



November 30, 2016

The Honorable Jason Chaffetz
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Confidential Informants: Status of the U.S. Drug Enforcement Administration's Efforts to Address a GAO Recommendation

Law enforcement agencies rely on the use of confidential informants as one of many investigative tools at the agencies' disposal.¹ Because of some informants' past involvement in criminal activities or organizations, the informants often have access to, or status in, such organizations and are uniquely situated to provide useful and credible information to law enforcement agencies regarding criminal activities. The information the informant provides may be critical to an investigation, but problems can occur if an agency fails to exercise appropriate oversight over the informant and the informant's activities. To help ensure appropriate oversight of informants, *The Attorney General's Guidelines Regarding the Use of Confidential Informants* (Guidelines) sets forth detailed procedures and review mechanisms to ensure that law enforcement agencies exercise their authorities appropriately and with adequate oversight.

In September 2015, as part of a review of several agencies' use of confidential informants, we reported on the extent to which (1) the U.S. Drug Enforcement Administration's (DEA) informant policy included procedures outlined in the Guidelines for effectively vetting informants and overseeing informants' illegal activities, and (2) DEA had monitoring processes to ensure compliance with the provisions in the Guidelines for vetting informants and overseeing informants' illegal activities.² Our report contained one recommendation to the Administrator of DEA, with assistance and oversight from the Department of Justice (DOJ) Criminal Division, to update its policy and corresponding monitoring processes to explicitly address the Guidelines' provisions on oversight of informants' illegal activities.³ You asked us to report on the actions DEA has taken to address this recommendation. This report provides our assessment of DEA's actions taken in response to our recommendation.

¹*The Attorney General's Guidelines Regarding the Use of Confidential Informants* defines a confidential informant as any individual who provides useful and credible information to a law enforcement agency regarding felonious criminal activities, and from whom the law enforcement agency expects or intends to obtain additional useful and credible information regarding such activities in the future.

²See GAO, *Confidential Informants: Updates to Policy and Additional Guidance Would Improve Oversight by DOJ and DHS Agencies*, [GAO-15-807](#) (Washington, D.C.: Sept. 15, 2015). DEA was among eight component agencies within the Departments of Justice and Homeland Security that GAO evaluated in the report.

³We found that DEA's policy generally addressed the factors outlined in the Guidelines for vetting a confidential informant.

To complete our September 2015 report, we assessed DEA's informant policy against provisions in the Guidelines regarding vetting informants and overseeing informants' illegal activities. Our assessment determined whether DEA's and the other agencies' policies met the minimum criteria established in the Guidelines. We also interviewed DEA officials responsible for overseeing the agency's informant programs and reviewed guidance from and interviewed representatives of DOJ headquarters offices (Office of the Deputy Attorney General and Criminal Division). Additionally, we analyzed monitoring processes by comparing agencies' internal review mechanisms and processes against *Standards for Internal Control in the Federal Government*.⁴ We also analyzed documentation such as examples of inspection checklists and inspection reports. Our published work provides more detail on our scope and methodology.⁵ As part of our annual fiscal year 2016 recommendation follow up, we requested DEA's updated confidential informant policy and internal inspection checklists. We continued to receive updated information through October 2016. We reviewed the updated policy and inspection checklists and met with DEA officials to assess the extent to which DEA's actions were consistent with our recommendation.

We conducted this performance audit in November 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

DEA has updated its policy and monitoring processes to address the Guidelines' provisions on oversight of informants' illegal activities. These actions are consistent with the recommendation we made in our September 2015 report, and we consider the recommendation to be closed and implemented.

Background

The Guidelines require each DOJ law enforcement agency to develop agency-specific policies regarding the use of informants, and the DOJ Criminal Division is tasked with reviewing these agency-specific policies to ensure that they comply with the Guidelines. The Guidelines also provide that whenever an agency believes that an exception to any provision in the Guidelines is justified, the agency is to seek an exception from DOJ's Criminal Division, and the agency is required to maintain documentation of any exceptions granted.

Our September 2015 report focused on two areas within the Guidelines:

- **Requirements for Vetting Informants:** The Guidelines require that, prior to utilizing a person as an informant, agencies vet informants to assess their suitability for the work. For example, law enforcement agents who oversee the use of informants (case agents or control agents) must complete and sign a written initial suitability report and recommendation that addresses factors about the proposed informant such as biographical information, personal information (e.g., relationship to the target of the investigation), motivation for becoming an informant, and criminal history.

⁴GAO, *Internal Control: Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

⁵[GAO-15-807](#).

