United States Government Accountability Office

Report to Congressional Requestors

March 2019

DNA EVIDENCE

DOJ Should Improve Performance Measurement and Properly Design Controls for Nationwide Grant Program

GAO-19-216

GAO Highlights

Highlights of GAO-19-216, a report to congressional requestors

March 2019

DNA EVIDENCE

DOJ Should Improve Performance Measurement and Properly Design Controls for Nationwide Grant Program

Why GAO Did This Study

Many state and local government crime labs continue to have backlogs of requests for crime scene DNA analysis, which may include sexual assault kits, despite DOJ awarding nearly $1 billion since 2004 through the CEBR grant program to enhance lab capacity and reduce backlogs. Additionally, questions have been raised about potential improper connections among those who profit from CEBR grants—such as private labs and DNA equipment vendors—and those who advocate for CEBR funding.

This report examines, among other things, (1) what is known about the amount of backlogged DNA evidence at state and local government labs; (2) the extent to which OJP measures CEBR grant performance; and (3) the extent to which OJP has designed controls to identify conflicts of interest related to CEBR grants. GAO reviewed CEBR grantee data on DNA evidence backlogs from 2011-2017 (the most recent years of comparable data). GAO reviewed documentation on CEBR performance and controls related to conflicts of interest, transparency in grantee procurement, and lobbying. GAO also reviewed relevant reports and studies, and interviewed officials from DOJ.

What GAO Recommends

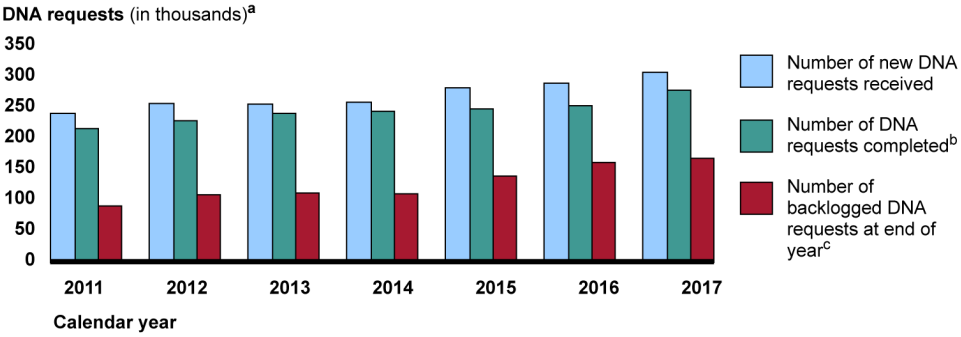
GAO is making four recommendations. OJP should (1) consistently document CEBR goals, (2) revise CEBR performance measures, (3) document its designation of confidential financial disclosure certifiers, and (4) clarify guidance for lobbying requirements for CEBR grantees. DOJ concurred with all four recommendations.

View GAO-19-216. For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwing@gao.gov.

What GAO Found

GAO found that the reported number of backlogged requests for crime scene DNA analysis at state and local government labs has increased by 85 percent from 2011 through 2017, the most recent full year for which grantee data were available (from about 91,000 to about 169,000). This growth has occurred despite labs' collectively processing more requests over time, as shown below.

Requests for Crime Scene DNA Analysis, Requests Completed, and Backlogged Requests at State and Local Government Labs (2011-2017)



Source: GAO analysis of DNA Capacity Enhancement and Backlog Reduction (CEBR) grant program data. | GAO-19-216

[a]"DNA requests" means requests for biology screening and/or DNA testing such that if a request requires one or both, it is counted once.

[b]Some requests may be closed by administrative means rather than through analysis, such as when a suspect pleads guilty before the evidence is analyzed or when the victim has not consented to participate in the criminal justice process. These requests are included in the number of requests received but are not included in the number of requests completed.

[c]The National Institute of Justice (NIJ) defines a "backlogged" request for crime scene DNA analysis as a request that has not been closed by the issuance of a report to the submitting agency within 30 days of receipt in the lab.

GAO found that the Office of Justice Programs (OJP)—the primary grant-making arm of the Department of Justice—has not consistently documented program-wide goals for its DNA Capacity Enhancement and Backlog Reduction grant program (CEBR). For example, it has documented different meanings of "capacity enhancement." Additionally, CEBR performance measures do not fully reflect selected attributes of successful performance measures, such as having measurable targets. These issues hinder OJP's ability to assess program results.

GAO found that OJP has designed controls to achieve its objectives related to compliance with selected requirements for transparency in grantee procurement that apply to both OJP and CEBR grantees. However, OJP has not properly designed all controls related to selected requirements for conflicts of interest and lobbying. While OJP has designed a control to review confidential financial disclosure reports submitted by OJP employees who administer CEBR grants, OJP does not have the required documentation designating which officials are authorized to certify these reports. Similarly, OJP has designed controls to obtain required lobbying certification and disclosure forms from grantees, but OJP has not taken steps to ensure that grantees collect and forward to OJP, as appropriate, these forms from subgrantees and contractors, as required.

Contents

Letter		1
	Background	6
	Reported Backlog of Requests for Crime Scene DNA Analysis at State and Local Government Labs Nationwide Is Increasing Due to Various Factors	16
	The Amount of Unsubmitted DNA Evidence Nationwide is Unknown and Various Factors Contribute to this Unsubmitted Evidence	23
	CEBR Program Goals Are Not Consistently Documented and Its Performance Measures Do Not Fully Reflect Selected Attributes of Successful Performance Measures	27
	OJP Has Designed Controls to Achieve Its Objectives Related to Compliance with Selected Federal Requirements for Grantee Procurement, but Has Not Properly Designed All Controls for Conflicts of Interest and Lobbying Related to CEBR Grants	38
	Conclusions	51
	Recommendations for Executive Action	52
	Agency Comments and Our Evaluation	53
Appendix I	Objectives, Scope, and Methodology	55
Appendix II	Additional Sources of Lab Data and Considerations When Reviewing DNA Evidence Data	65
Appendix III	Information on Backlogs of Convicted Offender and Arrestee Samples	70
Appendix IV	Grant Programs That Address DNA Evidence Backlogs and Unsubmitted Sexual Assault Kits	72
Appendix V	Selected Efforts to Inventory or Quantify Unsubmitted Sexual Assault Kits and Associated Challenges	76

