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BY THE COMPTROLLER GENERAL
**Report To The Chairman, Subcommittee
 On Government Information And
 Individual Rights, House Committee On
 Government Operations**
 OF THE UNITED STATES

Released

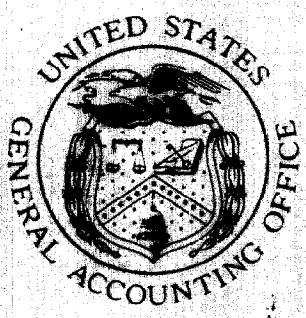
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**FBI Audit Conclusions On The
 Criminal Informant Program
 Should Have Been Qualified**

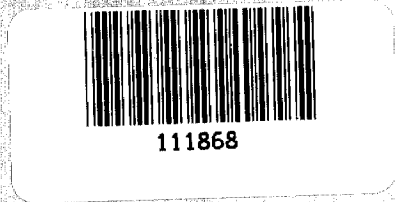
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In a 1979 report on its Criminal Informant Program, the FBI concluded that, with few exceptions, the program was in compliance with both FBI regulations and Attorney General guidelines.

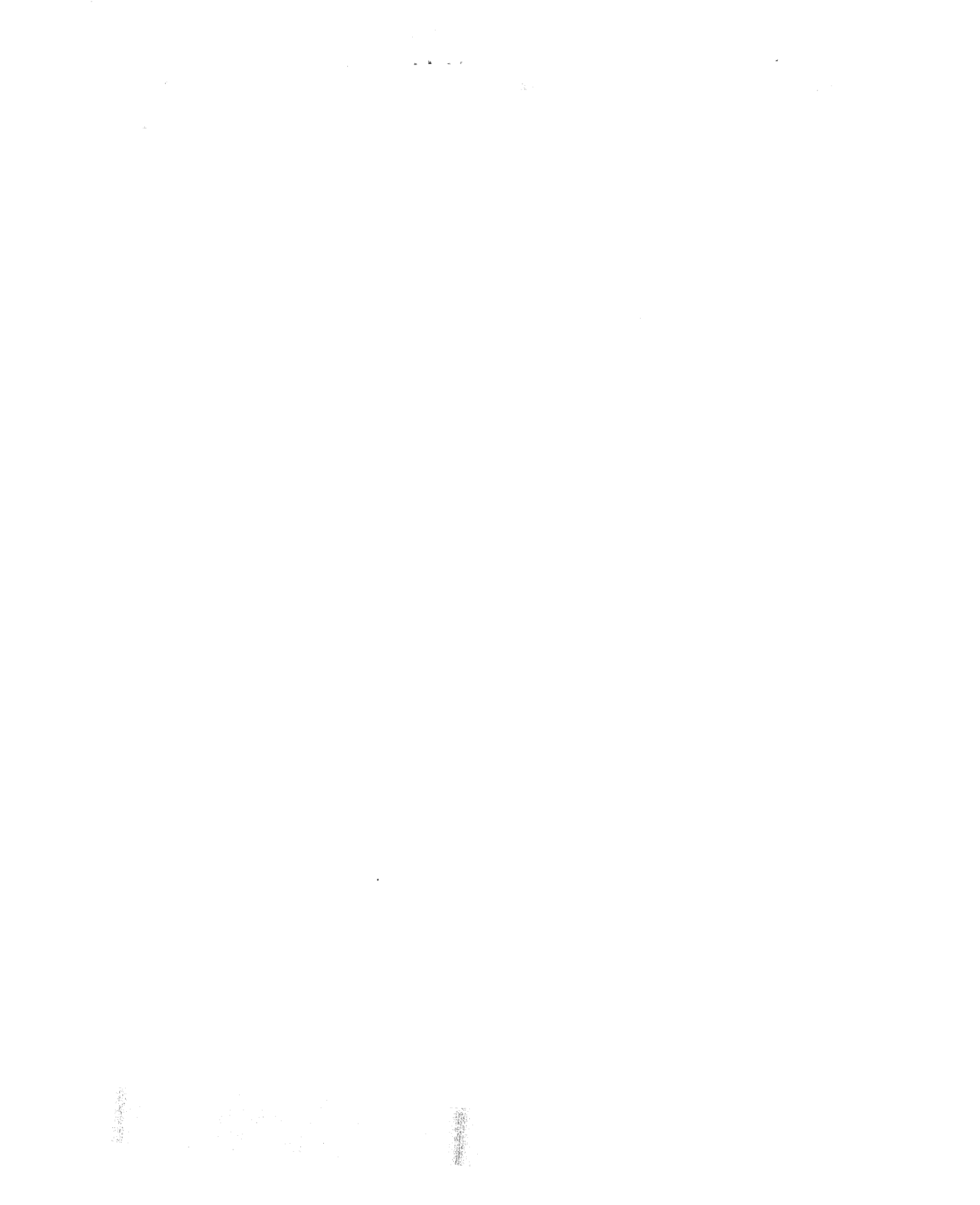
GAO analyzed the FBI's audit report and found no errors in the facts or figures, but the report's audit scope and methodology should have been better qualified to support the FBI's audit conclusions.



