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The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

Subject: *Law Enforcement Body Armor: Responses to Posthearing Questions for the Record*

On February 15, 2012, I testified before your Committee on the Department of Justice's body armor initiatives. This letter responds to questions for the record that the Ranking Member and several other Committee members posed. The responses are based on previously issued GAO products.¹ If you have any questions about this letter or need additional information, please do not hesitate to contact me at 202-512-9627 or maurerd@gao.gov.

David C. Maurer
Director, Homeland Security and Justice Issues

Enclosure

¹See GAO, *Law Enforcement Body Armor: DOJ Could Enhance Grant Management Controls and Better Ensure Consistency in Grant Program Requirements*, GAO-12-353 (Washington, D.C.: Feb. 15, 2012). GAO, *Law Enforcement Body Armor, DOJ Supports Its Use and Enhancements, but Could Strengthen Management of Its Related Grant Programs*, GAO-12-448T (Washington, D.C.: Feb. 15, 2012).

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Questions from Senator Grassley

(1) Unexpired Balances in the Bulletproof Vest Partnership Program:

The report released by GAO at the hearing indicates that the Justice Department (Department) has been carrying over significant balances in the Bulletproof Vest Partnership program (BVP program). The report indicates that the BVP has a \$27 million unobligated balance that GAO recommends the Department deobligate. In response to a question from me at the hearing, you stated that it was your understanding from the Department that they intended to follow through on this recommendation and use the money to purchase additional vests.

- **Is there any statutory requirement that the Department use these funds to purchase more vests? If so, please indicate what restrictions exist in law.**

In our February 2012 report, we found that the BVP program had \$27 million in undisbursed balances from grants whose terms had ended and were closed. We recommended that DOJ deobligate these undisbursed balances.² In accordance with statutory provisions, once DOJ deobligates the undisbursed balances, the BVP program may only use these amounts for the purpose of making grants to States, units of local government and Indian tribes to purchase armor vests for their law enforcement officers and State and local court officers, unless otherwise instructed by Congress.³

- **In the event there is no requirement with how the Department utilizes these funds, should Congress condition the use of future funds pending the distribution of the unobligated balance?**

As noted in our preceding answer, there is a statutory requirement related to how the BVP program may use these funds.

- **What has been the impact of Congress continuing to award “no year” money to the BVP program? Is this is significant factor contributing to the unobligated balance in the BVP program?**

According to DOJ officials, virtually all of their grants are appropriated with “no year” funds. We did not specifically evaluate the impact of awarding “no year appropriations” to the BVP program or whether this is a significant factor contributing to the undisbursed balances in closed grants in the BVP program.

²Undisbursed balances are funds that the BVP program has obligated by entering into a grant agreement, but the grantee has not drawn down, or the program has not disbursed.

³42 U.S.C. § 3796//.

- **Are there any additional factors contributing to the continued presence of unobligated balances in the BVP program? If so, please describe those factors in detail.**

As we noted in our February 2012 report, the key issue for the BVP program is undisbursed balances from closed grants. Once the BVP program awards a grant, it obligates its funding. However, because the BVP program does not disburse the funds up front, and instead provides them on a reimbursable basis, the grantee does not receive any funds from its award until the BVP program approves its request for reimbursement. If grantees do not submit reimbursement requests during the term of the grant and the BVP program does not extend the grant term, the program closes the grant and the grantee is no longer eligible for reimbursement. The BVP program may then deobligate these once obligated, but undisbursed funds.

According to officials, there are several reasons why grantees may not seek reimbursement. In some instances, for example, grantees decided not to purchase some or all of the originally intended vests. In other instances, grantees purchased vests using funds from other sources.

- **To the best of your knowledge, are there any other grant programs at the Department that carry-over significant unexpired balances on an annual basis? If so, please provide a list of those programs.**

Our work and findings on undisbursed funds from closed grants focused on the Bulletproof Vest Partnership Grant program. As such, we do not know whether other grant programs at the Department carry-over significant unexpired balances from closed grants.

