



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on Judiciary
Subcommittee on Crime, Terrorism,
Homeland Security, and Investigations

concerning

Cost Savings and Efficiencies at the Department of Justice

April 10, 2013

Mr. Chairman, Congressman Scott, and Members of the Subcommittee:

Thank you for inviting me to testify about the efforts of the Office of the Inspector General (OIG) for the Department of Justice (Department or DOJ) to identify waste and inefficiency in the DOJ. Helping to ensure that taxpayer funds are used wisely to support the Department's mission has long been a central focus of the OIG's oversight work, but never more so than in the current budgetary environment.

In my nearly one year as Inspector General, my office has pursued a number of initiatives to help make the operations of the Justice Department more effective and efficient, and to identify important savings of taxpayer dollars. During this time, we have issued more than 70 audits, which included annual financial statement audits, information security audits, audits of grant recipients, and audits of state and local participants in the Federal Bureau of Investigation's (FBI) Combined DNA Index System (CODIS). We issued reports on the Department's handling of suspension and debarment, the FBI's implementation of the Sentinel project, the FBI's handling of its forensic DNA case backlog, the U.S. Marshals Service's (USMS) management of its procurement activities, and the Executive Office for Immigration Review's management of immigration cases. Our Investigations Division processed more than 10,000 complaints in the past year, resulting in dozens of arrests and convictions involving corruption or fraud offenses and well over 100 administrative actions against Department employees. And all of this work was in addition to our more high-profile investigations, such as our reports on Operation Fast and Furious, the improper hiring practices in the Justice Management Division, the Pardon Attorney's handling of the Clarence Aaron clemency request, and the Operations of the Voting Section of the Civil Rights Division.

I am particularly proud of having appointed the DOJ OIG's first-ever whistleblower ombudsperson, and I am committed to ensuring that whistleblowers in the Department can step forward and report fraud, waste, and abuse without fear of retaliation. During my tenure, I have seen first-hand the important role that whistleblowers play in advancing the OIG's mission to address wasteful spending and improve the Department's operations. We will continue to do all we can to ensure that we are responsive to complaints that we receive, and to ensure that allegations of retaliation are thoroughly and promptly reviewed.

While this past year has been a remarkably busy time, I note that it is typical of the extraordinary work that the DOJ OIG has produced for years. Indeed, over the past 10 fiscal years, the OIG has identified nearly \$1 billion in questioned costs – far more than the OIG's budget during the same period. In

addition, we have identified over \$250 million in taxpayer funds that could be put to better use by the Department, and our criminal and administrative investigations have resulted in the imposition or identification of more than \$100 million in civil, criminal, and nonjudicial fines, assessments, restitution, and other recoveries over that period.

Moreover, when we issue our audits and reviews, we regularly make recommendations to the Department on how it can reduce costs and improve ineffective or inefficient programs. The Department must redouble its efforts to adopt and implement these OIG recommendations. As of September 2012, hundreds of OIG recommendations to the Department remain open, and our FY 2012 audits and related single audits identified approximately \$25 million in questioned costs that the Department should make every effort to resolve and, if necessary, recover. I intend to make this issue a priority for my office.

Now that I have provided a brief overview of what we have done during the past year to help ensure that taxpayer funds are being used well and that the Department is being managed effectively and efficiently, let me provide some details about the specific opportunities my office has identified for further cost savings and efficiencies at the DOJ. I have grouped these opportunities into four categories: (1) addressing the Department's growing cost structure; (2) reducing duplication and improving coordination; (3) optimizing grant and contract administration; and (4) enforcing against fraud and financial offenses.

From these four areas, one clear message emerges: Leading the Department in this climate of budget constraints will require careful budget management and significant improvements to existing operations; focusing only on discrete operating efficiencies is unlikely to fully address the significant challenges of moving the Department from an era of expanding budgets into an era of budget constraints without sacrificing its mission. It is therefore incumbent upon the Department to plot a new course for the current budgetary environment, one that streamlines the Department's operations while simultaneously taking on the most important and fundamental questions about how the Department is structured and managed.

