



# **AUDIT OF OUTSIDE EMPLOYMENT BY STAFF OF THE FEDERAL BUREAU OF INVESTIGATION LABORATORY DIVISION'S DNA UNITS**

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FEDERAL BUREAU OF INVESTIGATION  
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# **AUDIT OF OUTSIDE EMPLOYMENT BY STAFF OF THE FEDERAL BUREAU OF INVESTIGATION LABORATORY DIVISION'S DNA UNITS**

## **Introduction**

The Federal Bureau of Investigation's (FBI) Laboratory Division supports the federal and non-federal criminal justice systems by:

- conducting scientific analyses of physical evidence;
- providing specialized scientific and technical support to ongoing investigations;
- developing an automated database of DNA profiles from evidence and individuals for examination and comparison;
- providing expert testimony in court; and
- providing specialized forensic science training, analysis, and technical assistance to crime laboratory personnel and crime scene training to law enforcement personnel.

The FBI Laboratory Division is also the custodian of the Combined DNA Index System (CODIS), which is composed of multiple indices, including databases of DNA profiles from convicted offenders, forensic evidence, arrestees, missing persons, and unidentified human remains. The CODIS Unit, which manages the CODIS and the National DNA Index System (NDIS), develops, provides, and supports the CODIS Program, which is used by federal, state, and local crime laboratories in the United States and selected international law enforcement crime laboratories to foster the exchange and comparison of forensic DNA evidence from violent crime investigations.

The FBI Laboratory Division also contains the Nuclear DNA Unit, the Mitochondrial DNA Unit, and the Federal DNA Database Unit. The Nuclear DNA Unit (Nuclear Unit) examines evidence from alleged crimes, including counterterrorism and intelligence-gathering efforts, threatening letters, violent crimes, bank robberies, extortion and organized crime cases, and other crimes investigated by the FBI.

The Mitochondrial DNA Unit (Mitochondrial Unit) examines biological evidence from crime scenes to determine the mitochondrial DNA sequence of samples from hair, bone, teeth and other items that potentially contain

mitochondrial DNA. The Mitochondrial Unit also maintains the National Missing Person DNA Database program for the identification of missing and unidentified persons and the Scientific Working Group DNA Analysis Methods Population Database, which is an integrated software and database resource for forensic comparison.

The Federal DNA Database Unit processes known DNA samples from the nation's federal offenders and uploads these profiles to NDIS.

CODIS is implemented as a database with hierarchical levels that enable federal, state, and local crime laboratories to compare DNA profiles electronically. The hierarchy flows upward from the local level to the state level and then, if allowable, the national level. The FBI manages the NDIS, the highest level in the hierarchy, and its database contains DNA profiles uploaded by law enforcement agencies across the United States. NDIS enables the laboratories participating in the CODIS program to electronically compare DNA profiles on a national level.

According to the FBI's Operational Procedures for National DNA Index System Quality Assurance Standards (QAS) Audits, public laboratories participating in NDIS are required to: (1) conduct annual audits in accordance with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories and DNA Databasing Laboratories, which are published by the FBI; and (2) undergo external QAS audits every 2 years by an organization external to the public laboratory. Organizations providing external QAS audit services include the National Forensic Science Technology Center (NFSTC), the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), and the Potomac Regional Audit Group.

The NFSTC is a nonprofit corporation established in 1995 by the American Society of Crime Laboratory Directors to provide services to forensic laboratories. The services provided include performing QAS audits, conducting grant progress assessments, and providing training to forensic analysts. The NFSTC receives more than 90 percent of its funding from Department of Justice grants.

The ASCLD/LAB is a nonprofit corporation established in 1984 that offers voluntary accreditation to public and private crime laboratories in the United States and around the world. Accreditation is offered in the forensic disciplines for which services are generally provided by forensic laboratories. The ASCLD/LAB is funded primarily by fees charged for its services.

The Potomac Regional Audit Group is a consortium of laboratories in Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Kentucky that have an agreement to provide staff for the required external QAS audits of laboratories in the group. The FBI Laboratory is part of this group. The QAS audits are coordinated to avoid conflicts of laboratories auditing each other. Each laboratory in the group uses its own staff to perform the QAS audits of other laboratories in the group and pays the salaries, travel, and expenses for its own staff to perform the QAS audits. In addition, staff from the FBI Laboratory Division occasionally performs external QAS audits of individual laboratories that are not part of the Potomac Regional Audit Group. In this situation, the FBI staff performs the audits during FBI work hours as part of their official FBI duties, and the FBI pays the salaries, travel, and expenses associated with these audits.

These external organizations occasionally use qualified personnel who are detailed from other organizations and laboratories, including the FBI Laboratory Division's CODIS and DNA units, to perform the external QAS audits. The FBI considers details to these three external organizations to be a useful training experience for its employees and it traditionally has paid its employees' salaries while the employees are detailed to the external organizations.<sup>1</sup>

The audit reports produced from the external QAS audits are provided to the audited laboratory, which sends the report and a description of its corrective actions to the FBI Laboratory for review. The FBI reviews the findings in these audit reports and ensures that the corrective action by the NDIS public laboratory is suitable for bringing the laboratory into compliance with the QAS.

## **OIG Audit Objectives and Approach**

The objectives of our audit were to: (1) identify and assess the procedures through which FBI Laboratory DNA staff request and obtain approval for outside employment, (2) determine if DNA staff and FBI management followed the established procedures regarding outside

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<sup>1</sup> FBI officials told us that FBI employees benefit from details to external organizations by learning effective ways to organize and complete a QAS audit, and the FBI benefits by developing a cadre of personnel knowledgeable about the accreditation process that can be utilized for internal quality assurance matters. FBI officials also told us that as an accredited laboratory under ASCLD/LAB, the FBI Laboratory has an obligation to make its employees available as assessors in support of the volunteer-based organization of this accrediting body and the external organizations that play a central role in assuring quality control in public laboratories. The FBI officials stated that for these reasons, the FBI Laboratory has traditionally paid its employees' salaries while the employees are detailed to the external organizations.

employment, and (3) determine whether outside employment by DNA staff creates the reality or appearance of conflicts of interest.

