

Section III

Management Section (Unaudited)

Overview

Each year, the Department identifies existing and potential management challenges, weaknesses, and areas in need of improvement. Two primary sources used to identify these issues are the Department's OIG-identified Top Management and Performance Challenges and the Federal Managers' Financial Integrity Act (FMFIA) assessment process. The challenges identified by the Department's OIG are from an auditor's perspective and include areas of concern that bear significantly on how well the Department carries out its mission and meets its responsibilities as a steward of public funds. The FMFIA assessment process evaluates the effectiveness of internal controls to support effective and efficient programmatic operations, reliable financial reporting, and compliance with applicable laws and regulations (FMFIA § 2) and whether financial management systems conform to financial system requirements (FMFIA § 4).

Presented on the following pages are the OIG-identified Top Management and Performance Challenges in the Department, Department management's response to those challenges, and the Corrective Action Plan resulting from the FMFIA assessment.

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Top Management and Performance Challenges Facing the Department of Justice

November 10, 2014

MEMORANDUM FOR THE ATTORNEY GENERAL
THE DEPUTY ATTORNEY GENERAL

FROM: 
MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Top Management and Performance Challenges Facing the Department of Justice

Attached to this memorandum is the Office of the Inspector General's 2014 list of top management and performance challenges facing the Department of Justice (Department), which we have identified based on our oversight work, research, and judgment. We have prepared similar lists since 1998. By statute this list is required to be included in the Department's Agency Financial Report.

This year's list identifies seven challenges that we believe represent the most pressing concerns for the Department. They are *Addressing the Persisting Crisis in the Federal Prison System*; *Safeguarding National Security Consistent with Civil Rights and Liberties*; *Enhancing Cybersecurity in an Era of Ever-Increasing Threats*; *Effectively Implementing Performance-Based Management*; *Ensuring Effective and Efficient Oversight of Law Enforcement Programs*; *Upholding the Highest Standards of Integrity and Public Service*; and *Protecting Taxpayer Funds from Mismanagement and Misuse*. While the challenges are not presented in a priority order, we believe the federal prison crisis, safeguarding national security, and enhancing cybersecurity are challenges in three critical areas that will continue to occupy much of the Department's attention and require its sustained focus for the foreseeable future.

In addition, one of the challenges, *Effectively Implementing Performance-Based Management*, offers the Department the opportunity to realize improvements and positive results across the spectrum of its programs and operations. Meeting this challenge will require the Department to use accurate and reliable data, develop results-oriented measurements, and adopt a data-driven analytical approach in its evaluation of program performance. We recognize that achieving results-oriented measurement is particularly difficult in areas such as litigation and law enforcement, but it is of critical importance if the Department is to effectively monitor whether its programs are accomplishing their intended goals. Performance-based management will enhance the Department's ability to achieve its strategic management objectives and address its most salient challenges.

We hope this document will assist the Department in prioritizing its efforts to improve program performance and enhancing its operations. We look forward to continuing to work with the Department to respond to these important issues in the year ahead.

Attachment

TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING
THE DEPARTMENT OF JUSTICE

Office of the Inspector General

1. Addressing the Persisting Crisis in the Federal Prison System

The Department of Justice (Department) continues to face two interrelated crises in the federal prison system. First, despite a slight decrease in the total number of federal inmates in fiscal year (FY) 2014, the Department projects that the costs of the federal prison system will continue to increase in the years ahead, consuming a large share of the Department's budget. Second, federal prisons remain significantly overcrowded and therefore face a number of important safety and security issues.

Containing the Cost of the Federal Prison System

The costs to operate and maintain the federal prison system continue to grow, resulting in less funding being available for the Department's other critical law enforcement missions. Although the size of the federal prison population decreased for the first time since 1980, from 219,298 inmates at the end of FY 2013 to 214,149 inmates at the end of FY 2014, and the Department now projects that the number of inmates will decrease by 10,000 in FY 2016, the downward trend has yet to result in a decrease in federal prison system costs. For example, in FY 2000, the budget for the Federal Bureau of Prisons (BOP) totaled \$3.8 billion and accounted for about 18 percent of the Department's discretionary budget. In comparison, in FY 2014, the BOP's enacted budget totaled \$6.9 billion and accounted for about 25 percent of the Department's discretionary budget. During this same period, the rate of growth in the BOP's budget was almost twice the rate of growth of the rest of the Department. The BOP currently has more employees than any other Department component, including the Federal Bureau of Investigation (FBI), and has the second largest budget of any Department component, trailing only the FBI. The Department's leadership has acknowledged the dangers the rising costs of the federal prison system present to the Department's ability to fulfill its mission in other areas. Nevertheless, federal prison spending continues to impact the Department's ability to make other public safety investments, as the Department's FY 2015 budget request for the BOP is a 0.5 percent increase from the enacted FY 2014 level.

Our work has identified several funding categories where rising prison costs will present particularly significant challenges in future years. For example, inmate healthcare costs constitute a rapidly growing portion of the federal prison system budget. According to BOP data, the cost for providing healthcare services to inmates increased 55 percent from FY 2006 to FY 2013. The BOP spent over \$1 billion on inmate healthcare services in FY 2013, which nearly equaled the entire budget of the U.S. Marshals Service (USMS) or the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The rapid increase in inmate healthcare costs can partly be attributed to the growth of the aging inmate population. From FY 2009 to FY 2013, the population of sentenced inmates age 50 and over in BOP-managed facilities increased 25 percent, while the population of sentenced inmates under the age of 30 decreased by 16 percent. The growth in the aging inmate population has significant budgetary implications for the Department because, according to studies cited by the National Institute of Corrections in a 2004 report, older inmates generally cost more than their younger counterparts to incarcerate. BOP data indicates that aging inmates account for about 19 percent of the total current population in BOP-managed facilities and 31 percent of inmates housed in BOP medical centers. In 2013, the average cost of incarcerating an

inmate in a BOP medical center was \$58,956 compared to \$27,549 for inmates in the general population. The Office of the Inspector General (OIG) is completing a review of the impact of the BOP's aging inmate population on inmate and custody management, including inmate programs and activities, housing, and costs.

The cost of prescription drugs is also driving BOP's healthcare costs. New prescription drug treatments, particularly for chronic hepatitis C (HCV), could exponentially increase costs in the coming years. The BOP currently spends \$6,600 per patient for a standard HCV treatment regimen. However, the treatment regimen newly approved by the Food and Drug Administration could cost an additional \$20,000 to \$40,000 per patient, according to BOP estimates. In 2014, the BOP estimated that at least 11,000 of its inmates have HCV, meaning that the BOP could face additional costs for these patients of approximately \$220 million to \$440 million. The BOP recently issued interim guidance on the implementation and management of HCV treatments. The OIG continues to monitor the effects of rising healthcare costs.

Given this crisis in the prison system, the Department needs to better utilize programs that can assist in prison population management, particularly existing programs and policies that Congress has already authorized. The OIG found in its 2013 review of the BOP's Compassionate Release Program that the program was not well-run and that an effectively managed program could assist the BOP with its prison capacity issues, which would result in cost savings for the BOP. Following our review, the BOP expanded its Compassionate Release Program to include criteria for elderly inmates with and without medical conditions. Similarly, in our 2011 review of the Department's International Prisoner Transfer Program, which permits certain foreign national inmates from treaty nations to serve the remainder of their sentences in their home countries, the OIG found that the Department rejected 97 percent of transfer requests by foreign national inmates, and that in FY 2010 few foreign inmates were transferred back to their home countries. Following our review, the BOP took steps to ensure that the treaty transfer program was communicated more effectively to inmates. According to recent BOP data, the number of inmates requesting transfer has increased significantly; however, the number of foreign inmates ultimately transferred to their home countries remains stagnant. The OIG anticipates completing its follow-up review of the treaty transfer program this fiscal year, and plans to report on whether there is additional progress that can be made to reduce prisoner numbers and costs in this area.

Separately, the Department has recently announced initiatives and changes in prosecution, sentencing, and early release policies that could reduce federal prison costs. These proposed policies target inmates sentenced for drug offenses, a group that accounts for more than half of the current federal prison population. The Department's FY 2015 budget request includes \$173 million to support the Smart on Crime initiative, which the Department indicates is intended to promote prevention and reentry programs, such as drug courts and veterans courts as alternatives to incarceration, and encourages prosecutors to draft criminal charges for low-level nonviolent drug offenders in ways that will not trigger mandatory minimum sentences. Further, in April 2014, the Department announced a clemency initiative for prisoners already serving long sentences for low-level, non-violent drug offenses.

The Department also has indicated its support for programs that provide alternatives to incarceration, coupled with treatment and supervision, in an attempt to reduce recidivism. In an August 2013 speech, the Attorney General identified state-sponsored initiatives that he said served as effective alternatives to incarceration by providing offenders the treatment and supervision designed to reduce recidivism while also reducing states' prison populations. The Attorney General also instructed all U.S. Attorneys' Offices

(USAOs) to designate a Prevention and Reentry Coordinator in their respective Districts to expand on existing programs that promote the implementation of the Smart on Crime initiative. The OIG is currently conducting an audit that will evaluate the design and implementation of pre-trial diversion and drug court programs, variances in the usage of the programs among the USAOs, and costs savings associated with successful program participants.

Improving Prison Safety and Security

At the same time it focuses on prison costs, the Department must continue its efforts to ensure the safety and security of staff and inmates in federal prison and detention facilities. Prison overcrowding presents the most significant threat to the safety and security of BOP staff and inmates. In its FY 2013 Agency Financial Report, the Department once again identified prison overcrowding as a programmatic material weakness, as it has done in every such report since FY 2006. Yet, the federal prisons remain almost as crowded today as they were in FY 2006. As of June 2014, federal prisons operated at 33 percent overcapacity, with 42 percent overcrowding at higher security facilities and 40 percent at medium security facilities. Overcrowding in the federal prison system has prevented the BOP from reducing its inmate-to-correctional officer ratio, which according to the Congressional Research Service has remained at approximately 10-to-1 for more than a decade. The Department's FY 2014-2018 strategic plan includes an outcome goal to reduce system-wide crowding in federal prisons to 15 percent by FY 2018. However, as of June 2014, the BOP's Long Range Capacity Plan projects prison overcrowding to be 38 percent by FY 2018, higher than it is today. To reach the long-term outcome goal in the strategic plan, without expending additional funds to build more federal prison space or to contract for additional non-federal bed space, the Department would have to achieve a net reduction of about 23,400 federal prisoners from the June 2014 prison population, based on the existing bed space available within the federal prison facilities.

The safe and secure incarceration of federal inmates not only applies to BOP-managed facilities, but also extends to privately managed BOP contract facilities. Effective oversight of these facilities is critical since the proportion of inmates housed in contract facilities has increased substantially, from 2 percent of the prison population in 1980 to 19.5 percent in 2013. Riots in two privately managed BOP contract facilities, one in Texas in 2009 and the other in Mississippi in 2012, resulted in the death of a correctional officer, severe injuries to prisoners and employees, and over \$60 million in property damage. The causes of both incidents have been at least partially attributed to prisoners' reactions to their perceptions of inadequate medical conditions and mistreatment at the facilities. The OIG is examining how the BOP manages its private contract prisons, whether the three contract prisons we are reviewing meet BOP and other safety and security requirements and how contract facilities compare with similar BOP facilities in terms of inmate safety and security. The use of segregated housing in private contract facilities and federal prisons also raises inmate safety and security concerns. In 2013, the BOP agreed to have an independent assessment conducted on its use of segregated housing. The OIG awaits the results of the report, and will continue to monitor the BOP's management of restrictive housing operations.