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GGD-80-37
 MARCH 13, 1980





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-197702

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
Committee on Government Operations
House of Representatives

The Honorable Thomas N. Kindness
Ranking Minority Member
Subcommittee on Government
Information and Individual Rights
Committee on Government Operations
House of Representatives

01504

In response to your June 1979 request, we are reporting on our assessment of the Federal Bureau of Investigation's (FBI's) internal audit of its criminal informant program. As requested, our report also outlines the type of audit we had planned but were unable to conduct in response to a May 1978 request by the Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives.

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We found, on the basis of the information made available to us, that with certain qualifications, the FBI's compliance audit report accurately represented the status of the criminal informant program at the time of the audit. However, because the FBI did not permit us to examine criminal informant files, we could not verify all the information presented in its report.

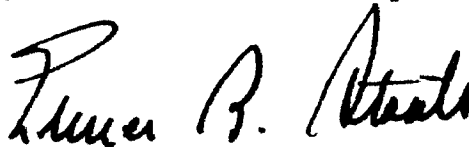
Our analysis of the FBI's audit questionnaires, methods for selecting case files, and procedures for conducting its test of payments indicated that the complexities of and restrictions placed on the audit required some qualification of the conclusions in the audit report. We recognize that due to the sensitive nature of the informant program many of the problems we identified would be extremely difficult to overcome. However, more qualified conclusions in view of the limitations of the review methodology would have provided a better assessment of FBI compliance with its regulations and the Attorney General's guidelines on the use of informants.

Appendix I describes the type and scope of the FBI's internal review and presents our evaluation of its strengths and weaknesses and why we feel the FBI's conclusions should be qualified. GAO methodology for performing a more comprehensive audit of the criminal informant program is outlined in appendix II.

We reviewed and discussed with FBI officials the methods and procedures used in carrying out their audit of the criminal informant program. We also reviewed FBI files, records, and workpapers generated during the audit. Since we did not have access to criminal informant files, all of our audit work was performed at FBI headquarters.

³⁷The Department of Justice did not agree that the limitations in the FBI's audit scope and methodology warranted more qualified conclusions on the criminal informant program. The Department's comments are discussed in more detail on page 10 and included in appendix V.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time we will make copies available to others on request.



Comptroller General
of the United States

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1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

FBI AUDIT CONCLUSIONS ON THE CRIMINAL INFORMANT
PROGRAM SHOULD HAVE BEEN QUALIFIED

On the basis of the information made available to us, we found that the FBI's audit report accurately represented the status of the criminal informant program, with certain qualifications. However, because the FBI did not permit us to examine criminal informant files, we could not verify all the information presented in its report. Our analysis of the adequacy of the FBI's audit questionnaires, methods for selecting case files, and procedures for conducting its test of payments indicates that the complexities of and restrictions placed on the audit require qualification of the conclusions. Qualified conclusions explaining the limitations of the review methodology would have provided a better assessment of FBI compliance with its regulations and the Attorney General's guidelines on the use of informants.

FBI COMPLETES EXTENSIVE
COMPLIANCE AUDIT QUICKLY

In a 3-week period, from March 26, 1979, to April 16, 1979, the FBI conducted a compliance audit of the criminal informant program at all 59 field offices. The FBI's audit was designed to determine whether the informant program was in compliance with Attorney General guidelines and Bureau rules and regulations relating to criminal informants. This review, which included 2,847 active informant files and 932 closed informant files, was accomplished through the efforts of 9 inspectors, 70 inspector's aides, and 7 accountants.

To assess compliance with the regulations, the FBI audit staff reviewed informant files, interviewed agents responsible for operating informants, reviewed field office security procedures for informant files, and interviewed field office management and other personnel as necessary.

The major areas of compliance included in the FBI audit were

- development, operation, and travel of informants;
- payments and instructions to informants;
- maintenance of informant files and indices;

- violations of instructions and law; and
- records of information obtained from informants.

The FBI's audit, as clearly stated in its report, was strictly a compliance audit. No effort was made to examine the efficiency, economy, or effectiveness of the criminal informant program. According to FBI officials, a more comprehensive review was not performed because the FBI Director wanted to know quickly whether the criminal informant program was operating within the guidelines, rules, and regulations established by the Attorney General and the FBI.

NO APPARENT PROBLEMS WITH AUDITOR'S INDEPENDENCE OR REPORT ACCURACY

To test the FBI auditors' independence, we selected a random sample of the inspectors, inspector's aides and accountants involved in the audit and checked their personnel folders for previous work locations. None of the staff in the sample had previously been assigned to a field office they audited.

On the basis of our review of FBI audit working papers, we feel that the factual material contained in the FBI audit report, such as the number of instances of noncompliance at each office, accurately represents the status of the Bureau's compliance with the laws and regulations pertaining to the criminal informant program.

To ensure that the content of the report was accurate and adequately supported, we traced to the workpapers and other supporting documentation as much of the FBI report as practical. We found no inaccuracies or lack of support. The facts and figures in the FBI audit report are correct and adequately supported by the working papers.