To accomplish these objectives, we interviewed FBI Headquarters and Laboratory officials regarding the FBI's policies and procedures for outside employment, including the:

- Assistant Director of the FBI's Office of Integrity and Compliance;
- Assistant Director and Deputy Assistant Director of the FBI Laboratory; and
- Chief of the FBI Laboratory's Biometrics Analysis Section.

We also interviewed the unit chiefs of each of the FBI Laboratory DNA units, as well as employees within those units that either participated in, or signed agreements to participate in, outside employment activities. In addition, we reviewed various documents maintained by the Laboratory Division regarding outside employment requests and approvals, position descriptions, employee lists, and policies and procedures regarding QAS audits. Details of our audit scope and methodology are contained in Appendix I to this report.

## **Results in Brief**

Since 2002, two FBI Laboratory Division employees have worked for an outside organization to review QAS audits and they received payment for this work from the outside organization. An additional 23 FBI Laboratory Division employees had performed or observed QAS audits either as part of their official FBI duties without being paid by an outside organization, or prior to being employed by the FBI.

Of these 25 FBI employees, 2 employees reviewed QAS audit documents prepared by NFSTC and were each paid about \$13,625 by the NFSTC for this work from January 2009 through July 2010. They reviewed approximately 109 of the NFSTC's QAS audit documents before those documents were finalized and sent to the NDIS public laboratory, and subsequently to the FBI. One of the 2 employees estimated that the combined time the 2 employees spent reviewing each of the 109 audit documents was from about 1 hour and 20 minutes to about 3 hours, and the reviews were primarily performed on nights and weekends. Both employees requested and received the appropriate approval from FBI Laboratory officials to engage in this outside employment.

However, we determined that FBI and Department policy prohibit employees from engaging in outside employment that involves a Department grant. Over 90 percent of the NFSTC is funded from Department of Justice grants. Therefore, the FBI Laboratory did not comply with FBI and Department policies when approving the outside employment engagements for these two FBI laboratory employees, and it is likely that the NFSTC compensated these two FBI employees using Department of Justice grant funds. Such outside employment is in direct conflict with the FBI's outside employment rules, as well as the Department regulation on which those rules are based, which is designed to prevent actual and apparent financial conflicts of interest.

We also believe that the FBI Laboratory should not allow its staff to be paid by outside organizations for performing any CODIS-related work, regardless of whether the organization is funded by Department grant money. Because the FBI is the custodian of CODIS and approves which federal, state, and local laboratories can participate in CODIS, we consider such outside work to be inconsistent with standards issued by the Office of Government Ethics.

An FBI official who approved the outside employment for the two employees told us that in July 2010, more than 1.5 years after she approved the outside employment, she became aware of the extent of Department grant funding received by the NFSTC when a congressional staffer raised these concerns to the FBI. She then requested advice from the FBI's Office of Integrity and Compliance. The Assistant Director of the FBI's Office of Integrity and Compliance advised her that, because of the extent of the funding, the employees should curtail any activity with the NFSTC out of an "abundance of caution." On July 31, 2010, the approving official terminated the approvals for these two employees to participate in outside employment with the NFSTC. On July 31, 2010, the NFSTC also terminated the work agreements with these two employees effective August 31, 2010.

As noted below, for the remaining 23 employees who performed or observed QAS audits, the outside work performed or agreed to be performed was either part of the FBI employees' official duties and the employees were not paid by the outside organization, or the outside work occurred prior to employment with the FBI.

- Nineteen employees performed or observed QAS audits for the NFSTC, the ASCLD/LAB, the Potomac Regional Audit Group, or individual external laboratories as part of their official FBI duties. Three of the 19 employees signed formal work agreements with the NFSTC, performed or observed the QAS audits during official FBI

duty hours, and received their salaries and payment for all travel and expenses associated with the audits from the FBI and not the NFSTC. Two of the 19 employees signed formal work agreements with the NFSTC but had not performed any QAS audits for the NFSTC. These two employees performed or observed QAS audits for the ASCLD/LAB during official FBI duty hours, and received payment for all salary and travel and expenses associated with the audits from the FBI, not the ASCLD/LAB. Seven of the remaining 14 employees performed or observed QAS audits for the ASCLD/LAB during official FBI duty hours, and received payment for salary and all travel and expenses associated with the audits from the FBI, not the ASCLD/LAB. The remaining seven employees worked on one or more QAS audits of individual external laboratories. These audits were performed during official FBI duty hours, and the FBI paid the employees' salaries, travel, and expenses associated with the audits.

In addition, 11 of the 19 employees also participated on one or more QAS audits of other laboratories in the Potomac Regional Audit Group. The employees performed the QAS audits during official FBI duty hours, and the FBI paid all salary, travel, and expenses associated with the audits.

- Four employees performed QAS audits before the employees were hired by the FBI. Two of the four employees performed QAS audits for the NFSTC and received payment from the NFSTC for expenses associated with the audits. The other two employees performed QAS audits for individual external laboratories and received payment from the non-FBI laboratory that employed them for salaries and expenses associated with the audits. Since being hired by the FBI, these four employees have not performed any QAS-related work outside the FBI.

