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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

September 12, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Lee Lofthus
Assistant Attorney General for Administration
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Sessions and Assistant Attorney General Lofthus:

This letter follows the August 11, 2016, letter from the U.S. Marshals Service (USMS) providing information in response to multiple inquiries regarding allegations of excessive and wasteful spending by the USMS of the Assets Forfeiture Fund (AFF) and funds dedicated to Joint Law Enforcement Operations (JLEO).

Although a Department of Justice Office of Inspector General (DOJ OIG) Report of Investigation examining some of these allegations found that the USMS “did not violate the Federal Acquisition Regulation or other policies,”¹ the OIG questioned the wisdom of certain of these expenditures and recommended that the Department update JLEO policy guidance. The DOJ OIG report also did not resolve all allegations raised in my previous letters. Attached for your review is a courtesy copy of a memorandum detailing the findings and conclusions regarding these allegations.

To gauge what progress the USMS and the Department have made in properly administering and overseeing these funds, I also respectfully request that the Department respond to the following questions by September 26, 2017:

¹ U.S. Dep’t of Justice Office of the Inspector General, Report No. 2015-005333 (May 12, 2016) [OIG AFF Report].

1. Is the Department reviewing and updating the Colgate Memo? What is the status of that effort? Please provide a copy of any changes to guidance regarding JLEO expenditures.
2. The Department's March 8, 2016, letter to me indicated that Justice Management Division staff was reviewing AFF allocations to the USMS to, among other things, "identify tools to increase transparency and improve oversight, and make recommendations for future program efficiencies." In that letter, the Department also stated it was "conducting a broader review of reimbursable payments made to participants in the Asset Forfeiture Program," working with Department components "to standardize the tracking and reporting of program-related expense data" and "anticipates conducting regular reviews of AFF allocations in the future."
 - a. What oversight tools has the Department identified and implemented?
 - b. What changes, if any, have been made to avoid wasteful spending and ensure AFF resources are allocated efficiently and appropriately?
 - c. Please provide an oversight briefing on the results of the Department's review of AFF payments, plans for regular reviews going forward, and all efforts to oversee and administer appropriate expenditures of AFF funds by Department components, particularly the USMS.
3. In the FY 2017 allocation to the USMS of the AFF, the Department wrote that it was working with the USMS Investigative Operations Division (IOD) to accurately document circuit cost expenditures. What are the results of those efforts? What internal controls are in place to ensure IOD expenditures of JLEO funds are allowable under the statute?
4. Please provide copies of all allotments and suballotments of AFF funds, including JLEO funds, provided to the USMS for FY 2017; a copy of any additional requests by the USMS under the AFF for FY 2017; and, when available, a copy of the initial FY 2018 AFF budget allocation for the USMS. To the extent the information is not readily apparent in FY 2017 suballotment documents, please provide documentation demonstrating when and what amount amounts of JLEO funds have been allocated to the USMS thus far in FY 2017 to support circuit costs.
5. Please provide documentation describing the assets currently managed by each district employee who is "dedicated" to the Asset Forfeiture Program. Please also provide answers to the questions previously asked on this topic in my letter of June 10, 2015.

6. Please provide documentation demonstrating that headquarters positions “dedicated” to and fully funded by the Asset Forfeiture Program are 100% devoted to AFF work. Please also provide answers to the questions asked on this topic in my letter of June 10, 2015.
7. How many days has the Asset Forfeiture Academy in Houston been used for Asset Forfeiture-related training in FY 2017? How many days has the Academy been used for non-AFP training in FY 2017? For non-AFP training, is the AFF reimbursed for non-AFP use of the Academy?
8. What items, if any, are being reused by the USMS in its new headquarters location?
9. How many offices in the new USMS headquarters location are not physically occupied on a full-time basis? How many offices in the new USMS headquarters location are dedicated to positions that are physically located outside of the local commuting area? This includes, but is not limited to, offices where the name plate on the office or cubicle designates an employee or contractor who does not live in the local commuting area.
10. Please provide the total expenditures for travel of the two individuals associated with the Asset Forfeiture Division international unit to and from Washington, D.C., and other destinations since those individuals joined the unit. Please provide a list of all international destinations.

Thank you for your cooperation in this matter. If you have any questions, please contact DeLisa Lay of my staff at (202) 224-5225.

Sincerely,



cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

The Honorable Michael Horowitz
Inspector General
U.S. Department of Justice

Attachment

MEMORANDUM

To: Committee on the Judiciary, United States Senate
Committee on Appropriations, United States Senate

From: Senate Judiciary Committee, Oversight and Investigations Staff

Subject: Spending of the Assets Forfeiture Fund by the U.S. Marshals Service

Date: September 11, 2017

This memorandum outlines findings as a result of Chairman Grassley's inquiries into allegations of wasteful spending by the U.S. Marshals Service (USMS) of the Assets Forfeiture Fund (AFF). It examines certain expenditures in greater detail, including those related to the USMS Asset Forfeiture Academy, the USMS headquarters relocation, so-called "dedicated" asset forfeiture positions, and joint law enforcement operations. It concludes that the USMS wasted asset forfeiture money, spent it contrary to the Fund's authorizing statute, and made questionable representations to the Committee, and likely the Department of Justice. There is a clear need for more robust and consistent oversight of asset forfeiture expenditures by components participating in the Asset Forfeiture Program.