Sexual abuse in prison also remains a serious safety and security issue for the Department. In May 2014, the Department estimated that four percent of state and federal prison inmates reported experiencing one or more incidents of sexual victimization by another inmate or a facility staff member within the previous 12 months. The Prison Rape Elimination Act of 2003 (PREA) expanded the Department's responsibility to prevent the sexual abuse of inmates in BOP facilities and detainees in the custody of the USMS. The

OIG recently completed a review of the Department's efforts to implement and comply with PREA since the Department's 2012 publication of the National Standards to Prevent, Detect, and Respond to Prison Rape (standards), which apply to all federal, state, and local confinement facilities. The OIG found that while the Department has made progress complying with the standards during the early period of implementation, significant work remains. For example, the Department does not have an effective mechanism in place to ensure compliance with the provisions of the standards that place obligations on the Department's law enforcement components that investigate sexual abuse in confinement settings. Consistent with those standards, all OIG investigators responsible for investigating sexual abuse allegations completed training earlier this year. The OIG will continue its longstanding efforts to investigate allegations of sexual abuse in federal prisons and detention facilities, work that has resulted in numerous criminal convictions and administrative actions by the BOP and the USMS.

The introduction of weapons and contraband, such as drugs, cell phones, and tobacco, into correctional facilities also presents considerable safety and security concerns. The OIG released an audit in June 2014 that assessed the usage and effectiveness of 65 x-ray machines purchased by the BOP for approximately \$4 million following an attempted smuggling incident at the Federal Correctional Complex in Pollock, Louisiana. Our audit found that the machines were not effective for screening certain commodities commonly received by institution warehouses, and that prior to the audit the BOP had no policy guidance outlining the x-ray machines' limitations on effectively scanning dense items. In response to an OIG memorandum, the BOP issued guidance to ensure consistent application of all critical security and operational procedures for the use of x-ray machines at all BOP institutions that have received the equipment.

The unauthorized use of cell phones in prisons and detention facilities has proven to be a significant danger, and presents an increasing threat to the safety of the public as well as BOP staff and inmates. According to a 2011 Government Accountability Office (GAO) report, the number of cell phones BOP confiscated at federal prisons increased from 1,774 in 2008 to 3,684 in 2010. BOP officials reported that contraband cell phone use can threaten the security of prisons and expand criminal activity both inside and outside of prisons. For example, in January 2011 an inmate at a federal institution was sentenced to an additional 14 years in prison for running an identity-theft ring using a contraband cell phone, resulting in over \$254,000 in fraudulent purchases. In September 2014, five correctional officers from the Baltimore City Detention Center, which is a state operated facility that also houses federal inmates under a contract with the USMS, pled guilty to participating in a 2-year racketeering conspiracy that included the smuggling of drugs and contraband, including cell phones, for further distribution by inmates who were active gang members. The OIG will continue to monitor cell phone interdiction efforts by the states and the BOP. In July 2013, the BOP released new staff entrance and search procedures, which authorized random pat searches of staff and in September 2014 the BOP announced a pilot program to use Millimeter Wave Scanners (similar to those used in airports) for contraband detection at six institutions. The OIG continues to monitor the BOP's compliance with a 2003 OIG recommendation regarding the searching of staff and their property when entering BOP institutions. In October 2014, the OIG initiated a review of the BOP's contraband interdiction efforts, including staff and visitor searches as well as physical security measures. That review will also examine state prisons' contraband interdiction practices.

Addressing the challenge of ensuring the safety and security of correctional officers and federal inmates will require the BOP to take several actions. First and foremost, the BOP must pursue strategies to reduce

prison overcrowding. It must also provide effective oversight of privately managed contract prison facilities, reduce the incidence of inmate sexual abuse, and prevent the smuggling of weapons and contraband into prison.

2. Safeguarding National Security Consistent with Civil Rights and Liberties

The top priority in the Department's FY 2014-2018 strategic plan continues to be protecting U.S. citizens against acts of terrorism. As demonstrated by recent acts perpetrated by the Islamic State of Iraq and the Levant (ISIL) in the Middle East and last year's bombing of the Boston Marathon, the threat posed by terrorism remains serious. The proposed FY 2015 budget for the Department allocates over \$4.3 billion to national security efforts to maintain counterterrorism and counterespionage programs and sustain intelligence gathering and surveillance capabilities. Given the potential magnitude of the threat posed, it is particularly important that the Department ensure that these funds are spent wisely, and that they are effective in improving national security. At the same time, however, the Department must ensure that it respects the civil liberties of American citizens. The recent debate over the government's surveillance programs has drawn significant attention to the challenge of operating critical national security programs consistent with the public's expectation of privacy.

The Department's national security efforts continue to be a focus of the OIG's oversight work, which has consistently shown that the Department faces many persistent challenges in its efforts to protect the nation from attack. One such challenge is ensuring that national security information is appropriately shared among Department components and the Intelligence Community so that responsible officials have the necessary information to act in a timely and effective manner. Our joint review with three other Inspectors General of the government's handling and sharing of information prior to the Boston Marathon bombings found that the FBI, Central Intelligence Agency (CIA), Department of Homeland Security, and National Counterterrorism Center generally shared information and followed procedures appropriately. Although we found that the FBI did not coordinate with the CIA in 2011 after receiving lead information about one of the alleged perpetrators of the bombings, we concluded that the CIA's involvement likely would not have been helpful to the FBI at that time. We also found that the FBI did not share this lead information with its state and local partners on the Joint Terrorism Task Force prior to the bombings, and we recommended that the FBI consider establishing a procedure for sharing threat information with state and local partners more proactively and uniformly. To identify potential gaps in information sharing that could compromise the effective targeting and disruption of international terrorist groups we intend to conduct a review of domestic information sharing among federal, state, and local law enforcement agencies.

We also continue to review the Department's use of the various investigative tools that it has available to enhance its national security efforts. For example, we are currently examining the Drug Enforcement Administration's (DEA) use of administrative subpoenas to obtain or exploit broad collections of "bulk" data or information. In particular, this review will address the legal authority for the acquisition and use of these data collections.

Various investigative methods used by the Department and the FBI to carry out their national security missions contain safeguards designed to protect the civil liberties of Americans. The importance of achieving the appropriate balance between effective national security efforts and respect for civil liberties and privacy interests was demonstrated by OIG reviews that have assessed the FBI's use of National

Security Letters (NSL), which give the government authority to obtain information such as telephone and financial records from third parties without a court order, provided certain requirements are met. The OIG's initial two NSL reviews found that the FBI had misused this authority by failing to comply with important legal requirements designed to protect civil liberties and privacy interests, and we therefore made recommendations to help remedy these failures. In our most recent review of the FBI's use of NSLs published earlier this year, we found that the FBI and the Department have devoted considerable resources toward implementing the recommendations made in our past reports, and are taking additional measures to improve the FBI's compliance with NSL requirements. However, we identified additional challenges in certain areas during our compliance review, and we therefore made 10 new recommendations to the FBI and the Department to further improve the use and oversight of NSLs.

Ongoing OIG work, such as our reviews of the Department's requests for and use of business records under Section 215 of the USA PATRIOT Reauthorization Act and the Department's use of pen register and trap-and-trace devices under the Foreign Intelligence Surveillance Act (FISA), also address privacy concerns implicated by the use of national security authorities to collect data. Although the OIG completed both of these reviews months ago, and we have provided classified briefings to Congress regarding them, we have been unable to release the classified reports to Congress or non-classified reports to the public because the classification review being conducted by the intelligence community, which includes the FBI, is still ongoing. Similarly, in 2013, we requested that the Department and the Office of the Director of National Intelligence (ODNI) conduct declassification reviews for the full classified versions of our prior Section 215 reports, as well as our reports on the President's Surveillance Program and the FBI's use of Section 702 of the FISA Amendments Act, so that these reports can be released publicly. Our requests for the declassification reviews remain pending. We had made a similar request regarding our prior NSL reports and, in October 2014, we released new versions of those prior NSL reports with additional information unredacted after the information was declassified by the Department and ODNI in response to a Freedom of Information Act (FOIA) lawsuit. We believe it is important for the Department and ODNI to promptly review the remaining OIG national security reports that we identified in 2013 for declassification review.

The OIG also is currently reviewing the FBI's use of information derived from the National Security Agency's (NSA) collection of telephony metadata obtained from certain telecommunications service providers under Section 215. The review will examine the FBI's procedures for receiving, processing, and disseminating leads the NSA develops from the metadata, and any changes that have been made to these procedures over time. The review will also examine how FBI field offices respond to leads generated from this collection, and the scope and type of information field offices collect as a result of any investigative activity that is initiated. In addition, the review will examine the role the leads have had in FBI counterterrorism efforts.

The Department must couple its protection of national security with a commitment to the principles of transparency, oversight, and compliance with the law in its management of surveillance and data collection programs. Technological advances have increased the amount of data potentially available for use by law enforcement agencies, and Americans are engaged in a discussion about the value of the information collected and the appropriateness of collection techniques employed under surveillance authorities. New and emerging national security threats continue to drive the Department's work, and as the Department continues to acquire, store, and use information for its national security investigations and prosecutions, concerns about privacy rights and liberties will continue to arise.

3. Enhancing Cybersecurity in an Era of Ever-Increasing Threats

The United States continues to face serious, rapidly evolving economic and national security threats posed by cyber attacks and cyber espionage against its computer systems and infrastructure. In a January 2014 poll conducted by Defense News, leaders in national security policy, the military, Congress, and the defense industry identified cyber warfare as the number one threat facing the United States. In November 2013, FBI Director James B. Comey testified before the Senate Committee on Homeland Security and Governmental Affairs that in the future the resources devoted to cyber threats had the potential to eclipse resources devoted to non-cyber based terrorist threats. As recent events have shown, significant data breaches have occurred in the private sector, including at some of the nation's largest companies. These breaches have exposed to harm the personal data and financial information of millions of Americans. The federal government is also a frequent target of cyber attacks.

The Department has assigned numerous offices responsibility for meeting the cybersecurity challenge. These include the FBI's Cyber Division, which leads the Department's cyber investigative efforts; the National Security Division's cyber unit, the Criminal Division's Computer Crime and Intellectual Property Section, and the many USAOs responsible for prosecuting cyber cases. The FBI Cyber Division is responsible for protecting against cyber-based terrorism, espionage, and computer intrusions, and also leads the National Cyber Investigative Joint Task Force (NCIJTF), which is the focal point for coordinating, integrating, and sharing information on cyber threat investigations across 19 U.S. agencies and foreign partners. As we stated in last year's management challenges report, this increasing proliferation of cybersecurity events creates pressing challenges for the Department to properly coordinate its cyber resources to work in concert toward the same goal, and to ensure that information related to cyber threats is shared and disseminated in an appropriate manner.

Moreover, the Department's FY 2015 budget request reflects its continued recognition of cybersecurity as a top priority. The Department requested \$722 million, an increase of \$7.6 million, to confront computer intrusions and cybercrimes and protect the Department's information networks. Over the last two years, the Department has requested \$100.2 million to address rapidly changing cyber threats. The majority of this increase, \$86.6 million (and 152 positions), is to support the FBI's Next Generation Cyber Initiative (NGC), which was launched in 2012 to enhance the FBI's ability to address cyber security threats to which the United States is vulnerable. NGC goals include increased partnering with the NCIJTF, focusing cyber security resources on computer and network intrusions instead of crimes committed with a computer, expanding the capabilities of Cyber Task Forces in each of the FBI's 56 Field Offices, and bolstering the FBI's cyber workforce and support infrastructure. The OIG is currently reviewing the NGC Initiative, determining whether the FBI is meeting its goals and assessing the FBI's progress following our 2011 report on its ability to address the national security cyber threat.