FBI AUDIT CONCLUSIONS SHOULD BE QUALIFIED SOMEWHAT

The FBI audit report concluded "The audit clearly shows that the FBI Criminal Informant Program is being handled in compliance with both FBI rules and regulations and Attorney General Guidelines, with few exceptions." While our evaluation of the audit does not provide a basis for refuting this conclusion, it does suggest that a more qualified conclusion explaining the limitations of the audit methodology and scope

would have provided a better assessment of FBI compliance with agency policy and guidance relating to informants.

Methodology weaknesses contribute to the need for qualified conclusions

Reliable measures of compliance with FBI and Attorney General policy guidance would have been difficult to obtain under the best of circumstances. In this case, the difficulty of performing the audit was compounded by the unique nature and sensitivity of the informant program. While the methodology used in the study allowed reliable conclusions about many aspects of compliance with recordkeeping requirements, we believe that work relating to other areas of compliance was not sufficient to support unqualified conclusions.

File reviews

In conducting the study, the auditors reviewed the case files of all informants active as of February 28, 1979, or a total of 2,847 case files. Additionally, a random sample of 932 closed cases out of a total 7,055 was reviewed. The lack of written instructions and the minimal amount of training given to inspector's aides raise the possibility that some information obtained from the files is inconsistent and therefore unreliable.

The inspector's aides attended a half day training session at which they were presented with the regulations covering informants and instructions on carrying out the audit. Questions raised by inspector's aides during the course of the training were to be referred to the responsible field inspector. It was assumed each of the nine inspectors answered questions consistently since they had all been present at the audits of the first two field offices. If the field inspector did not know the answer, the question was to be referred to the headquarters group in charge of the audit. No record was maintained in the field or in headquarters of questions raised or responses given.

Although the lack of access to informant files prevented us from verifying possible inconsistencies, we believe that the lack of adequate instructions and training might have led to inconsistent and therefore unreliable answers to

several questions requiring judgments on the part of the inspector's aides. Some of these questions were:

- Is there any indication that the informant has been used for acts or encouraged to commit acts which the FBI could not approve for an undercover agent?
- Is there any indication that the informant has been utilized in a matter where the FBI is not authorized to conduct an investigation?
- Is there any indication the informant has furnished false information or that he is unreliable?
- Is there any indication that the informant was provided more information than necessary to carry out his assignments?

We found no evidence that checks were made to see whether two different aides reviewing the same file would have provided consistent answers to these questions. Without standardized instructions and consistency checks, the FBI had no method of determining whether similar information in different cases was evaluated in the same manner.

It is also quite possible that the files did not reflect the actual situation. To accept file data as accurate, or to accept the lack of it as proof that everything was handled properly, assumes that agents who had deviated from FBI and Attorney General regulations would have recorded that fact in the files. We believe it may be speculative to assume that agents who had not complied with these aspects of policy would incriminate themselves in either the files or in the nonconfidential questionnaires. Yet the FBI's audit conclusions rest to a great extent on these assumptions.

The file review, therefore, may or may not have provided reliable information on the extent to which FBI agents knew of and reported instances where informants acted illegally. The audit report disclosed three instances of possible violations of law by informants. The FBI report provides reliable information on how frequently conduct of this nature was recorded by FBI agents. FBI findings in the area of compliance with laws and instructions may be overstated because their methodology only permits a statement about how frequently this information is recorded in informant files.

We believe the information collected from the case files provided reliable estimates of compliance with some of the guidance covering the use of informants. These areas included whether

- a supervisor approved the opening of the informant file,
- authority to use the informant was requested of FBI headquarters by secure teletype,
- background information was obtained on the informant, and
- contacts with informants were documented in conformance with regulations.

The file review also provided reliable information on whether more than one agent had contacted the informant and the extent to which identifying information such as FBI identification number, social security number, photographs, telephone numbers, and addresses were included in the files. Additionally, the FBI's audit conclusion on the existence of the informants appears reliable, although the conclusion does not rule out the possibility of collusion between agents or that an agent created false identifiers.

Agent questionnaires

To supplement the information obtained from informant files, questionnaires were administered to agents with active informants. The nature of the questions and the lack of confidentiality afforded agents' responses raise questions about the reliability of the information obtained.

The questionnaires asked the agents

- whether they were familiar with and understood the Attorney General's guidelines and the FBI rules and regulations covering informants;
- whether they gave their informants required instructions including those relating to the nature of the informants relationship with the FBI, the restrictions on authorized methods of obtaining information, and the necessity of reporting payments on their tax returns as income;

- whether the agents reported all criminal involvement of the informant known to them;
- whether agents reported all facts known about the informant which would have a bearing on whether the person should be used as an informant; and
- whether another agent had been involved in payments and if informants had provided payment receipts.

The agents were not offered any degree of confidentiality covering their responses. 1/

FBI officials do not believe a confidential questionnaire would have provided more reliable data. They noted that few agents would respond differently to such a questionnaire because they would not believe their responses would be kept confidential. Given this attitude, the reliability of agents' responses cannot be determined. Some reported having deviated from FBI policies and procedures in the area of providing instructions to informants.

With the possible exception of the agent's understanding of the rules and regulations covering informants, the reliability of the information obtained could be subject to question. Conclusions as to whether agents gave informants proper instructions and reported all relevant information about informant criminality may be suspect. As in the previous discussion of the data obtained from case files, there was no incentive for agents to inculcate themselves.