The Asset Forfeiture Program:

Congress established the Assets Forfeiture Fund in 1984 and authorized the Attorney General to use the Fund for limited purposes.¹ First, the Attorney General may use the Fund to support the Department's Asset Forfeiture Program (AFP or "the Program"). The Program, according to the Department of Justice website, administers "the seizure and forfeiture of assets that represent the proceeds of, or were used to facilitate federal crimes."² Multiple Department of Justice components participate in the program, including the Money Laundering and Asset Recovery Section, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), U.S. Attorney's Offices, and the USMS.³

The USMS plays a unique role in the Program. It does not initiate underlying investigations that lead to seizures. Rather, the USMS is the "primary custodian of seized property for the Program" and "manages and disposes of the majority of the

¹ 28 U.S.C. § 524(c).

² <https://www.justice.gov/afp>.

³ Organizations outside of the Department that also participate in the fund include the U.S. Postal Inspection Service, the Food and Drug Administration, the U.S. Department of Agriculture Office of the Inspector General, the Department of State's Bureau of Diplomatic Security, and the Defense Criminal Investigative Service.

property seized for forfeiture” by other Program participating components.⁴ The bulk of Program costs associated with asset management and disposal and certain other Program operations expenses are incurred by the USMS Asset Forfeiture Division (AFD).⁵ AFD also administers third party interest and equitable sharing payments.⁶

Second, Congress authorized the Attorney General to use the AFF to offset costs associated with specific enumerated investigative expense categories. Those categories include awards for information, purchase of evidence, equipping of conveyances, and joint law enforcement operations (JLEO).⁷ JLEO funds are a subcategory of the AFF. Statutory restrictions particular to the use of JLEO funds are described further below.

Inaccurate and Misleading Responses to the Committee:

Chairman Grassley wrote to the USMS with questions about specific instances of reportedly wasteful spending of the AFF on multiple occasions.⁸ Although the Office of the Inspector General (OIG) did not find violations of the Federal Acquisitions Regulation or applicable policies with respect to certain of these expenditures, the Committee’s inquiry also considered whether they appeared excessive and wasteful.⁹ The Chairman further determined that, on several of these topics, the USMS failed to accurately report simple facts about its AFF spending or to offer sufficient justifications. Overall, the agency demonstrated a clear need for significantly more robust oversight of its AFF expenditures.

Asset Forfeiture Academy

The USMS Asset Forfeiture Academy (AFA) is a facility built by the USMS purportedly to train employees and contractors in the AFD on fundamentals of asset forfeiture law and the Justice Department’s Asset Forfeiture Program. The AFA is located in Houston, Texas in a privately-owned high rise building called the Allen Center. It is adjacent to USMS office space and a weapons storage facility. According to a USMS brochure, “[t]he AFA includes a classroom that holds 48 student consoles and an instructor podium, a conference room, a business center and a kitchenette/galley.”¹⁰ When whistleblowers alleged that the establishment of the AFA was unnecessary and that its expenses were excessive and wasteful, the Chairman requested detailed explanations for the costs associated with the AFA. Several of the USMS’s explanations are incomplete and misleading.

⁴ <https://www.justice.gov/afp/participants-and-roles>.

⁵ <https://www.justice.gov/afp/page/file/934031/download>.

⁶ *Id.*

⁷ 28 U.S.C. § 524(c).

⁸ *See, e.g.*, Letter from Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee, to Stacia A Hylton, Director, USMS (Mar. 18. 2016).

⁹ DOJ OIG AFF Report.

¹⁰ U.S. Marshals Service Asset Forfeiture Academy brochure (Attachment 1).

First, the USMS underreported to the Committee the AFA's ongoing rent costs. The USMS stated that it pays \$42,000 per month for its facilities at the Allen Center, which, as noted, includes the AFA.¹¹ However, the USMS only reported the square footage of the AFA classroom, and did not include square footage of the AFA reception area, "conference room, a business center and kitchenette/galley" constructed as part of the AFA build out.¹² This means the USMS underreported to the Committee the amount it spends on rent for the AFA by \$7,774 per month, or \$93,292 per year.

Second, the USMS underreported the amount of custom granite installed in the facility.¹³

Third, the USMS underreported the AFA's operating costs. The USMS claimed these costs are \$50,000 per year.¹⁴ But budget documents show that for every year from FY 2012 to FY 2017, the USMS has requested and the Department has allotted between \$75,000 and \$175,000 for the AFA's "operating costs."¹⁵

The AFA's limited use of the space calls into question whether its costs—whatever they actually are—are justified. In FY 2014, the AFA was used for approximately 32 days out of the entire year.¹⁶ In FY 2017, based on documents reviewed by the Committee, the USMS has hosted or plans to host Asset Forfeiture-related trainings for approximately 52 days—an improvement from prior years but still not even accounting for two total months out of the year. Although other divisions have used and still plan to use the facility, it is for non-Asset Forfeiture purposes and it is unknown whether those

¹¹ Letter from William Delany, Chief of Congressional & Public Affairs, USMS, to Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee (Aug. 11, 2016).