Because the above QAS work was performed as part of the employees' official FBI duties, or before the employees were hired by the FBI, no written approval for this work was required, and we do not take exception to the outside work performed by these 23 employees. However, we determined that the signed work agreements with the NFSTC for the five employees who were employed by the FBI mischaracterized the relationship between the employees and NFSTC by not indicating the employees were performing the



audits as part of their official FBI duties, instead of as employed consultants of the NFSTC.<sup>2</sup>

In addition to the 25 FBI Laboratory Division employees who performed, observed, or reviewed external QAS audits, the ASCLD/LAB identified, and the FBI confirmed, 34 additional FBI Laboratory Division employees who performed non-QAS inspections and assessments of external laboratories for the ASCLD/LAB during official FBI duty hours, and received from the FBI payment for salary and all travel and expenses associated with the inspections and assessments, not the ASCLD/LAB. Because the work was performed as part of the employees' official FBI duties during FBI official work hours and was paid for by the FBI, we found no basis to question the employees' participation in this work.

We did not find evidence that the FBI employees' involvement in the QAS audits for the NFSTC gave the NFSTC any advantage over the other organizations performing QAS audits.

## **Background**

This audit arose as a result of a letter, dated August 6, 2010, from Senator Richard Shelby of Alabama to the FBI expressing concerns about several FBI Laboratory employees who were "moonlighting" for the NFSTC. Senator Shelby stated that these employees were working as either quality assurance standards auditors or as contractors performing quality reviews of DNA quality assurance audit reports for the NFSTC assessment program. In particular, Senator Shelby's letter expressed concern regarding two FBI employees who were employed by the NFSTC to review DNA quality assurance reports prior to the reports being issued to the audited laboratory.

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<sup>2</sup> While the FBI agreed that the work agreements did not disclose that the work was being performed as part of the employees' official FBI duties, the FBI did not agree that the work agreements mischaracterized the relationship, but rather that the work agreements omitted a discussion of the actual nature of the relationship. However, we note that the Department's supplemental regulation (5 C.F.R § 3801.106) defines outside employment as any form of employment, business relationship, or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. Because the work agreements did not disclose that the audit services were being performed as part of the employees' official FBI duties, we believe the work agreements, as stated, constituted outside employment within the above stated definition. We further believe that the work agreements needed to disclose that the work was being performed as part of the employees' official FBI duties for the work to not be viewed as outside employment. Further, the signed work agreements for all five employees stated that the employees would be paid by the NFSTC for the consultant work, when in fact they were not. For these reasons, we believe the work agreements did mischaracterize the relationship between the FBI Laboratory employees and the NFSTC.

Senator Shelby's letter stated that this provided an unfair advantage to the NFSTC and the laboratories that were audited by the NFSTC.

As the custodian of CODIS, the FBI approves which federal, state, and local laboratories can participate in CODIS. The FBI also reviews the QAS audit report supplied to the audited laboratory and any corrective actions taken by the laboratory based on findings in the report. The NFSTC and the FBI QAS process is described below. The other QAS review organizations follow a similar process.

- A public NDIS laboratory needs an external QAS audit of its DNA laboratory and can decide to use the NFSTC to perform the audit.
- The NFSTC recruits qualified auditors (some can be FBI Laboratory employees) to work with its internal staff to conduct the QAS audit of the NDIS public laboratory and complete the QAS audit document.
- The NFSTC auditors submit the QAS audit document to the NFSTC for a quality review.
- An NFSTC team of quality assessors conducts a quality review of the QAS audit document to ensure that the NFSTC auditors completed the audit document properly and interpreted the QAS accurately.
- The NFSTC sends the QAS audit document to the NDIS public laboratory.
- The NDIS public laboratory addresses any findings and submits the audit document along with documentation of corrective actions to the FBI NDIS Custodian, who is an employee of the FBI Laboratory's CODIS Unit.
- The NDIS Custodian provides the QAS audit document and corrective action documentation to the FBI NDIS Audit Review Panel Chair, who is also an employee of the FBI Laboratory's CODIS Unit.
- The NDIS Audit Review Panel Chair assigns a panel of reviewers (two FBI and two non-FBI QAS auditors) to review the QAS audit document and any corrective action documentation from the NDIS public laboratory. This panel determines if the findings in the audit document are correct, and corrective action by the NDIS public

laboratory is suitable for bringing the laboratory back into compliance with the QAS.

- The NDIS Audit Review Panel members send their observations and recommendations back to the NDIS Review Panel Chair. If additional information is needed, the Chair communicates with the laboratory to obtain more documentation and the panel review process may be repeated.
- When the NDIS Audit Review Panel and Chair are satisfied that the NDIS public laboratory is in compliance with the QAS, the Chair will recommend to the NDIS Custodian that the QAS audit be closed.
- The NDIS Custodian advises the NDIS public laboratory that it is in compliance with the QAS and that the audit is closed.

### **FBI Procedures for Requesting and Approving Outside Employment**

In general, the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics prohibit outside employment for employees of the Executive Branch if it is already prohibited by statute (such as the financial conflict of interest statute, 18 U.S.C. § 208) or an agency supplemental regulation (such as the Department of Justice's supplemental regulation regarding outside employment, 5 C.F.R. § 3801.106), or if participation in the outside employment "would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired."

The Department's supplemental regulation regarding outside employment (5 C.F.R. § 3801.106) states:

No employee may engage in outside employment that involves: (i) the practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children; (ii) any criminal or habeas corpus matter, be it Federal, State, or local; or (iii) litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

The supplemental regulation defines outside employment as "any form of employment, business relationship or activity, involving the provision of

personal services whether or not for compensation, other than in the discharge of official duties.”

The supplemental regulation also states that an employee must obtain written approval before engaging in outside employment, not otherwise prohibited, that involves the practice of law, or a subject matter, policy, or program that is in the employee component's area of responsibility.

The FBI incorporated these same policies into its December 6, 2007, Ethics and Integrity Program Manual. The FBI updated the manual in June 2009 and renamed it the Ethics and Integrity Program Policy Implementation Guide. The FBI updated the guide again in November 2010.