In its efforts to combat cybercrimes that impact the private sector, the Department must conduct sufficient outreach. It must also be willing to share information about cyber threats so that the private sector can prepare for and defend itself against cyber attacks. In last year's management challenges report, we stressed the need for the Department to aggressively implement the President's February 2013 Executive Order that requires the Department to implement procedures to rapidly share quality cyber threat information with private sector entities. A response from the Department came recently when the FBI established the Key Partnership Engagement Unit. The new unit aims to share "sector specific threat information" with private sector partners, and has provided classified briefings to key industries including

energy and financial services. To avoid duplication, when sharing information with the private sector, the Department must coordinate with other federal agencies performing similar tasks, such as the Department of Homeland Security and the Secret Service. A successful cybersecurity strategy requires cooperation from the private sector, as well as reciprocal cooperation from law enforcement. The OIG will continue to monitor the Department's outreach to the private sector.

In protecting its own computer systems and data, the Department must establish and maintain effective internal network defenses. Of particular concern are insider threats. As recent events have shown, employees and contractors who have access to government computer systems and information in order to do their work, may pose serious security risks from within. In February 2014, the Department established an Insider Threat Prevention and Detection Program. The purpose of this program is to use counterintelligence, security, information assurance, and other functions and resources to identify and counter insider threats. The Department's Insider Threat Working Group is responsible for the development of minimum standards and guidance for implementing the program, and ensuring that civil liberties issues are adequately addressed.

Further, it is critical that the Department respond to cybersecurity incidents in a timely and meaningful manner. According to the National Institute of Standards and Technology (NIST), organizations need an incident response capability to enable them to detect incidents quickly, minimize loss and destruction, mitigate the system weaknesses that were exploited, and restore information technology services. However, an April 2014 GAO report analyzed a statistical sample of fiscal year 2012 cyber incidents across 24 federal agencies, including the Department, and estimated that the agencies did not effectively or consistently demonstrate actions taken in response to approximately 65 percent of detected incidents. Regarding Department policies and procedures, the GAO report identified several instances where the Department was in full or partial compliance, and in one instance in noncompliance, with key elements defined by the NIST. The report also found that the Department only partially defined the roles, responsibilities, and levels of authority for responding to cybersecurity incidents and did not develop and document procedures for prioritizing incidents. The GAO did, however, note that the Department was the only one of the six federal agencies selected for the audit that had established incident response performance measures.

In an era of ever-increasing cyber threats, the Department will be challenged to sustain a focused, well-coordinated cybersecurity approach for the foreseeable future. The Department must continue to emphasize protection of its own data and computer systems, while marshalling the necessary resources to combat cybercrime and effectively engaging the private sector.

4. Effectively Implementing Performance-Based Management

A significant management challenge for the Department is ensuring, through performance-based management, that its programs are achieving their intended purposes. In a September 2014 speech on criminal justice reforms aimed at reducing the federal prison population and its costs, the Attorney General stated, "it's time to shift away from old metrics and embrace a more contemporary, and more comprehensive, view of what constitutes success ... because what gets measured is what gets funded and what gets funded is what gets done." Currently, the Department's 40 components have about 500 performance measures for programs with varied goals that include preventing terrorism and promoting national security, reducing violent crime, enforcing federal laws, and ensuring the fair and efficient

administration of justice. Establishing annual and long-term performance measures with ambitious targets is a challenge for many of the Department's programs given that the programmatic outcomes are frequently not easily measured. However, the Department's ability to accomplish its strategic goals is significantly aided by how well it can gather and use data to evaluate program performance and improve management decisions; in addition, empirical evidence can assist in resource allocations and in requesting budget proposals.

Performance-based management has been a long-standing challenge not only for the Department but across the entire federal government. The Government Performance and Results (GPRA) Modernization Act of 2010 updated the federal government's performance management framework. The Act and corresponding guidance in the Office of Management and Budget's Circular No. A-11 place a heightened emphasis on priority-setting, cross-organizational collaboration to achieve shared goals, and the use and analysis of goals and measurements to improve outcomes. The Act established the website Performance.gov to serve as a single platform to communicate government-wide and agency performance. The Act also requires that federal agencies establish priority goals and cross-agency goals; conduct quarterly data-driven reviews to measure performance in achieving these goals; and use Performance.gov as a vehicle to report this information to the public. These quarterly data-driven performance reviews are modeled after successful evidence-based practices used in both the private and public sectors, such as the New York City Police Department's use of "CompStat" in the early 1990s to reduce crime and improve police performance.

The Department has taken actions to implement the tenets of performance-based management. For instance, in March 2014, the Department developed four agency priority goals to reflect the Attorney General's stated priorities and align with the Department's new strategic plan for FYs 2014-2018. The priority goals address themes concerning national security, violent crime, protecting vulnerable people, and financial and healthcare fraud, and focus on results that can be accomplished over a 12 to 24 month timeframe. Through Performance.gov, the Department has begun to report on a quarterly basis its progress in meeting these goals with performance data. Similarly, the Department developed a new set of key performance measures to track its progress in accomplishing the 30 long-term outcome goals in its new strategic plan. Also, starting in FY 2013, the Department combined its annual performance report and annual performance plan to provide a more useful and integrated picture of the Department's performance.

As the Department implements the GPRA Modernization Act requirements, it must continue its efforts to develop meaningful outcome-oriented goals and performance metrics. Some of the Department's performance goals and indicators are focused on inputs, workload, or processes rather than on outcomes and results. For example, several of the performance measures for the USAOs, such as the number of matters handled or total judgments and settlements, are output rather than outcome focused. These measures may provide information about the number of cases being handled, but they do not assess the significance and impact of those cases, nor do they address the goals of the Smart on Crime initiative. Given the significant role federal prosecutors play in combating crime, serving justice, and keeping the public safe, meaningful and outcome-based USAO performance measures can serve as powerful incentives to allocate resources and ensure focus toward achieving priorities. Achieving results-oriented measurement is particularly difficult in areas such as litigation and law enforcement, but of critical importance if the Department is to effectively monitor whether its programs are accomplishing their intended goals.

Further, Department leadership has acknowledged that the Department needs to embrace data in its evaluation of program performance, such as through advanced data analytics. Adopting a data-driven, analytical approach will be especially important for assessing the implementation of the Attorney General's Smart on Crime initiative. As noted previously, the rising cost of incarceration threatens the Department's ability to fulfill its mission in other priority areas. Much of the Smart on Crime initiative promotes the increased use of prevention and reentry programs, such as the expanded use of pre-trial diversion and drug court programs as alternatives to incarceration. A comprehensive approach to the collection and analysis of data on how well these programs are reducing incarceration costs, deterring crime, and improving public safety will help the Department to focus its resources and make strategic investments.

An essential building block to achieving performance-based management is having reliable data, an issue that has proven to be a challenge for the Department. Multiple OIG audits and reviews have identified problems with inaccurate or unreliable performance data. For example, in a 2014 review, the OIG found that the Department could not provide readily verifiable data related to its mortgage fraud efforts because of underreporting and misclassification of mortgage fraud cases in the Executive Office for U.S. Attorneys' case management system. The OIG also found there was no established methodology for obtaining and verifying the criminal mortgage fraud statistics announced during the Attorney General's October 2012 press conference regarding the Distressed Homeowner Initiative. According to an August 2013 FBI memorandum, the statistics presented at the press conference had reported approximately five times the actual number of criminal defendants charged as part of the initiative, and ten times the actual total estimated losses associated with Distressed Homeowners cases. Also, a 2014 OIG audit of the John R. Justice grant program found that the Bureau of Justice Assistance did not collect standardized, relevant baseline information on staffing rates for prosecutor and public defender positions, which resulted in limited data being available for a quantitative analysis of the impact of the grant program. In a 2012 review, the OIG found that the Executive Office for Immigration Review's performance reporting was flawed for both the immigration courts and the Board of Immigration Appeals. As a result, the Department could not accurately assess how well these bodies were processing immigration cases and appeals, or identify needed improvements.

Current and reliable data on performance measures is also critical in addressing resource allocation. Of growing importance in the current budget climate is the need to invest wisely in human capital, a fundamental prerequisite for achieving performance-based management. Between January 2011 and December 2013, the number of individuals employed by the Department declined by more than 4,000 due to sequestration and managed hiring efforts. Moreover, according to a January 2014 GAO report, by September 2017 approximately 28 percent of Department employees who were on board in September 2012 will be eligible to retire. The Department's FY 2015 budget request includes an increase of 580 positions over the FY 2014 enacted level. As the Department hires employees to fulfill its mission, it will need to rely on performance data to make strategic workforce planning and human capital decisions. The Department recently issued its human capital strategic plan for FYs 2015-2018 and plans to conduct quarterly data-driven reviews to measure its progress toward achieving the plan's goals.

In sum, effectively implementing performance-based management remains an ongoing challenge for the Department. Although the Department has taken actions to meet the requirements of the GPRA Modernization Act, it must continue to reexamine its performance measures. The use of reliable data will

aid the Department in effectively measuring its programs, which in turn will enhance the Department's ability to achieve its strategic management objectives and allocation of resources.

5. Ensuring Effective and Efficient Oversight of Law Enforcement Programs

The Department's traditional law enforcement mission of enforcing and upholding federal law remains vitally important and occupies a central place in the Department's current strategic plan. As the nation's largest law enforcement agency, the Department possesses the unique responsibility of overseeing the coordination of its law enforcement practices while respecting civil rights. The OIG's recent work has identified several challenges facing the Department's law enforcement efforts.

A persistent challenge for the Department is to provide careful management and oversight of sensitive law enforcement programs. Such programs are not always subject to public scrutiny, heightening the importance of effective oversight. For example, our prior review on Operation Fast and Furious determined that the ATF and the Department had not devoted sufficient attention to ensuring that ATF's policies adhered to requirements found in the Attorney General's Guidelines and other Department policies. We recommended that the Department coordinate among its law enforcement components on issues relating to significant law enforcement policies and procedures, case deconfliction mechanisms, and law enforcement initiatives. In this way, the Department can establish best practices and consistency among the investigative techniques used by its law enforcement components. The OIG is conducting a follow-up review to evaluate the progress and effectiveness of the measures the Department and the ATF have taken to implement the recommendations in our 2012 report that reviewed ATF's Operation Fast and Furious. Another key finding in our Fast and Furious report was that the ATF failed to exercise sufficient oversight of sensitive activities that posed a danger to the public or otherwise presented special risks. The ATF recognized this problem and established a Monitored Case Program to improve its oversight capabilities. The OIG is currently conducting a review to examine several ATF storefront operations that continued or began after the inception of the Monitored Case Program, and to evaluate the effectiveness of the Monitored Case Program as an oversight tool.

In addition, the OIG is reviewing the DEA's management of its confidential source program to evaluate its compliance with laws and regulations and oversight of payments to confidential sources. In particular, the OIG is determining if the DEA adhered to all requirements in the Attorney General's Guidelines regarding the use of confidential informants. This review will examine whether the Department reviews certain decisions relating to the registration and utilization of confidential sources. Concurrently, the OIG has been conducting an investigation of alleged payments for information by DEA personnel to an Amtrak employee. The OIG is also reviewing the Department's admission, handling, tracking, and monitoring of sex offenders admitted into the federal Witness Security (WITSEC) program and the Department's procedures for notifying states, local municipalities, and other law enforcement agencies regarding the relocation of the sex offenders in the WITSEC program.