Appendix VI	DNA Capacity Enhancement and Backlog Reduction Program-wide Performance Measures	85
Appendix VII	Selected Attributes of Successful Performance Measures and Consequences if Not Met	87
Appendix VIII	DNA Capacity Enhancement and Backlog Reduction Program Permissible Uses of Funds	88
Appendix IX	Controls Related to Transparency in Grantee Procurement for DNA Capacity Enhancement and Backlog Reduction Grants	89
Appendix X	Controls Related to Conflicts of Interest for DNA Capacity Enhancement and Backlog Reduction Grants	92
Appendix XI	Controls Related to Lobbying for DNA Capacity Enhancement and Backlog Reduction Grants	96
Appendix XII	Comments from the Department of Justice	99
Appendix XIII	GAO Contact and Staff Acknowledgments	103

Tables

Table 1: DNA Capacity Enhancement and Backlog Reduction Grant Program (CEBR) Goals Listed in National Institute of Justice (NIJ) Documentation and NIJ Officials' Clarifications 28

Table 2: Assessment of DNA Capacity Enhancement and Backlog Reduction Program-wide Performance Measures Against Five Selected Attributes of Successful Performance Measures 31
Table 3: Office of Justice Programs (OJP) Controls Related to Transparency in Grantee Procurement 40
Table 4: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Employees 42
Table 5: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Awarding Agencies and Grantees 45
Table 6: Office of Justice Programs (OJP) Controls Related to Lobbying 48
Table 7: Department of Justice (DOJ) Grant Programs that Address DNA Evidence Backlogs at Labs 73
Table 8: Department of Justice (DOJ) Grant Programs that Address Sexual Assault Kits (SAK) in Law Enforcement Custody that Have Not Been Submitted to Labs for DNA Analysis 74
Table 9: Counts of Unsubmitted Sexual Assault Kits (SAK) Inventoried, Analyzed, and Outcomes from Analysis and Investigation as Reported by 38 SAKI Grantees (October 2015 – June 2018) 77
Table 10: Counts of Sexual Assault Kits (SAK) Submitted for Analysis, and Outcomes from Analysis and Investigation, as Reported by 32 Grantees Participating in the New York County District Attorney's Office (DANY) SAK Grant Program (as of September 2018) 79
Table 11: Data Resulting from Laws Requiring Inventories of Unsubmitted Sexual Assault Kits (SAK) in Idaho and Texas 80
Table 12: DNA Capacity Enhancement and Backlog Reduction (CEBR) Program-wide Performance Measures, Detailed Summary 85
Table 13: Summary of Selected Attributes of Successful Performance Measures and Adverse Consequences of Not Meeting Attribute 87
Table 14: DNA Capacity Enhancement and Backlog Reduction Program (CEBR) Permissible Uses of Funds in 2018 Grant Solicitation 88
Table 15: Office of Justice Programs (OJP) Controls Related to Transparency in Grantee Procurement 89

Table 16: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Employees 92
Table 17: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Awarding Agencies and Grantees 94
Table 18: Office of Justice Programs (OJP) Controls Related to Lobbying 97

Figures

Figure 1: Stages in Using DNA Evidence from Crime Scenes to Aid Investigations 6
Figure 2: How DNA Profiles Are Generated and Compared to Help Law Enforcement 11
Figure 3: “Unsubmitted” Crime Scene DNA Evidence and the Two Types of DNA Evidence “Backlogs” 13
Figure 4: Requests for Crime Scene DNA Analysis, Requests Completed, and Backlogged Requests at State and Local Government Labs, from Calendar Year 2011 through 2017 18
Figure 5: Lobbying Certification and Disclosure Requirements for Recipients of Federal Awards over $100,000, per 28 C.F.R. pt. 69 47
Figure 6: Convicted Offender and Arrestee DNA Profile Uploads into the National DNA Index System (NDIS) 70

Abbreviations

AAG	Assistant Attorney General
ASCLD	American Society of Crime Laboratory Directors
BJA	Bureau of Justice Assistance
BJS	Bureau of Justice Statistics
DAEO	Designated Agency Ethics Official
DANY	New York County District Attorney's Office
DNA	deoxyribonucleic acid
DOJ	Department of Justice
EI&CE	Forensic DNA Laboratory Efficiency Improvement and Capacity Enhancement grant program
CEBR	DNA Capacity Enhancement and Backlog Reduction grant program
CODIS	Combined DNA Index System
FBI	Federal Bureau of Investigation
IACP	International Association of Chiefs of Police
JMD	Justice Management Division
NIJ	National Institute of Justice
OGE	U.S. Office of Government Ethics
OMB	Office of Management and Budget
OJP	Office of Justice Programs
SAFE-ITR	Sexual Assault Forensic Evidence-Inventory, Tracking, and Reporting grant program
SAK	Sexual Assault Kit
SAKI	National Sexual Assault Kit Initiative

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

March 21, 2019

The Honorable Lindsey O. Graham
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
United States Senate

At the end of 2017, about 169,000 requests for DNA analysis of crime scene evidence were backlogged at state and local government crime labs.[1] Since 2004, the Department of Justice (DOJ) has awarded nearly $1 billion to states and local jurisdictions through the DNA Capacity Enhancement and Backlog Reduction (CEBR) grant program (or CEBR legacy programs) to help increase lab capacity and reduce the amount of DNA evidence awaiting analysis at labs.[2] Nevertheless, although labs are processing more requests, backlogs of crime scene evidence in labs continue to increase. Further, CEBR grantees can use funds to contract with third parties—such as private labs and DNA equipment vendors—and questions have been raised about potential improper connections among these third parties and those who advocate for CEBR funding.

Additionally, thousands of sexual assault kits (SAKs) in law enforcement custody have not been submitted to crime labs for DNA analysis.[3] DOJ, state and local governments, and a nonprofit organization have efforts underway to inventory or quantify these “unsubmitted” SAKs. However, the number of unsubmitted SAKs nationwide is not well understood and there are concerns that these unsubmitted SAKs have delayed justice or enabled serial offenders to reoffend.