The FBI has implemented procedures intended to ensure that the above stated outside employment policies are followed. These procedures, detailed in the FBI's Ethics and Integrity Program Policy Implementation Guide, require employees to submit requests for outside employment through appropriate supervisory personnel for review and approval by the appropriate division head. The policy requires the division head or designee to determine if the nature of the outside employment is prohibited by Department or FBI policy. The policy provides factors to consider when making this determination including whether there are any legal restrictions contained in statutes or departmental regulations.

In circumstances involved in this audit, such legal restriction did exist in the Department's supplemental regulation 5 C.F.R. § 3801.106. That regulation prohibits any employee from engaging in outside employment that involves grants or other matters in which the Department is a grant-maker. While the FBI policy implementation guide states that legal restrictions to the requested employment should be considered, it does not specifically instruct the division head or designee to determine whether the outside employment request should be denied because it involves a grant or other matters in which the Department is a grant-maker. We believe the policy implementation guide should be revised to specifically incorporate such a determination before a decision is reached regarding whether or not to approve outside employment requests.

An official in the Laboratory Division's security office told us that his job is to review the potential employer for security concerns and he was not required to conduct a conflict of interest review. He believed that the official who signs the form approving the outside employment is responsible for determining if there are any conflicts of interest between the potential employer and the employee or the FBI.

In this case, the Deputy Assistant Director, acting for the Assistant Director of the Laboratory Division, approved the outside employment requests for the two employees who worked for the NFSTC. The Deputy Assistant Director agreed with the security office official that it is the approving official's responsibility to identify potential conflicts.

## **FBI Laboratory Employees Potentially Involved in Outside Employment**

To determine whether the DNA staff and FBI management followed the established procedures regarding outside employment, and whether outside employment by DNA staff created the reality or appearance of a conflict of interest, we: (1) analyzed data regarding outside employment activities by FBI Laboratory DNA Unit employees from FY 2002 through September 13, 2010, and (2) interviewed laboratory employees and FBI officials regarding the circumstances surrounding the outside employment and the process for requesting and approving the outside employment.

Based on data provided by the FBI and verified by data from the NFSTC, and ASCLD/LAB, we identified 25 FBI Laboratory DNA Unit employees who performed or observed outside activities related to the QAS audits from FY 2002 through September 13, 2010, for the NFSTC, the ASCLD/LAB, the Potomac Regional Audit Group, or individual external laboratories. The ASCLD/LAB identified, and the FBI confirmed, 34 additional FBI Laboratory Division employees who performed non-QAS inspections and assessments for the ASCLD/LAB. Our analyses of these outside activities follow.

### *FBI Employees Employed and Paid by the NFSTC to Perform Reviews of QAS Audits*

Two FBI Laboratory DNA Unit employees entered into work agreements in January 2009 with the NFSTC to review the NFSTC's QAS audit documents before those documents were finalized and sent to the NDIS public laboratory. The employees, who served as expert consultants to the NFSTC, performed the work outside of their official duty hours and received compensation for their work from the NFSTC.

In late 2008, both employees sought and obtained written permission to engage in outside employment from FBI management. According to the two employees, each of the two employees reviewed about 109 QAS audit documents for the NFSTC and was paid \$125 for each review. The two employees spent from 1 hour and 20 minutes to 3 hours reviewing each of the 109 QAS audit documents, and the review work was performed primarily

on nights and weekends. Each of the two employees was paid about \$13,625 by the NFSTC for the review work.

At the time of the request and approval of this outside employment, the FBI's procedures for such requests and approvals were contained in the FBI's December 6, 2007, Ethics and Integrity Program Manual. The manual stated that "No employee may engage in outside employment that involves . . . (iii) . . . grants . . . in which the Department of Justice is or represents a . . . grant-maker." The manual further defines "outside employment" as "any form of employment . . . involving the provision of personal services whether or not for compensation, other than in the discharge of official duties." This FBI guidance mirrors the language of the Department of Justice's supplemental regulation (5 C.F.R. § 3801.106) regarding outside employment.<sup>3</sup>

Given that the NFSTC received more than 90 percent of its funding from Department grants, these employees presumably received compensation for their work for the NFSTC from Department grant funds. As a result, under the quoted provisions of the FBI's Ethics and Integrity Program Manual, FBI management should not have approved the outside employment requests.<sup>4</sup>

The approving officials told us that they approved the requests because they were not aware of the extent of grant funding that the NFSTC received from the Department. However, the prohibition contained in the FBI and Department policy does not indicate the prohibition is applicable only if the amount of Department grant funding exceeds a certain amount. As a result, this outside employment was in direct conflict with the FBI's

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<sup>3</sup> At the audit close-out meeting FBI officials informed us that the FBI's Office of Integrity and Compliance has sought and received additional clarification from the Department's Office of Government Ethics. Specifically, the Office of Integrity and Compliance requested guidance regarding how to determine whether outside employment at colleges, universities, and other similar institutions "involves" grants. FBI officials told us that the Department's Office of Government Ethics stated that the Department would determine whether the specific department or component of the college for which an employee wished to work received a grant from the Department, as opposed to any part of the college, before applying this rule. FBI officials told us that they will be taking this additional guidance into account when they revise the FBI's process for approval of outside employment.

<sup>4</sup> The Assistant Director for the FBI Laboratory Division initially approved the outside employment request for one of the two employees. However, the approved request was lost in transit to FBI Headquarters and a second request was approved by the Deputy Assistant Director for the FBI Laboratory Division. The Deputy Assistant Director also approved the outside employment request for the other employee.

outside employment rules, and the Department regulation on which those rules are based.