¹² *Id.*; U.S. Marshals Service Asset Forfeiture Academy brochure (Attachment 1). The USMS reported that 3,186 square feet at the Allen Center was dedicated to the Asset Forfeiture Academy, but blueprints indicate that an additional 2,192 square feet make up the Academy's reception area, conference rooms, and kitchen—all constructed as part of the Academy's build out. AFA Plans (Attachment 2). The USMS has reported to the Committee expenditures related to the reception and conference room area as part of its total build out cost and advertises these facilities as benefits of using the AFA space. At the entrance to the AFA from the S/TX office space, the USMS has labeled the entire suite, including the reception area, kitchen, conference rooms, and classroom as the "Asset Forfeiture Academy."

¹³ The USMS stated in an April 2015 letter that the custom granite in the facility was limited to five small surfaces and a reception desk, but invoices and photographs show the same granite used for two custom table tops in the conference and reception areas. Invoices for Table Tops, On File with the Committee.

¹⁴ Letter from William Delaney, Chief of Congressional and Public Affairs, U.S. Marshals Service to Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary (Aug. 11, 2016).

¹⁵ FY 2012 USMS AFF Budget Request; FY 2013 USMS AFF Budget Request; FY 2014 USMS AFF Budget Request; FY 2015 USMS AFF Budget Request; FY 2016 USMS AFF Budget Request; FY 2017 USMS AFF Budget Request; FY 2012 USMS AFF Budget Allocation; FY 2013 USMS AFF Budget Allocation; FY 2014 USMS AFF Budget Allocation; FY 2015 USMS AFF Budget Allocation; FY 2016 USMS AFF Budget Allocation; FY 2017 USMS AFF Budget Allocation. In FY 2014, the USMS actually was allocated \$207,000 for the AFA's operating costs.

¹⁶ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Loretta Lynch, Attorney General, U.S. Dep't of Justice (Oct. 1, 2015).

divisions and groups have reimbursed or will reimburse the Assets Forfeiture Fund for use of the AFA.¹⁷

Moreover, the Allen Center has always had conference rooms available for tenants to use at no cost. The USMS claimed that these are difficult to use, do not have USMS intranet access, and pose security concerns.¹⁸ However, it is alleged that only one of many courses at the AFA require intranet access. Additionally, both the USMS and the Department have used these rooms with no reported security concerns.¹⁹

Headquarters Relocation

In October 2015, the Chairman wrote to the Department outlining whistleblower allegations that the USMS planned headquarters relocation was rife with wasteful spending.²⁰ Whistleblowers alleged, among other things, that the USMS planned to construct personal in-office bathrooms for senior leadership, procure expensive and unnecessary furniture and audio-visual equipment, and provide office space for individuals who do not live or work in the local commuting area.²¹ The Chairman requested information about these expenditures, some of which still has not been provided. In August 2016, the USMS wrote to the Committee that it planned to take steps to minimize unnecessary expenditures for the relocation, including reusing certain furniture. Yet, whistleblowers reported that most furniture, including office furniture and TVs, was not reused and may have been discarded. Additionally, USMS reportedly installed television cable in offices of USMS employees who are prohibited by policy from actually using it. The agency also built office space specifically for employees who do not live or work in the local commuting area.

Fully Funded Asset Forfeiture Positions:

Outside of the four enumerated categories of investigative expenses,²² Congress has authorized use of the Fund only to pay Asset Forfeiture-related expenses.²³ As the USMS Asset Forfeiture Division itself noted in May 2013, an employee whose salary and expenses are paid by the AFF means that they are “preclude[d from] realigning their

¹⁷ It is also alleged that many AFF-related courses offered in the Academy are taught by instructors that have to be flown in from FLETC in Georgia, and some classes contain a high instructor/student ratio.

¹⁸ Letter from William Delaney, Chief of Congressional and Public Affairs, U.S. Marshals Service to Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary (Aug. 11, 2016).

¹⁹ Additionally, the USMS Strategic Plan calls for centralized training within the USMS organized under and administered by its own Training Division. The Plan also encourages the use of cost-effective distance learning that would not require the establishment of the separate AFA and conceivably would be an efficient way to train asset forfeiture personnel, many of whom are distributed in districts throughout the country.

²⁰ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Loretta E. Lynch, Attorney General, U.S. Dep't of Justice (Oct. 1, 2015).

²¹ *Id.*

²² 28 U.S.C. §§ 524(c)(1)(B), (C), (F), (G), (I).

²³ *Id.* § 524(c)(1)(A); *id.* §§ 524(c)(1)(D), (E), (H).

work outside supporting the asset forfeiture mission.”²⁴ But information provided to the Committee shows that is exactly what the USMS has been doing, and provides additional evidence that the Department must exercise more thorough oversight of its components’ AFF expenditures.