[1]DNA stands for deoxyribonucleic acid and is the genetic material present in the nucleus of cells. According to the Department of Justice, a backlogged request for analysis of crime scene evidence is a request that has not been completed within 30 days of receipt in the laboratory.

[2]CEBR funds can be used for efforts related to processing (1) DNA evidence collected from crime scenes, and (2) DNA samples taken from convicted offenders, arrestees, and others pursuant to law.

[3]A SAK is a package of materials used to collect samples (evidence) from the victim’s or suspect’s body by a medical professional. The type of evidence collected depends on what occurred during the assault.

In 2013, we issued a report that reviewed, among other things, data and outcomes associated with DOJ's CEBR program (formerly named the DNA Backlog Reduction Program).[4] You asked us to revisit CEBR program data and outcomes and address additional questions related to backlogs of DNA evidence in labs and unsubmitted SAKs in law enforcement custody. In July 2018, we issued a testimony statement with preliminary observations from our ongoing work.[5]

This report addresses the following questions:

1. What is known about the amount of backlogged crime scene DNA evidence, including SAKs, in state and local government labs and the factors that contribute to such backlogs?
2. What is known about the amount of unsubmitted DNA evidence, including SAKs, in law enforcement custody and the factors that contribute to this unsubmitted evidence?
3. To what extent does the Office of Justice Programs (OJP)—the primary grant-making arm of DOJ—measure CEBR program performance?
4. To what extent has OJP designed controls related to conflicts of interest, transparency in grantee procurement, and lobbying requirements applicable to CEBR grants?

To describe what is known about the amount of backlogged crime scene DNA evidence in state and local labs, we collected yearly baseline data from the National Institute of Justice (NIJ), the component within OJP that administers the CEBR program, for calendar years 2011 through 2017.[6] We selected these years because in 2011 two previous grant programs were combined into what is now known as the CEBR grant program, and because 2017 is the most recent full calendar year for which CEBR

[4]GAO, *Justice Grant Programs: DOJ Could Improve Decision-Making Documentation and Better Assess Results of DNA Backlog Reduction Program Funds*, GAO-13-605 (Washington, D.C.: July 2013).

[5]GAO, *DNA Evidence: Preliminary Observations on DOJ's DNA Capacity Enhancement and Backlog Reduction Program*, GAO-18-651T (Washington, D.C. July 2018).

[6]NIJ collects baseline data—which includes data from all labs within grantees' jurisdictions (not only those labs that use CEBR grant funds)—as part of the grant application process. We also reviewed data from other sources but determined that CEBR data were the most useful for showing aggregate nationwide trends. For our rationale for using CEBR data (as opposed to other sources), see the full description of our scope and methodology in appendix I. For more information on these other sources of data, see appendix II.

grantee data were available at the time of our review. To assess the extent to which NIJ-compiled CEBR baseline data are reliable, we completed a number of data reliability steps, including discussing data entry issues with grantees and running logic tests on the data, among others. We determined that the CEBR baseline data are sufficiently reliable for our purposes.[7] To ensure we had identified all possible sources of data and to better understand how labs collect and report data, we met with knowledgeable officials from various entities, including national associations, research groups, CEBR grantees or grantee labs, and DOJ.

To identify and describe what is known about the amount of unsubmitted DNA evidence, including SAKs, in law enforcement custody, we obtained and reviewed information and/or data related to several efforts to inventory or quantify unsubmitted SAKs in law enforcement custody, including:

- Data from DOJ's National Sexual Assault Kit Initiative (SAKI) grant program;
- Data from the New York County District Attorney's Office (DANY) SAK grant program;
- State laws requiring SAK inventories, including state-specific data resulting from such laws in Idaho and Texas;[8]
- Information from reporting requirements under the Sexual Assault Forensic Evidence Reporting (SAFER) Act;
- Data from the Joyful Heart Foundation, a national nonprofit survivors' advocacy organization; and
- Data from two prior nationwide studies on the amount of, and reasons for, unsubmitted DNA evidence in law enforcement custody (including DNA evidence associated with various types of crime, not just sexual assault).

[7]We determined that state and local government labs participating in the CEBR program from 2011 through 2017 generally represent the level of workloads and backlogs from state and local government labs that participate in CODIS nationwide. However, we found that CEBR turnaround time data for 2017 were not reported as consistently as data for workloads and backlogs and may not be representative of nationwide turnaround times for state and local government labs.

[8]We selected Idaho and Texas as illustrative examples because, relative to each other, they differed with respect to legal requirements for conducting inventories, and timeframes associated with conducting those inventories.

We include general information about all of these efforts and data from some of these efforts in this report. For the data we include in this report (SAKI, DANY, Idaho and Texas), we present all available data for the time periods the efforts have been active. We assessed the reliability of the data from these efforts and found they were sufficiently reliable for our purposes. For details about the specific steps we took to assess the reliability of data for each of these efforts, see appendix I.

To identify and describe factors that contribute to backlogs of unanalyzed DNA evidence at laboratories and unsubmitted DNA evidence, including SAKs, in law enforcement custody, we reviewed 22 reports, including 16 government reports (or government-funded reports), 4 academic journal articles, 1 book, and 1 study from a non-governmental organization. Five of the government (or government-funded) reports included nationwide studies of public crime labs and law enforcement agencies with original research. We also discussed these factors with a non-generalizable selection of DNA evidence stakeholders from 17 entities, including DOJ officials, CEBR grantees, forensic crime lab directors, and relevant academics and practitioners. For information about how we selected the reports we reviewed and the stakeholders we interviewed, see appendix I. Finally, we conducted legal research on state laws that require law enforcement to submit SAKs for analysis and that also require labs to analyze previously-unanalyzed SAKs. We summarized information from these sources to identify common factors, and we included illustrative examples of the types of factors we identified in this report.