Adding to the Department's oversight challenges is the need to integrate rapidly evolving technologies into law enforcement efforts while the rules governing those technologies remain in flux. The OIG is auditing the Department's use of or participation in law enforcement operations using unmanned aerial systems (UAS). Since the release of our September 2013 interim report, the Department has convened a UAS policy review working group, but has not yet finalized action towards a Department-wide policy on

the use of UAS. The Department should take appropriate steps to ensure the most efficient, effective, and appropriate use of this new law enforcement technology.

The Department also must balance its critical oversight of law enforcement programs with ensuring the civil rights of American citizens. For example, passenger interdiction is a sensitive activity that requires careful management. The OIG is examining interdiction activities involving DEA-initiated cold consent encounters and searches of travelers at transportation facilities. In this review, the OIG seeks to determine how DEA's policies and practices are currently being implemented and whether they can be improved to strengthen oversight and increase protection of civil rights.

At the international level, the Department has an expansive presence in foreign countries, including over 1,200 permanent positions in over 140 countries. Department personnel establish and maintain working relationships with other nations, provide training, assist with investigations, and transport fugitives back to the United States. The Department faces numerous cooperation and oversight challenges, particularly when helping to build foreign counterparts' law enforcement capacities to address the expansion of transnational crime. When foreign partners make a commitment to law enforcement reform, the Department can provide federal resources and expertise, including the International Criminal Investigative Training Assistance Program and the Office of Overseas Prosecutorial Development, to assist with investigative, prosecutorial, and correctional services. While the Department works with foreign partners to support national security and foreign policy objectives, including combatting illegal immigration and building national defense programs to fight terrorism abroad, it must also ensure that the coordination, management, and oversight of these efforts sufficiently address international issues and align with current U.S. government and Department concerns and missions.

Furthermore, careful and effective oversight of law enforcement activities and employee conduct abroad is essential given the potential impact on U.S. foreign interests. For example, as representatives of the U.S. government, off-duty misconduct by Department employees stationed abroad can present unique concerns, particularly for law enforcement employees with security clearances. Moreover, when off-duty misconduct occurs, the impact on the U.S. government's reputation and on its law enforcement efforts can be especially damaging. The OIG is currently reviewing policies, guidance, and training that govern the off-duty conduct of Department employees on official travel or assignment in foreign countries. In addition, the OIG and the Department of State (State) OIG are conducting a joint review of post-incident responses by the DEA and State to three 2012 drug interdiction missions in Honduras involving the use of deadly force. This review will address several issues, including the rules of engagement governing the use of deadly force and information provided to Congress and the public by the Department and State about the incidents.

Coordination among law enforcement entities is critical to ensuring effective and efficient law enforcement operations. In a recent review that examined the operations of the multi-agency Organized Crime Drug Enforcement Task Forces Fusion Center (OFC), we found that a strained working relationship between the leadership of the OFC (the Director of which was a DEA employee during the OIG review) and the FBI created an uncooperative working environment that harmed the operations of the OFC. We also made several recommendations to improve the efficiency and effectiveness of OFC operations and usefulness of its analytic products, including that the Office of the Deputy Attorney General evaluate the structure of the OFC and the procedures for appointment of its management and staff to determine if modifications are appropriate to ensure efficient and cooperative operations.

Coordination is also a key tool for the Department in sharing the responsibility to patrol and manage more than 55 million acres of land with more than 500 federally recognized Native American tribes. In Indian Country, where there are high rates of violent crime, sexual assault, and substance abuse, federal law enforcement is both the first and likely only avenue of protection for victims of violent crimes. In particular, the impact and exposure to violent crime for Native American children is alarming, and it has been calculated that native youths are two-and-a-half times more likely to experience trauma compared to their non-native peers. The Department has requested \$395.4 million to enhance and coordinate public safety initiatives in Indian Country. Additionally, the Department's Office of Justice Programs (OJP) awarded grants totaling over \$263 million, through the Correctional Systems and Correctional Alternatives on Tribal Lands Program. The OIG is currently auditing this program to assess the OJP's management and oversight of the funding, as well as the OJP's cooperation and coordination with the Bureau of Indian Affairs to ensure efficient and effective correctional services in Indian Country.

As evidenced by the OIG's wide array of reviews relating to law enforcement issues, the Department continues to be challenged in its oversight role of the vast variety of complex and evolving law enforcement issues. It is crucial that the Department ensure proper oversight of its programs while acting consistent with the protection of civil rights for American citizens.

6. Upholding the Highest Standards of Integrity and Public Service

Charged with enforcing the nation's laws and defending its interests, the Department's senior officials and employees are expected to uphold the highest standards of integrity. Meeting this expectation is a key component in fulfilling the Department's crucial role in public service.

It is impossible for any organization as large and complex as the Department to maintain a perfect record of integrity, yet we have found that constant vigilance by the Department has produced positive results. For example, the FBI Laboratory (Lab) strengthened its latent fingerprint identifications by implementing major reforms, the USMS issued a promotional items policy to limit purchases of "swag," and the Civil Rights Division took steps to improve public confidence in the division's hiring practices have assisted in restoring public confidence in the Department.

Yet, the Department must ensure the fair administration of justice or public confidence may be lost. As evident from our July 2014 report describing irregularities in the FBI Lab, the OIG found serious deficiencies in the design, implementation, and overall management of the case review process conducted by a Department Task Force that responded to troubling findings about the FBI Lab in a 1997 OIG report. The deficiencies led to the Department's failure to ensure that capital cases were the Task Force's top priority and treated with urgency. For example, three defendants were executed before their cases were identified and reviewed by the Task Force. Another significant deficiency arose from the Task Force's failure to review all cases involving an FBI Lab Examiner whose misconduct was identified in the OIG's 1997 report, and whose work was known by the Task Force as early as 1999 to be consistently problematic. Additionally, the OIG's July 2014 report regarding the DEA's detention of a suspect in San Diego found that the DEA's failure to ensure that the suspect was released from custody after deciding that he would not be charged resulted in his unjustified incarceration for 5 days, and in injuries requiring significant medical treatment.

The Department should also strive to maintain the highest standards of integrity and accuracy when reporting on its efforts to the public. In our 2014 Mortgage Fraud review, referenced above, we found

that the Department did not prioritize mortgage fraud at a level commensurate with its public statements about its enforcement priorities and substantially overstated its mortgage fraud enforcement efforts by providing inaccurate statistics at its October 2012 press conference. Moreover, the Department became aware soon after the press conference that the statistics were seriously flawed, but did not inform the public of the errors until August 2013 and continued to cite them during the intervening 10 months. Providing the public with inaccurate information and failing to correct such misstatements in a timely manner erodes the public's confidence and trust in the Department.

The Department must continue to work to eliminate nepotism and favoritism in its hiring decisions and to abide by merit system principles. In 2012, the OIG issued a report on its investigation of improper hiring practices in the Department's Justice Management Division (JMD). We found that multiple JMD employees had violated applicable statutes and regulations in seeking employment for their relatives within JMD. In 2014, we determined that the recommendations we made in our report could be closed because of the steps JMD had taken to improve its hiring procedures. In September 2014, the Deputy Attorney General issued a memorandum directing all Department components to adopt hiring disclosure procedures similar to those adopted by JMD in response to the OIG report. In November 2014, the OIG found violations of the federal nepotism prohibition and other personnel rules arising from the hiring of four students who were relatives of the three most senior officials in the Executive Office of Immigration Review (EOIR). However, we also found that EOIR has taken steps to adopt hiring practices consistent with those adopted by JMD, which should help prevent nepotism and favoritism in future EOIR hiring. The OIG is nearing completion of an investigation of nepotism and favoritism in another DOJ component.

Whistleblowers play a crucial role in helping to ensure that the Department is upholding the highest standards of integrity and public service. For example, the OIG first learned about the DEA's unjustified detention of the suspect in San Diego, discussed above, when concerned individuals called the OIG's hotline regarding the matter. Yet, we continue to identify instances where Department employees have sought to retaliate against whistleblowers. One recent OIG investigation found that a former high-ranking ATF official made highly inappropriate and derogatory statements about the ATF agents who reported their concerns regarding Operation Fast and Furious. Another investigation found substantial evidence that one of these ATF agents was retaliated against by a former United States Attorney for his testimony before a Congressional committee. More recently, two FBI agents detailed to the OFC told us that they had been subjected to retaliation by the OFC Director after they had raised concerns to the OIG about the OFC's operations. The OIG recently completed its review of these retaliation allegations and concluded that there were reasonable grounds to believe that actions were taken against the FBI employees in reprisal for making protected disclosures. The OIG continues to emphasize, through our OIG's Whistleblower Ombudsman Program, the vital importance of whistleblowers to ensuring the effective and efficient operations of the Department, as we seek to expand whistleblower training to all Department components. The Department's leaders must ensure that employees can come forward and report waste, fraud, abuse, and mismanagement without fear of retaliation, and that they know where and to whom they can report their concerns.

Robust oversight is critical to ensure that the Department upholds the highest standards of integrity. For any OIG to conduct effective oversight, it must have complete and timely access to all records in the agency's possession that the OIG deems relevant to its work. Prompt and complete access to information is a cornerstone of effective independent oversight by the OIG, a principle codified in the Inspector

General Act. We expect that most OIG audits and reviews will be conducted with prompt and complete cooperation from Department components, yet there have been recent occasions when we have not obtained timely or complete access to certain records due to the Department's view that access was limited by other laws. Actions that limit, condition, or delay access to information have substantial consequences that may adversely affect our ability to provide efficient and thorough oversight of the Department.

The Department continues to face challenges regarding its handling of allegations of misconduct by Department attorneys. The Office of Professional Responsibility (OPR) has jurisdiction, by statute, to investigate allegations of misconduct against Department attorneys acting in their capacity as lawyers. The OIG has long questioned the carving out of this exclusive role for OPR as it is managed as a component of the Department, has no institutional independence, and lacks transparency in that it does not regularly release its reports and conclusions to the public. The independent, non-partisan Project on Government Oversight (POGO) issued a March 2014 report that was critical of OPR's longstanding lack of transparency and recommended empowering the OIG to investigate misconduct by Department attorneys. The OIG's strong record of transparency is vital to ensuring the Department's accountability and enhancing the public's confidence in the Department's operations. Although a federal regulation, 28 C.F.R. 0.29e(a)(6), authorizes the OIG to request that the Deputy Attorney General assign to us a matter within the investigative jurisdiction of OPR, this procedure leaves the decision entirely to the Department leadership and, in any event, requiring the OIG to seek the Department's permission before undertaking an investigation compromises our independence. For these reasons, we continue to believe that Congress should eliminate this carve-out from the OIG's jurisdiction and support S.2127, bipartisan legislation that would amend the Inspector General Act to enable the OIG to investigate allegations of attorney misconduct.

The Department is expected to uphold the highest levels of integrity to maintain the public's trust. To meet this challenge, the Department must continue to encourage its employees to report what they reasonably believe to be evidence of wrongdoing, take steps to promptly address deficiencies, and ensure that oversight of its operations promotes the fair and impartial administration of justice.

7. Protecting Taxpayer Funds from Mismanagement and Misuse

Avoiding wasteful and ineffective spending is a fundamental responsibility of all federal agencies, and with a FY 2014 budget of \$27.3 billion, the Department needs to ensure that it operates as efficiently and effectively as possible. In FY 2014, the OIG's reports, including those related to audits performed by independent auditors pursuant to the Single Audit Act, identified about \$23.7 million in questioned costs and more than \$1.2 million in taxpayer funds that could be put to better use. These figures are in addition to numerous recommendations for program improvements that are not quantified in dollars.