Headquarters Employees

First, the Chairman has raised questions about headquarters employees who are funded by the AFF but not fully available for asset forfeiture work.²⁵ A memorandum of understanding (MOU) between the USMS and Department of Justice authorized funding from the AFF for eight “dedicated” headquarters employees.²⁶ USMS has since requested and received funding for these positions each fiscal year. According to whistleblowers, these fully funded employees are not fully dedicated to the Asset Forfeiture Program, and in some cases spend only a small portion of their time on asset forfeiture work. Despite requests from the Committee, the USMS has failed to provide any information demonstrating otherwise.²⁷ Moreover, the FY 2017 Asset Forfeiture Fund allocation provided to the USMS states that for FY 2017 the USMS requested funding for ten dedicated headquarters positions rather than the eight authorized by the MOU.²⁸ The Department indicated it would “evaluate the propriety” of using AFF funds to support the additional positions.²⁹

District Employees

The Chairman also has raised questions about whether the USMS is using the AFF to fully fund the salaries and expenses of district employees who are not actually fully dedicated to the asset forfeiture mission.³⁰

Prior to 2013, the USMS paid the salaries and expenses of all district employees whose work included asset forfeiture-related tasks from appropriated funds. The USMS kept track of this work by having employees bill any time allocated to asset forfeiture

²⁴ Memorandum from Kimberly Beal, Acting Assistant Director, Asset Forfeiture Division, U.S. Marshals Service to United States Marshals and Chief Deputy United States Marshals, U.S. Marshals Service (May 10, 2013).

²⁵ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Sally Quillian Yates, Deputy Attorney General, U.S. Dep’t of Justice (June 10, 2015).

²⁶ See, e.g., FY 2010 USMS AFF Budget Request.

²⁷ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Sally Quillian Yates, Deputy Attorney General, U.S. Dep’t of Justice (June 10, 2015).

²⁸ FY 2017 USMS AFF Budget Allocation.

²⁹ *Id.*

³⁰ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Sally Quillian Yates, Deputy Attorney General, U.S. Dep’t of Justice (June 10, 2015); Memorandum from Kimberly Beal, Acting Assistant Director, Asset Forfeiture Division, U.S. Marshals Service to All United States Marshals, All Chief Deputy United States Marshals, and All Administrative Officers (Jan. 9, 2013).

work to a specific asset forfeiture code. The USMS was then reimbursed from the AFF for costs of employee time spent on asset forfeiture work.

In 2012, the Asset Forfeiture Division conducted an analysis of the asset forfeiture workload performed by these district employees. The Assistant Director at the time determined that the USMS would seek full funding from the AFF for any district employee who worked a “preponderance” of their time on asset forfeiture. She determined that any employee who billed at least 70% of their time, based on a 1,740 hour work year, to asset forfeiture work would qualify.³¹ According to documents, she made exceptions for some employees who billed less than 70% of their time to asset forfeiture and directed that they too would be considered as devoting a “preponderance” of their time to asset forfeiture.³² The USMS would then discontinue seeking reimbursement for any asset forfeiture work performed by the remaining district employees. Theoretically, those costs would offset whatever non-asset forfeiture work was performed by fully funded employees. The analysis showed that this arrangement would yield an approximate \$1.3 million “net gain” to the USMS.³³

So, in FY 2013, the USMS requested full AFF funding for the employees it claimed spent a preponderance of their time on asset forfeiture work.³⁴ Converting these positions to “fully funded” AFF positions meant that the AFF would not only pay for actual work hours dedicated to asset forfeiture, but also for the employees’ leave time, holidays, and benefits. In the budget request, the USMS represented to the Department that it would be “[r]edefining these positions” and “devoting them entirely to [asset forfeiture] duties.”³⁵ The request was approved. In its FY 2013 asset forfeiture allocation for the USMS, the Department approved approximately \$1.3 million “to convert part-time forfeiture government employees to 100% dedicated forfeiture personnel.”³⁶

However, those employees were not 100% dedicated to asset forfeiture, and the USMS stopped tracking how much time they devoted to both asset forfeiture and non-asset forfeiture work. On the other hand, the USMS *did* track how much time non-dedicated employees spent on asset forfeiture work. Non-dedicated employees billed their asset forfeiture work to an asset forfeiture-specific project code, but dedicated employees billed all of their time to an asset forfeiture code and did not designate their non-asset forfeiture work with a non-asset forfeiture project code.³⁷ This practice left no

³¹ Spreadsheet, On File with the Committee; E-mail re: Spreadsheet (Nov. 2, 2012).

³² E-mail re: Spreadsheet (Nov. 2, 2012).

³³ Spreadsheet, On File with the Committee.

³⁴ FY 2013 USMS AFF Budget Request at 25-27.

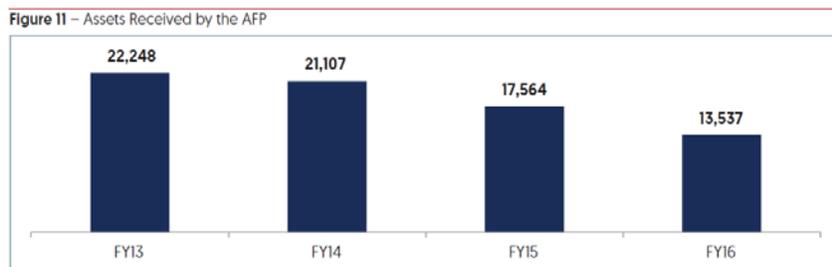
³⁵ FY 2013 USMS AFF Budget Request at 27.

³⁶ FY 2013 USMS AFF Budget Allocation.