(2) Duplication and Overlap between Justice Department Grant Programs:

Two distinct Justice Department grant programs provide funds that can be utilized to purchase body armor for local law enforcement agencies. The Bullet-Proof Vest Partnership (BVP) Grant Program administered by the Bureau of Justice Assistance (BJA) specifically provides reimbursement for the purchase of vests and the Byrne Justice Assistance Grant (Byrne/JAG) program funding for vests as part of its overall law enforcement assistance mission. The BVP program requires grantees to meet certain conditions, such as a 50 percent match, mandatory-wear policies by recipients, and adherence to quality standards. The Byrne/JAG program does not have any of these. Despite the fact that both programs could fund vests, the Department does not keep track of whether state and local agencies are using both programs to fund vest purchases.

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- **Why does Justice operate these programs differently and what would be the benefits for combining the programs?**

Federal law established both programs with distinct statutory authorities, requirements, and purposes, which results in differences in the programs' operations. The BVP program was established for the purpose of saving the lives of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests. By statute, the Director of the Bureau of Justice Assistance (BJA) is authorized to make grants to States, units of local government and Indian tribes specifically to purchase armor vests for use by State, local, and tribal law enforcement officers and State and local court officers in accordance with statutory provisions. In contrast, by statute, under the Edward Byrne Memorial Justice Assistance Grant (JAG) program, the BJA Director is authorized to provide State, local, and tribal governments with support in a wide range of program areas, including law enforcement; prosecution and courts; prevention and education; corrections and community corrections; drug treatment and enforcement; planning, evaluation, and technology improvement; and crime victim and witness initiatives. Within the law enforcement program area, grantees may use JAG grant funds to purchase armor vests, among many other things. In our February 2012 report, we recommended ways for DOJ to harmonize body armor requirements across both programs to ensure law enforcement officers' protection. DOJ agreed with our recommendations and has begun taking steps in these areas. However, we did not examine the benefits of combining the JAG and BVP programs.

- **Does DOJ know how many grantees receive money from both of these programs in any given fiscal year? Does GAO know?**

Neither DOJ nor we knows how many grantees use both BVP and JAG funding for the specific purpose of purchasing body armor. Because DOJ is not required to track JAG spending for specific purposes, it would not be able to determine how many JAG grantees used their grants to purchase body armor. However, DOJ tracks the most significant areas in which JAG grantees intend to use their funding by using "project identifiers." Regarding body armor, the JAG program has a project identifier for bulletproof vests, but no project identifiers for stab-resistant vests. In response to our audit work, DOJ officials said they would add a project identifier for stab-resistant vests during the fiscal year 2012 JAG application process.

- **What changes to the Bullet-Proof Vest Program Act would you suggest to account for these problems, or other issues you discovered in the course of your audit?**

As noted in the above response, we and DOJ do not know how many grantees are using both BVP and JAG funding to procure body armor. In our

February 2012 report, we recommended that DOJ enhance the controls for the BVP program to ensure that recipients of JAG grant funds are not using those funds as the matching portion for the BVP program. DOJ agreed that additional controls were needed and said that it would strengthen its monitoring activities in response to our review. In addition, DOJ said that it would enhance the availability of information on BVP and JAG program requirements in response to our recommendations. We believe that DOJ's planned actions will address our recommendations.

- **Could savings be achieved by consolidating the duplication between these two programs?**

We did not examine whether savings could be achieved by consolidating these programs.

(3) Quality Control for Vests Purchased:

Vests bought with federal funds should meet the highest possible quality standards. According to your audit, you found that many different factors affect the use and effectiveness of body armor, such as comfort, fit, wear and tear, care and maintenance, and environment.

- **What can Congress do to assist DOJ and other agencies in ensuring the highest possible quality standards for body armor?**

DOJ officials told us they have sufficient legal authority to establish requirements for the programs funding body armor purchases at the State and local level for their law enforcement officers. Nevertheless, further attention on this issue is warranted. In particular, we recommended that BJA establish requirements within the JAG program, consistent with BVP program requirements, that grantees using JAG grant funds for body armor purchases have written mandatory wear policies in place and that they are permitted to purchase only NIJ-compliant body armor. BJA agreed with these recommendations and we will monitor the department's actions to implement these recommendations.