The Department must remain particularly vigilant when taxpayer funds are distributed outside of its direct control to third parties, such as grantees and contractors. Over the past decade there has been significant growth in the Department's contract spending. According to data from the government's USASpending.gov website, Department contract outlays almost doubled from \$3.4 billion in FY 2003 to \$7.3 billion in FY 2013. This growth in contract spending presents a challenge to the Department to ensure contracts are being awarded competitively, that the Department actively monitors contractor

performance, and that funds are spent wisely and efficiently so that the Department gets full value for its expenditure of the taxpayers' money.

Nowhere is the growth trend in contracting more apparent than in the BOP. The BOP's FY 2015 budget requested \$1.1 billion for contract prisons, representing 15 percent of its total budget. Additionally, as noted above, the proportion of federal prison inmates in contract facilities has risen from 2 percent in 1980 to 19.5 percent in 2013. Moreover, according to the Federal Procurement Data System, in FY 2013, 8 of the top 10 high-dollar Department contract obligations (funds set aside for payment) were for private prison contracts. Such cost information inevitably leads to the question: are private prisons more or less cost effective than public prisons? The OIG is currently examining how the BOP manages its private prison contracts. The OIG is also auditing one of the largest BOP private prison contracts, which was awarded to a detention center in Texas, to assess the BOP's and contractor's compliance with contract terms and conditions in the areas of billings and payments, staffing requirements, and contract oversight and monitoring.

In part due to the sheer volume of money and the large number of recipients involved, grant funds present a significant risk for mismanagement and misuse. According to USASpending.gov, from FY 2009 through FY 2013 the Department awarded approximately \$17 billion in grants to thousands of governmental and non-governmental recipients. For example, an OIG audit questioned nearly all of the more than \$23 million in grant funds awarded by the Department to Big Brothers Big Sisters of America (BBBSA) due to the mismanagement of the grant funds. The audit also resulted in the OJP freezing disbursement of Department grant funds to BBBSA at that time. However, four months after OJP's action, BBBSA received \$5 million in grant funds from the Department of Labor. Further, we understand that OJP has recently approved a partial release of funds to BBBSA under BBBSA's 2012 grant based upon OJP's approval of a 90-day budget of BBBSA's anticipated costs, and that BBBSA may request drawdowns on a reimbursement basis as expenses are incurred. Protecting taxpayer funds from mismanagement and misuse is critical, and the Department must ensure that when such actions are taken with respect to a grant recipient, it should communicate with other federal granting agencies so that they are aware of the Department of Justice actions.

Further, the OIG's recent reports have identified several opportunities for improved efficiency in how the Department spends its own funds. For example, as described above, our June 2014 audit examined the BOP's purchase and usage of x-ray machines, and found significant concerns in the effectiveness and usage of the x-ray machines. The OIG found that the machines were not effective for screening certain commodities commonly received by BOP institution warehouses. In addition, significant delays between the delivery and installation of some x-ray machines resulted in over \$182,000 in expended funds for which no benefit had been realized.

The Department also plays an important role in protecting taxpayer funds through its efforts to enforce laws against financial offenses and fraud. For example, in FY 2013, the Department reported recoveries of \$3.8 billion in False Claims Act cases primarily comprised of \$2.6 billion attributable to health care fraud civil recoveries and \$890 million attributable to procurement fraud. The OIG's Fraud Detection Office (FDO) has opened grant fraud cases on issues including consultant payments, conflicts of interest, and embezzlement, and has provided fraud awareness training to OJP. In 2014, the FDO conducted 28 briefings focused on grant fraud indicators and common schemes, which reached approximately 2,500 participants.

The Department must also use all appropriate tools available to recover money owed to it, enforce the collection of debts owed to crime victims and the federal government, and ensure that the amounts recovered from civil debt collection activities are properly credited to the Department and spent wisely. In FY 2013, the USAOs collected \$9 billion in criminal and civil debts. However, at the end of FY 2013, an additional \$25.3 billion was owed to the United States, including \$20.8 billion in criminal fines and restitution and \$4.5 billion in civil debts. The USAOs' efforts to collect criminal and civil debts are the subject of an ongoing OIG review.

The Department must also ensure the proper stewardship of its Assets Forfeiture Fund, which has seen a significant increase from \$2.9 billion in FY 2011 to \$5 billion as of FY 2013. A portion of these funds constitutes the Department's Equitable Sharing Program, which distributes a share of forfeited property and proceeds to state and local law enforcement agencies that participate in a federal forfeiture. The equitable sharing payments distributed to state and local law enforcement agencies increased from nearly \$440 million in FY 2011 to nearly \$710 million in FY 2013. While this program offers the Department and its state and local partners a collaborative opportunity in law enforcement, if not carefully managed, the program also creates an opportunity for abuse. For example, in the past two fiscal years, OIG audits of equitable sharing payments identified over \$2 million in questioned costs. The Department must maintain careful oversight of the equitable sharing payments it distributes to ensure that state and local agencies spend these funds appropriately. The Department's oversight must also ensure that state and local agencies obtain forfeited property and proceeds in an appropriate manner.

The OIG's recent oversight work has demonstrated the continued challenges the Department faces in ensuring that taxpayer funds are protected from fraud, mismanagement, and misuse. It is essential that the Department continue to manage its resources wisely and maximize the effectiveness of its programs even as the Department's current budget environment improves.

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**MANAGEMENT'S RESPONSE TO THE FY 2014
OFFICE OF THE INSPECTOR GENERAL'S REPORT ON THE
TOP MANAGEMENT AND PERFORMANCE CHALLENGES
FACING THE DEPARTMENT OF JUSTICE**

1. Addressing the Persisting Crisis in the Federal Prison System

Just over a year after the August 2013 launch of the Department of Justice's (DOJ or the Department) Smart on Crime initiative – which shifted prosecutorial resources to cases with the most significant federal interests; effectively lowered sentences for low-level, nonviolent drug offenders; and encouraged the use of alternatives to incarceration in appropriate cases – the prison population has decreased for the first time since 1980. As the Report notes, the trend is projected to continue: the Department expects a decrease in prison population by approximately 1,200 in FY 2015 and approximately 10,000 in FY 2016. While the Smart on Crime initiative no doubt has made some progress, the Department is working to measure its effectiveness and impact, the full results of which are likely to be seen over a period of several years.

Despite this progress, federal detention and prison spending remains a large share of the Department's budget due to the overall size of the inmate population. In particular, and as the Report notes, medical needs are increasing prison costs and the aging population, a major user of medical services, is growing. In fact, one of the primary drivers of healthcare costs within the Bureau of Prisons (BOP) is the cost of prescription drugs. The Department and BOP have and will continue to implement all prudent mechanisms to reduce these healthcare costs without sacrificing the appropriate standard of care. For example, and as the Report recognizes, as part of the Smart on Crime initiative, the BOP has expanded its criteria for its Compassionate Release Program.

Some mechanisms identified in the Report for reducing prisons costs, however, are unlikely to have a significant impact on reducing the inmate population. The International Prisoner Transfer Program is a voluntary program requiring the consent of the prisoner, the sentencing country, and the receiving country. Although a significant number of foreign national prisoners are in BOP custody, many do not apply for transfer. Of those prisoners who apply, most are not eligible for transfer because they are not from a country having a transfer treaty relationship with the United States or because they do not meet statutory or treaty requirements. BOP is responsible for making the initial eligibility determination and then referring the small subset of eligible applicants to Criminal Division, which determines the suitability of each transfer applicant. Regardless of how many candidates are approved by the United States, the number of actual transfers will only increase if transfer treaty partners accept their nationals for transfer and do so in a timely manner. That said, even though these restrictions result in the Program's benefitting only a few prisoners, at the Office of the Inspector General's (OIG) recommendation, BOP has improved its procedures for publicizing the Program to inmates and trained staff on its implementation; the Criminal Division has also enhanced its review process.

Reductions in the population help address a second critical concern for BOP: the number of staff available to supervise and provide evidence-based programs and services to inmates. As the population goes down, the ratio of inmates to staff members also goes down, thereby increasing the safety of staff, inmates, and the general public. Last year's reduction in the inmate population decreased system-wide crowding in BOP's prisons to 30%, the lowest it has been since 1998. Despite the overall reduction, crowding remains a concern at medium and high security institutions which are operating at 39% and 52% above rated capacity, respectively.

The size of the inmate population affects prison safety and security and is a constant focus for the BOP, and the Department appreciates the Report's recognition of the numerous programs BOP has implemented and enhanced in order to increase prison security; we will not repeat those here. With regard to contract facilities, as the Report notes, the BOP is currently working to ensure that contracts continue to provide the best value for the government and that contract facilities provide safe and secure incarceration of inmates. The

independent assessment on the safety and security of segregated housing in contract facilities is complete and is scheduled to be provided to the BOP by December 2014.

2. Safeguarding National Security Consistent with Civil Rights and Liberties

The top priority of the Department is to protect U.S. citizens against acts of terrorism. In carrying out its missions to protect national security, the Department is also firmly committed to protecting privacy rights and civil liberties and promoting transparency. This commitment to protect privacy and civil liberties is evident in the work of the Department's privacy program, which is led by the Department's Chief Privacy and Civil Liberties Officer (CPCLO) and the Office of Privacy and Civil Liberties (OPCL). The CPCLO and OPCL work with privacy officials in each of the Department's components to ensure that privacy and civil liberties protections are incorporated in its important national security work.

The Department manages the dissemination of raw and finished intelligence and establishes policies to ensure it disseminates timely, high-quality intelligence to its appropriate components and the Intelligence Community (IC). Finished intelligence is comprised of analytical products which are posted on shared community networks and disseminated to those cleared with a need to know. The Department reviews production numbers and velocity to ensure raw information and finished assessments are shared, as appropriate, in a timely manner. In FY 2014, the Department significantly increased its sharing of critical, sensitive intelligence. As an essential part of this critical intelligence sharing process, the Department has worked with IC components to review procedures to protect the collection, use, and dissemination of U.S. Person information.

Operationally, the Department uses the Federal Bureau of Investigation (FBI) led 103 Joint Terrorism Task Forces and the National Joint Terrorism Task Force, as well as daily coordination and executive briefings, to share national security information with federal, state, and local law enforcement partners. Additionally, the Department actively participates in the National Counterterrorism Center, and the FBI leads the Terrorist Screening Center, through which valuable intelligence is shared as quickly as possible with all relevant stakeholders. The Department has continued to work with its law enforcement partners to ensure that information sharing procedures and initiatives comply with applicable privacy law and policy. This includes review and assessment of privacy and civil liberties issues of information technology systems used in information sharing initiatives, as well as participating in review of specific law enforcement programs to ensure that information collected, used, and disseminated for national security and law enforcement purposes complies with applicable privacy and civil liberties requirements.

While the Department is working to protect the nation against terrorism, it is committed to the principles of transparency, oversight, and compliance. The Department appreciates the OIG's recognition of this commitment and progress with respect to the FBI's compliance with National Security Letter requirements. In addition, to promote a more transparent government, the Department continues to work with the Office of the Director of National Intelligence and other IC agencies to declassify and make public as much information as possible about certain U.S. Government surveillance programs while protecting sensitive classified intelligence and national security information.

3. Enhancing Cybersecurity in an Era of Ever-increasing Threats

The United States faces serious, rapidly evolving economic and national security threats from cyber attacks and cyber espionage against its computer systems and infrastructure. These attacks are against the government and the private sector, with some of the most significant data breaches occurring in the private sector, including some of the nation's largest companies, exposing to harm personal data and financial information of Americans.