³⁷ Memorandum to United States Marshals, Chief Deputy United States Marshals, and Administrative Officers from Holly O’Brien, Assistant Director, Financial Services Division, U.S. Marshals Service, *Recording Asset Forfeiture Work in WebTA* (May 2013).

method to verify whether non-asset forfeiture work performed by dedicated employees offset asset forfeiture work performed by non-dedicated employees.

Furthermore, the asset forfeiture workload has decreased since FY 2013. Below is a table from the 2016 USMS annual report showing how many assets the program received from FY 2013 through FY 2016. According to this data, the number of assets received fell by 39%.



Additionally, according to whistleblowers, approximately 65% of assets currently in USMS inventory are cash. Cash is the easiest and least time-consuming asset to manage—once the cash is in custody and placed in an account, it requires very little maintenance. Moreover, many types of assets are not managed by the dedicated district personnel, but “nationally” either by contractors or by Asset Forfeiture Division headquarters personnel. The types of assets in this category include aircraft, jewelry, antiques and collectibles, commercial businesses, financial instruments, firearms, and real property. Thus, the workload associated with management of those assets cannot support full AFF funding for *district* personnel.

Recognizing the decrease in the asset forfeiture workload, the Department decreased AFF funding for both USMS federal employees and contractor personnel in FY 2017. The Department stated that its allocation for district asset forfeiture personnel would be reduced by “10 FTEs [full-time equivalent positions] from the requested level of 235 authorized FTEs in accordance with workload data showing a significant decline in asset seizure activity over the last several fiscal years.” The Department further noted that “[c]onsistent with the FY 2016 allocation, no funding is provided in FY 2017 for the salary and benefits of USMS personnel performing non-forfeiture related work.”³⁸

In response to these cuts, the USMS reportedly is in the process of realigning its workforce to reflect the workload. However, based on the above information, the USMS has for some time been using the AFF to fund work that otherwise would—and probably should—be paid by appropriated funds.

³⁸ FY 2017 USMS AFF Allocation.

Joint Law Enforcement Operations:

As discussed above, JLEO is one of the categories of investigative expenses authorized by Congress to be paid from the AFF.³⁹ The statute provides that JLEO funds may be used for “payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of *state or local law enforcement officers* that are incurred in a joint law enforcement operation[s].”⁴⁰ The statute does *not* say that JLEO funds are available to pay *federal* expenses incurred by *federal officers* in joint operations. Again, the law does allow for payments for federal activities from the Fund, but only for those directly related to asset forfeiture and for the other specified investigative categories.⁴¹ Further guidance on the use of JLEO to support state and local officers is outlined in a 1997 Department of Justice document known as the Colgate Memorandum.⁴²

Chairman Grassley’s letters have raised questions about the agency’s methodology and justification for two subcategories of its JLEO expenditures: circuit costs and databases. Among the questions raised were whether the USMS improperly directly funded these costs rather than seek reimbursement and whether the USMS used the funds for expenses incurred by federal, and not state and local, officers.⁴³ Although the Office of the Inspector General (OIG) found no “issues” with these expenditures, the OIG recommended that the Department update the Colgate Memorandum “to more fully address issues related to direct payment versus reimbursement of certain task force costs and to clarify certain allowable uses of these funds.”⁴⁴ It also does not appear the OIG examined the question of whether the USMS JLEO expenditures funded federal officers. Further inquiry shows that they did.

Circuit Costs

The USMS Asset Forfeiture Division is not the only USMS unit that has sought to secure a greater portion of the AFF to pay questionable expenses. The Investigative Operations Division (IOD) reportedly has long viewed the money set aside for the Asset Forfeiture Program as a lucrative “funding stream” that IOD could “tap” to expand its various programs, particularly those managed by the Technical Operations Group (TOG).⁴⁵ Initially, the IOD sought funding from the AFF for what it claimed were “investigative costs leading to seizure.” However, according to individuals familiar with

³⁹ 28 U.S.C. § 524(c)(1)(I).

⁴⁰ 28 U.S.C. § 524(I) (emphasis added).

⁴¹ 28 U.S.C. § 524(c)(1)(A)(ii), (iv); *id.* § 524(c)(1)(B), (C), (F), (G).

⁴² Memorandum from Stephen R. Colgate, Assistant Attorney General for Administration re: Guidance on Use of the Assets Forfeiture Fund (AFF) to Pay State and Local Law Enforcement Officer Overtime and Other Costs In Joint Law Enforcement Operations (July 1, 1997).

⁴³ See Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Sally Quillian Yates, Acting Deputy Attorney General, U.S. Dep’t of Justice (May 6, 2015).

⁴⁴ DOJ OIG AFF Report at 2.

⁴⁵ E-mail from J. Kirsch to TOG personnel (Sept. 21, 2009).

TOG operations, the group could never provide meaningful data demonstrating how its investigations regularly lead to seizures, because they do not.

TOG ultimately was unable to secure this funding stream, but it also sought funds for cellular tracking equipment and associated operating costs—known as circuit costs and intercept fees—through JLEO.⁴⁶ Arguably, the USMS has long been aware of the statutory restrictions on the use of JLEO to support state and local officers, because it has repeatedly taken pains to justify the purchase of cellular tracking equipment for task force officers who work for TOG by citing to the Colgate Memorandum.⁴⁷ The USMS also has clearly understood that task force JLEO funding for overtime and other state and local expenses supported state and local officers.⁴⁸ However, according to multiple sources, the vast majority of users of USMS surveillance equipment who incur associated circuit costs have always been federal officers. However, USMS requests for JLEO funds for these circuit costs may not have made this clear to the Department.

