Office of the Inspector General
United States Department of Justice

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before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

"Oversight of DEA's Confidential Source Program"

November 30, 2016

Mr. Chairman, Ranking Member Cummings, and Members of the Committee:

Thank you for inviting me to testify about the Department of Justice (Department) Office of the Inspector General's (OIG) oversight of the Drug Enforcement Administration's (DEA) Confidential Source Program. Confidential sources are an important part of DEA's law enforcement operations. Through our work, we found that the DEA relies heavily on confidential sources to conduct its investigations of criminal activity and drug interdiction operations. Between October 2010 and September 2015, the DEA had over 18,000 active confidential sources assigned to its domestic offices, with over 9,000 of those sources receiving approximately $237 million in payments for information or services provided to the DEA.

The DEA, as with any law enforcement agency, must take special care to evaluate and closely supervise the use of its confidential sources and manage its Confidential Source Program in order to balance the inherent public safety, privacy, and civil rights risks associated with the program. We found that the DEA continues to face challenges managing its Confidential Source Program and striking this important balance. Proper oversight of this program is particularly imperative considering that confidential sources are often motivated by factors other than combatting crime, including financial gain and avoidance of punishment. Since July 2015, the OIG has issued two audit reports related to the DEA's policies, oversight, management, use, and payments to confidential sources.

OIG 2015 Audit Report on the DEA's Policies on Confidential Sources and Management of Higher-Risk Confidential Sources

In July 2015, the OIG issued a report that determined the DEA's confidential source policies were not in full compliance with the Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines). The AG Guidelines provide guidance to all Justice Law Enforcement Agencies, including the DEA, regarding the establishment, approval, utilization, and evaluation of confidential sources. Compliance with the AG Guidelines helps ensure consistent and appropriate source management among all Department law enforcement agencies and helps to mitigate the risks involved with using confidential sources in federal investigations. In our report, we found that instead of implementing the AG Guidelines as a separate policy, the DEA chose to incorporate provisions of the AG Guidelines into its preexisting policy – the DEA Special Agents Manual, which the DEA asserted successfully captured the essence of the AG Guidelines. Our audit determined that this was simply not the case in numerous areas. For example, we found that the DEA's Confidential Source Program allowed the use of individuals as confidential sources that present high risks, such as media-affiliated sources, doctors, or drug trafficking organization leadership, without the higher level review and approval required by the AG Guidelines for these types of sources.

We similarly concluded that the DEA's policies and practices were not in line with the AG Guidelines' requirements for reviewing, approving, and revoking confidential sources' authorization to conduct Otherwise Illegal Activity (OIA).

Moreover, we found that although the DEA's policy includes a provision that generally follows the AG Guidelines requirement for evaluating the use of long-term confidential sources, the DEA was not adhering to its policy and conducted inadequate and untimely reviews of these sources.

We also found that the DEA was providing certain confidential sources with benefits under the Federal Employees' Compensation Act (FECA), which generally provides federal workers compensation for injuries or death sustained in the line of duty. We estimated that, in the one-year period between July 1, 2013, and June 30, 2014, the DEA paid 17 confidential sources, or their dependents, FECA benefits totaling more than $1 million. We found that the DEA was making these payments without a clear determination as to their legal basis, and had not established any procedures or controls regarding the awarding of these potentially substantial benefits. We also found that the DEA had not adequately considered the implications of awarding benefits to the disclosure obligations of federal prosecutors, and had not consulted with the Department about this issue.

We provided the DEA with seven recommendations to rectify these issues. As a result of our report, the DEA issued new policies governing its Confidential Source Program, and we found that this new guidance was sufficient to close five of our seven recommendations. The OIG's remaining recommendations, for which the DEA has taken some corrective action but for which there are outstanding issues, pertain to updating the DEA confidential source policies to ensure that long-term confidential sources are reviewed in a timely manner; and consulting with the Department about paying FECA benefits to confidential sources. We will continue to monitor the DEA's efforts to address these remaining two recommendations. The July 2015 report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2015/a1528.pdf.

OIG 2016 Audit Report on the DEA's Management of its Confidential Source Program

Two months ago, in September 2016, we issued a second report, this one focusing on the DEA's overall management and oversight of its Confidential Source Program. Our report found that the DEA's management and oversight of this program requires significant improvement.

Overall Program Management

We were particularly concerned to discover the DEA's use of "sub-sources" in its law enforcement investigations and intelligence programs. Sub-sources are individuals that confidential sources recruit and pay to perform activities or provide information related to the source's work for the DEA. We found that this practice was condoned by the DEA, yet the DEA has no controls, policies, or procedures for interactions with these sub-sources. Condoning the use of sub-sources to assist in investigations without the DEA's full knowledge, awareness, and approval raises serious questions. This lack of oversight increases the chance that individuals may be conducting unauthorized illegal activity on the DEA's behalf, potentially places

these and other individuals in harm's way, exposes the DEA and Department to significant liability, and could impact prosecutions.

We also found that the headquarters-based Confidential Source Unit relies heavily on the judgment of field office personnel for many aspects of its Confidential Source Program, which limits headquarters' ability to ensure that decisions related to confidential source establishment, use, and payments are appropriate and consistent. In addition, the DEA does not perform comprehensive reviews of the field offices' activities related to confidential sources, and the oversight that DEA does perform has been inconsistent and inadequate. As a result, we noted variations in how confidential sources are categorized. We further found that the DEA did not adequately review or ensure that the information in its electronic data system concerning confidential sources was complete, consistent, and accurate.

