Office of the Inspector General
United States Department of Justice

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

before the

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

concerning

"Use of Confidential Informants at ATF and DEA"

April 4, 2017

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 Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Confidential Informant Program and the Drug Enforcement Administration's (DEA) Confidential Source Program. We appreciate the Committee's continued interest in the Department's confidential informant programs. Confidential informants are an important part of the Department's law enforcement operations, with both ATF and DEA relying heavily on confidential informants to provide information related to unlawful activity and services that further federal criminal investigations.

Department officials have acknowledged that there are risks involved with using informants because these individuals often have criminal backgrounds, and they often provide assistance or cooperation in exchange for cash or the prospect of a reduced criminal sentence rather than a desire to help law enforcement. The appropriate use of informants requires assessing the usefulness and credibility of the information and services they provide, and therefore requires significant oversight, attentive program management, and thorough guidance.

To address these risks, the Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines) provides Department-wide guidance on various confidential informant matters, including determining the suitability of individual informants and providing enhanced oversight of high-risk informants. Compliance with the AG Guidelines helps ensure consistent and appropriate informant management among all Department law enforcement agencies and helps to mitigate the risks involved with using confidential informants in federal investigations. However, despite this guidance, our 2012 review of ATF's Operation Fast and Furious found that, until 2011, ATF had not updated its policies on confidential informants to account for the requirements of the AG Guidelines and our July 2015 review of DEA's confidential source policies found that they differed in several significant respects from the AG Guidelines' requirements.

In November 2016, I testified before this Committee and described the results of our July 2015 and September 2016 audits of DEA's Confidential Source Program. Two weeks ago, we released a public summary of a classified addendum to our September 2016 report that identifies specific findings related to the use of and payments to confidential sources by the DEA's Intelligence and Special Operations Divisions. Last week, we issued a report detailing our findings regarding ATF's Confidential Informant Program.

ATF's Management and Oversight of Its Confidential Informant Program

ATF managed over 1,800 active informants as of January 2016, spending approximately $4.3 million annually on its Confidential Informant Program in fiscal years (FY) 2012 through 2015. Although ATF's Confidential Informant Program is not as large as others in the Department, the overall risks of using informants remain the same. Last week's audit found that ATF's oversight of its Confidential

Informant Program required significant improvement, especially pertaining to ATF's management of relevant confidential informant information, tracking of payments to confidential informants, and oversight of higher-risk confidential informants.

While we determined that ATF's confidential informant policies were generally aligned with the AG Guidelines, our audit also determined that ATF has not properly implemented practices that accomplish what is written in its policy, and ATF's informant policies and procedures did not provide for adequate management of the program. The deficiencies I will describe in more detail below did not allow for ATF to meet the oversight requirements established in the AG Guidelines, and did not allow ATF to employ the level of oversight or management that would have most effectively mitigated the risks involved in using confidential informants.

Of particular concern, we found that information critical to the management of ATF's Confidential Informant Program was compartmentalized in three different locations: (1) the informant file, which is a hard-copy file that includes basic background information about the informant and administrative documents related to the informant; (2) one or more investigative files, which are hard-copy files that include details of the informant's case-related activities, as well as documentation of payments provided to the informant; and (3) an electronic database that contained only identifying information about every informant. Maintaining information in this way made it difficult for us, and could make it difficult for ATF officials, to assess whether an informant was providing information that assisted ATF investigations, particularly those informants who were involved in multiple cases. Further, the automated system that ATF used during our audit to manage its informant information was unsophisticated and unreliable, and it did not retain historical information.

Moreover, the compartmentalized nature of ATF's informant information had particularly significant effects on ATF's ability to track payments to individual informants. The AG Guidelines require that all payments to individual informants be accounted for. However, during our audit we found that ATF could not efficiently identify and track total payments made to individual informants with sufficient accuracy or reliability because doing so required locating and reviewing numerous hard-copy documents in multiple, separate files and systems. Recognizing the importance of this matter, we alerted ATF management of our concerns in June 2016 - which was prior to the conclusion of our audit - that ATF's information environment did not provide sufficient safeguards to ensure that complete and accurate information was consistently available, including when such information was required to be made available to prosecutors for use during criminal proceedings. In response to our concerns, ATF concluded that it also could not completely reconcile some confidential informant payment records. Although we did not examine whether ATF provided incorrect informant payment information during any criminal proceedings, and we are not aware of any such instances, we consider this deficiency in ATF's information environment to be a significant concern.

We also have concerns with ATF's management and oversight for certain categories of higher-risk confidential informants, because we found that ATF did not always categorize, track, and review the use of these informants. For one particular category of higher-risk informants, foreign nationals, we found that while ATF can sponsor foreign national informants for temporary legal status when ATF believes the informant will provide valuable information and assistance to its investigation, ATF officials did not completely and accurately track information related to these foreign national informants. As a result, we were unable to determine the total number of ATF-sponsored foreign national informants. The inability to efficiently identify these informants is especially problematic because these informants, as with many informants, can have criminal histories or may be involved with criminal organizations, and therefore the risks associated with these informants remaining in the United States without legal authorization are higher than normal. This lack of reliable information prohibited ATF headquarters from properly managing the informants and from ensuring appropriate coordination with the Department of Homeland Security.