In Fiscal Year 2011, for example, TOG explicitly attributed the increase in the portion of non-federal circuit costs to “an increase in state and local investigators being assigned” to task forces (both Regional Fugitive Task Forces and Technical Operations Centers).⁴⁹ However, the request did not clarify that task force officers with Regional Fugitive Task Forces do not operate the TOG equipment or themselves incur costs for intercept fees.⁵⁰ The request also did not clarify that the majority of TOG equipment users are federal officers. Later requests simply point to increased costs attributed to the percentage of cases the USMS says are “state and local cases.”⁵¹

Apparently for this reason, the Department has recently taken issue with the USMS’s use and justifications for this funding stream. For FY 2017, the Department

⁴⁶ Further, the unit sought to lean more heavily on increased use of sophisticated surveillance equipment in its Air Surveillance Program, by “setting aggressive and more ambitious performance targets,” in order to “sell the argument” for more resources, in that case “additional ASO personnel and larger aircraft.” Email from Kirch (Sept. 22, 2009).

⁴⁷ E-mail from M. Arnold to E. Morales (June 23, 2010); FY 2011 USMS AFF Budget Request, FY 2012 USMS AFF Budget Request, FY 2013 USMS AFF Budget Request. (FY 2014 also contains “Colgate Memo” justification but requests only funding to cover circuit costs, not for surveillance equipment).

⁴⁸ FY 2009 USMS AFF Budget Request at 16 (noting past use of JLEO funds to support “state and local law enforcement officers”); *see also* Internal Document discussing requirements of JLEO, on file with the Committee, which in response to the question “Can any of the JLEO funding be used to pay for any USMS expenses (USMS employee or contract OT, travel, etc)?” stated “No. JLEO program funds can only be used for State & local full time TFOs.”)

⁴⁹ FY 2011 USMS AFF Budget Request.

⁵⁰ *Id.*; According to an individual familiar with these operations, “that should never happen.”

⁵¹ FY 2012 USMS AFF Budget Request; FY 2013 USMS AFF Budget Request; FY 2014 USMS AFF Budget Request; FY 2015 USMS AFF Budget Request; FY 2016 USMS AFF Budget Request; FY 2017 USMS AFF Budget Request. Also, the FY 2012 request, unlike others, specifically noted that a portion of Circuit Costs would be directed to costs required to maintain the TOG network. TOG uses its own hardware and software to support the intercepts. To the extent that state and local officers who are themselves operating this equipment also use the network, the expense associated with the use of the network would appear to be allowable under JLEO.

allocated the agency's requested \$4,160,000 for circuit costs.⁵² However, the Department limited the USMS's ability to obligate the funds "until the USMS and AFMS can agree on a set of internal controls and procedures necessary to firmly establish that these expenses are 'costs of State or Local law enforcement officers' pursuant to 28 USC 524(c)(1)(I)." The Department went on to "remind" the Marshals Service, as the Chairman has argued,⁵³ "that funds authorized under 28 USC 524(c)(1)(I) are not available for Federal agency expenses, regardless of whether those expenses support a State or local investigation." Unfortunately, the agency's FY 2018 request inexplicably continues to disregard the plain limits of the law, requesting the same amount again for circuit costs based on the same faulty justification.⁵⁴

Databases

OIG also determined that the USMS does have "a method to estimate the portion of database costs that are related to federal vs. non-federal fugitives."⁵⁵ However, the database funding faces the same problem as the circuit costs—it primarily supports the work of federal officers. The portion of costs described by OIG is based on *cases*, not on the number of registered state and local task force *officers* ("TFOs") who use the databases. In recent years, as shown in the table below, the percentage of database costs paid from JLEO has dwarfed the percentage of state and local registered database users.

Notably, in earlier years, the USMS stated explicitly in its budget requests that a minority of its database users were TFOs.⁵⁶ The Department thus should have been aware that the USMS was entitled to less JLEO money than it requested—and perhaps this is why the percentage of database costs actually paid by JLEO in the first few years was so low. However, from FY 2015-FY 2017, the USMS did not offer this information in its requests.⁵⁷ In the most recent budget rounds, however, after the Chairman asked questions about these costs, the Department sought additional information about the registered users and learned that only approximately 42% of them are TFOs. Accordingly, the Department allocated 42% of USMS's requirement for database costs in its initial FY 2017 AFF budget allocation. As it did with respect to circuit costs, the

⁵² FY 2017 Initial AFF Allocation.

⁵³ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Sally Quillian Yates, Acting Deputy Attorney General, U.S. Dep't of Justice (May 6, 2015).

⁵⁴ FY 2018 AFF Budget Request.

⁵⁵ According to the OIG report, the USMS states that there is a field in the system where users can identify whether they are searching for state or federal cases. However, it allegedly was not until the Committee first asked about these costs that the USMS notified database users alerting them to the "federal v. state" box in the system, and that box is not a mandatory field. There also is no way to verify whether searches conducted actually relate to a federal or state case, even on a general level.

