assessment could include, for example, information from the National Institute of Standards and Technology or a review of how external partners determine if such technologies are sufficiently accurate for their own use.

Without actual assessments of the results from its state and federal partners, the FBI is making decisions to enter into agreements based on assumptions that the search results may provide valuable investigative leads. Until FBI officials can assure themselves that the data they receive from external partners are reasonably accurate and reliable, it is unclear whether such agreements are beneficial to the FBI, whether the investment of public resources is justified, and whether photos of innocent people are unnecessarily included as investigative leads.

- 24. On a scale of 1-10, 1 being the least accurate and 10 being most accurate, where would you place the FBI's facial recognition systems' current accuracy?**

The FBI has limited information on the accuracy of its face recognition technology capabilities. As a result, the accuracy level of these capabilities is unclear.

Specifically, the FBI has not (1) assessed how often errors occur in its Next Generation Identification-Interstate Photo System (NGI-IPS); (2) verified that its system is accurate for all allowable candidate list sizes; or (3) taken steps to determine whether the face recognition systems used by external partners, such as states and federal agencies, are sufficiently accurate for use to support FBI investigations. Further, although the FBI has taken steps to solicit feedback from NGI-IPS users, it has not conducted operational reviews to assess the accuracy of face recognition searches to determine if it is meeting federal, state, and local law enforcement needs and take actions, as necessary, to improve the system. Therefore, we continue to recommend that the FBI conduct an operational review of NGI-IPS at least annually,<sup>31</sup> as required by its own guidance.<sup>32</sup>

<sup>29</sup>GAO, *Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy*, [GAO-16-267](#) (Washington, D.C.: May 16, 2016).

<sup>30</sup>GAO, *Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to Ensure Privacy and Accuracy*, [GAO-17-489T](#) (Washington, D.C.: Mar. 22, 2017).

<sup>31</sup>[GAO-17-489T](#).

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**25. Do you believe that federal facial recognition systems and those of state and local governments should be interoperable and accessible for the purposes of pursuing investigative leads? Are there any concerns regarding whether privacy protection laws would be followed with such an expanded database and user base?**

The use of face recognition technology raises concerns regarding the protection of privacy and individual civil liberties, meaning that privacy protection is important regardless of whether the systems are interoperable. As we reported in May 2016, the FBI did not timely update key face recognition privacy notices required by law—Privacy Impact Assessments and a Systems of Records Notice—during the development of its face recognition technologies. We continue to believe that DOJ and the FBI should determine why these privacy notices were not published as required and take corrective actions, which would better keep the public informed on how personal information is being used and protected.<sup>33</sup>

In March 2017, FBI officials stated that they began conducting NGI-IPS audits at participating states and provided us with the audit plan the FBI's CJIS Audit Unit developed in June 2016 for NGI-IPS users. DOJ officials said that CJIS developed an audit plan of the FACE Services Unit to coincide with the existing triennial FBI internal audit for 2018. However, DOJ did not provide the audit plan for the FACE Services Unit. DOJ officials said the methodology would be the same as the audit plan for NGI-IPS, but that methodology does not describe oversight on use of information obtained from external systems accessed by FACE Services employees. According to the FACE Services Privacy Impact Assessment, the searching and retention of photos by the FACE Services Unit presents privacy risks that the facial images will be disseminated for unauthorized purposes or to unauthorized recipients, or that there will be improper access to the photos or misuse of the photos. Without conducting audits on its use of external databases, FBI officials cannot be sure that they are implementing face recognition capabilities in a manner that appropriately protects individuals' privacy. Because the FBI has a responsibility to oversee the use of the information by its employees, we believe DOJ is making progress towards meeting, but has not fully implemented our recommendation to audit both NGI-IPS users and its FACE Services Unit.

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<sup>32</sup>See FBI, *FBI Information Technology Life Cycle Management Directive*, version 3.0 (Aug. 19, 2005) and DOJ, *Systems Development Life Cycle Guidance* (Jan. 2003).

<sup>33</sup>[GAO-17-489T](#).