In addition, the DEA did not adequately oversee payments to its sources, which exposes the DEA to an unacceptably increased potential for fraud, waste, and abuse, particularly given the frequency with which DEA offices utilize and pay confidential sources. For example, DEA policy prohibits paying sources who were deactivated because of an arrest warrant or for committing a serious offense. Yet we found two concerning instances of payments to previously-deactivated sources. Based on our review of DEA's confidential source data, we estimated the DEA may have paid about $9.4 million to more than 800 previously-deactivated sources between fiscal years (FY) 2011 and 2015. Although we identified concerns related to the reliability of the data within the DEA's confidential source database, it appears that paying deactivated sources is common enough to justify much closer managerial oversight and review of such payments.

Utilization of Limited Use Confidential Sources

We also reported our significant concerns about the DEA's direction and guidance for what it calls "Limited Use" confidential sources. DEA policy specifies that Limited Use sources are those who make information available to the DEA independently, and without direction by the DEA. DEA regards the Limited Use confidential sources as low-risk, and therefore DEA policy requires less supervision of matters involving these sources as compared to other kinds of sources. However, we found that some DEA drug interdiction units – whose primary activity is to intercept drug trafficking at transportation and other facilities - relied heavily on Limited Use confidential sources. DEA Special Agents from these units gave instructions and guidance to Limited Use confidential sources about what information to provide and what actions to take to assist the DEA with interdiction activities, thus testing the boundaries of what it means for a source to provide information "without direction."

Further, we found that Limited Use confidential sources were some of DEA's highest paid sources, 477 of whom received an estimated $26.8 million between FY 2011 and FY 2015. Specifically, some of the Limited Use sources used by the drug interdiction units received significant payments for their assistance, including

an airline employee who received more than $600,000 in less than 4 years, and a parcel company employee who received over $1 million in 5 years.

Among the Limited Use confidential sources used by the DEA were Amtrak and Transportation Security Administration (TSA) employees. In November 2015, the OIG completed investigations into DEA's use of two Amtrak employees and one TSA employee as confidential sources. In one investigation, the OIG determined that the DEA paid two Amtrak employees more than $860,000 for information that was available at no cost to the government and in violation of federal regulations relating to the use of government property, thereby wasting substantial government funds. In another investigation, the OIG found that the DEA had registered a security screener for the TSA as a confidential source in violation of DEA policy, which precludes signing up as a confidential source "employees of U.S. law enforcement agencies who are working solely in their official capacity with the DEA." In addition, the TSA screener was required, without being compensated as a confidential source, to provide certain relevant information to the DEA. In both of these investigations, the OIG determined that the DEA violated or exceeded the terms of its confidential source policies.

In the September 2016 audit report, we found that between FY 2011 and FY 2015 the DEA used at least 33 Amtrak employees and 8 TSA employees as sources, paying the Amtrak employees a total of over $1.5 million and the TSA employees over $94,000. In March 2016, the DEA promulgated an interim policy with a specific prohibition on using government or quasi-government employees, such as Amtrak employees, as confidential sources to obtain information within the scope of their official duties.

The DEA also did not appropriately track all Limited Use confidential source activity. The DEA's current process does not adequately safeguard traveler information, possibly compromising personally identifiable information, affecting government record maintenance requirements, complicating the DEA's efforts to manage and access important case-related information, and potentially increasing the risk that information may not be available to prosecutors when needed in legal proceedings. Moreover, we found that the DEA's files do not document all source activity, which impacts the DEA's ability to examine a source's reliability and to determine whether the source frequently or rarely provides useful information, or whether the information DEA agents acted upon resulted in identifying individuals involved in illegal activity or instead caused DEA to regularly approach innocent civilians for questioning.

Overall, we believe the DEA's reliance on Limited Use confidential sources to accomplish interdiction operations, the DEA's direction and guidance to these sources, and the DEA's long-term and lucrative relationships with these sources raise questions as to whether these sources are truly providing information independently and without direction. Those questions also could have implications for any Fourth Amendment issues that may arise as a result of related searches and seizures.

DEA Intelligence Division's Use of Confidential Sources

We also found that the DEA has conducted limited management, oversight, and tracking of source payments by the DEA's Intelligence Division, which oversees several programs under which sources provide information or conduct narcotics-related intelligence-gathering activities. For example, DEA's Intelligence Division does not independently validate the credibility of sources used for intelligence programs or the accuracy of the information they provide. The Intelligence Division generally relies on DEA field offices' risk assessments and determinations that confidential sources are reliable. In comparison, the Intelligence Community, of which the DEA's Intelligence Division is a member, has standards for the appropriate handling of sources, including independent validation of sources. Relying on field offices to make these judgments without sufficient oversight from the Intelligence Division could negatively affect the Intelligence Division's ability to understand and appropriately use the information it receives.

In addition, the DEA was unable to provide us with an itemized list and overall total of payments to intelligence-related confidential sources. However, we determined that the DEA's Intelligence Division paid more than $30 million to sources who provided narcotics-related intelligence and contributed to law enforcement operations, $25 million of which went to just 9 sources.

Cumulatively, the deficiencies we identified in our reviews and investigations raise significant concerns about the adequacy of the current policies, procedures, and oversight associated with the DEA's management of its Confidential Source Program. Our September 2016 report made seven recommendations to help the DEA address deficiencies and evaluate aspects of its Confidential Source Program to ensure that it is managed effectively and consistently and that the DEA's handling of and payments to sources are appropriate, accountable, and reflective of the importance of, and risked posed by, its use of confidential sources. This report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2016/a1633.pdf. In responding to our audit, DEA management and program officials expressed a commitment to improve the DEA's Confidential Source Program, to implement appropriate controls over confidential sources, and to ensure that confidential sources remain a productive and essential element used by the DEA to accomplish its mission.

This concludes my prepared statement, and I will be pleased to answer any questions that the Committee may have.