The Department Must Address its Growing Cost Structure, Particularly the Federal Prison System

The current budgetary environment presents critical challenges for the Department. Of particular importance, the Department's mission has remained substantially unchanged since 2001, even as the budgetary environment in which the Department operates has changed dramatically. From FY 2001 through FY 2011, the Department's discretionary budget grew by more than 41 percent in real dollars, to \$28.9 billion. Yet, in FY 2012, the Department's discretionary budget decreased by more than 7 percent (to \$26.9

billion), and in FY 2013, the Department's discretionary budget decreased again, this time by 5.9 percent (to \$25.3 billion). It therefore appears likely that in the years ahead Department leadership will face the significant challenge of fulfilling the Department's mission without the assurance of increased resources.

While the Department has taken initial steps to address its reduced budget, the Department must also have in place an innovative and transparent strategic vision for how to fulfill its mission in the long term without requiring additional resources.

Nowhere is this problem more pressing than in the federal prison system, where the Department faces the challenge of addressing the increasing cost of housing a continually growing and aging population of federal inmates and detainees. The federal prison system is consuming an ever-larger portion of the Department's budget, making safe and secure incarceration increasingly difficult to provide, and threatening to force significant budgetary and programmatic cuts to other DOJ components in the near future. The Department's own budget reports demonstrate the fundamental financial challenges facing the Department. Fifteen years ago, the BOP's enacted budget was \$3.1 billion, which represented approximately 14 percent of the Department's budget. In comparison, the Department requested \$6.9 billion for the BOP in FY 2013, or 26 percent of the Department's total FY 2013 budget request. Moreover, the President's FY 2013 budget projects the budget authority for federal correctional activities to rise from \$6.9 billion to \$7.4 billion by 2017.

In FY 2006, there were 192,584 inmates in BOP custody. As of October 2012, the BOP reported more than 218,000 inmates in its custody, an increase of more than 13 percent. Not surprisingly, these trends mirror the increased number of federal defendants sentenced each year, which rose from approximately 60,000 in FY 2001 to more than 86,000 in FY 2011, according to the U.S. Sentencing Commission.

The Department, during both the prior administration and the current administration, has been aware of the budgetary and capacity problems associated with a rapidly expanding prison population for years. The Department first identified prison overcrowding as a programmatic material weakness in its FY 2006 Performance and Accountability Report, and it has been similarly identified in every such report since. In fact, prison overcrowding was the Department's only identified material weakness last year.

Yet, despite the Department having recognized this problem as a material performance weakness for the past 7 years, conditions in the federal prison system continue to decline, even as the BOP receives an ever-increasing share

of the Department's scarce resources. For example, since FY 2000, the BOP's inmate-to-staff ratio has increased from about four-to-one to a projected five-to-one in FY 2013. Since FY 2006, federal prisons have moved from approximately 36 percent over rated capacity to approximately 39 percent over rated capacity in FY 2011, with medium security facilities currently operating at approximately 48 percent over rated capacity and high security facilities operating at approximately 51 percent over rated capacity. Moreover, even if the Department receives its requested funding as detailed in BOP's Long Range Capacity Plan, the Department's outlook for the federal prison system remains bleak: the BOP projects system-wide crowding to be 44 percent over rated capacity through 2018.

The OIG believes that the Department can make better use of existing programs to realize cost savings and reduce overcrowding. For example, in December 2011, the OIG reviewed the Department's International Prisoner Treaty Transfer Program, which permits certain foreign national inmates from treaty nations to transfer to their home countries to serve the remainder of their sentences. The OIG review found the BOP and the Criminal Division's International Prisoner Transfer Unit had rejected 97 percent of foreign national inmates' requests to transfer from FY 2005 through FY 2010, and in FY 2010, slightly less than 1 percent of the 40,651 foreign national inmates in the BOP's custody were transferred to their home countries to complete their sentences. While some factors that reduce the number of transfers are beyond the Department's control, the OIG found the Department could take steps to increase the number of inmates transferred and the timeliness of the process that would result in potentially significant savings. The Department is now implementing the OIG's 14 recommendations to manage the program more effectively. Similarly, the OIG is reviewing the BOP's implementation of its Compassionate Release Program, which allows the Department to release prisoners under extraordinary and compelling conditions, such as terminal illness.

