United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

May 6, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Quillian Yates
Acting Deputy Attorney General
United States Department of Justice

Dear Acting Deputy Attorney General Yates:

On March 18, 2015, I sent a letter to Director Stacia Hylton of the U.S. Marshals Service (USMS) inquiring into questionable spending of the Assets Forfeiture Fund by officials in the Asset Forfeiture Division (AFD). On April 3, 2015, the USMS responded. Like the Department's initial response to my March 19, 2015, letter regarding allegations of hiring *quid pro quos* within USMS, the response to my March 18, 2015 letter is at best incomplete and potentially misleading.

This letter requests additional information based on the USMS April 3, 2015, response.

Crystal Mall 4

The April 3, 2015, response from USMS states that AFD moved its offices to Crystal Mall 4 in Arlington, Virginia in 2009, and that renovations to the space "were incorporated into the GSA build out pursuant to standard terms of the lease agreement for all interior finishing."

This response suggests to the reader that the work and renovations occurred in 2009 when AFD moved in to Crystal Mall 4. However, according to information obtained by the Committee, additions and modifications to the AFD space may not have been incorporated into the 2009 build out. Specifically, documents obtained by the Committee demonstrate that the AFD awarded a contract for renovation of a large conference room in Crystal Mall 4 in August 2013. The documents also show that AFD extended the contract performance period twice—once through October 15, 2013, and eventually to December 31, 2013. According to these documents, contractors installed brand new wallpaper, crown molding, baseboards, and chair railing in the AFD conference room through the period of the 2013 Government shutdown. While numerous federal Government employees stayed home without a paycheck during the budget crisis, the AFD was apparently busy redecorating its offices.

USMS also states that AFD purchased a conference table "from the lowest offeror in a competitive procurement" for $22,000, including shipping. Federal Acquisition Regulations require that, to bypass a mandatory source requirement to purchase items like office furniture, an agency contracting officer must either obtain a waiver, or make a written determination that an item available through UNICOR is "not comparable" in terms of "price, quality, and time of delivery," to the commercial item.[1] The most expensive conference table currently available on UNICOR's product list is $2,315.[2]

That's approximately one-tenth the price paid by the AFD.

USMS further claims that it purchased additional window treatments or "roller shades" for $12,300 because "those initially provided in the existing office space blocked out all light when closed." It is unclear why blocking out light is a defect for a window treatment. It is also unclear why, even if that were true, it required purchase of entirely new treatments, rather than simply raising, lowering, or otherwise adjusting the ones that were already there.

Asset Forfeiture Academy (AFA)

USMS stated that the AFA is co-located in Houston, Texas with the Southern District of Texas' Asset Forfeiture Unit "for greater consolidation and efficiency." According to USMS, this arrangement allows "students [to] benefit from on-the-job training provided by experienced staff in both office and field settings." The USMS also stated that the AFA cost $1,780,600 to establish, and that the audio visual system has an annual service cost of approximately $10,700. Finally, according to the USMS, the AFA was used for training purposes only about 33.5 days in fiscal year 2014.

Based on information obtained by the Committee and the Committee's own review of the April 3 letter and its attachments, these explanations are incomplete and, in some cases, incorrect.

Information obtained by the Committee suggests that the total build out cost for the AFA may actually have been as high as approximately $2,164,700, about $384,100 more than the USMS figure in its April 3, 2015, letter. Additionally, although my initial

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[1] FAR §§ 8.602, 8.604, 8.605.
[2] http://www.unicor.gov/shopping/ViewProduct.asp?idProduct=2352&idStore=UNI&idCategory=922.

March 18 letter on this subject specifically asked USMS "how much AFD spent in total to establish" the AFA, "*including rent*," the USMS failed to provide any information regarding rent at the commercially leased downtown office space in Houston.

According to whistleblower allegations, there also is no real benefit to students derived from the AFA's location. There allegedly is no substantive connection between the district office and the AFA, and none of the employees assigned to the district office provide instruction for AFA courses.

Based on the Committee's review of the training agendas provided by USMS on April 3, USMS used the AFA for training purposes for only 31.5 days in fiscal year 2014, not 33.5 days.

Multiple whistleblowers also have indicated that, at the time the USMS built the AFA, the USMS maintained and used other training facilities and workspace in locations around the country, including Georgia and Arizona.

The AFA apparently remains unused approximately eleven months out of the year, and the USMS already had training space in other locations at the time it built the AFA. Yet, the USMS justified its spending to locate the AFA in a commercially leased downtown office building in Houston by claiming "greater consolidation and efficiency." That justification appears weak.