To evaluate how OJP measures CEBR program performance, we first sought to identify CEBR program-wide goals. To do this, we reviewed OJP CEBR documentation, including the most recent CEBR grant solicitation and NIJ reports that include CEBR performance information. We also discussed CEBR goals with NIJ officials. We then assessed these CEBR program-wide goals against federal internal control standards that call for management to define goals clearly.[9] As part of this effort, we also obtained and reviewed information on OJP's 6 CEBR program-wide performance measures, and evaluated the extent to which

[9]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014), Principle 6 – Define Objectives and Risk Tolerances (starts on page 35).

they reflected attributes of successful performance measures we previously established.[10]

To evaluate the extent to which OJP has designed controls related to conflicts of interest, transparency in grantee procurement, and lobbying requirements applicable to CEBR grants, we conducted legal research on these topic areas to identify federal statutes and regulations applicable to OJP and CEBR applicants, recipients, and subrecipients.[11] To determine the extent to which OJP has designed controls to achieve its objectives related to compliance with these requirements, we reviewed DOJ or OJP documentation, which included, among others, the Fiscal Year 2018 CEBR solicitation, the DOJ Departmental Ethics Website, and the DOJ Ethics Handbook for On and Off-Duty Conduct. To further determine the extent to which OJP has designed each control, we also obtained and reviewed a variety of CEBR program documents, including those associated with reviewing and approving CEBR grant applications, and grant monitoring. We also discussed some of the controls that we identified with four CEBR grantees. Finally, we assessed controls that were not properly designed against federal internal control standards, which specify how management should design controls to achieve its compliance objectives.[12]

We conducted this performance audit from September 2017 to March 2019 in accordance with generally accepted government auditing

[10]Successful performance measures help assess progress toward preestablished goals. Our prior work established nine attributes of successful performance measures: linkage, clarity, measurable targets, objectivity, reliability, core program activities, limited overlap, balance, and government-wide priorities. GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143, (Washington, D.C.: November 2002). We selected 3 of the 9 attributes (linkage, clarity, and measurable targets) because they are foundational. By foundational, we mean that without them, other attributes are less relevant or important. We selected 2 of the 9 attributes (core program activities, balance) because they assess the extent to which the performance measures cover a variety of aspects of performance. For additional detail about our selection of these criteria, see appendix I.

[11]We did not review the extent to which controls were implemented effectively (e.g. through controls testing procedures such as conducting case file reviews), nor did we review the extent to which employees were trained to implement controls effectively (e.g. through reviewing training material and/or outcomes of such training). We examined requirements applicable to subgrantees and contractors under CEBR grantees and subgrantees, and subcontractors.

[12]GAO-14-704G. Per guidance in these standards, an existing control is not properly designed when, even if the control operates as designed, the control objective would not be met.

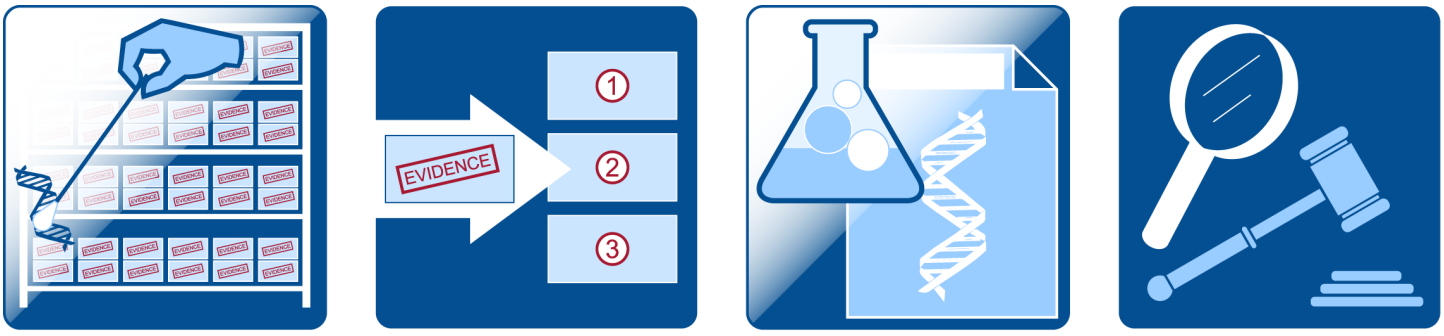
standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Using DNA Evidence from Crime Scenes to Aid Investigations

DNA evidence from crime scenes can be used to help link perpetrators or victims to each other and to crime scenes, and ultimately bring perpetrators to justice. Figure 1 illustrates stages in the process of using DNA evidence from crime scenes to aid investigations.

Figure 1: Stages in Using DNA Evidence from Crime Scenes to Aid Investigations



Collection and storage
Law enforcement officials collect evidence from crime scenes that may contain DNA and store it in law enforcement custody.

Submission and prioritization
Law enforcement officials submit evidence to lab for analysis; this request for analysis is prioritized among other requests.

Lab analysis and reporting
Lab personnel analyze the evidence and report the results to law enforcement.

Investigation and prosecution
Law enforcement officials investigate and can prosecute, if appropriate.

DNA Deoxyribonucleic acid

Source: GAO analysis. | GAO-19-216

Collection and Storage

After an alleged crime, law enforcement officials collect evidence that may contain DNA from crime scenes, victims, and suspects (hereafter referred to as “DNA evidence”). In the case of sexual assault, a victim may choose to undergo a medical-forensic exam where a medical

professional collects samples from the victim's body.[13] This evidence is placed in a SAK for storage and for potential future DNA analysis. According to NIJ, the contents of a SAK vary by jurisdiction but generally include swabs and collection envelopes for biological materials, debris, and underwear.

Most states have established statutes and/or policies for biological evidence retention, according to a report supported by the National Institute of Standards and Technology (NIST) and NIJ.[14] Biological evidence refers to samples of biological material—such as hair, tissue, bones, teeth, blood, semen, or other bodily fluids—or to evidence items containing biological materials. However, this report states that existing state laws vary in (1) their definitions of what constitutes biological evidence for purposes of evidence retention, (2) categories of crime for which biological evidence should be retained, and (3) the length of time biological evidence should be retained.

Submission and Prioritization

Law enforcement officials and prosecutors may submit requests for analysis of DNA evidence to labs.[15] These officials may opt not to submit DNA evidence to labs if they do not believe the results of the analysis would add value to the case. However, laws in some states require officials to submit DNA evidence to labs for analysis in cases of sexual assault. Additionally, DOJ, the International Association of Chiefs of Police (IACP), and the National Sheriffs' Association, have reported that all SAKs should be analyzed if victims report the crime to law enforcement. According to OJP, the majority of sexual assaults are

[13]In this report, we use the term "sexual assault" to include attacks or attempted attacks generally involving unwanted sexual contact between victim and offender, including rape.