⁵⁶ FY 2012 Mid-Year AFF Budget Request; FY 2013 USMS AFF Budget Request; FY 2014 USMS AFF Budget Request.

⁵⁷ FY 2015 USMS AFF Budget Request; FY 2016 USMS AFF Budget Request; FY 2017 USMS AFF Budget Request.

Department reminded the USMS that Congress has not authorized JLEO funds to pay federal expenses. Unlike the agency's circuit costs request, in FY 2018 the agency finally accepted that JLEO funds are not available to pay expenses incurred by federal law enforcement officers.⁵⁸

Conclusion:

Evidence shows that the USMS wasted and misused money it received from the Assets Forfeiture Fund. The agency also provided incomplete and in some cases misleading details about some of these expenditures to the Committee and potentially to the Department.

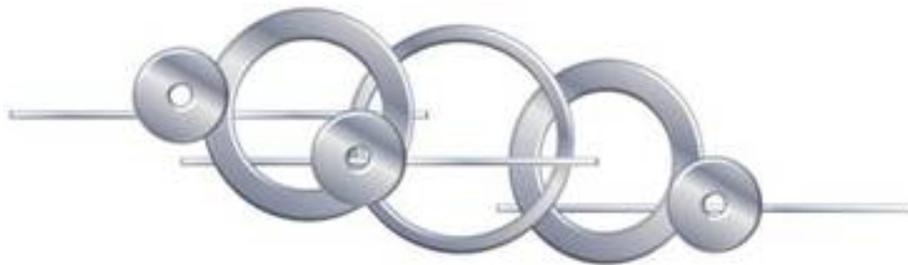
Equally concerning, however, is that the Department's more stringent oversight of AFF expenditures, described in the sections above examining fully funded positions and JLEO, did not begin until the Chairman raised whistleblower allegations of waste and abuse. The Department's FY 2017 AFF allocation to the USMS shows that the Department is capable of requiring more substantive justification for its components' budget requests than it appears to have done in past years. In this last budget round the Department asked more probing questions about the USMS's AFF expenditures and was thus finally equipped to push back. The Department also:

- challenged "excessively high" USMS rent requests for the amount of funded government positions allocated to the agency, causing the USMS to lower the requests by \$790,000;
- drastically reduced funds for "Awards for Information" after a closer look found that a full "80 percent of all USMS awards" in the past "were unrelated to any of the federal violations enumerated" in the applicable statute; and
- cut funding for an asset management and tracking system the USMS spent millions developing only to have it proven redundant to a system already in place.

To ensure that careful scrutiny continues to be applied to AFF expenditures, at least by the USMS, the Chairman is sending the attached letter with follow-up questions. The Committee will continue to exercise oversight on these expenditures, and strongly encourages the Department to do the same.

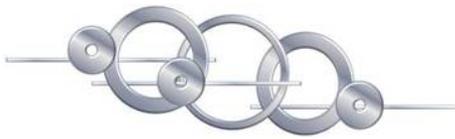
⁵⁸ FY 2018 AFF Budget Request.

U.S. Marshals Service Asset Forfeiture Academy



**Three Allen Center
333 Clay Street
Suite 3050
Houston, TX 77002**

U.S. Marshals Service Asset Forfeiture Academy



The U.S. Marshals Service Asset Forfeiture Academy (AFA) sits on the 30th floor of the Three Allen Center building in the heart of downtown Houston, TX. The AFA includes a classroom that holds 48 student consoles and an instructor podium, a conference room, a business center and a kitchenette/galley. The AFA is a federally approved training facility; there is no cost for federal agency use of the AFA other than travel and per diem for attendees.



Classroom

The classroom consists of individual student consoles and an instructor podium. Each student console provides a USMS-network enabled desktop computer, microphone, SMARTSync connectivity, TurningPoint Audience Response System, Microsoft Office programs, Internet and access to color printers, scanners and fax machines.



The instructor podium offers USMS network-enabled desktop computer with SMART-Podium panel and laptop connection. Video feed from the podium is displayed on two projectors and a confidence monitor. Presentation tools available in the classroom include cable TV, DVD/BluRay, MP3 player, document camera and video-conferencing technology.

Conference Room & Business Center

In addition to the classroom, the AFA has a conference room with two seating areas that can accommodate up to 14 people. Meeting technology available in the conference room includes USMS-network connections, a 360-degree Lync webcam, video-conferencing and speaker-phone capability, cable TV, DVD/BluRay player and video feed from the main classroom. The AFA Business Center offers access to a copier, fax machine, color printer, scanner, telephone, shredder, laptops, cable TV and classroom video to support business needs or instructor preparation during meetings or training sessions.



Hotels

The AFA is within walking distance to the following hotels:

- Hyatt Regency Houston
- DoubleTree by Hilton Hotel Houston Downtown
- Residence Inn Houston Downtown
- Courtyard Houston Downtown

The AFA can be accessed from the Hyatt Regency Houston and DoubleTree by Hilton Hotel through the underground tunnel system, without leaving the building.