Whatever approach the Department wishes to take to address the growing cost of the federal prison system, it is clear that something must be done. In an era where the Department's overall budget is likely to remain flat or decline, it is readily apparent from these figures that the Department cannot solve this challenge by spending more money to operate more federal prisons unless it is prepared to make drastic cuts to other important areas of the Department's operations. The Department must therefore articulate a clear strategy for addressing the underlying cost structure of the federal prison system and ensuring that the Department can continue to run our prisons safely and securely without compromising the scope or quality of its many other critical law enforcement missions.

Reducing Duplication and Improving Coordination of Department Functions

In the current budgetary environment, the Department cannot afford to spend its limited taxpayer funds on duplicative programs that would run more cost-effectively if they were combined in whole or in part. Our oversight work has identified areas which we believe the Department should carefully examine for consolidation opportunities.

One such area is the Department's grant-making apparatus. The Department currently maintains three separate grant-making components: the Office of Justice Programs (OJP), Office on Violence Against Women (OVW), and Community Oriented Policing Services (COPS). Prior OIG reports have found that this structure has led to inefficient duplication. For example, while OVW has in the past required its grant recipients to use the OJP financial guide, OVW has recently released its own financial guide. OVW grantees who also receive OJP grants therefore must often follow two different sets of rules, thereby increasing the risk of waste and noncompliance. A recent GAO report raised similar concerns, noting that COPS uses a different grant management system than OVW and OJP, thereby limiting the Department's ability to share information on the funding its components have awarded or are preparing to award.

The division of grant-making responsibility among three separate components also creates the challenge of ensuring that there is proper coordination of, and clear strategic vision for, the Department's overall grant-making efforts, and that those overall efforts are consistent with the priorities of the Department's non-grant-making components. The Department should therefore seek to consolidate the common functions of these three grant-making components to increase coordination and save costs while maintaining key separate practices for meeting individual statutory requirements and fulfilling the missions of each office.

The Department could reap similar benefits to its operations, and its bottom line, by improving the coordination between other components carrying out related or overlapping missions. An example of this opportunity is found in the Department's four primary law enforcement components: the FBI, DEA, ATF, and USMS.

Law enforcement represents a central element of the Department's mission, yet the ability and willingness of Department components to coordinate and share intelligence, resources, and personnel with one another and other law enforcement agencies has historically posed a significant challenge. One cause of this challenge is the confusion created when

components have overlapping jurisdictions. For example, whereas the FBI may investigate all federal crimes and instances of terrorism, other agencies possess simultaneous jurisdiction to enforce specific criminal laws that necessarily overlap, such as the DEA's investigations of federal drug cases or ATF's investigations of federal firearms cases. Some overlap between these four components is unavoidable and may even help ensure proper law enforcement focus and attention. However, the Department should clarify the jurisdictional boundaries of each wherever possible. It may also benefit from considering whether consolidation of any operational functions or administrative functions, such as information technology, human resources, budgeting, and records management, could yield operational benefits, improve law enforcement safety, or save costs. Similarly, the Department should consider ways to increase the sharing of lessons learned and best practices among law enforcement components.

In the same vein, the Department should consider whether its law enforcement components have the proper level of consistency in their standard procedures, protocols, and manuals; where there are differences, the Department should consider whether they are justified. While the Department's law enforcement components generally adhere to Attorney's General Guidelines and policies for law enforcement activities, specific protocols and procedures for particular investigative techniques often vary from component to component. In particular, our review of new policies ATF implemented after Operation Fast and Furious underscored the agency's delay in completing its integration into the Department and in implementing controls to protect the public that were used in other Department law enforcement components. For example, we found that ATF had not until recently used review committees to evaluate either its undercover operations or its use of high-level and long-term confidential informants. We also expressed concern that ATF and the Department had not devoted sufficient attention to ensuring that ATF's policies scrupulously adhered to requirements found in the Attorney General's Guidelines and other Department policies, including ATF's confidential informant policies, which were not revised to conform to the Attorney General's Guidelines Regarding the Use of Confidential Informants until 8 years after ATF joined the Department. We therefore believe that Department-led, cross-component assessments designed to compare the law enforcement components' policies could identify opportunities for improvements that would make the Department's law enforcement operations more consistent and efficient.