We recognize that questionnaire responses to these types of questions can never be completely reliable. A better understanding might have been achieved, however, if the questionnaires had been administered under conditions which provided for confidentiality of responses, and if agents were asked not only about their own compliance but the compliance of other agents. 1/

1/The Justice Department stated that no such confidentiality from administrative or criminal action could be offered to FBI employees who may be involved in improper or illegal acts.

The final area covered by the agent questionnaire involved payments to the informants. If agents indicated the informant had been paid, they were asked to provide a "yes" or "no" answer to the following questions:

- Were these payments authorized?
- Has any other agent handled payments or accompanied you when payments were made?
- Did you obtain signed receipts?

In cases where more than one payment was made to the informant and where some but not all payments involved another agent and/or receipts, it becomes very unclear as to what a "yes" or "no" answer really means. Additionally, findings other than compliance would require agents to make inculpatory statements.

Test of payments

To supplement payment information obtained from the questionnaires and file reviews 1/, the auditors performed a test of payments and detected one situation requiring additional investigation. Payments are considered confidential and are accounted for monthly. Some informant payments for 5 of the 26 months covered by the review were traced back to cancelled checks and informant files to determine whether the payments were properly authorized. The 5 months reviewed were not randomly selected, nor were they selected by other means which might have assured that these months were representative of the entire 26 months under review.

In addition to testing payment authorization, inspector's aides were instructed to "support the basis for payment in the informant file by review of the appropriate investigative

1/File reviews provide information on authorization of payments and whether the file indicated compliance with some rules and regulations covering payments, but did not provide information on how many payments were accompanied by receipts or involved more than one agent.

file," for 50 percent of the payments reviewed. No explanation was given in the FBI audit program of what criteria should be used to determine whether the basis for payment was supported. The audit program also did not specify that payments traced to investigative files be selected randomly. Given that neither the 5 months selected for review nor the subsample of payments traced to investigative files were randomly selected and that instructions on determining what constituted support for the payment were unclear, the reader should be cautious in drawing conclusions based on the information presented in the FBI report.

Some compliance issues not covered by audit

FBI and Attorney General policies for handling informants are contained in the FBI's Manual of Investigative Operations and Guidelines. Our review of the guidelines and the FBI's audit program showed that most of the regulations contained in the guidelines were addressed. However, plans were lacking or somewhat limited with respect to whether

- use of informants had been minimized,
- informants had been established to cover all activity of interest to the FBI within the region,
- potential value of information received justified the consideration the informant sought from the government, and
- informant payment procedures were being adhered to.

Minimizing use of informants

Attorney General guidelines require that special care be taken to minimize the use of informants. One of the considerations in accomplishing this is to determine whether the information an informant could supply is readily available through other sources. The FBI audit report does not address the extent of compliance with this policy guidance.

Informant coverage of areas of FBI interest

FBI guidelines specify that the special agent in charge of each office is "responsible for the establishment of

informant coverage of all activity of interest to the FBI within its territory with particular emphasis on areas targeted by the office. Informant coverage must be constantly reassessed to insure adequate coverage is maintained." We found no indication that the FBI audit addressed the subject of informant coverage.

Weighing value of information
against consideration given

The Attorney General's guidelines require that in considering the use of informants, the FBI should weigh the potential value of the information that may be furnished against the consideration the informant may seek from the government. The audit report does not address compliance with this directive.

Payment to informants

Some compliance issues related to informant payments were outside the scope of the FBI study. Receipts obtained from informants or documents explaining the circumstances of payments were not reviewed, even though 87 percent of the informants paid furnished signed receipts. As a result, compliance with regulations requiring that changes on informant receipts be initialed by the informant was not determined.

Other aspects of informants payments for which compliance was not specifically determined included lump sum payments, payments to witnesses, and payments to closed informants.

CONCLUSIONS

Our review of the audit's scope and methodology raised some question about how the work was done. Certain program issues, such as minimizing informant use and weighting cost against benefits of the information obtained, did not appear to be evaluated. Other issues which were examined include whether

--informants were given guidance,

--informants operate within the law, and

--payments really go to legitimate informants.

These questions are difficult to answer with any degree of assurance. The sensitive nature of the program along with the decision not to obtain information from informants further complicated the auditor's task.

The audit was strongest when addressing procedural aspects of the program--approval of the use of a specific informant, and collection of certain background information. This information is required to be in the file in all cases, and its presence or absence can easily be observed.

The audit was not as strong when addressing questions about the interaction between agents and informants. Answering questions of this nature, on the basis of information which might compromise an agent, results in a certain degree of risk. Unfortunately, no estimate of this risk can be made. The users of the report must evaluate its conclusion in terms of how the work was done and any qualifications therein. Aside from the issues discussed above, we believe the FBI audit report is adequate.

AGENCY COMMENTS AND OUR EVALUATION

The Department of Justice did not agree that the limitations in the FBI's audit scope and methodology warranted more qualified conclusions on the criminal informant program. It stated that reports of the Planning and Inspection Division are issued for the use of the Director of the FBI, and other internal uses as appropriate. The Department said that, considering the clearly stated scope and procedural limitations included in the FBI report, the risk in accepting the audit conclusions was adequately stated.