We believe the approving officials should have been aware of the funding relationship between the Department and the NFSTC and recognized the impropriety of the outside employment relationship. Because the FBI Laboratory employees sought and obtained permission to engage in this outside employment, and there is no evidence that they misrepresented the facts surrounding their requests, they were entitled to rely on the permission they received. Yet, the FBI needs to ensure that these employees, and all DNA unit employees, understand that the Department provides extensive grant funding to entities in the forensic science community and that the employees have a duty to consider the existence of such funding when requesting outside forensic science-related employment.

We also believe that the FBI should not allow its staff to be paid by outside organizations for performing CODIS-related work. Because the FBI is the custodian of CODIS and approves which federal, state, and local laboratories can participate in CODIS, such outside work is inconsistent with Office of Government Ethics standards requiring "employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired."

One of the approving officials told us that in July 2010, more than a year and a half after she approved the outside employment, she became aware of the extent of Department grant funding received by the NFSTC after a congressional staffer raised these concerns to the FBI. The approving official then requested advice from the FBI's Office of Integrity and Compliance. The Assistant Director of the FBI's Office of Integrity and Compliance advised the approving official that, because of the extent of the funding, the employees should curtail any activity with the NFSTC out of an "abundance of caution." On July 31, 2010, the approving official terminated the approvals for the two employees to participate in the outside employment with the NFSTC. On July 31, 2010, the NFSTC also terminated the work agreements with these two employees effective August 31, 2010.

The Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch provides that a violation of supplemental agency regulations may be cause for appropriate disciplinary action. We asked an FBI management official if any disciplinary action had been taken against the approving officials for the two approvals for outside employment that were prohibited by Department supplemental regulation 5 C.F.R. § 3801.106. The FBI management official told us that the two approving

officials had been counseled by the Executive Assistant Director for the Science and Technology Branch about proper procedures for vetting outside employment.

*FBI Employees Who Participated in QAS Audits with Outside Organizations as Part of Their Official FBI Duties*

Nineteen FBI Laboratory DNA Unit employees participated in QAS audits with either the NFSTC, the ASCLD/LAB, the Potomac Regional Audit Group, or individual external laboratories as part of their official FBI duties as discussed below.

- Five of the 19 employees entered into work agreements with the NFSTC to participate in QAS audits of NDIS public laboratories. None of these five employees sought or received written approval to engage in outside employment with the NFSTC because their participation in the QAS audits was considered part of their official FBI duties and they did not receive any payment from NFSTC. The FBI Laboratory requires its employees to participate in at least one QAS audit before they are permitted to serve on FBI NDIS review panels, which assess audits of NDIS public laboratories on behalf of the FBI. We determined that two of these five employees had not participated in QAS audits for the NFSTC, but had participated in such audits for the ASCLD/LAB. The ASCLD/LAB did not require the employees to enter into work agreements. These two employees were not compensated by the ASCLD/LAB, performed the QAS audits during official FBI duty hours, and the FBI paid all salary, travel, and expenses associated with the audits. Likewise, the other three employees who signed work agreements with the NFSTC were not compensated by the NFSTC, performed the QAS audits during official FBI duty hours, and the FBI paid all salary, travel, and expenses associated with the audits.<sup>5</sup> In addition, one of the five employees also participated on a QAS audit of another laboratory in the Potomac Regional Audit Group. The employee performed the QAS audit during official FBI duty hours, and the FBI paid all salary, travel, and expenses associated with the audit.

Notwithstanding the agreements they signed, these five employees did not engage in outside employment and were not required to obtain approval for outside employment. The participation by these

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<sup>5</sup> One of the three employees who had signed work agreements with the NFSTC and who had performed QAS audits for the NFSTC left employment with the FBI on April 18, 2008.



employees in the QAS audits for the NFSTC or the ASCLD/LAB was part of their official FBI duties. They each believed that the work agreements they entered into with the NFSTC only indicated their qualifications to do the audit work and was not an agreement to receive payment from the NFSTC.

The FBI Ethics and Integrity Program Manual defines an activity as outside employment if it is "other than in the discharge of official duties." We believe that the FBI managers and employees understood that they were performing this work in the course of their official duties. The fact that the employees entered into "business consultant agreements" with the NFSTC does not affect that determination. The FBI's payment of the employees' salaries, travel costs, and expenses further supports the view that all parties concerned understood that these employees were conducting FBI business.

We found nothing improper about the FBI Laboratory's requirement that its employees participate in a QAS audit before serving on an FBI NDIS review panel. Nor do we see anything inappropriate in the FBI Laboratory's determination that participation in a QAS audit by these employees on behalf of the NFSTC or the ASCLD/LAB was part of their official duties.

We do, however, believe that FBI Laboratory DNA Unit personnel should not enter into agreements with outside entities that mischaracterize the relationship between the employee and the outside entity. Although these five FBI Laboratory DNA Unit employees were not actually employed by the NFSTC, the agreements between them and the NFSTC created the appearance of an improper outside employment relationship. After we discussed this issue with FBI staff on January 27, 2011, the agreements between the NFSTC and four of the five employees were terminated. The remaining employee no longer works for the FBI.

- Seven of the 19 FBI Laboratory DNA Unit employees participated in QAS audits of NDIS public laboratories with the ASCLD/LAB. As with the FBI employees discussed previously, none of these employees sought or received approval to engage in outside employment with the ASCLD/LAB because their participation in the QAS audits was considered part of their official FBI duties. The seven employees performed the QAS audits during official FBI duty hours, and the FBI paid all travel and expenses associated with the

audits. In addition, five of the seven employees also participated on one or more QAS audits of other laboratories in the Potomac Regional Audit Group. The employees performed the QAS audits during official FBI duty hours, and the FBI paid all salary, travel, and expenses associated with the audits.