[14]In 2013, the National Institute of Standards and Technology—a component of the Department of Commerce—and NIJ jointly supported the issuance of a report detailing best practices for biological evidence preservation. See Technical Working Group on Biological Evidence Preservation, *The Biological Evidence Preservation handbook: Best Practices for Evidence Handlers*, a report jointly supported NIST and NIJ, April 2013.

[15]Other groups may also submit requests, such as public defenders and those who submit requests on behalf of convicted offenders (seeking to clear the innocent of wrongful convictions). According to NIJ and stakeholders we spoke with, all requests are not equal and do not take the same amount of resources. Specifically, requests for analysis may contain one or more "items" for examination, such as weapons, carpets, or bedsheets. Each item may contain multiple "samples" for analysis (e.g. multiple stains on clothing). Each sample, in turn, may be subject to multiple "tests," such as instrumental analysis, extractions, or comparative examinations. Thus, depending on the number of items, samples, and tests needed, requests can vary greatly in the amount of resources needed to conduct the analysis.

committed by persons known to the victim.[16] Although analysis of SAKs in these cases may not provide new information about the alleged perpetrator's identity, the results may link the alleged perpetrator to other crimes within and across jurisdictions, as we discuss later.

According to officials from NIJ, IACP, and the American Society of Crime Lab Directors (ASCLD), law enforcement officials and prosecutors who submit requests for DNA analysis, and labs that process requests, generally prioritize requests based on various factors. These factors may include, among others, state laws, public safety concerns, the trial date of the associated case, whether there is a known suspect, or the type of crime—such as homicide, sexual assault, or property crime. According to these officials, law enforcement officials or prosecutors also generally have the option to mark a request as needing to be "expedited" or "rushed," based on the same factors.

Lab Analysis and Reporting

Once submitted and prioritized, labs perform analysis on DNA evidence. We define "DNA analysis" in this report as (1) biology screening (locating, screening, identifying, and characterizing blood and other biological stains and substances); and/or (2) DNA testing (identifying and comparing DNA profiles in biological samples).[17] A DNA profile is generally considered a unique genetic identifier based on the genetic constitution of an individual.[18] Comparing DNA profiles from crime scene evidence to DNA profiles from known sources can help lab analysts identify the source of unknown DNA profiles found on crime scene evidence. Thus, DNA samples used for such comparisons, called "reference" samples, are generally collected from victims and may also be collected from others whose DNA may be present in crime scene evidence—such as suspects,

[16]According to OJP's Bureau of Justice Statistics (BJS), from 1994 through 2010, about 75 to 80 percent of rapes and sexual assaults were perpetrated by someone known to the victim. DOJ, OJP, BJS, *Female Victims of Sexual Violence, 1994-2010*, (March 2013).

[17]We use this definition of "DNA analysis" because the CEBR program counts requests that undergo biology screening and/or DNA testing as one request (such that if a request requires one or both, it is counted once).

[18]A DNA profile contains the genetic constitution of an individual at defined locations (also known as loci) in the DNA. Each person (except identical twins) has a unique DNA profile when used in the context of the national level of the FBI's Combined DNA Index System (CODIS), which now evaluates 20 specific DNA locations. We discuss CODIS later in this report.

crime scene personnel, first responders, and consensual sexual partners (in cases of sexual assault).[19]

Upon completing DNA analysis and required reviews, the lab provides a report to law enforcement with the results.[20] The results detail the extent to which any DNA profiles identified from crime scene evidence match DNA profiles from reference samples, and note whether any profiles that may be attributable to a potential perpetrator are eligible to be uploaded into the FBI's Combined DNA Index System (CODIS), among other things. CODIS is a system that allows federal, state, and local labs to exchange and compare DNA profiles electronically in order to develop investigative leads. CODIS has multiple levels where DNA profiles can be stored and searched: the local level, the state level, and the national level.[21]

Once labs upload one or more eligible DNA profiles into CODIS, CODIS compares the profile(s) to (1) profiles generated from evidence taken from other crime scenes and deemed to belong to other potential perpetrators; and (2) profiles generated from samples taken from convicted offenders

[19]Some sources distinguish between "reference" samples (from victims and suspects), and "elimination" samples (from others whose DNA may be present in crime scene evidence). However, for purposes of this report, we refer to all these samples as "reference" samples. In practice, evidence often contains a mixture of DNA from more than one person. These mixtures can be challenging to analyze and interpret. Additionally, DNA analysis may result in "partial" profiles, which may occur when samples have low quantities of DNA or are exposed to extreme environmental conditions, among other things. Not all biological evidence that undergoes DNA analysis yields usable DNA.

[20]Labs must perform technical and administrative reviews prior to reporting results to law enforcement, according to the FBI's Quality Assurance Standards (QAS), which labs that participate in the national level of CODIS must adhere to. The technical review is an evaluation of reports, notes, data, and other documents to ensure there is an appropriate and sufficient basis for the scientific conclusions. The administrative review is an evaluation of the report and supporting documentation for consistency with laboratory policies and for editorial correctness.