We disagree with the Department's position. Although the audit report was addressed to the FBI Director, it was done in lieu of a GAO review and in response to congressional insistence that the informant program be evaluated. The FBI clearly intended that the report be released for external uses from the start of the audit. Upon completion, the report was delivered to GAO and various congressional committees. Moreover, the conclusions and other information were widely publicized in the newspapers.

As pointed out previously, the FBI's audit methodology had limitations. And, some of the compliance issues, such as whether the use of informants had been minimized, were not included in the scope of the audit. These limitations were simply not explained in the FBI audit report. Consequently, a reader cannot adequately assess the risk involved in accepting the FBI's conclusions.

The Department also felt that several other statements in our report required additional clarifications. (See app. V.) Its comments are discussed in more detail below.

Training of FBI auditors

The Department expressed concern that our statements on page 3 regarding inadequate written instructions and training for inspectors aides give an inaccurate impression. According to the Department, all of the inspectors aides have served as special agents where they had prior experience in operating informants and some had supervised informant program activity. Consequently, they did not require extensive training.

We are not questioning the qualifications or experience of the inspectors aides, but rather pointing out that the lack of written instructions and short training period might have led to inconsistent and therefore unreliable answers to several questions requiring judgments on the part of the aides. Moreover, merely having had experience with operating informants provides no assurance that an agent is familiar with the regulations. As the FBI audit report pointed out, 23 agents who were operating informants at 9 field offices admitted they did not completely understand the Attorney General guidelines on the use of informants.

Lack of documentation

During the course of the FBI audit, questions raised by the aides were to be referred to one of the nine responsible field inspectors for resolution. If an inspector did not know the answer, the question was to be referred to the headquarters group. We pointed out that no written record of any questions or responses was maintained. The Department felt this statement inferred that not keeping such a record is improper. The FBI did not consider it necessary to keep written documentation.

Our statement was not intended as a criticism of the FBI's recordkeeping. Our point is that without a written record, it is not possible for the FBI or GAO to determine whether answers to questions raised were consistent.

Possible confusion over certain questionnaire responses

As we pointed out on page 7, we believe that the wording of certain questions involving payments to informants made it unclear as to what a yes or no answer really meant. The Department said it had no problem with the clarity of "yes" or "no" responses to these questions.

We believe, however, that there could have been some confusion or a difference of opinion over the appropriate response to certain yes or no questions. Consider the following question: Did you obtain signed receipts? If there were multiple payments, but receipts for only some of the payments, the answer could be yes for some and no for others. The questionnaire had only the one question with provision for one yes or no answer. There were no written instructions covering this type of situation.

Testing payments to informants

The Department stated that the test of payments was intended only to supplement other procedures, such as file reviews, and was not intended to be a separate audit with separate conclusions. We believe that the Department read more into this section than we intended to say. Our point is that without a random selection of payments the results are not necessarily representative of the entire period under review.

Compliance issues not covered by FBI audit

Although we pointed out certain items contained in the informant program guidelines which apparently were not covered by the FBI audit, the Department felt that the items generally fell within the area of effectiveness, efficiency, and economy. As such, the Department pointed out these areas were excluded from the scope of the audit as clearly stated in the report.

In our view, the report is misleading in its all-inclusive statements as shown by the following examples from the audit procedures and conclusions sections of the report.

--"This audit program covered every area of compliance in the Criminal Informant Program as set forth in the FBI's Manual of Investigative Operations and Guidelines, which rules and regulations include the Attorney General Guidelines."

--"The FBI's Criminal Informant Program is being handled in substantial compliance with all internal rules and regulations." (Underscoring added)

Whether or not the omitted areas fall into the effectiveness, efficiency and economy categories, we believe that the limitation in audit scope should have been clearly stated.

Efficiency, economy, and effectiveness

The Department viewed appendix II as a criticism of the FBI audit since it did not cover efficiency, economy, and effectiveness. The purpose of this appendix was not to criticize the FBI, but to point out the added benefits of a more comprehensive audit and the approach we would have taken in conducting such an audit.

The Department also pointed out that Professor James Q. Wilson, Harvard University, was commissioned to do and had completed a study of the feasibility of conducting a comprehensive review of the informant program. The study will be reviewed by the Department to determine if further review is necessary.

A COMPREHENSIVE AUDIT WOULD HAVE
YIELDED MORE USEFUL RESULTS

HISTORY OF GAO INVOLVEMENT

In May 1978 the Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, requested GAO to analyze the use of informants by the FBI. However, in October 1978, the FBI Director said he would not allow GAO to review the criminal informant program. The Director took the position that the Bureau must protect the confidentiality of informants' identities and files to maintain credibility with those persons whose assistance is vital to the FBI's investigative mission. In place of a GAO audit, the Director, in March 1979, announced that he was requiring his Office of Inspections to conduct a compliance review of the FBI's informant program. Bureau officials stated that the results of their study would be made available to GAO for review. The results of our analysis of the FBI audit are explained in appendix I.