Notably, the challenge of coordination is not limited to domestic operations, but rather extends to the Department's substantial international law enforcement efforts as well. The DEA, FBI, ATF, and USMS have stationed personnel abroad who work with their foreign counterparts to investigate and prosecute violations of U.S. law, and to provide reciprocal assistance to their foreign counterparts. The DEA maintains the Department's largest

international presence with more than 1,000 full-time employees devoted to international operations in 65 countries. The DEA requested an international enforcement budget of more than \$400 million in FY 2013. The FBI's international presence is also sizable, with 61 legal attachés, 14 sub-offices, and 287 authorized positions in 66 countries during FY 2012. With substantial overseas resources comes the need to ensure that these resources are well managed, coordinated with each other, and coordinated with both domestic and foreign law enforcement organizations. Meeting these challenges requires putting frameworks in place to support international investigations before they begin, including clear lines of investigative authority among law enforcement agencies, appropriate mechanisms to share information, and appropriate and consistent training of all personnel involved in international operations.

Optimizing Grant and Contract Administration

From FY 2008 through FY 2011 the Department awarded approximately \$15 billion in grants and \$27 billion in contracts, and it awarded another approximately \$1 billion in grants and \$6 billion in contracts in FY 2012. Appropriate administration of public funds must always be a priority, but in this climate of constrained budgets, the use of billions of taxpayer dollars requires particular attention from Department management.

In addition to the potential gains from consolidating the Department's grant-making components discussed above, the Department should focus its attention on improving other aspects of its grant-making efforts. Most obviously, the Department should ensure that grants are achieving the intended results. Using performance measures that provide adequate information to evaluate not only the benefits achieved through the grant-making process but also the investment required will help the Department improve the efficiency of its grant-making and allow it to use its limited resources where they will be most useful.

Once grant funds are disbursed, the Department relies on thousands of governmental and non-governmental grant recipients to appropriately manage the billions of dollars of awards. It is therefore imperative that the Department diligently oversee those recipients and provide them with tools to help ensure that grant terms and conditions are followed. Several such efforts are under way at the Department. For example, in September 2011, representatives from the Civil Division, the Antitrust Division, and the OIG, in cooperation with the Department's National Advocacy Center, produced a grant fraud training video for federal prosecutors and other government attorneys. In March 2012 the Financial Fraud Enforcement Task Force's Recovery Act, Procurement, and Grant Fraud Working Group, which includes the OIG, released a training framework for reducing grant fraud risk. The Department also developed and

implemented a Grant Financial Management Online Training program complete with test questions to help support grant recipient compliance with rules and regulation. Yet not all of these training programs are required for all Department grant recipients, and as demonstrated by the \$22 million in questioned costs reported in FY 2012 OIG grant and contract audits as well as related single audits, grant management and the oversight of grantee expenditures continue to be significant challenges for the Department.

Optimizing grant-making is of obvious importance, but the Department currently spends more on contracts for goods and services each year than on grants. Some of the largest of these contracts are related to the planning, implementation, and management of complex information technology systems. In total, the Department awarded nearly \$3 billion in contract funds on information technology in FY 2012.

The OIG's audits and reviews of Department programs have found instances of poorly managed or otherwise inefficient expenditures on information technology. For example, the OIG's September 2012 interim report on the FBI's implementation of Sentinel, an investigative and case management system, found that the FBI deployed the system after taking over management of the project from a contractor. However, we found that the system was deployed behind schedule and did not provide all of the originally planned capabilities. We also found that although the FBI's \$441 million cost estimate is \$10 million less than the latest Sentinel budget, the estimate did not include originally planned operations and maintenance costs for the next 2 years, which the FBI estimated to be \$30 million annually, and that the FBI did not adjust its cost baseline when it transferred requirements to other FBI information systems. The Department must ensure that there is adequate management and oversight of information technology contracts to minimize cost overruns and provide planned system functionality.