These employees knew that their participation in the QAS audits for the ASCLD/LAB and the Potomac Regional Audit Group was part of their official FBI duties. We see nothing inappropriate in the FBI Laboratory's determination that participation in a QAS audit by these employees on behalf of the ASCLD/LAB or the Potomac Regional Audit Group was part of their official duties.

- Seven employees worked on one or more QAS audits of individual external laboratories. These audits were performed as part of the employees' official FBI duties during official FBI duty hours and the FBI paid the employees' salaries, travel, and expenses associated with the audits.

With the exception of the two FBI employees who were paid by the NFSTC to perform reviews of the QAS audit reports, we found no distinction in the way the FBI treated its staff's involvement with the NFSTC, ASCLD/LAB, or the Potomac Regional Audit Group. Specifically, we found that the FBI Laboratory provided staff at no cost to the NFSTC and the ASCLD/LAB to perform and observe QAS audits. In addition, the FBI Laboratory used its own staff to perform QAS audits for individual laboratories in the Potomac Regional Audit Group and other laboratories outside that group at no cost to those laboratories. Therefore, we found no evidence that the FBI employees' involvement in the QAS audits for the NFSTC gave the NFSTC any advantage over the other organizations performing QAS audits.

#### *FBI Employees Who Had Worked for Outside Organizations before Employment with the FBI*

Four employees performed QAS audits before the employees were hired by the FBI. Two FBI Laboratory DNA Unit employees signed work agreements with the NFSTC and performed QAS audits for the NFSTC before being hired by the FBI. The other two employees performed QAS audits for individual external laboratories and received payment from the non-FBI laboratory that employed them for salaries and expenses associated with the audits. None of these four FBI employees participated in QAS audits since beginning their FBI employment.

We concluded that because these NFSTC agreements predated the employees' FBI employment and because none of the employees participated in any QAS audits while employed by the FBI, they have not engaged in outside employment. We also found no indication that these employees have a financial conflict of interest stemming from their previous work for the NFSTC or individual external laboratories.

However, as noted previously, the FBI's Ethics and Integrity Program Manual, subsequently renamed the FBI's Ethics and Integrity Program Policy Implementation Guide, prohibits employees from engaging in outside employment that involves grants in which the Department is the grant maker. Accordingly, we believe that both employees who signed work agreements with the NFSTC should formally terminate those agreements to make clear that they are not engaged in an improper outside employment relationship with a Department of Justice grantee. After we discussed this issue with FBI staff on January 27, 2011, the agreements between the NFSTC and each of the two employees were terminated.

#### *FBI Employees Who Participated in Non-QAS Inspections and Assessments for the ASCLD/LAB as Part of Their Official FBI Duties*

In addition to the 25 FBI Laboratory Division employees who performed, observed, or reviewed external QAS audits, the ASCLD/LAB identified and the FBI confirmed 34 additional FBI Laboratory Division employees who performed non-QAS inspections and assessments of external laboratories for the ASCLD/LAB during official FBI duty hours. These employees received from the FBI payment for salary and all travel and expenses associated with the inspections and assessments, not the ASCLD/LAB. Because the work was performed as part of the employees' official FBI duties during FBI official work hours, and was paid for by the FBI, we found no basis to question the employees' participation in this work.

## **Conclusion**

From FY 2002 through September 13, 2010, 25 FBI Laboratory DNA Unit employees worked for outside organizations or entered into agreements to work for outside organizations to either review, perform, or observe QAS audits.

We concluded that the outside work for 2 of the 25 employees was prohibited by Department regulation and FBI policy, and therefore was improperly approved by FBI management. We did not take exception to the outside work for the remaining 23 employees, because the work was either performed as part of the employees' official FBI duties (19 employees) or

was performed prior to the employees being hired by the FBI (4 employees). However, we noted that 5 of the 19 employees who performed the outside work as part of their official FBI duties signed work agreements with the outside organizations that mischaracterized the relationship between the FBI employee and the outside organization. Further, two of the four employees who participated in the outside work before being hired by the FBI did not terminate their work agreements after being hired by the FBI. After we discussed this issue with FBI staff on January 27, 2011, the agreements between the NFSTC and each of the two employees were terminated.

In addition to the 25 FBI employees who participated in outside activities related to QAS audits, an additional 34 FBI Laboratory Division employees participated in non-QAS inspections and assessments for outside organizations as part of their official FBI duties.

## **Recommendations**

We recommend that the FBI:

1. Revise the FBI's Ethics and Integrity Program Implementation Guide to require the division head or designee to determine whether requested outside employment involves a grant or other matters in which the Department is a grant-maker before deciding whether or not to approve the request.
2. Ensure that all FBI Laboratory employees understand that the Department provides extensive grant funding to entities in the forensic science community and that the employees have a duty to consider the existence of such funding when requesting outside forensic science related employment.
3. Establish procedures to ensure that the FBI Laboratory does not approve any requests for staff to be paid by outside organizations for performing CODIS-related work, regardless of whether the outside organization is a recipient of Department grant funds.
4. Establish procedures to ensure that FBI Laboratory personnel performing official FBI duties with outside entities do not enter into agreements with those entities that characterize the relationship as outside employment and create the appearance of a conflict of interest.

## ABBREVIATIONS

<b>ASCLD/LAB</b>	American Society of Crime Laboratory Directors Laboratory Accreditation Board
<b>CODIS</b>	Combined DNA Index System
<b>Department</b>	Department of Justice
<b>DNA</b>	Deoxyribonucleic Acid
<b>FBI</b>	Federal Bureau of Investigation
<b>NDIS</b>	National DNA Index System
<b>NFSTC</b>	National Forensic Science Technology Center
<b>QAS</b>	Quality Assurance Standards

## STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that the FBI's management complied with federal laws and regulations for which non-compliance, in our judgment, could have a material effect on the results of our audit. The FBI's management is responsible for ensuring compliance with federal laws and regulations applicable to the FBI. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objectives.