Had GAO performed the original review, it would have conducted a more comprehensive audit, including such essential elements as a review of the economy, efficiency, and program results as set forth in the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Such a review would have provided more useful information concerning the overall effectiveness of the criminal informant program.

GAO AUDIT SCOPE

A fundamental policy in our government is that Federal agencies entrusted with the authority for utilizing public resources have a responsibility for providing a full accounting of their activities. This accountability should identify not only the objects for which resources have been devoted but also the manner and effect of their application.

This concept of accountability is woven into the basic premises supporting the Comptroller General's audit standards. These standards provide for a scope of audit that includes not only financial and compliance auditing but also auditing for economy, efficiency, and achievement of desired results. Provision for such a scope of audit is not intended

to imply that all audits are presently being conducted this way or that such an extensive scope is always desirable. However, an audit that would include provision for the interests of all potential users of government audits would ordinarily include provision for auditing all the above elements of the accountability of the responsible officials.

Definitions of the three elements of a complete audit follow.

1. Financial and compliance--determines (a) whether financial operations are properly conducted and (b) whether the entity has complied with applicable laws and regulations.
2. Economy and efficiency--determines whether the entity is managing or utilizing its resources in an economical and efficient manner and the causes of any inefficiencies or uneconomical practices, including inadequacies in management systems, administrative procedures, or organizational structure.
3. Program results--determines whether the desired results or benefits are being achieved, whether the objectives established by the legislature or other authorizing body are being met, and whether the agency has considered alternatives which might yield desired results at a lower cost.

GAO REVIEW OBJECTIVES

The objectives of a GAO review would have been broad in scope and included, along with a compliance study and a test of payments, a review of (1) the efficiency and economy in the use of resources and (2) program effectiveness to determine whether the desired results were achieved.

Specifically, the objectives of GAO's review would have been to

- determine how informants are developed, what their activities and accomplishments are, and how they are controlled;

- determine what evaluations are made of the usefulness of the informants' information and services; and
- test fiscal controls over the transfer and custody of funds and the payments made to informants.

In order to adequately evaluate the efficiency, effectiveness, and results of the criminal informant program, GAO would have preferred complete access to FBI informant and investigative files. However, in light of the FBI's refusal to grant access to these files, in June 1978 GAO developed and proposed to the FBI a review methodology which did not require access to informants' identities and files. While our proposed audit methodology did not call for access to informant files, it did, of necessity, call for access to certain information in those files.

This proposal, which also was rejected by the FBI, stated that GAO would base much of its evaluation on specific documents provided by the FBI and on interviews with special agents and their supervisors. Documents required by GAO would have included quarterly and annual progress and evaluation reports on informants sampled, payment records, and related documents from investigative files. Also, GAO would have required excised copies of other information in informant files when quarterly and annual progress reports did not contain information necessary to satisfy the previous listed review objectives and for verification purposes. Excisions would have been limited to names and any other specific data related to protecting the identities of the sources of information. GAO would have been permitted to discuss with FBI officials the general nature of any excisions. GAO would have performed audit steps similar to those performed by the FBI as well as additional steps to assess program efficiency, economy, and effectiveness.

GAO AUDIT METHODOLOGY

Had GAO conducted the original review, it would have adopted a more comprehensive audit methodology than that selected by the FBI.

To determine how informants are developed, their activities and accomplishments, and the controls exercised

over them, GAO would have examined, through analysis of selected closed informant files, the background and characteristics of informants and their motivations for supplying information. How informants are identified and selected and how the FBI determines their reliability is another area GAO would have analyzed. We would have attempted to determine how the services and information were provided by informants as well as the potential benefits and risks of using informants. This would be accomplished by reviewing the types of information gathered and the informants' sources and means of securing information. We would have inquired into the FBI's use of information or services supplied and verified specific accomplishments such as arrests, convictions, and property recovered. The audit would also include testing and reviewing controls over informants, including instructions provided to informants, frequency of contacts, steps taken to assure that informants' conduct conforms to legal and administrative requirements, and notification of informants' violations of law to appropriate authorities.

To assure that the FBI evaluates the usefulness and value of informants' services and information, we would have determined who evaluates informant activities, the type and frequency of such evaluations, and the use of the results of these evaluations. GAO also would have reviewed audit reports on individual field offices prepared by the Planning and Inspection Division.

To test fiscal controls for the transfer and custody of funds and payments made to informants, we would have examined FBI (1) adherence to established payment policies and (2) procedures used to equate the value of information received with the payment amount.

SCOPE OF REVIEW

Our findings and conclusions are based entirely on work done at FBI headquarters in Washington, D.C. We reviewed and discussed with FBI officials the methods and procedures used in carrying out their audit of the criminal informant program. We reviewed FBI files, records, and workpapers generated during the audit. However, since the FBI did not permit us access to criminal informant files, we could not verify all of the information contained in their files, records, and workpapers. Our review was conducted between September and November 1979.

In order to verify the numerical data presented in the FBI report, we traced all figures from their final report back to the supporting summary schedule. We then selected 15 (25 percent) of the 59 field offices and traced the summary schedule data back to the individual field office summaries. For six (10 percent) of the field offices, three from the sample above and three from outside the sample, we traced the individual summary data back to the supporting documentation and workpapers.