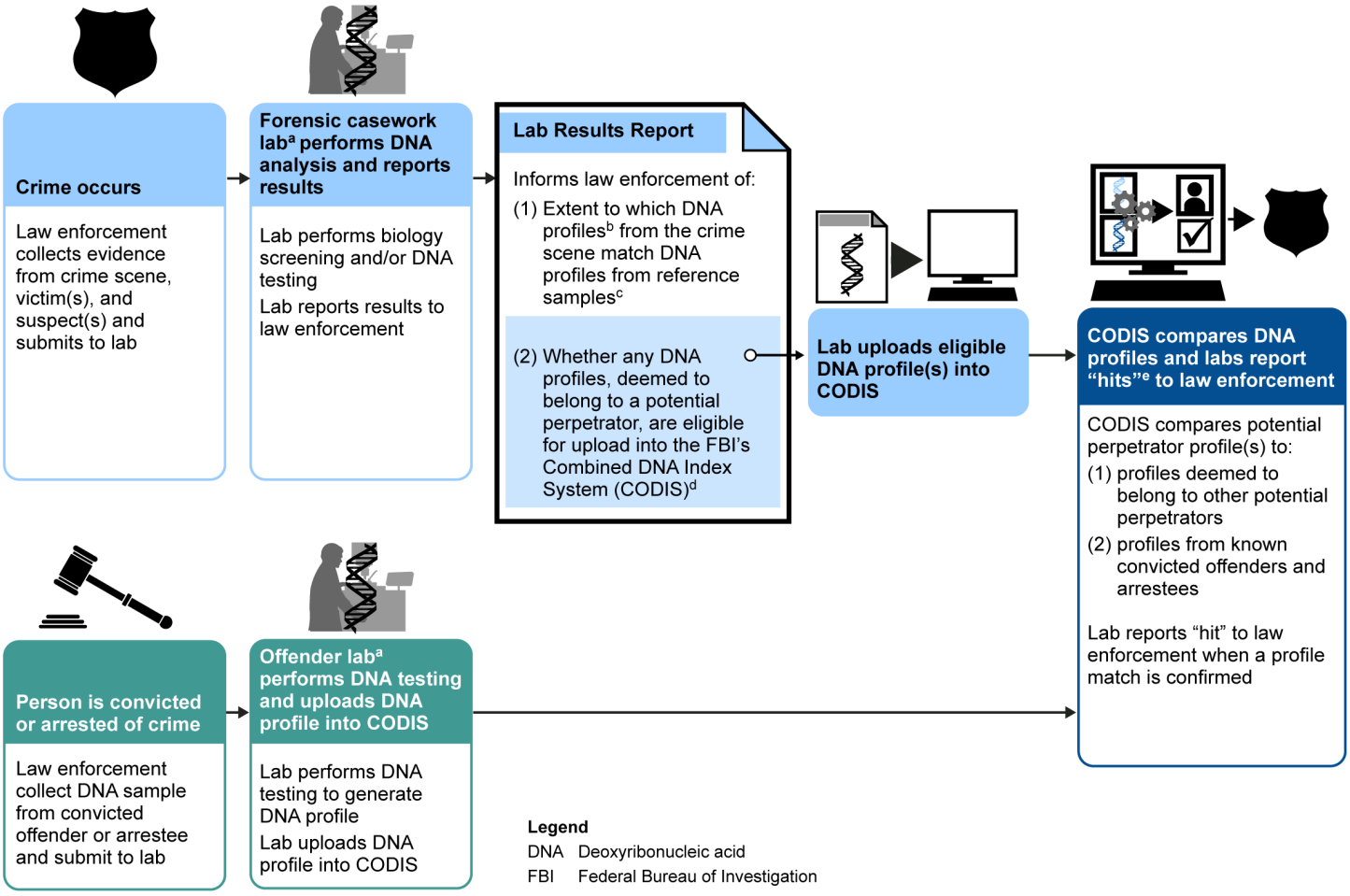
[21]According to FBI officials, the FBI sets requirements for what DNA profiles are eligible to be uploaded into the national level of CODIS; and state and local governments set requirements for what DNA profiles are eligible to be uploaded at state and local levels of CODIS, respectively.

and arrestees as authorized by law.[22] When a profile deemed to belong to a potential perpetrator matches another profile within CODIS, a "hit" or investigative lead may be developed.[23] A hit may involve the linking of crimes to each other and/or to convicted offenders or arrestees. If this occurs, the lab will send a second report to law enforcement notifying them of the hit and providing additional information. Figure 2 below shows how CODIS can help develop investigative leads.

[22]According to DOJ, the federal government, all 50 states, the District of Columbia, and Puerto Rico have laws requiring the collection of DNA samples from individuals convicted of certain crimes; in addition, according to DOJ, the federal government and over half the states have laws authorizing the collection of DNA from individuals arrested for certain crimes. According to FBI officials, federal statute authorizes the collection DNA samples from non-U.S. persons who are detained under the authority of the United States, and other categories of persons, as authorized by either federal or state law. 34 U.S.C. § 40702.

[23]The FBI defines a hit as, "A confirmed match that aids an investigation and one or more of the case(s) involved in the match are unsolved." According to FBI officials, not all profile matches result in "hits" because the matches may relate to cases already solved or may not provide new information. For instance, a match may confirm the identity of a perpetrator whose identity had already been confirmed by DNA analysis prior to entry into CODIS.

Figure 2: How DNA Profiles Are Generated and Compared to Help Law Enforcement



Source: GAO analysis of DOJ and stakeholder information; Art Explosion (clip art). | GAO-19-216

[a]We use the term "forensic casework lab" to refer to labs that perform DNA analysis on evidence from crime scenes, victims, and suspects; we use the term "offender lab" to refer to labs that perform DNA analysis on samples taken from convicted offenders, arrestees, and other categories of persons as authorized by law; some labs do both.

[b]A DNA profile is generally considered to be a unique genetic identifier based on the genetic constitution of an individual.

[c]"Reference samples," as used in this report, are DNA samples collected from known individuals—such as victims, suspects, crime scene personnel, first responders, and consensual sexual partners—for purposes of comparison to recovered crime scene DNA.

[d]CODIS is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases. CODIS has multiple levels where DNA profiles can be stored and searched; the local level (for city and county DNA labs), state level, and national level. According to FBI officials, the FBI sets requirements for what DNA profiles are eligible to be uploaded into CODIS at the national level; and state and local governments set requirements for what DNA profiles are eligible to be uploaded at state and local levels of CODIS, respectively.

[e]The FBI defines a hit as "a confirmed match that aids an investigation and one or more of the case(s) involved in the match are unsolved."

Only federal, state, or local government labs that meet the FBI's Quality Assurance Standards can participate in CODIS.[24] Government labs may outsource DNA analysis or testing to private labs, but government labs must take ownership of the results of those analyses pursuant to FBI Quality Assurance Standards before entering any associated DNA data into CODIS.[25]

Investigation and Prosecution

Upon receiving the results of lab analysis or CODIS hit information from a lab, law enforcement officials are responsible for investigating cases further and, as appropriate, prosecuting potential perpetrators. Additional resources may be needed for investigation, prosecution, and victim notification when jurisdictions receive many CODIS hits in a short period of time, such as after a jurisdiction decides to analyze all its old SAKs.