- **What is the involvement of the manufacturers in the standards-setting process?**

According to National Institute of Justice (NIJ) officials, manufacturers may provide input into the process for updating ballistic-resistant and stab-resistant standards in several ways. For example, they can participate in the NIJ-sponsored public workshops held before the standards are updated or they can provide comments on the draft standards when NIJ submits them for public comments. However, NIJ does not permit manufacturers to serve on the Special Technical Committees, which are groups with the primary responsibility for updating body armor standards. NIJ officials explained that this facilitates the participation of law enforcement practitioners and avoids conflict of interest.

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- **How are NIJ and manufacturers addressing the unique problems with vest comfort and fit faced by female officers?**

NIJ officials and the manufactures with whom we spoke during the course of our review are aware of the vest comfort and fit issues female officers face and each group is taking action in response. For example, NIJ told us that ongoing research on female body armor testing methods will inform the test protocols in the new standards that NIJ expects to complete for stab resistant vests in December 2012 and ballistic resistant vests in November 2013. They also told us that the Special Technical Committees involved in updating the standards are considering the inclusion of ergonomic or “wearability” requirements in the new standards, which will benefit female as well as male officers. The six manufacturers we met with said that they custom fit their armor to the individual officer, which helps ensure female officers are wearing vests best contoured to their shapes. In addition, manufacturers told us that they have improved and will continue to improve the design and comfort of their female body armor. For example, one manufacturer said it is planning to use a new technique to mold bust cups without stitching, which may result in thinner, more comfortable vests for female officers.

- **Is there any reason why body armor made in a foreign country, but sold and used in the United States, should not be certified, tested, or evaluated by the National Institute of Justice?**

We did not examine the issue of body armor made in a foreign country or foreign countries and whether that body armor should or should not be certified, tested, or evaluated by NIJ. We also do not know the countries in which the body armor currently meeting NIJ’s compliance standards was manufactured. However, NIJ’s body armor standards are voluntary and manufacturers are not required to have their armor tested. Both foreign and domestic body armor manufacturers may voluntarily submit their armor for testing through NIJ’s compliance testing program. If the body armor passes, it may obtain NIJ-compliant status and appear on NIJ’s compliant products list. Since law enforcement agencies that receive BVP funding may only purchase body armor from this list, there are advantages for manufacturers to undergo NIJ compliance testing.

- 1. Between FY1999-FY2012, Bureau of Justice Assistance (BJA) has awarded \$340 million in Bulletproof Vests Partnership (BVP) grants, but has only reimbursed grantees \$247 million - a \$93 million difference. Of the \$93 million in undisbursed funds, Government Accountability Office (GAO) found that \$14 million was deobligated and repurposed. \$8 million was used as an offset a FY2009 rescission in the Department of Justice's (DOJ) budget. The balance was used to fund "additional BVP program awards." What were these BVP program awards?**

The BVP program used the balance to fund additional BVP grant awards for State, local, and tribal law enforcement agencies to purchase armor vests for their law enforcement officers.

- a. \$27 million of the \$93 million are funds that have expired and could be deobligated and used for another purpose, and \$52 million is from awards where the term has not yet expired, but claims for reimbursement have not yet been received. At the end of FY2012, portions of this \$52 million will begin to expire unless they are obligated.**

- i. Can you identify any reason BJA could not deobligate the expired awards immediately?**

No. DOJ has indicated that the Office of Justice Programs (OJP) agreed with our recommendation to deobligate undisbursed funds from grants in the BVP program that have closed, and they are working to do so.

- ii. Given the "no-year" funding status of the BVP Program, could this \$27 million be used immediately to fund existing and new awards?**

Yes. BJA intends to use the deobligated, undisbursed BVP program funds from closed grants to supplement the appropriation amounts for procuring body armor in fiscal years 2012 and 2013.

- iii. Has the excess \$93 million been accumulating interest?**

- a. And, if so, what happened to that interest?**

According to Department officials, the BVP grant funds do not accumulate interest.