Further, as I wrote in my April 23 letter, the USMS explanation of its purchase of 57 square feet of granite appears incomplete. Multiple whistleblowers have alleged that this granite was "very special," "top of the line," and "the most expensive on the market." It is unclear why the USMS cannot disclose to the Committee how much it paid for this luxury material. Notably, the USMS was able to provide the cost of the AFA window system, even though that system was "included in the build-out of the AFA using the standard GSA reimbursable work agreement." Yet the USMS claims it cannot provide the cost of the custom cut granite "because it was included in the overall contractor build out cost."

Spending Approvals

The USMS also states in its April 3, 2015, letter that "[t]he approvals for the items raised in your [March 18, 2015] letter occurred as far back as 2008 and were compliant with the USMS' internal controls at the time and the senior USMS officials who approved the questioned expenditures retired years ago."

As noted above, documents obtained by the Committee demonstrate that contract awards, modifications, and justifications for at least some of the items subject to the Committee's inquiry occurred as recently as 2013. Multiple whistleblowers also allege that the approvals for both the Crystal Mall 4 renovations and the items designed and installed at the AFA occurred by and upon the insistence of Kimberly Beal, who has since been promoted to the permanent position of Assistant Director for the Asset Forfeiture Division. Information obtained by the Committee also shows that AD Beal, along with touting her ability to "leverag[e] financial avenues," takes credit for the AFA and lists it as a "key accomplishment[]" in her executive management biography. Documents obtained by the Committee also suggest that another individual, Brett Thomas, may also have played a significant role in approving the AFA purchases. According to publicly available information, Mr. Thomas has served as an Assistant Chief Inspector for the USMS since January 2009, around the time the USMS began receiving contractor proposals for the AFA's design. Mr. Thomas remains the Director of the AFA.

Further, information obtained by the Committee shows that the former Acting Associate Director for Administration, Lisa Dickinson (who now works within the USMS Office of General Counsel) served in her acting role from June 10, 2013 to February 9, 2014, when Crystal Mall 4 renovations actually took place. According to the USMS April 3 letter, the Associate Director for Administration (ADA) is responsible for "implement[ing] additional approval safeguards for furniture and equipment expenditures across USMS headquarters functions, including AFD . . . ." In the USMS' own words, it appears that the ADA is ultimately responsible for the approval of at least some of the expenses that are the subject of the Committee's inquiry. If Ms. Beal or others within AFD did not actually approve them or have the authority to do so, it would seem that Ms. Dickinson did.

Joint Law Enforcement Operations (JLEO)

The statute authorizing the Assets Forfeiture Fund (AFF) limits the use of that fund for joint law enforcement operations for the "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 with a Federal law enforcement agency participating in the Fund."[3] Longstanding internal agency guidance on the use of JLEO funds, commonly referred to as the "Colgate Memo," also states: "The AFF may reimburse only those expenses authorized by the statute."[4] Reading the statute and the Colgate Memo together, JLEO funds must be used to *reimburse* state and local *law enforcement officers* for costs they *actually incurred* while participating in a joint law enforcement operation.

[3] 28 U.S.C. § 524(c)(1)(I) (emphasis added).
[4] 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), at 6 (emphasis added).

According to the April 3, 2015, response from USMS, "JLEO funds are provided from the AFF to support state and local task force operations. No JLEO funds have been used to directly support any USMS employee."

The USMS goes on to state that it does not have "sufficient detail" to determine whether certain expenditures, known as "circuit costs," "are attributed to federal versus state and local cases." USMS thus estimates that those cases account for "approximately 80%" of the total circuit costs.

According to whistleblowers, however, the USMS *does* have the capability to extract information from the Justice Detainee Information System (JDIS) to more accurately identify which circuit costs are attributed to federal as opposed to state and local cases. The USMS website also states that in Fiscal Year 2014, the USMS arrested 71,092 state and local fugitives and 33,797 federal fugitives.[5] According to these reports, then, USMS state and local fugitive arrests accounted for 67.8% of total fugitive arrests. This percentage is significantly lower than the 80% of costs the USMS asserts are associated with state and local cases.

The USMS also states—with more certainty than is apparently possible for circuit costs estimates—that precisely 79.4% of Commercial-Assisted Legal Research (CALR) database searches are run for state or local cases.