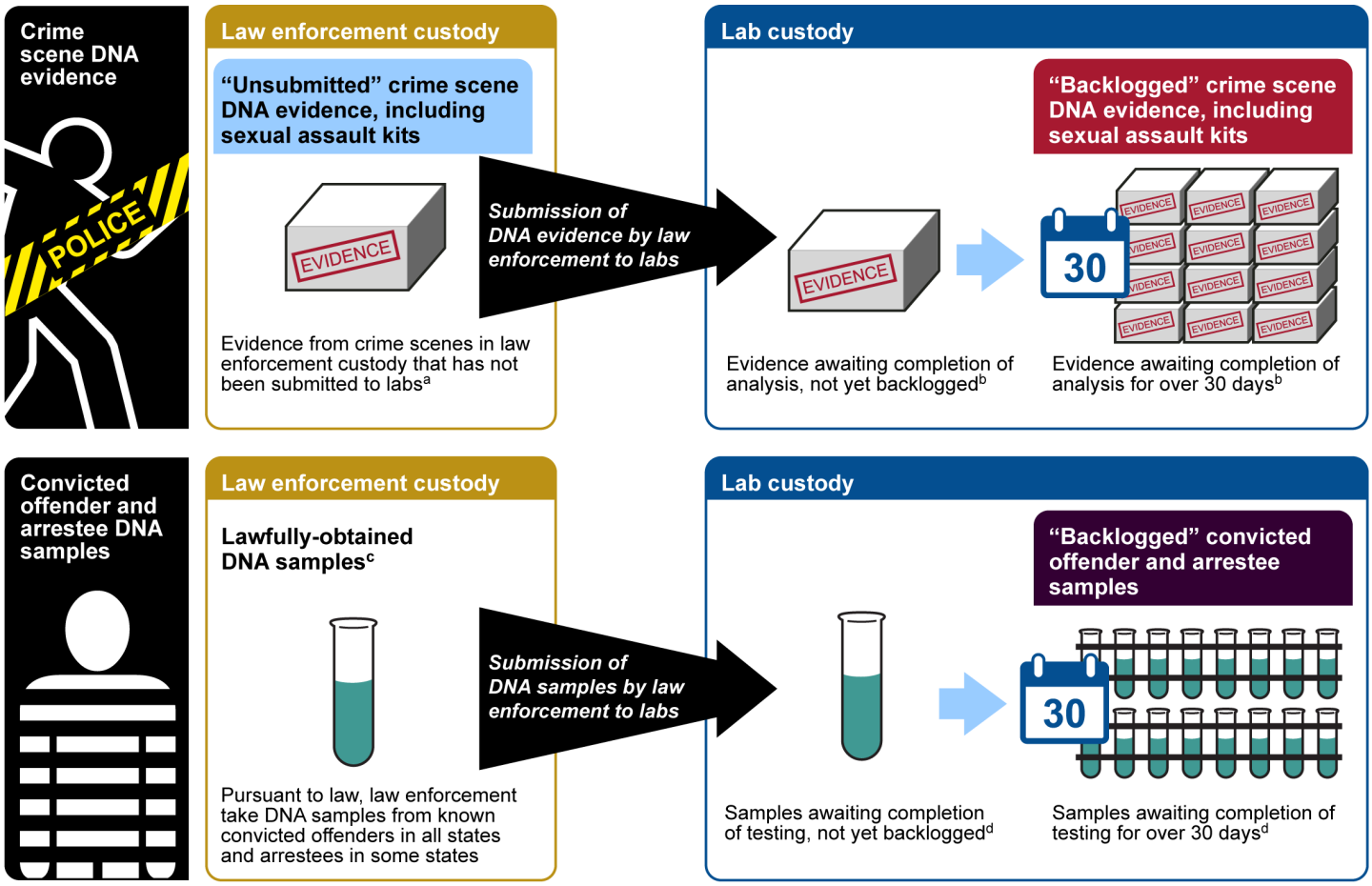
"Unsubmitted" DNA Evidence and the Two Types of DNA Evidence "Backlogs"

"Unsubmitted" crime scene DNA evidence in law enforcement custody is separate from, but related to, "backlogged" crime scene DNA evidence in labs. Further, there are two separate types of DNA evidence backlogs: (1) backlogs of crime scene evidence in labs, and (2) backlogs of convicted offender and arrestee samples in labs (see figure 3).

[24]FBI, *Quality Assurance Standards for Forensic DNA Testing Laboratories* (September 1, 2011). FBI, *Quality Assurance Standards for DNA Databasing Laboratories* (September 1, 2011). According to FBI officials, the integrity of CODIS relies on the permanent ownership and maintenance of the samples that produced DNA profiles, and its participating labs provide such permanence. See also, 34 U.S.C. § 12592 (providing that only information on DNA identification records and analyses that are maintained by federal, state, or local criminal justice agencies (or the Secretary of Defense) can be included in CODIS).

[25]According to NIJ, taking 'ownership' of data implies and requires a technical review of all the data. Moreover, NIJ reported that the requirement to technically review all of the data is a major bottleneck in labs that sometimes mitigates the expediency of outsourcing.

Figure 3: "Unsubmitted" Crime Scene DNA Evidence and the Two Types of DNA Evidence "Backlogs"



DNA Deoxyribonucleic acid

Source: GAO analysis (using definitions of backlogs from the National Institute of Justice). | GAO-19-216

[a]Not all crime scene evidence collected by law enforcement is submitted to labs. Law enforcement may collect more evidence than is needed and labs may have capacity limitations.

[b]NIJ defines a "completed" request for analysis of crime scene evidence as a request that has been closed by a report to law enforcement; and NIJ defines a "backlogged" request as one that has not been completed within 30 days of receipt in the lab.

[c]According to OJP, DNA has not been collected from potentially thousands of convicted offenders across the United States due to the lack of coordinated DNA collections in some jurisdictions, as well as the frequent inability for rural and smaller municipalities to collect samples during processing.

[d]NIJ defines a "completed" DNA convicted offender or arrestee sample as a sample that has been tested and uploaded to the FBI's Combined DNA Index System; and NIJ defines a "backlogged" request one that has not been completed within 30 days of receipt in the lab.