DOJ's work to prevent intrusions and attacks on the nation's home computers, business systems, and government networks draws upon an array of legal tools and capabilities. It integrates DOJ's criminal investigative and national security authorities, intelligence gathering and analytic capabilities, and legal expertise in technological matters to detect, deter, and disrupt cyber threats. Because of the range of capabilities and expertise required, DOJ takes an integrated, cross-component approach to cybersecurity, including the relevant threat subject matter experts (terrorism, economic espionage, organized crime) for the most effective response. In addition, the Department uses all cybersecurity tools at its disposal to include investigations, prosecutions, intelligence collection, foreign investment review, threat information sharing, victim outreach, policy review, and strategic planning.

Because cyber threats have many dimensions, a combination of law enforcement, national security, diplomatic, economic, and military tools and authorities—wielded by DOJ and other agencies across the government—needs to be used to mount an effective, collective defense. Accordingly, DOJ collaborates with agencies across the U.S. Government to detect, deter, and disrupt cyber threats, including, among others, the Department of Homeland Security, the IC, the Department of State, and the Department of Defense, as well as state and local governments. The Department helps to develop and implement Executive Orders and other cross-government policy directives related to cybersecurity and information sharing. The Department also proposes and advocates for appropriate legislation to address cybersecurity threats, including provisions that would encourage better collaboration and information sharing between the private sector and government.

The Internet makes it easy for criminals to conduct schemes across international borders, so international outreach and training is critical to address cybercrime that victimizes U.S. citizens. The Department collaborates with international partners to identify, arrest, and extradite individuals involved in data breaches and other computer crimes committed against U.S. victims and to assist in developing the laws and expertise to address computer crime. It also handles requests for assistance from foreign authorities (e.g., Mutual Legal Assistance Treaty requests) concerning cybercrimes in other countries and is taking steps to enhance its capacity to handle such requests.

Outreach and information sharing with the private sector is vital to deter and defend against cybercrime and other cyber threats. DOJ conducts outreach to inform companies and the general public about nascent threats. When threats materialize, DOJ works with other federal departments and agencies to inform companies and individuals that they have been victimized so that they can better protect themselves. The Department collaborates with both IC and law enforcement partners to share cyber threat information with the private sector. The FBI coordinates investigative and operational responses to cyber events, and FBI messages containing intelligence and threat indicators are available to the private sector. These messages are coordinated with IC partners and disseminated when appropriate. The FBI also helps to coordinate the Government's response to computer intrusion activity and notification of victims. The U.S. Attorneys' Offices (USAO) also conduct public and industry outreach and awareness activities. For example, each USAO has one or more designated prosecutors who belong to the Computer Hacking and Intellectual Property (CHIP) Network. Among their other duties, CHIP attorneys conduct public and industry outreach and awareness activities on a continuing basis, helping the private sector to understand the criminal cyber threat and the tools and resources that may assist them if they are a victim of an intrusion. In 2012 DOJ launched the National Security Cyber Specialist (NSCS) Network. This Network specializes in legal tools and advice relating to national security cyber threats. NSCS attorneys coordinate closely with CHIP attorneys and indeed often have served as CHIP prosecutors. NSCS attorneys conduct outreach to companies who may have been – or may become – victims of national security-related cyber intrusions to share useful information and discuss relevant legal issues.

Insider threats are a significant concern across the U.S. Government. Threats are often criminal in nature, and in such cases, the Department's components, including agency OIGs, work together to deter and punish such offenders, particularly when investigations are state-sponsored or involve classified information. The Department's Insider Threat Working Group coordinates efforts in the fight against insider threats. The

Department also has continued legislative efforts to ensure that the law appropriately deters and punishes insider conduct. The Department has leveraged the FBI's robust Insider Threat prevention program to benefit the entire Department, especially within those components that handle classified information.

The Department also recognizes the importance of establishing and maintaining effective internal network defenses. The Department has a robust cybersecurity program to proactively detect and combat insider and advanced persistent threats. For example, the Department has in place defense-in-depth capabilities that provide data loss prevention and advanced malware and virus detection. It also is capable of blocking intrusion attempts and inappropriate inbound and outbound connectivity.

4. Effectively Implementing Performance-based Management

The Department is committed to the development of meaningful results-oriented measurement and has processes in place to constantly monitor and enhance these measures. As stated in the OIG's Report, establishing measures with ambitious targets is a challenge for many of the Department's programs given that the programmatic outcomes frequently are not easily quantified. The Department reviews and monitors components' performance, in conjunction with budget execution and financial information, quarterly. The Department adjusts measures and targets as appropriate.

The Department's Smart on Crime Initiative is focused on identifying reforms to ensure that federal laws are enforced fairly and efficiently. This initiative looks at all phases of the criminal justice system including charging, sentencing, incarceration, and reentry. Over the past year, using data from the BOP, USAOs, and the U.S. Sentencing Commission, as well as other anecdotal information, the Department has developed performance metrics with an eye toward meaningfully tracking progress on the effects of Smart on Crime policies.

Regarding the Distressed Homeowner Initiative, in August 2013, the Department released revised statistics to correct the numbers cited in the Department's October 2012, announcement regarding the initiative. When questions arose about the accuracy of the statistics, the Department determined the source of the error and corrected the data. The Department has issued corrections and modified press releases and other public statements to reflect the correct statistics. Since the issuance of the OIG Report, the Department has issued and implemented a set of best practices for ensuring that accurate statistics are collected and reported to the public.

The Department's Office of Justice Programs (OJP) recognizes that standardized data elements are an important component of state impact assessments and are necessary for a vigorous quantitative analysis of the John R. Justice program. Since FY 2010, the Bureau of Justice Assistance (BJA) has required grantees to complete local impact assessments. In response to the FY 2014 OIG audit findings, BJA plans to implement internal procedures in FY 2015 to standardize the requirements for state impact assessments in its Performance Measurement Tool and ensure that a more robust, consistent, and effective methodology is included in the grant solicitation.

The Department began two initiatives to use performance data to make strategic workforce planning and human capital decisions in FY 2014. First, the Department finalized its Human Capital Strategic Plan for FY 2015-FY 2018, "People First . . . Partnering Across DOJ to Empower its Workforce," and released human capital objectives that align to the current priorities of the Administration and the Department. Second, the Department participated in the Office of Personnel Management's HRStat3.0 initiative, completed the required reviews, and analyzed human capital management data with a focus on improving performance and reducing costs. DOJ continues to use the Federal Employee Viewpoint Survey data to develop and implement workforce planning strategies to attract, retain, and develop DOJ employees.

5. Ensuring Effective and Efficient Oversight of Law Enforcement Programs

As the nation's largest law enforcement agency, the Department bears a distinct responsibility to enforce federal law while maintaining respect for privacy, civil liberties, and civil rights. Indeed, these dual roles complement each other, and maintaining respect for the law requires maintaining respect for the integrity, commitment and professionalism of the agencies and individuals responsible for enforcement of the law. The Department's commitment to protecting privacy, civil liberties, and civil rights is built into the Department's guidelines for all of its law enforcement work, and the Department's CPCLC and OPCL work alongside component privacy officials to ensure that the Department's law enforcement complies with privacy requirements.

Appropriate oversight of the Department's law enforcement components is essential to ensuring the consistent enforcement of federal law. The Department has numerous mechanisms that exist to establish and maintain a consistent approach to law enforcement across all components with a focus on the Department's strategic and law enforcement priorities. The Attorney General has established guidelines that direct the law enforcement components in the development of agency policies governing particularly sensitive enforcement methods and tools.

For two years, the Office of the Deputy Attorney General (ODAG) chaired a Risk Assessment Working Group comprised of representatives of the Department's law enforcement components, members of the Attorney General's Advisory Committee, the Executive Office of United States Attorneys, the Criminal Division, and the Office of the Attorney General. This Working Group carefully reviewed the various tools and techniques utilized by the Department in pursuit of federal criminal investigations and prosecutions, to include a review of the Department's policies on assessing risk during the course of investigations, initiation and oversight of sensitive investigative activities, use of confidential informants, authorization of otherwise illegal activities by undercover agents or informants, and investigations in which project generated income is contemplated. Building on the findings of this Working Group, the Deputy Attorney General circulated two memoranda: first, guidance to all United States Attorneys and heads of litigating components on a prosecutor's role in overseeing sensitive operations; and second, a memorandum setting forth baseline principles that reflect the Department's approach to risk assessment in criminal investigations and operations. Since those memos were issued, representatives from the Department's law enforcement agencies and United States Attorneys have been engaged with the ODAG to ensure that those principles have been fully enshrined not only in written policies, but also in the training and day-to-day operations of the Department's agents and prosecutors.

The ODAG also has chaired the Deconfliction Working Group to develop policies and mechanisms for the necessary coordination and collaboration of multiple law enforcement agencies across the Department and also in the broader federal, state, local, and tribal law enforcement communities. As part of this process, the Deputy Attorney General on May 1, 2014, issued the Department Policy for Mandatory Use of Investigative Deconfliction Systems requiring all Department law enforcement components to engage in a process of deconflicting information from criminal investigations to produce more efficient and effective law enforcement efforts.

The effective coordination of multi-agency efforts is critical to maximizing the success of federal law enforcement operations. The Organized Crime Drug Enforcement Task Force (OCDETF) program is a critical component of the Department's coordination efforts. The OCDETF Fusion Center (OFC) exists to serve a key role in the sharing of information and coordinating multi-agency investigations. Accordingly and in response to OIG's review of the OFC, the Department concurred with the recommendations of the OIG, and OCDETF is working to address those recommendations and implement recommended changes. Additionally, the ODAG is conducting a review of the structure of the OFC and the procedures for appointment of its management and staff. Upon completion of that review the Deputy Attorney General will be able to evaluate the structure, organization, and management of the OFC, and OCDETF will implement any appropriate changes or modifications to the OFC.

The OIG Report references multiple reviews of specific law enforcement component operations or discrete categories of domestic and foreign enforcement activity and policy. Oversight in each of these areas is important, and the Department is actively engaged in this process, both working with the OIG and independently, to maintain consistently effective enforcement of federal law that appropriately respects the rights and interests of all concerned.

As noted by the OIG, the Department has a significant presence in foreign countries through its components. The Department seeks to maintain the highest standards of professionalism and integrity by individuals representing the United States overseas. All Department components have established expectations for the conduct of employees traveling outside the United States as part of their official duties. The Department is committed to ensuring these standards are upheld and that any violations are dealt with appropriately.

The FBI is reviewing law enforcement in Indian Country to identify the personnel and resources necessary to better investigate, prosecute, and prevent crime through both reactive and proactive measures. The FBI Indian Country Crimes Unit has developed an excellent working relationship with Interior's Bureau of Indian Affairs. Through this partnership a new joint 3-week comprehensive Indian Country Basic Investigators Course will be offered to Bureau of Indian Affairs Special Agents, FBI Special Agents, and tribal investigators. The Department is reviewing investigative Memoranda of Understanding between FBI and the Bureau of Indian Affairs and the FBI and specific tribal entities to ensure that all major crimes are being thoroughly investigated and presented for prosecution.

The Department's enhanced Tribal Special Assistant U.S. Attorney (SAUSA) program within the USAOs has improved collaboration with Tribal Law Enforcement. Tribal SAUSAs are cross-deputized tribal prosecutors who are able to prosecute crimes in both tribal court and federal court as appropriate. These Tribal SAUSAs serve to strengthen a tribal government's ability to fight crime and to increase the USAOs' coordination with tribal law enforcement personnel.