- **Requirements for Overseeing Informants' Illegal Activities:** Since 1980, the Guidelines have permitted agencies to authorize informants to engage in activities that would otherwise constitute crimes under federal, state, or local law if someone without such authorization engaged in these same activities. For example, in the appropriate circumstance, an agency could authorize an informant to purchase illegal drugs from someone who is the target of a drug-trafficking investigation. Such conduct is termed "otherwise illegal activity." The Guidelines include certain requirements when authorizing otherwise illegal activity and restrictions on the types of activities an agency can authorize. In particular, the Guidelines prohibit agencies from authorizing an informant to participate in an act of violence, obstruction of justice, and other enumerated unlawful activities.

DEA Has Addressed Our Recommendation to Update Its Confidential Informant Policy and Corresponding Monitoring Processes

In September 2015, we reported that DEA's policy generally addressed the factors outlined in the Guidelines for vetting a confidential informant. We also reported that DEA's policy was either partially consistent with or did not address some provisions in the Guidelines regarding oversight of informants' illegal activities. As a result, the policy did not explicitly inform DEA agents of all the activities and safeguards that the Guidelines outline for minimizing the risks involved with using informants. We found that DEA had processes in place, such as ongoing monitoring activities and separate evaluations, to help ensure compliance with its informant policy. However, DEA's monitoring processes—including periodic internal inspections of DEA field offices—generally did not address compliance with illegal activity provisions, in part because these provisions were not explicitly addressed in DEA's informant policy. To help ensure that DEA's policy and oversight were fully consistent with the Guidelines, we recommended that the Administrator of DEA, with assistance and oversight from the DOJ Criminal Division, update DEA's policy and corresponding monitoring processes to explicitly address the Guidelines' provisions on oversight of informants' illegal activities.

In response to our recommendation, DEA updated its policy and provided it to the DOJ Criminal Division for review. In April 2016, the DOJ Criminal Division signed a memorandum stating that the updated policy is consistent with the Guidelines. We reviewed a copy of the policy in September 2016, once the policy provisions had been fully incorporated into DEA's agents manual, and confirmed that the policy is consistent with the Guidelines provisions regarding overseeing informants' illegal activities. Additionally, in October 2016, DEA provided us with updated internal inspection checklists that include questions to help ensure compliance with the updated policy, including provisions added to the policy to address our recommendation.

DEA's updated policy and monitoring processes are consistent with our recommendation. Thus, we consider the recommendation closed and implemented.

Agency Comments

We requested comments on a draft of this report from the Department of Justice. In its written comments, reproduced in enclosure I, DEA stated it was pleased with our determination that DEA has implemented the recommendation.

We are sending copies of this report to the appropriate congressional committees and the Attorney General of the United States. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about our September 2015 report or the actions that DEA took to close the recommendation, please contact me at (202) 512-9627 or MaurerD@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are Kristy Love, Assistant Director, and Alana Finley.

A handwritten signature in black ink that reads "Diana Maurer". The signature is written in a cursive, flowing style.

Diana Maurer
Director, Homeland Security and Justice Issues

Enclosure - 1

Enclosure I



U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

NOV 25 2016

Diana Maurer, Director
Homeland Security & Justice Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Confidential Informants: Status of the U.S. Drug Enforcement Administration's Efforts to Address a GAO Recommendation

Dear Director Maurer:

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), appreciates the opportunity to review the Government Accountability Office's (GAO) draft letter report, dated November 30, 2016, and entitled, ***Confidential Informants: Status of the U.S. Drug Enforcement Administration's Efforts to Address a GAO Recommendation***. The draft report letter was related to a previously released GAO report entitled, ***Confidential Informants: Updates to Policy and Additional Guidance Would Improve Oversight by DOJ and DHS Agencies***, in which GAO issued one recommendation to DEA. The draft letter report summarized GAO's review of DEA's implementation of the following recommendation:

- To help ensure the agency's policies and oversight are fully consistent with the Attorney General's Guidelines regarding the use of confidential informants, the Administrator of DEA with assistance and oversight from the DOJ Criminal Division, should update the agency's policies and corresponding monitoring processes to explicitly address the Guidelines' provisions on oversight of informants' illegal activities.

GAO noted in their draft letter report DEA has addressed GAO's recommendation to update its confidential informant policy and corresponding monitoring processes. DEA is pleased with GAO's recognition of DEA's actions to revise and implement policies and processes to ensure compliance with the Attorney General Guidelines.

Additionally, GAO noted the recommendation is closed and implemented due to the appropriate actions DEA has taken. DEA has no additional comments on the subject report.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Stanfill", is positioned above the printed name.

Michael J. Stanfill
Deputy Chief Inspector

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#).
Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400,
U.S. Government Accountability Office, 441 G Street NW, Room 7125,
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548



Please Print on Recycled Paper.