However, information obtained by the Committee suggests that there is no agency-wide methodology capable of reviewing database searches to determine whether they pertained to federal or state and local cases. According to one whistleblower, who uses these databases "almost every day," the agency has "no idea" what cases are associated with USMS employee searches.

Based on the USMS' April 3, 2015, letter and information obtained by the Committee, it appears that the USMS cannot accurately certify with any confidence that it is in compliance with the statute or Department policy. Even if the USMS estimates are accurate—and it is not clear that they are—the inability of the agency to track this spending with "sufficient detail" makes any oversight and accountability for the use of JLEO funds highly questionable, if not impossible. It is also unclear from the USMS' response that is in fact *reimbursing* state and local officers rather than seeking direct funding from the Department based on unverifiable estimates. Finally, the statute and the guidance require that the JLEO funds be used to reimburse costs incurred by state and local law enforcement *officers*, not costs generally attributable to state and local *cases*. If a federal USMS employee is running a database search, that money is supporting a federal law enforcement officer.

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[5] http://www.usmarshals.gov/duties/factsheets/fugitive_ops.pdf

With respect to the District of Arizona, the USMS stated in its April 3, 2015, letter that "the USMS has transferred $26,000 of non-JLEO/AFF funds to the District of Arizona for payments under the Awards for Information funding for drug cases." However, the Committee has received allegations that the non-JLEO transfers nevertheless were made from AFF monies intended for costs associated with asset forfeiture operations, not with locating and apprehending "fugitives wanted for drug offenses." It is further alleged that AD Beal approved the transfer to "make up" for a decrease in JLEO funding to the District of Arizona in Fiscal Year 2014.

Please provide documents responsive to the following requests by May 26, 2015:

Crystal Mall 4

1. The GSA lease agreement for Crystal Mall 4 and any subsequent amendments;
2. Documentation, including all approvals, contracts, statements of work, and contract modifications, demonstrating when the renovations to the AD and DAD workspace and the AFD conference rooms took place and at what cost;
3. All USMS e-mail correspondence regarding the approvals, contracts, and contract modifications for the renovations including work related to crown molding and any other "millwork, painting, staining, and wall coverings";
4. Written documentation of either the waiver or the determination demonstrating how items available from UNICOR are not comparable to the $22,000 conference table;

Asset Forfeiture Academy

5. The GSA lease and work agreements related to the AFA and any modifications or amendments, including any statements of work and invoices related to the space build out;
6. The amount that USMS pays in rent for the AFA on a monthly basis;
7. The total operating cost for the AFA on an annual basis;
8. The names and locations of all other training facilities used by the USMS, the dates they were established, and how often they are in use;
9. A list of all AFA instructors, including their titles, duty station, and courses taught at the AFA since the facility opened;
10. A record of any other uses of the AFA facility during the nearly eleven months it remains idle from training per year;
11. The name of the contractor(s) who designed and installed the custom granite at the AFA, purchase orders and invoices showing how much the USMS paid for the materials and installation, and a copy of all other contractor submissions for granite when the material was "bid competitively and procured by GSA";

12. A copy of all other bid materials for the items at issue in the Committee's March 18, 2015, letter that USMS asserts were competitively bid;

Spending Approvals

13. All approvals for expenditures made related to each of the items at issue in the Committee's March 18, 2015 letter;

Joint Law Enforcement Operations (JLEO)

14. The methodologies, in detail, used to arrive at the 80% estimate for state and local circuit costs, as well as that used to specify that 79.4% of database searches are related to state and local cases;
15. All USMS AFF budget requests submitted to the Department from FY 2012 to the present, as well as all associated allocations signed by the Deputy Attorney General;
16. Documentation clearly outlining the definition of "circuit costs" and what specific expenses the term "circuit costs" encompasses;
17. From FY 2012 to the present, the total number of full-time state and local task force officers who were issued USMS credentials and the total number of Deputy U.S. Marshals;
18. Evidence that the Department authorized the USMS to reprogram its AFF allocation such that the District of Arizona received additional funding for "Awards for Information," an expense category subject to annual Congressional appropriations;
19. Documentation of all transfers of funds from any AFF Forfeiture Operations Expenses category to or for the benefit of the District of Arizona in Fiscal Year 2014;
20. Any and all e-mail communications regarding the decrease in JLEO funding to the District of Arizona in Fiscal Year 2014, and any attempts to restore or increase funding to offset that decrease in whole or in part.

Should you have any questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225. Thank you.

Sincerely,

Chuck Grassley

Charles E. Grassley
Chairman
Committee on the Judiciary

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