6. Upholding the Highest Standards of Integrity and Public Service

The Department is pleased that the OIG recognizes that the Department's vigilance on maintaining integrity has produced positive results. Yet, as the OIG Report stated, it is impossible for any organization as large and complex as the Department to maintain a perfect record. In July 2014, the OIG published a report on the Department's 1996 review of the FBI Lab's analysis of evidence and recommended that the FBI conduct a re-examination of certain capital cases. As part of the FBI Lab's ongoing efforts to review microscopic hair comparison analysis and remedy the concerns with the 1996 review, the Department and FBI have prioritized evaluating files where the defendants were sentenced to death. The Department will take steps to ensure that the results of these reviews are appropriately disseminated. Another July 2014 report cited the Drug Enforcement Administration's (DEA) failure to ensure a suspect was released from custody after deciding that he would not be charged, with the suspect then incurring injuries. Two years ago, the DEA implemented procedures to prevent this from happening again in the future.

In response to the OIG's statement that on occasion they were not provided timely access to certain records, the Department has repeatedly stated its commitment to ensuring the OIG has access to the information it needs to perform its oversight mission effectively. In every instance where the OIG has sought access to legally-restricted material – such as grand jury material protected by Federal Rule of Criminal Procedure 6(e), Title III wiretap information, or materials protected by the Fair Credit Reporting Act – from the Department, the Attorney General or the Deputy Attorney General has ensured that the OIG obtained the requested material. To assist the Department in resolving the legal issues implicated by the interaction of Section 6(a)(1) of the Inspector General Act and other statutes limiting the disclosure and dissemination of particular categories of sensitive information, the Department has requested a formal opinion from the Office of Legal Counsel (OLC). If the outcome of OLC's legal review does not assure the OIG of the access it needs to do its

job, the Department is willing to work with the OIG to develop legislative remedies. In the meantime, the Attorney General and the Deputy Attorney General are committed to working with the OIG to provide efficient access to all materials necessary to complete OIG reviews, consistent with existing law.

The Department recognizes the important role played by whistleblowers in its law enforcement efforts. To help educate employees about their rights as whistleblowers, in April 2014, the Deputy Attorney General sent a memo to all employees that discussed the importance of reporting waste, fraud, and abuse and provided a link to a training video on whistleblowers' rights created by the OIG.

In response to the 2012 OIG Report on improper hiring practices in the Department's Justice Management Division (JMD), both JMD and the Executive Office for Immigration Review (EOIR) implemented a policy requiring hiring officials to acknowledge the prohibition on the granting of unauthorized preferences and to certify compliance with the Merit System Principles. Later that year, the Department shared this policy with Human Resources Officers throughout the Department and asked each component to document the controls they had in place to protect against improper hiring. To strengthen these controls, in September 2014, the Deputy Attorney General issued a memorandum directing all Department components to update their nepotism policies to be consistent with the procedures adopted by JMD in response to the OIG's 2012 report. Thereafter, in consultation with the OIG, JMD revised its procedures to require that, in the case of an applicant who is a relative of a DOJ employee, the selecting official must certify that the relationship between the applicant and the DOJ employee did not influence the selection decision. To deter improper hiring activities in the future, EOIR has started the process of implementing the new JMD policy and form and has committed to providing component-wide training regarding nepotism.

The Department disagrees with the OIG's stance on the jurisdiction of the Department's Office of Professional Responsibility (OPR). OPR was created to investigate allegations of misconduct against Department attorneys that relate to their authority to litigate, investigate, or provide legal advice, and OPR has acquired considerable expertise in the state ethical and professional rules of conduct that governs the practice of law by Department attorneys. The OIG Report contains no criticism of OPR's work, the thoroughness of its investigations, or the soundness of its findings. OPR acts independently and without interference from Department senior leadership. The Department is not aware of any reason why this model should be changed. Where appropriate, OPR has investigated senior Department leadership at the highest levels and issued misconduct findings against Department attorneys when evidence supported such findings. Should the OIG want to assume an investigation that falls within the jurisdiction of OPR, a formal mechanism exists for the OIG to make such request.

Regarding transparency, notwithstanding Privacy Act limitations, OPR annually reports statistical information on the complaints it receives and the number of inquiries and investigations it accepts and resolves. The FY 2013 Annual Report not only included summaries of representative inquiries handled by OPR during the year but also included summaries of nearly every investigation OPR closed during FY 2013. This includes the sources of complaints and allegations; the categories of allegations made and resolved; and whether closed investigations resulted in findings of professional misconduct, poor judgment, or mistake. In addition, OPR regularly provides complainants detailed information concerning the resolution of their complaint, and the Department refers to bar disciplinary authorities any findings of professional misconduct that implicate bar rules.

7. Protecting Taxpayer Funds from Mismanagement and Misuse

The Department takes very seriously its responsibility to protect taxpayer dollars, and has taken numerous steps in recent years to ensure that Department resources are being managed efficiently and effectively.

The Department's OJP integrates programmatic, financial, and administrative oversight throughout the grant lifecycle, conducting programmatic and financial monitoring, grantee audit resolution, review of internal

controls, training and technical assistance, performance management, and targeted outreach to high-risk or at-risk grantees. OJP consistently exceeds its statutory requirement to conduct comprehensive monitoring of not less than 10% of total award dollars. In FY 2014, OJP completed in-depth programmatic monitoring on 661 grants totaling \$1.2 billion, twice the amount required by law. In addition, in FY 2014, OJP completed on-site financial monitoring on 307 grants totaling \$621 million.

The OIG Report cites OJP's audit of grant funds awarded to Big Brothers Big Sisters of America (BBBSA). Upon learning of the OIG's preliminary findings in February 2013, OJP immediately acted to protect the federal funds awarded to BBBSA, including designating BBBSA as a DOJ high-risk grantee; restricting BBBSA's access to its remaining funds under its open grant awards; and restricting BBBSA from obligating, expending, or drawing down any additional DOJ funds. In February 2014, OJP conducted a financial monitoring site visit that focused on assessing BBBSA's updated internal controls. OJP concluded that the newly established and enhanced procedures appeared adequate and recommended releasing funds on a limited basis to resume mentoring activities and enable OJP to further assess the implementation of BBBSA's internal controls. BBBSA still has additional corrective actions to implement before it can gain full access to DOJ funds, and OJP will continue to monitor BBBSA's efforts to address the outstanding audit issues.

OJP continues to identify ways to share grantee performance data, including high risk designations, with other federal agencies. In FY 2014, OJP added the requirement for applicants to disclose whether they are currently designated high risk by another federal grant making agency. During FY 2015, OJP will participate with other federal agencies in addressing the new Uniform Guidance requirements to use the Federal Awardee Performance and Integrity Information System to assess an applicant's pre-award risk based on available grantee performance information.

The Department is committed to enforcing court imposed criminal fines and restitution owed to the United States and victims of crime, as well as civil debts owed to the United States. Through the Department's prosecution and collection efforts over the 5-year period from FYs 2009 to 2013, over \$13.6 billion in fines and restitution has been collected, and over \$26.6 billion has been recovered on civil debts. In FY 2014 alone, the Department recovered an additional \$24.7 billion.

In its debt recovery efforts, the Department uses remedies in the Federal Debt Collection Procedures Act (e.g., garnishment of wages, execution on real and personal property, and fraudulent conveyance actions), the Mandatory Victims Restitution Act (MVRA) (e.g., resentencing and revocation proceedings), the Federal Rules of Civil Procedure (e.g., subpoenas and depositions), as well as various state law remedies. Moreover, the Department's recovery activities include asset forfeiture, which over the past 5 years has returned over \$2.7 billion to financial crime victims, and referrals to the Treasury Offset Program, which has returned over \$100 million in the past 5 years either to crime victims, the Crime Victims Fund, or the General Fund of the Treasury. The Department has leveraged new technologies by using online search engines and credit bureau reporting services to identify assets, and electronic lien filing services to prevent the sale or transfer of property without notification to the Federal Government.

The MVRA mandates that restitution be imposed for the full amount of victims' losses, regardless of the defendant's ability to pay. Although the Department has taken steps to improve its debt collection efforts, it is important to note that approximately 80% or more of the outstanding debt balance is currently not collectible, according to estimates by the United States Attorneys' Offices. This figure is based, among other things, on a review of each defendant's financial circumstances including information contained in pre-sentence reports; financial statements; credit bureau reports; asset searches; skip tracing reports; tax returns; and/or information gathered as a result of subpoenas, interrogatories, or requests for production of documents. In addition, unlike civil debts which can be written off if determined to be uncollectible, criminal debts reside on the books for 20 years plus the period of incarceration. Moreover, if the court determines that a defendant cannot pay the debt amount in one lump sum, the court must set a payment schedule. As a result, nearly all restitution orders contain payment schedules, such as ordering "\$1 million in restitution, payable at \$100 month." The court-

ordered payment schedules restrict USAOs' ability to collect the debts immediately upon imposition.

With respect to stewardship of the Assets Forfeiture Fund Equitable Sharing Program, the Department's "Guide to Equitable Sharing for State and Local Law Enforcement Agencies" (Guide) outlines the Department's policies for state and local use of equitable sharing funds, including permissible and impermissible uses. Non-compliant agencies may be excluded from the program and may be referred to the OIG. The Department continually seeks opportunities to improve policies to prevent abuse of program funds. To ensure effective management and protect the Asset Forfeiture Program against potential waste, fraud, and abuse, the Department has established a requirement for participating law enforcement agencies to report compliance with the Guide to receive funding under the program. Based on risk factors, a specialized team conducts compliance reviews of state and local agencies. The team works to ensure that these agencies follow all policies and spend funds in accordance with the Guide.

The Department, through its internal controls process, has identified several problems with equitable sharing participants and has referred those problems to the OIG, leading to many of the audits cited by the OIG. The resulting audits and, in one instance, a criminal investigation reflect cooperation between the Department and the IG. The Department will continue to employ internal controls and a risk-based system to review compliance of equitable sharing recipients and will continue to support the OIG audits.

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Corrective Action Plan

FMFIA SECTION 2 – PROGRAMMATIC MATERIAL WEAKNESS – PRISON CROWDING

U.S. DEPARTMENT OF JUSTICE Corrective Action Plan Issue and Milestone Schedule		Report Date September 30, 2014
Issue Title Prison Crowding	Issue ID 06BOP001	Component Name Bureau of Prisons
Issue Category FMFIA, Section 2 <input type="checkbox"/> Reportable Condition <input checked="" type="checkbox"/> Material Weakness FMFIA, Section 4 <input type="checkbox"/> Non-conformance OMB A-123, Appendix A <input type="checkbox"/> Reportable Condition <input type="checkbox"/> Material Weakness		
Issue Category – SAT Concurrence or Recategorization Concur		
Issue Description <p>As of September 30, 2014, the inmate population housed in BOP operated institutions exceeded the rated housing capacity by 30 percent. The BOP’s Long Range Capacity Plan relies on multiple approaches to house the federal inmate population, such as contracting with the private sector and state and local facilities for certain groups of low-security inmates; expanding existing institutions where infrastructure permits, programmatically appropriate, and cost effective to do so; and acquiring, constructing, and activating new facilities as funding permits.</p> <p>To address this material weakness, the BOP will continue implementing its Long Range Capacity Plan, making enhancements and modifications to the plan, as needed, commensurate with funding received through enacted budgets. The BOP’s formal Corrective Action Plan includes utilizing contract facilities; expanding existing institutions; and acquiring, constructing, and activating new institutions as funding permits. The BOP will continue to validate progress on construction projects at new and existing facilities through on-site inspections or by reviewing monthly construction progress reports.</p> <p>This material weakness was first reported in 2006. Remediation of the weakness through increasing prison capacity is primarily dependent on funding. Other correctional reforms and alternatives will require policy and/or statutory changes. Other initiatives notwithstanding, if the acquisition, expansion, construction, and activation plans detailed in the BOP’s Long Range Capacity Plan are funded as proposed, the over-crowding rate for FY 2016 is projected to be 17 percent.</p> <p>The Department’s corrective action efforts are not limited to the BOP alone. The Department continues to consider and implement an array of crime prevention, sentencing, and corrections management improvements that focus on accountability and rehabilitation, while protecting public safety. The Department recognizes that the BOP’s capacity management efforts must be teamed with targeted programs that are proven to reduce recidivism and promote effective re-entry. The BOP will continue to work with the Department on these programs.</p>		