Airport Information

The AFA has easy access to two airports:

- George Bush Intercontinental Airport (IAH), 22 miles
- William P. Hobby Airport / Houston Hobby Airport (HOU), 12 miles

Transportation in Houston

The following transportation services are available:

- **Greenlink:** Environment-friendly buses travel routes in the downtown area regularly with stops every 7-10 minutes. Routes connect major office buildings along Smith and Louisiana streets to METRO transit, the convention corridor, hotels, restaurants, shopping, and entertainment. Greenlink is free Monday thru Friday, 6:30 AM to 6:30 PM.
- **METRO Rail:** Houston's METRO Rail offers inexpensive transportation in close proximity to more than 70 dining and entertainment options, professional sports arenas, and many cultural institutions and districts. Tickets cost \$1.25 (one-way) and can be purchased using cash, credit or debit card at all rail stops via the METRO Ticket Vending Machine (TVM). METRO Rail hours are:
 - 4:30am-11:40pm (M-TH) 4:30am-2:20am (F)
 - 5:30am-2:20am (SAT)
 - 5:30am-11:40pm (SUN)
- **Taxi Services:** "Six in the City" is a special offer provided by local taxi cabs. Guests can go anywhere in the Downtown area for \$6.

Interested in reserving the U.S. Marshals Service Asset Forfeiture Academy?

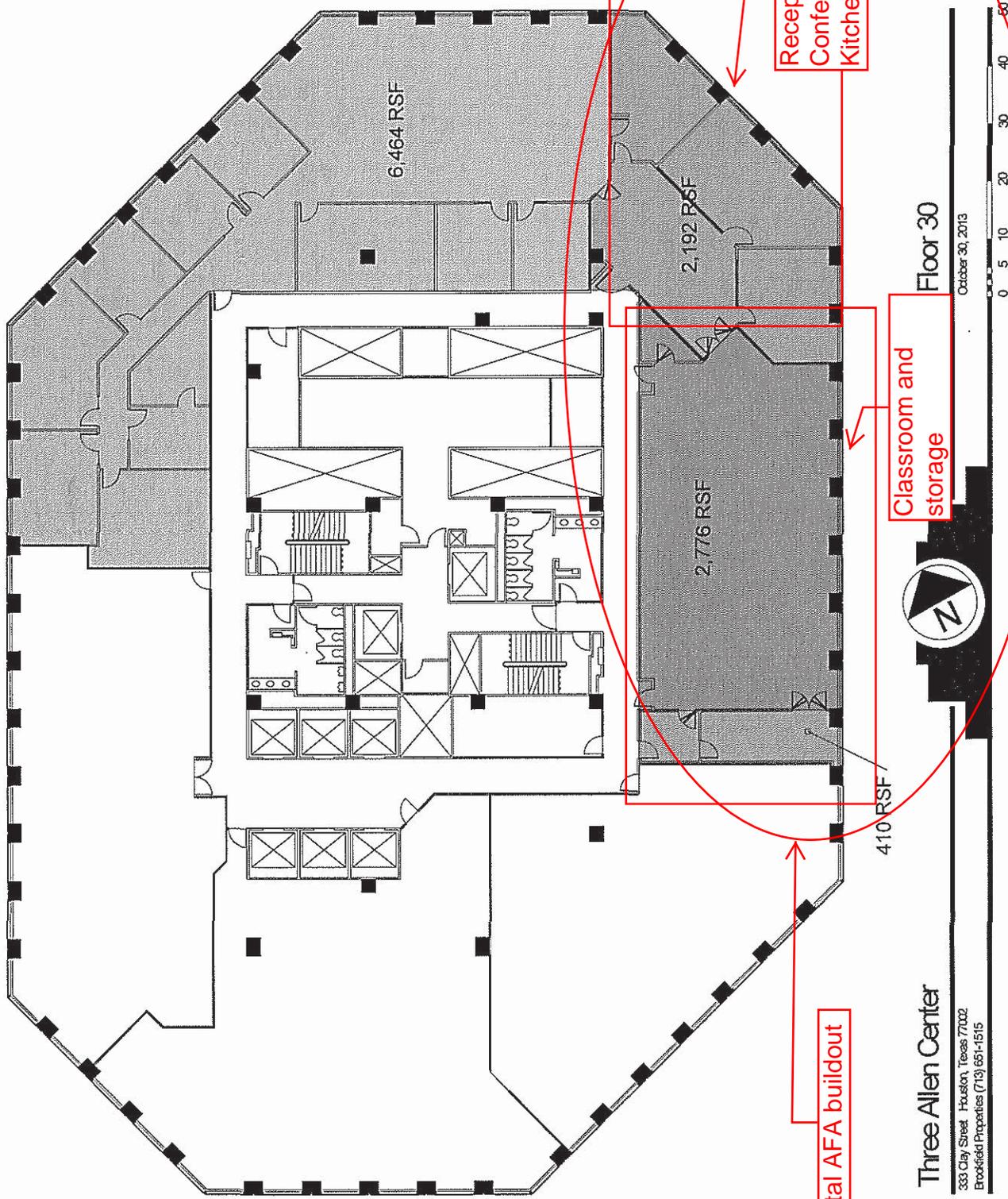
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Three Allen Center - F30 - Floorplan



Three Allen Center

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Brookfield Properties (713) 651-1515



Floor 30

October 30, 2013