To verify the independence of the FBI inspectors, inspector's aides, and accountants, we reviewed their personnel folders for the previous work assignments of (1) each of the nine inspectors, (2) all personnel assigned to the New York region, (3) a random sample of 30 of the remaining inspector's aides and accountants. The random sample provides us with a 93 percent confidence level. The personnel folders of all of the auditors assigned to the New York region were examined because FBI officials informed us that due to the large size of the New York office, inspector's aides could possibly have been assigned there in the past.

We also examined the scope and methodology of the FBI audit. The scope of the audit was evaluated to determine if the audit guidelines adequately covered the regulations contained in the FBI's Manual of Investigative Operations and Guidelines pertaining to informants.

The audit methodology was evaluated to determine the extent to which it conformed with the principles of sound survey research. The selection of informant payments and

case files to be reviewed were analyzed to determine the extent of bias and sampling error. The amount of training given to the auditors performing the review and the design of the audit questionnaires used to collect compliance data were analyzed to determine whether the information collected could be expected to be reliable and consistent.

RICHARDSON PREYER, N.C., CHAIRMAN
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 COMMITTEE ON GOVERNMENT OPERATIONS
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 WASHINGTON, D.C. 20515

June 18, 1979

Honorable Elmer B. Staats
 Comptroller General
 General Accounting Office
 441 G Street, NW
 Washington, DC 20548

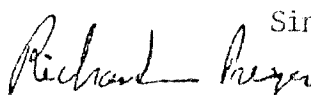
Dear Mr. Comptroller General:


In March the Director of the FBI announced he was asking his Office of Planning and Evaluation to conduct a review of the FBI's informant program. The Subcommittee understands that the Director initiated the internal review in lieu of agreeing to an external review by the GAO. The internal review has recently been completed, and a report provided to the Director.

The Subcommittee is interested in obtaining GAO's assessment of the FBI internal review, and the adequacy of the manner in which the review was conducted. Evaluating the adequacy of Federal agency internal auditing is an important part of GAO's function. An evaluation of this particular review is most appropriate in view of the sensitivity and controversy surrounding the FBI's informant program, and as follow-up to this Subcommittee's requested GAO January 1979 report on the FBI's internal audit operations. The earlier GAO study pointed to deficiencies in the Bureau's audit operations.

Because of these findings, and because the FBI continues to deny the GAO full access to FBI records, the Subcommittee, in pursuit of its oversight responsibility, requests a GAO evaluation of the informant program review conducted by the FBI.

Your staff can contact Subcommittee Staff Director, Timothy Ingram, for further details of this request.

Sincerely,

 Richardson Preyer
 Chairman


 Thomas N. Kindness
 Ranking Minority Member



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

FEB 25 1980

Mr. Allen R. Voss
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

This letter is in response to your request for comments on the draft report entitled "FBI Audit Conclusions On The Criminal Informant Program Should Have Been Qualified."

The Department of Justice (Department) is pleased to learn of the General Accounting Office's (GAO) conclusion that the Federal Bureau of Investigation (FBI) audit accurately represented the status of the criminal informant program and that data in the FBI audit report are correct and are adequately supported by working papers. GAO does make several statements in its draft report which we believe need clarification. Our comments elaborate on these statements.

On page 1, Appendix I, GAO states:

"Qualified conclusions explaining the limitations of the review methodology would have provided a better assessment of FBI compliance with its regulations and the Attorney General's guidelines on the use of informants."

We do not believe such a qualification is necessary. Actually, a qualification would not provide a "better assessment" but rather an indication of the risk in accepting the conclusions as valid. The scope limitations of the audit were clearly set forth in the report. We stated the "purpose of the audit was to determine if the Criminal Informant Program is being operated in compliance with FBI rules and regulations, including Attorney General Guidelines in the use of informants. Effectiveness, efficiency, and economy were not addressed." We also stated that procedures included informant file reviews and "where warranted, Supervisory, Special Agent, and support personnel were interviewed during the audit."

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Reports of the Planning and Inspection Division are issued for the use of the Director of the FBI and other internal uses, as appropriate. Considering the clearly stated scope and procedural limitations included in the report to the Director, we believe the risk in accepting the audit conclusions is adequately stated.

On page 3, Appendix I, GAO states:

"The lack of written instructions and the minimal amount of training given to inspector's aides raises the possibility that some information obtained from the files is unreliable.

The inspector's aides attended a half day training session at which they were presented with the regulations covering informants and instructions on carrying out the audit."

These statements give an inaccurate impression. All of the inspector's aides had prior experience in reviewing informant files and field division informant programs and/or field division squads whose special agents had informants and were knowledgeable of the regulations concerning the use of informants. All of the inspector's aides have served as special agents where they were actually involved in the operation of informants and, in many cases, as special agent field supervisors in field divisions where they would have supervised informant program activity. Further, a number of inspectors and inspector's aides conducted test audits in two field divisions at the beginning of this audit. These inspectors and aides were then used in supervisory positions during the conducting of the audits in the remaining 57 field divisions. A limited training session was all that was necessary to familiarize the inspectors and inspector's aides with the specific requirements of the audit. The Department considers the written instructions furnished the inspectors and inspector's aides to have been completely adequate.