Business Process Area (N/A for Section 2 and Section 4 issues)			
Not Applicable			
Date First Identified	Original Target Completion Date	Current Target Completion Date	Actual Completion Date
2006	09/30/2012	Dependent on funding	
Issue Identified By		Source Document Title	
Bureau of Prisons		BOP Population Projections	
Description of Remediation			
Increase the number of federal inmate beds to keep pace with the projected inmate population. Efforts to reach this goal include expanding existing institutions, acquiring surplus properties for conversion to correctional facilities, constructing new institutions, utilizing contract facilities, and exploring alternative options of confinement for appropriate cases.			
Milestones	Original Target Date	Current Target Date	Actual Completion Date
1. As of September 30, 2006, the inmate population in BOP owned and operated institutions reached 162,514 and was housed in a capacity of 119,510, resulting in an over-crowding rate of 36 percent.	09/30/2006		09/30/2006
2. As of September 30, 2007, the inmate population in BOP owned and operated institutions reached 167,323 and was housed in a capacity of 122,189, resulting in an over-crowding rate of 37 percent, an increase of 1 percent for the year.	09/30/2007		09/30/2007
3. As of September 30, 2008, the inmate population in BOP owned and operated institutions reached 165,964 and was housed in a capacity of 122,366, resulting in an over-crowding rate of 36 percent, a decrease of 1 percent for the year.	09/30/2008		09/30/2008
4. As of September 30, 2009, the inmate population in BOP owned and operated institutions reached 172,423 and was housed in a capacity of 125,778, resulting in an over-crowding rate of 37 percent, an increase of 1 percent for the year.	09/30/2009		09/30/2009
5. As of September 30, 2010, the inmate population in BOP owned and operated institutions reached 173,289 and was housed in a capacity of 126,713, resulting in an over-crowding rate of 37 percent, the same rate as at the end of the previous year.	09/30/2010		09/30/2010
6. As of September 30, 2011, the inmate population in BOP owned and operated institutions reached 177,934 and was housed in a capacity of 127,795, resulting in an over-crowding rate of 39 percent, an increase of 2 percent for the year.	09/30/2011		09/30/2011
7. As of September 30, 2012, the inmate population in BOP owned and operated institutions reached 177,556 and was housed in a capacity of 128,359, resulting in an over-crowding rate of 38 percent, a decrease of 1 percent for the year.	09/30/2012		09/30/2012
8. As of September 30, 2013, the inmate population in BOP owned and operated institutions reached 176,849 and was housed in a capacity of 129,726, resulting in an over-crowding rate of 36 percent, a decrease of 2 percent for the year.	09/30/2013		09/30/2013
9. As of September 30, 2014, the inmate population in BOP owned and operated institutions reached 172,742 and was housed in a capacity of 132,803, resulting in an over-crowding rate of 30 percent, a decrease of 6 percent for the year.	09/30/2014		09/30/2014
10. Planning estimates call for a rated capacity of 134,835 to be reached by the end of FY 2015. The over-crowding rate is projected to be 26 percent at that time, a decrease of 4% for the year.	09/30/2015		

Milestones	Original Target Date	Current Target Date	Actual Completion Date
11. Planning estimates call for a rated capacity of 136,735 to be reached by the end of FY 2016. The over-crowding rate is projected to be 17 percent at that time, a decrease of 9% for the year.	09/30/2016		
<p>Reason for Not Meeting Original Target Completion Date Funding received through enacted budgets for additional capacity has not kept pace with the increases in the federal inmate population.</p>			
<p>Status of Funding Available to Achieve Corrective Action FY 2015 funding is unknown at this point because the FY 2015 budget has not been enacted. The Department of Justice's proposed FY 2016 budget for BOP is under review at the Office of Management and Budget.</p>			
<p>Planned Measures to Prevent Recurrence The BOP will continue to structure budget requests to address capacity needs in the most cost effective manner possible.</p>			
<p>Validation Indicator Results are measured as a new institution or expansion project is activated and resulting increases in rated capacity are established. A corresponding decrease in the over-crowding rate will be a tangible measurement of the results. Progress on construction projects at new and existing facilities will be validated via on-site inspections of each facility or by review of monthly construction progress reports.</p>			
<p>Organizations Responsible for Corrective Action BOP Administration Division and Program Review Division</p>			

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Undisbursed Balances in Expired Grant Accounts

Section 536 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012 (Act) of the Consolidated Appropriations Act, 2010 (Pub. Law 112-55) requires certain departments, agencies, and instrumentalities of the United States Government receiving appropriations under the Act to track undisbursed balances in expired grant accounts for FY 2014.

Undisbursed balances in expired grant accounts include budget authority that is no longer available for new obligations but is still available for disbursement. According to Section 20.4(c) of OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, the expired phase "lasts five years after the last unexpired year unless the expiration period has been lengthened by legislation. Specifically, you may not incur new obligations against expired budget authority, but you may liquidate existing obligations by making disbursements." For FY 2014, the below information is required to be reported in the Agency Financial Reports and annual performance plans/budgets with regard to undisbursed balances in expired grant accounts: 1) details on future action the department, agency, or instrumentality will take to resolve undisbursed balances in expired grant accounts; 2) the method that the department, agency, or instrumentality uses to track undisbursed balances in expired grant accounts; 3) identification of undisbursed balances in expired grant accounts that may be returned to the Treasury of the United States; 4) in the preceding three fiscal years, details on the total number of expired grant accounts with undisbursed balances (on the first day of each fiscal year) for the department, agency, or instrumentality and the total finances that have not been obligated to a specific project remaining in the accounts.

Three Department of Justice grant-making agencies are required to report under this guidance: Community Oriented Policing Services (COPS), Office of Justice Programs (OJP), and the Office on Violence Against Women (OVW). Their responses are noted below:

1. Details on future actions that will be taken to resolve undisbursed balances in expired grant accounts:

COPS closely monitors the financial activity of all its grantees. This includes requiring all grant recipients to report the financial expenditures for all COPS awards on a quarterly basis. COPS has a group of dedicated Grant Program Specialists and Staff Accountants that offer grantees real-time technical assistance with implementing any aspect of their grant. Due to the additional reporting requirements and transparency associated with American Recovery and Reinvestment Act of 2009 (ARRA) grant recipients, COPS has implemented additional efforts to monitor COPS Hiring Recovery Program (CHRP) grantees. First, all CHRP grantees were encouraged to complete an online grants management training, which includes a training track specifically addressing financial reporting and disbursement of funds. Second, CHRP grantees were notified in 2012 that the undisbursed balance on their grant awards would lapse on September 30, 2015 (5 years after the last unexpired year for ARRA), thus all grant program requirements should be completed by that time and all expensed funds disbursed. Third, beginning in November 2010, COPS conducts quarterly outreach efforts to a select group of CHRP grantees who appear to have either discrepancies in the financial or programmatic reporting on their awards. COPS management works with the Justice Management Division (JMD), OMB, and the Office of the Vice President (OVP) to ensure that ARRA funds are being disbursed and outlayed timely.

All OJP discretionary/categorical and block/formula grantees are required to submit a financial report quarterly. Grantees have 90 days after the end date of the award to drawdown funds and close out the award. If the payments to the grantee are less than the amount of the grant expenditures, then the grantee is given the opportunity to draw down these funds. OJP Customer Service Outreach staff calls the grantee to ask them to draw down their funds. The first notice will commence on the same day as the phone call to the grantee. If the grantee has not drawn down their available funds after 14 calendar days, a second contact is made by the Customer Service Outreach staff and a second notice is sent. If there is no action by the grantee, a third notice is sent to the grantee informing them that OJP will de-obligate the funds from their grant. If the

grantee has not retrieved their funds after 14 additional calendar days, the funds are de-obligated. After deobligation, the grantee will receive a Grant Adjustment Notice (GAN) in the mail informing them that the funds have been de-obligated and are no longer available and the grant is closed.

OVW closely monitors the financial activity of all its grantees. All grant recipients are required to report their financial expenditures for OVW awards on a quarterly basis and their project performance activities on a semi-annual or annual basis. Although Section 1512 reporting was terminated in January 2014, until that time, ARRA grantees were required to submit special Section 1512 reports on a quarterly basis that included project and financial information. OVW reviewed 100 percent of these reports for each reporting period and contacts the grantees regarding any concerns or questions. OVW Grant Program Specialists and Financial analysts offer ARRA grantees technical assistance with implementing any aspect of their grant, including trainings, outreach, site visits and monitoring. The OVW management receives and reviews frequent reports on ARRA grant activity, including obligation and outlay data, and OVW management works with JMD, OMB, OVP, and the OIG to ensure that ARRA funds are being disbursed and outlayed timely.

2. Method used to track undisbursed balances in expired grant accounts:

COPS utilizes both the Financial Management Information System 2 (FMIS2) data as well as data from OJP's Grant Payment Request System (GPRS) to track CHRP undisbursed balances. OJP currently uses its Grants Management System (financial reports), FMIS2 and GPRS to track undisbursed balances. OVW utilizes both FMIS2 data as well as data from OJP's GPRS to track undisbursed balances.

3. Identification of undisbursed balances in expired grant accounts that may be returned to the Treasury:

The Department has the authority to transfer unobligated balances of expired appropriations to the Working Capital Fund. Specifically, Public Law 102-140 provides that at no later than the end the fifth fiscal year after the fiscal year for which funds are appropriated or otherwise made available, unobligated balances of appropriations available to the Department of Justice during such fiscal year may be transferred into the capital account of the Working Capital Fund to be available for the Department-wide acquisition of capital equipment, development and implementation of law enforcement or litigation related automated data processing systems, and for the improvement and implementation of the Department's financial management and payroll/personnel systems. Therefore, in general, unobligated and undisbursed balances in the Department's expired grant accounts will be transferred to the Working Capital Fund for use as authorized by law, not returned to the Treasury. An exception to this will be ARRA grant funds; pursuant to Public Law 111-203, such grant funds that had not been obligated as of December 31, 2012, will be rescinded and returned to the Treasury. The Department may utilize recoveries from the ARRA grants to cover any potential future reconciliation of debt and then the Department will transfer the remaining recoveries to Treasury no later than September 30, 2015.

4. The total number of expired grant accounts with undisbursed balances (on the first day of each fiscal year) and the total finances that have not been obligated to a specific project remaining in the accounts, are as follows (dollars in millions):

OJP:

FY 2011: 6 accounts; \$859.7 in undisbursed and unobligated balances

FY 2012: 5 accounts; \$485.6 in undisbursed and unobligated balances

FY 2013: 1 account; \$72.0 in undisbursed and unobligated balances

FY 2014: 1 account; \$24.0 in undisbursed and unobligated balances

COPS:

FY 2011: 1 account; \$861.8 in undisbursed and unobligated balances

FY 2012: 1 account; \$580.3 in undisbursed and unobligated balances

FY 2013: 1 account; \$277.5 in undisbursed and unobligated balances

FY 2014: 1 account; \$84.4 in undisbursed and unobligated balances

OVW:

FY 2011: 1 account; \$154.4 in undisbursed and unobligated balances

FY 2012: 1 account; \$63.2 in undisbursed and unobligated balances

FY 2013: 1 account; \$23.5 in undisbursed and unobligated balances

FY 2014: 1 account; \$10.5 in undisbursed and unobligated balances

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