- 5 C.F.R. § 3801.106

Our audit included examining, on a test basis, the FBI's compliance with the aforementioned laws and regulations that could have a material effect on the FBI's operations, through reviewing the FBI's procedures for requesting and approving outside employment, interviewing FBI management officials involved in the approval of outside employment, analyzing documentation related to requests and approvals for outside employment, and interviewing FBI employees who participated in outside employment activities.

Except for the instances of non-compliance identified in our audit, we did not identify any areas where the FBI was not in compliance with the laws and regulations referred to above. With respect to activities that were not tested, nothing came to our attention that caused us to believe that FBI management was not in compliance with the laws and regulations cited above.

## STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards* we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the FBI's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. The FBI's management is responsible for the establishment and maintenance of internal controls.

As noted in this report, we identified a deficiency in the FBI's internal controls related to the evaluation of outside employment requests before approval that is significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affects the FBI's ability to ensure that approved outside employment complies with the FBI's rules for outside employment and with the Department of Justice regulations on which those rules are based.

Because we are not expressing an opinion on the FBI's internal control structure as a whole, this statement is intended solely for the information and use of the auditee. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

### **Audit Objectives, Scope, and Methodology**

We completed an audit of outside employment by staff of the FBI Laboratory Division's DNA Units. The objectives of our review were to: (1) identify and assess the procedures through which FBI Laboratory DNA staff report and obtain approval for outside employment, (2) determine if DNA staff and FBI management followed the established procedures regarding outside employment, and (3) determine whether outside employment by DNA staff creates the reality or appearance of conflicts of interest.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit generally covered outside employment activities by staff of the FBI Laboratory Division's DNA Units from FY 2002 through September 13, 2010.

To accomplish the audit objectives, we interviewed various FBI Headquarters and Laboratory officials regarding the Bureau's policies and procedures for outside employment, including the:

- Assistant Director of the FBI's Office of Integrity and Compliance;
- Assistant Director and Deputy Assistant Director of the FBI Laboratory; and
- Chief of the FBI Laboratory's Biometrics Analysis Section.

We also obtained from the FBI a list of all staff from its Laboratory Division's DNA Units who had participated in outside employment from FY 2002 through September 13, 2010. To verify the accuracy of the data provided by the FBI, we analyzed data maintained by the National Forensic Science Technology Center regarding participants on Quality Assurance Standards audits from FY 2002 through September 13, 2010. We also sent verification requests to the American Society of Crime Laboratory Directors Laboratory Accreditation Board.



Finally, we interviewed the unit chiefs for each of the FBI Laboratory Division's DNA units, and various employees within those units involved in outside employment activities. We also reviewed various documents maintained by the Laboratory Division regarding outside employment requests and approvals, position descriptions, employee lists, and policies and procedures regarding the Quality Assurance Standards audits.

## APPENDIX II

# FBI's Response to the Draft Audit Report



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D. C. 20535-0001

March 10, 2011

Cynthia A. Schnedar  
Office of the Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, Northwest  
Washington, D.C. 20530

Dear Ms. Schnedar:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your report entitled, "Audit of Outside Employment By Staff of the Federal Bureau of Investigation Laboratory Division's DNA Units" (hereinafter, "Report").

We are pleased by the Report's conclusion that in the vast majority of cases examined by the OIG (23 out of 25), FBI employees participated in Quality Assurance Standard (QAS) audits at the National Forensic Science Technology Center (NFSTC) as part of their official duties -- for which they received no outside compensation -- or before they were hired by the FBI. Specifically, the OIG did "not take exception to the outside work performed by these 23 employees." While the OIG found that the remaining two employees received payment from the NFSTC for audit work while employed at the FBI, the Report also notes that the FBI Laboratory promptly terminated these two employees' work agreements once it recognized the potential conflict of interest based on the NFSTC's receipt of federal grant funds.

We value the Report's determination that the OIG "[f]ound no evidence that the FBI employees' involvement in these QAS audits for the NFSTC gave the NFSTC any advantage over other organizations performing QAS audits."

Since its implementation, the FBI's Combined DNA Index System (CODIS) (which includes DNA profiles from convicted offenders, forensic evidence, arrestees, missing persons, and unidentified human remains) has aided approximately 130,000 investigations. The CODIS Program has a long-standing commitment to the quality and integrity of the DNA records it manages and continually strives to improve its processes. One of the many checks and balances which encompass CODIS operations includes a robust and thorough audit program. As the party responsible for managing this audit program, the FBI Laboratory has a number of employees who are highly experienced in the audit process and whose subject matter expertise is valued by organizations which participate in the audit program.

In conclusion, based upon a review of the Report, the FBI concurs with all four recommendations. The FBI appreciates the professionalism exhibited by your staff to complete

this audit. Enclosed herein is the FBI's response to the recommendations in the Report. Please feel free to contact me should you have any questions.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Amy Jo Lyons".

Amy Jo Lyons  
Assistant Director

Enclosure

**THE FEDERAL BUREAU OF INVESTIGATION (FBI) RESPONSE TO THE  
OFFICE OF INSPECTOR GENERAL AUDIT OF  
OUTSIDE EMPLOYMENT BY STAFF OF THE FEDERAL BUREAU OF  
INVESTIGATION LABORATORY DIVISION'S DNA UNITS**

**Recommendation #1:** “Revise the FBI’s Ethics and Integrity Program Implementation Guide to require the division head or designee to determine whether requested outside employment involves a grant or other matters in which the Department is a grant-maker before deciding whether or not to approve the request.”