Spending on conferences represents another cost category that we believe the Department should scrutinize. Although the Department has reported reducing these expenditures by \$7 million in the last year and \$33 million in total over the last two years, it nevertheless reported spending over \$58 million on conferences in FY 2012, and that number excludes spending on conferences that cost less than \$20,000 and conferences that were not predominantly for DOJ attendees. We believe that the current budgetary environment demands that the Department search for adequate alternatives to conferences, such as video conferencing, and that it strongly consider restricting its conference spending even further.

Enforcing Against Fraud and Financial Offenses

Finally, I wish to emphasize today the importance of the Department's continued vigorous enforcement against fraud and financial offenses. The

Department has long played an important role in preventing and reducing fraud and financial crimes.

Rarely in the Department's history has this role received as much attention – or as many resources – as in the past few years. The Department must ensure that these resources are appropriately deployed where they can make the greatest impact. For example, the Department appears to have had success in bringing False Claims Act cases, having announced in September 2012 that its total recoveries in these cases since January 2009 exceeded \$13 billion, of which \$9.3 billion was recovered in cases involving fraud against federal health care programs. Notably, many of those cases were the result of disclosures by whistleblowers, starkly demonstrating the importance of encouraging government employees to come forward with information about waste, fraud, abuse, and mismanagement. The Department should continue to strive to maximize such recoveries.

In addition, the Department must ensure that individuals and entities who have committed fraud previously do not have the means or opportunity to do so again. For example, the Department can use the suspension and debarment of individuals or entities to protect the government's financial interest from unethical, dishonest, or otherwise irresponsible entities and to reduce fraud, waste, and abuse in federal programs. Suspension and debarment decisions are made either administratively through agency suspending and debarring officials or statutorily as a result of convictions for qualifying offenses. A June 2012 OIG audit found that the Department had not established an adequate system to ensure that it fulfills its responsibilities related to statutory debarment, creating the possibility that federal funding could be inadvertently and inappropriately awarded to excluded individuals.

The Department also should ensure the effective use of its Asset Forfeiture Program to confiscate both the means to commit and the proceeds of criminal activity. In particular, the Department may benefit from seeking greater interagency efficiency in its asset forfeiture efforts, as a recent GAO report concluded that there may be overlap between the asset management activities and the information technology infrastructures of the Department's Asset Forfeiture Program and the Treasury Department's similar Asset Forfeiture Fund. The Department may wish to consider studying the feasibility of consolidating or better coordinating the administrative structure of its asset forfeiture program with that of the Treasury Department.

And on a related note, the Department should continue to strengthen its efforts to collect criminal penalties and civil judgments owed to the Department. In FY 2012, for example, the U.S. Attorneys' Offices reported collecting \$13.1 billion in criminal and civil actions, more than doubling the \$6.5 billion reported in FY 2011. However, at the end of FY 2012, the U.S. Attorneys' Offices reported an ending principal balance of nearly

\$86 billion relating to criminal and civil actions that remained uncollected, which is more than 6 times the amount collected and \$10 billion more than the ending principal balance in FY 2011. In addition, collection efforts appeared to vary substantially among the U.S. Attorneys' Offices.

Conclusion

Avoiding wasteful and ineffective spending is a fundamental responsibility of federal agencies in any budgetary environment. But when times are tight, as they are today, the government must redouble its efforts to make the most of every taxpayer dollar. While our oversight work has identified numerous examples of ineffective or questionable spending at the Department of Justice, it has also identified numerous opportunities for improvements that we believe will help maximize the efficiency, and effectiveness, of the Department's programs and operations. I hope and trust that the Department will pursue each and every one of the OIG's recommendations to this end without delay.

In concluding, I want to emphasize the message I offered at the start of this testimony: to fully address the budgetary challenges facing the Department, and to protect its ability to fulfill its mission, the Department must develop a unified and transparent strategy for the future, one that focuses on its fundamental cost structure, strips away unnecessary duplication, and ensures that, where necessary, hard choices about program funding are made in a principled manner. I look forward to working closely with the Department and the Congress to ensure that this is done, and done right.

This concludes my prepared statement, and I would be pleased to answer any questions.