GAO also states that no records were maintained of questions raised by those conducting the audit or of the responses received to any such questions. This infers that not keeping such a record is improper. The FBI did, however, keep records of exceptions, noncompliance, and deviations. We believe such records are sufficient.

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GAO states on page 4, Appendix I: ". . . we believe that the lack of adequate instructions and training might have led to inconsistent and therefore unreliable answers to several questions requiring judgments on the part of the inspector's aides."

We do not agree with the judgmental statement. Indeed, the training and instructions, especially when considering the backgrounds of those conducting the audit, were more than adequate.

GAO states on page 4, Appendix I: "We found no evidence that checks were made to see whether two different aides reviewing the same file would have provided consistent answers to these questions. Without standardized instructions and consistency checks, the FBI had no method of determining whether similar information in different cases was evaluated in the same manner."

It is true that the FBI did not document its records to see whether two different aides reviewing the same file would have provided consistent answers to these questions. Based upon the instructions furnished, the supervision afforded and the experience of the inspectors and the inspector's aides, this was deemed unnecessary.

On page 5, Appendix I, GAO states: ". . . the FBI's audit conclusion on the existence of the informants appears reliable, although the conclusion does not rule out the possibility of collusion between agents or that an agent created false identifiers."

The Department believes no reasonable audit procedures will insure the detection of improprieties, especially if collusion is involved.

GAO states on page 6, Appendix I: "We recognize that questionnaire responses to these types of questions can never be completely reliable. A better understanding might have been achieved, however, if the questionnaires had been administered under conditions which provided for confidentiality of responses, and if agents were asked not only about their own compliance but the compliance of other agents."

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GAO correctly noted our position that a confidential questionnaire would not have provided more reliable data. No such confidentiality from administrative or criminal action could be offered to FBI employees who may be involved in improper or illegal acts.

Regarding the questions on page 7, Appendix I, pertaining to payments to informants, GAO states, "If agents indicated the informant had been paid, they were asked to provide a 'yes' or 'no' answer to the following questions:

--Were these payments authorized?

--Has any other agent handled payments or accompanied you when payments were made?

--Did you obtain signed receipts?

In cases where more than one payment was made to the informant and where some but not all payments involved another agent and/or receipts, it becomes very unclear as to what a 'yes' and 'no' answer really means. Additionally, findings other than compliance would require self-incrimination."

The Department has no problem with the clarity of a "yes" or "no" answer. A "yes" answer simply means the conditions of the question were met in all instances and a "no" answer would mean that in at least one instance they were not.

On page 8, Appendix I, GAO criticizes the procedures used in the FBI test of payments to informants and states: "Given that neither the 5 months selected for review nor the subsample of payments traced to investigative files were randomly selected and the unclear instructions on determining what constituted support for the payment, the reader should be cautious in drawing conclusions based on the information presented in the FBI report."

The test of payments was intended only to supplement other procedures, such as file reviews, and was not intended to be a separate audit with separate conclusions. The FBI drew no such conclusions in its report. The Department believes the instructions are quite clear on this point.

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GAO states that plans were lacking or somewhat limited in the FBI audit program with respect to minimizing the use of informants, informant coverage in areas of FBI interest, and value of versus consideration given for information.

We believe these items generally fall within the area of effectiveness, efficiency, and economy. As we stated earlier and as the report specifically states, these areas were excluded from the scope of the audit.

On page 9, Appendix I, GAO states: "The audit program did not require that a determination be made as to whether all payments to informants were listed on the appropriate accounting statements."¹/The FBI tested payments from monthly statements to selected individual payments and not from "all" payments to monthly statements. The FBI tests monthly statements during routine inspection audits and has found them to be overall reliable.

GAO states that since receipts from informants were not reviewed, compliance with regulations regarding changes on informant receipts be initialed by the informant was not determined. This is true, as receipts are filed at FBI Headquarters where they are independently reviewed at the time they are received for compliance.

In Appendix II, GAO criticizes the audit for not covering efficiency, economy, and effectiveness. Again, it was clearly pointed out in the scope of the informant audit that the audit was strictly to determine compliance with FBI rules and regulations, including Attorney General guidelines in the use of informants, and that efficiency, economy, and effectiveness were not addressed.

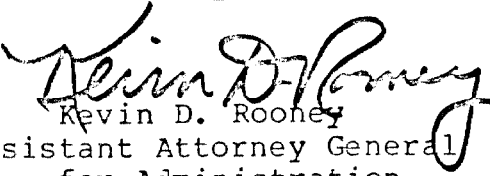
Professor James Q. Wilson, Harvard University, was commissioned to do and has completed a study concerning the feasibility of conducting a comprehensive review of the informant program. Effectiveness, efficiency, and economy were to be addressed by Professor Wilson. This study will be analyzed to determine if further review of the informant program is warranted.

¹/On the basis of the Department's comments, we deleted this statement from the final report.

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We appreciate the opportunity to comment on the report. Should you require any additional information, please feel free to contact us.

Sincerely,


Kevin D. Rooney
Assistant Attorney General
for Administration

GAO Note: Page references in Department of Justice comments may not correspond to pages in the final report.

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