**FBI Response to Final Draft:**

The FBI concurs with this recommendation. To encourage the proper review of Outside Employment requests and to ensure regulations are adhered to, the FBI is currently implementing an electronic outside employment form and process to replace the current paper form. Prior to completing the electronic form, employees will be required to complete a preliminary electronic questionnaire tailored to identify potential conflicts of interest. Specifically, employees will be asked, among other things, whether their prospective employer is a DOJ Grant recipient. Employees are also asked whether their prospective employment is with a university or non-profit, local, county, state, or federal agency and if so, to obtain certification from the entity as to whether they are recipients of DOJ grants. If the employee responds affirmatively to these or the other questions listed, they will be immediately directed to contact the Office of Integrity and Compliance (OIC) for a Standard of Conduct Review. OIC will discuss the situation with the employee and determine whether the request may be approved. As these revisions to the Outside Employment process involve the development and implementation of an IT based program, it is estimated for completion in approximately six months. Additionally, these changes will be incorporated in the FBI’s Ethics and Integrity Program Implementation Guide.

**Recommendation #2:** “Ensure that all FBI Laboratory employees understand that the Department provides extensive grant funding to entities in the forensic science community and that the employees have a duty to consider the existence of such funding when requesting outside forensic science related employment.”

**FBI Response to Final Draft:**

The FBI concurs with this recommendation. As noted above, the electronic Outside Employment form and process has been created in part to help identify potential conflicts of interest such as prospective employment with entities receiving DOJ grant funding. FBI Laboratory employees will be required, as will all other FBI employees, to complete this initial Outside Employment questionnaire tailored to identify numerous types of conflicts of interests. In addition, to ensure that all FBI Laboratory employees understand that the Department provides extensive grant funding to entities in the forensic science community, Laboratory Executive Management (EM) will work with OIC to develop a training presentation for all Laboratory employees to ensure that they understand the

complexities of outside employment and the importance of determining the source of the funding stream for such employment to avoid a conflict of interest..

**Recommendation #3:** “Establish procedures to ensure that the FBI Laboratory does not approve any requests for staff to be paid by outside organizations for performing CODIS-related work, regardless of whether the outside organization is a recipient of Department grant funds.”

**FBI Response to Final Draft:**

The FBI concurs with this recommendation. Per recommendation #1, the electronic Outside Employment form and process was decided upon in part to help identify potential conflicts of interest. The training provided to all Laboratory employees as mentioned in response to #2 (above) will also include training to communicate that CODIS-related activities are not eligible for outside employment.

**Recommendation #4:** “Establish procedures to ensure that FBI Laboratory personnel performing official FBI duties with outside entities do not enter into agreements with those entities that characterize the relationship as outside employment and create the appearance of a conflict of interest.”

**FBI Response to Final Draft:**

The FBI concurs with this recommendation. The training provided to all Laboratory employees as noted above will ensure that Laboratory personnel performing official FBI duties with outside entities do not enter into agreements with those entities that characterize the relationship as outside employment and create the appearance of a conflict of interest.

## APPENDIX III

### Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Report

The Office of the Inspector General (OIG) provided a draft of this audit report to the Federal Bureau of Investigation (FBI). The FBI's response is incorporated in Appendix II of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

#### Recommendation Number:

1. **Resolved.** The FBI concurred with our recommendation to revise the FBI's Ethics and Integrity Program Implementation Guide to require the division head or designee to determine whether requested outside employment involves a grant or other matters in which the Department is a grant-maker before deciding whether or not to approve the request. The FBI stated that it is implementing an electronic outside employment form and process to replace the current paper form. This new process will require employees to complete a preliminary electronic questionnaire tailored to identify potential conflicts prior to completing the electronic form. The questionnaire will contain questions to determine whether the prospective employer is a Department grant recipient, and the nature of such grants. Based on the employees' responses to the questionnaire, they will be directed to contact the Office of Integrity Compliance to discuss the situation and determine whether the request may be approved. The FBI stated that this new process will be incorporated into the FBI's Ethics and Integrity Program Implementation Guide and the FBI expects the revised process to be completed within 6 months.

This recommendation can be closed when we receive documentation showing the revised process described above has been incorporated into the FBI's Ethics and Integrity Program Implementation Guide.

2. **Resolved.** The FBI concurred with our recommendation to ensure that all FBI Laboratory employees understand that the Department provides extensive grant funding to entities in the forensic science community and that the employees have a duty to consider the existence of such funding when requesting outside forensic science

related employment. The FBI stated that in addition to the revised process described under Recommendation 1, the Laboratory Executive Management will work with the Office of Integrity and Compliance to develop a training presentation for all laboratory employees to ensure that they understand the complexities of outside employment and the importance of determining the source of the funding stream for such employment to avoid a conflict.

This recommendation can be closed when we receive evidence showing the above described training course has been developed and provided to all laboratory employees.

3. **Resolved.** The FBI concurred with our recommendation to establish procedures to ensure that the FBI Laboratory does not approve any requests for staff to be paid by outside organizations for performing CODIS-related work, regardless of whether the outside organization is a recipient of Department grant funds. The FBI stated that the new electronic form and process described for Recommendation 1 was decided upon in part to help identify potential conflicts of interest. The FBI also stated that the training described for Recommendation 2 will include training to communicate that CODIS-related activities are not eligible for outside employment.

This recommendation can be closed when we receive evidence showing the above described training course has been developed and provided to all laboratory employees.

4. **Resolved.** The FBI concurred with our recommendation to establish procedures to ensure that FBI Laboratory personnel performing official FBI duties with outside entities do not enter into agreements with those entities that characterize the relationship as outside employment and create the appearance of a conflict of interest. The FBI stated that the training described for Recommendations 2 and 3 will ensure that laboratory personnel performing official FBI duties with outside entities do not enter into agreements with those entities that characterize the relationship as outside employment and create the appearance of a conflict of interest.

This recommendation can be closed when we receive evidence showing the above described training course has been developed and provided to all laboratory employees.