We were similarly unable to obtain from ATF an accurate and complete picture of informants who are also Federal Firearms Licensees. While we found that ATF's policy provides guidance related to this informant category, we are concerned that ATF did not have a reliable method of querying its records to identify informants who may be a licensee. In our 2012 report on ATF's Operation Fast and Furious and Related Matters, the OIG found that ATF was receiving information and cooperation from a licensee regarding firearms sales to individuals who were engaged in firearms trafficking and illegal firearms purchases. That report revealed that ATF did not have controls in place to ensure that there was no conflict between its use of the individual in an investigative manner and its oversight of the same individual as an approved license holder. Although ATF officials told us that ATF does not currently have any licensees who are also informants, we continue to believe that this informant category requires increased oversight and therefore ATF should strengthen its recordkeeping in this area.

In addition, we reviewed ATF's efforts to manage certain categories of higher-risk informants that are identified within the AG Guidelines. For example, the AG Guidelines require law enforcement agencies to establish a Confidential Informant Review Committee comprised of component and Department officials to approve the continued use of long-term informants, which is defined as six consecutive years as a confidential informant. While ATF policy states that field divisions are responsible for determining which, if any, confidential informants have been active for six consecutive years and therefore must be submitted to the ATF Committee for review, we found that ATF headquarters officials did not have a sufficient method to verify that all such informants were submitted for Committee review. We could not determine, and ATF could not affirm, if ATF's Committee had reviewed all long-term informants, as ATF did not have adequate records about these informants and allowed the field divisions to manage long-term informant information. We are concerned that this decentralized process did not provide an adequate level of assurance that all long-term informants requiring this enhanced review were identified.

Moreover, the Committee had not always met as scheduled, had not always reviewed and opined on all of the informant files provided by ATF for review, and had postponed decisions to a later date on numerous occasions. As a result, we believe that ATF's review process for these informants had not provided the enhanced oversight required by the AG Guidelines.

We provided ATF with five recommendations to address the deficiencies in its informant program and to improve its ability to sufficiently identify, assess, and mitigate the risks involved with using informants. In responding to our audit, ATF agreed with all of the recommendations and expressed a commitment to implement program enhancements. We will monitor ATF's efforts to address our recommendations, including its implementation of the new informant database. Our report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2017/a1717.pdf.

Shortly after our entrance conference in October 2015, ATF informed us that it was in discussions to enhance its existing CI database and, in June 2016, ATF awarded the contract for its new database. Last fall, after our fieldwork was completed, ATF developed its new automated system that it believes will address many of the findings in our report. Because ATF has not yet fully implemented the system and integrated its use into ATF policy and guidance, we have not audited it. Based on a demonstration provided to us, we believe the system is an improvement over its unsophisticated legacy system and enhances ATF's information environment. However, the system is still in its infancy and several advancements are necessary to address the relevant findings in our report.

DEA's Management and Oversight of Its Confidential Source Program

In July 2015, the OIG issued a report that determined the DEA's confidential source policies were not in full compliance with the AG Guidelines and lacked sufficient oversight and consistency with the rules governing other DOJ law enforcement components. We made seven recommendations to the DEA, all of which are now closed as a result of DEA's issuance of new policies governing its Confidential Source Program and DEA's implementation of more comprehensive procedures and coordination with the Department. That report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2015/a1528.pdf.

In September 2016, we issued our next audit report that found that the DEA's management of its Confidential Source Program did not provide sufficient oversight and controls related to the DEA's establishment, use, and payment of confidential sources, in particular Limited Use and DEA intelligence-related sources. We made seven recommendations to help the DEA address deficiencies and improve various aspects of its Confidential Source Program. The DEA continues to evaluate and assess necessary actions needed to address our recommendations and remedy the deficiencies we found during our audit. As such, all of our recommendations remain open. That report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2016/a1633.pdf.

In March 2017, we provided the Department and Congress with a classified Addendum to our September 2016 report, and also issued an unclassified public summary, that provides additional details about the OIG's findings concerning DEA's establishment, use, and payment of confidential sources used in a DEA Intelligence Division program and by the DEA Special Operations Division for overseas operations. As we discuss in our public summary, we found that the DEA had not fully accounted for the national security, foreign relations, and civil liberties risks associated with using and paying certain confidential sources. We provided the DEA with several recommendations for the improvement of its efforts related to the use of these confidential sources. The DEA concurred with all of the recommendations and stated that it is taking necessary steps to implement the recommendations, which we plan to review and assess through our resolution and follow up process. Our unclassified public summary of that Addendum can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2017/a1633a.pdf.

Informant programs are unquestionably important to law enforcement, but they also come with significant risks. My office will continue to be vigilant in helping to ensure that they are appropriately overseen within the Department of Justice. This concludes my prepared statement, and I will be pleased to answer any questions that the Committee may have.