- iv. The DOJ recently requested \$30 million in FY2013 funding for the BVP Program. With the addition of deobligated funds that are likely to become available at the end of FY2012 added to the current \$27 million that can be**

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deobligated immediately, it seems BVP could recover enough funds from within its own program to fully fund this request. Is this correct?

Yes. BJA could potentially use the \$27 million to fund grants for purchasing body armor vest in future fiscal years or offset a future budget request.

- 2. In your testimony, you noted that BVP frequently extends and re-extends grant award time frames. You also referenced a 2008 GAO report which “found about a billion dollars of funds like this that were sitting around basically unused” in grant programs across the federal government.**

- a. Does GAO believe the practice of extending (and in some cases re-extending) grant award time frames is a prudent approach to grant management?**

We did not examine this issue during our review. However, the BVP program has designed internal controls to help it manage the funds from grant awards whose terms have been extended. However, we did not test these controls as part of our review.

- b. When a grant award expires and the corresponding funding is deobligated, is the grantee prevented in any way from reapplying for BVP grants in the future?**

No. Grantees that have obtained BVP grant awards and have not used part or all of the funds before the term of the grant ends may reapply for grant funds in future fiscal years.

- c. Can you identify any accountability issues that may arise when grant awards are continually extended beyond their original time frame?**

During our review, we did not examine the potential accountability implications of continued extensions of grant awards. The BVP program has designed internal controls to help it manage awards that have been extended beyond their original terms. However, we did not test these controls as part of our review.

Director Maurer, I appreciate the effort that has gone into studying the important issues surrounding the federal and state partnership in providing body armor to our law enforcement professionals. I am pleased to see that the GAO report recognizes the particular issue of female body armor, given the rising percentage of females serving in law enforcement across America. The report notes that NIJ will include female body armor testing methods in its ballistic-resistant body armor standards, which is scheduled to be released in November 2013.

1. Is there anything that can be done prior to that time to ensure availability and proper fit of body armor for females serving in law enforcement today?

Yes. The National Institute of Justice (NIJ) is taking steps to address issues related to female body armor. In particular, NIJ has tested models of body armor designed specifically for females and will continue to do so. As a result, several models of NIJ-compliant body armor for females are on the market. Also, NIJ has guidance and an educational video that addresses proper fit of body armor for law enforcement officers, including female officers. In the guidance, for example, NIJ encourages agencies to inspect officer's body armor regularly to ensure the armor continues to fit properly. Further, NIJ's ongoing research to explore the effect of heat, humidity, and moisture on the strength of newer body armor materials could also benefit body armor for female officers.

2. Did the GAO study how are female officers are currently affected by mandatory wear policies?

Yes. We spoke with female officers in 4 jurisdictions that had mandatory wear policies in place—Los Angeles, California; the District of Columbia; Hanover County, Virginia; and Gaithersburg, Maryland. The female officers we met with did not raise any issues with the mandatory wear policies of their departments and told us that, in the absence of mandatory wear policies, they would still use the body armor while on duty because it helps keep them safe.⁴

The GAO report helpfully outlines some of the important research that the NIJ has supported to ensure up-to-date standards for body armor.

3. In its efforts to improve the design of body armor, has the NIJ studied the issue of backface signature injuries?

Yes. NIJ is working with the Department of Defense's (DOD) Technical Support Working Group to study new materials to significantly reduce or eliminate blunt force trauma caused by backface signature—the indentation

⁴Although the views of these officers provide valuable insights into body armor issues, these views are not generalizable.

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caused by the bullet's impact— in soft body armor. We did not discuss with NIJ any other studies it may have conducted related to backface signature injuries.

4. What standards, if any, are being developed to address this safety issue?

The current NIJ ballistic-resistant standard addresses the performance of body armor in protecting against blunt force trauma. Specifically, the standard requires that during ballistic testing body armor is not penetrated by a bullet and has a backface signature of no more than 44 millimeters to pass the testing. NIJ is currently working to update its standard for bulletproof vests but we do not know whether NIJ will modify the backface signature requirement as part of the update.