"Unsubmitted" Crime Scene DNA Evidence versus "Backlogged" Crime Scene DNA Evidence

Efforts, systems, and methods used to audit and inventory "unsubmitted" and "backlogged" crime scene DNA evidence are different.[26] NIJ uses the term "unsubmitted" to refer to DNA evidence that has not been submitted to labs but remains in law enforcement custody.[27] In contrast, NIJ uses the term "backlog" to refer to a request for DNA analysis that has been submitted to a lab but that has not been completed (closed by a report to the submitting agency) within 30 days of receipt.[28]

Backlogs of Crime Scene Evidence versus Backlogs of Convicted Offender and Arrestee Samples

Backlogs of crime scene DNA evidence are separate from backlogs of convicted offender and arrestee DNA samples. DNA analysis of crime scene evidence and DNA testing of convicted offender and arrestee samples involve different processes, and some labs only perform one function or the other. According to NIJ, analyzing evidence from crime scenes is time consuming because it often must undergo biology screening to determine if biological materials are present before DNA testing can even begin. Further, some of the samples can be degraded or fragmented and can contain DNA from multiple contributors. In contrast, according to NIJ, DNA samples taken from convicted offenders and arrestees are easier, faster to analyze, and less expensive to analyze because they are taken from a single source (the convicted offender or arrestee) and generally do not require rigorous interpretation.

According to officials from NIJ, the FBI, and ASCLD, backlogs of convicted offender and arrestee samples are not a significant issue today. See appendix III for more information about backlogs of convicted offender and arrestee samples.

[26]Although unsubmitted DNA evidence in law enforcement custody may be considered by some as part of a "backlog," we do not use this this term to describe unsubmitted evidence for purposes of clarity.

[27]For purposes of this report, "unsubmitted" SAKs also refer to SAKs being stored in laboratories, hospitals, or other medical facilities but for which a request for analysis has not been made. IACP officials said that most SAKs are stored in law enforcement storage facilities, but they may also be found in labs, hospitals, rape crisis centers, or other medical facilities.

[28]According to NIJ officials, "receipt" refers to receipt in the area of the lab that performs DNA analysis. Evidence associated with a given request may need to first be processed in one or more other areas of the lab—such as areas that perform latent fingerprint analysis or firearms analysis—before being processed by the area of the lab that performs DNA analysis.

DOJ Grant Programs That Address DNA Evidence Backlogs at Labs and Unsubmitted SAKs in Law Enforcement Custody

DOJ has two grant programs that primarily address DNA evidence backlogs at state and local government labs and two grant programs that primarily address unsubmitted SAKs in law enforcement custody. Specifically, the CEBR program and the Forensic DNA Laboratory Efficiency Improvement and Capacity Enhancement program (EI&CE) address DNA evidence backlogs at labs; and the Sexual Assault Kit Initiative (SAKI) and the Sexual Assault Forensic Evidence—Inventory, Tracking, and Reporting program (SAFE-ITR) address unsubmitted SAKs in law enforcement custody. We primarily focus on the CEBR program in this report but have included additional information on all these grant programs in appendix IV.

CEBR is a grant program that dates back to 2004.[29] Grant awards are made non-competitively to states and units of local government based on a formula set by DOJ that allocates certain amounts to each state.[30] This formula takes into account each state's population and associated crime levels, and guarantees a minimum amount for eligible applicants from each state. In fiscal year 2018 OJP awarded $67.8 million in CEBR grants to 127 grantees in all 50 states and the District of Columbia.

The CEBR program is funded by an appropriation "for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities."[31] The broad appropriations language enables NIJ to allocate this funding for a variety of forensic programs. However, the Justice for All Reauthorization Act of 2016 mandated that at least 75 percent of funds made available under this appropriation be used for

[29]In 2011, grant programs that separately funded labs that analyzed (1) crime scene DNA evidence, and (2) convicted offender and arrestee DNA samples, were combined into one grant program called the DNA Backlog Reduction Program. In 2014, this was renamed the DNA Capacity Enhancement and Backlog Reduction Program.

[30]The formula is set by DOJ administratively as opposed to some formula grant programs where the formula is set by statute.

[31]The appropriation language states that funds are "for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities, including the purposes authorized under section 2 of the DNA Analysis Backlog Elimination Act of 2000 (Public Law 106–546) (the Debbie Smith DNA Backlog Grant Program)." The purposes of the CEBR grant program are generally similar to the purposes of the Debbie Smith DNA Backlog Grant Program. There is no additional statutory authorization for the program.

grants for DNA analysis or to increase the capacity of government labs to carry out DNA analysis.[32]

Reported Backlog of Requests for Crime Scene DNA Analysis at State and Local Government Labs Nationwide Is Increasing Due to Various Factors

Data from DOJ's CEBR grant program show that the number of backlogged requests for analysis of DNA evidence at state and local government labs nationwide has increased from 2011 through 2017. Specifically, labs have continued to receive more requests for DNA analysis than they can complete each year, even though labs have consistently completed an increasing number of requests over time. These data also show that average turnaround time for these requests has stayed relatively constant among CEBR grantees, though these data may not be representative of turnaround times for state and local government labs nationwide. We identified several factors that are reported to have contributed to this increased demand for DNA analysis, including scientific advancements in DNA analysis technology and state laws requiring analysis of certain DNA evidence, among other factors.

[32]The Justice for All Reauthorization Act of 2016, Pub. L. No. 114-324, § 3(a), requires that not less than 75 percent of the funds made available under this appropriation be provided for grants for activities described under paragraphs (1), (2), and (3) of section 2(a) of the DNA Analysis Backlog Elimination Act of 2000. Those purposes include (1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples collected under applicable legal authority; (2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect; and (3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analysis of samples specified in the purposes above. Prior to this, congressional reports accompanying the appropriation have directed that OJP make funding for DNA analysis and capacity enhancement a priority. OJP officials said they use CEBR funding to help meet the "75 percent" requirement discussed above.

CEBR Data Show an Increasing Nationwide Backlog of Requests for Crime Scene DNA Analysis at State and Local Government Labs

Among CEBR grantees, the reported aggregated backlog of requests for crime scene DNA analysis has increased by nearly 85 percent from 2011 through 2017 (from about 91,000 to about 169,000).[33] As of January 1, 2018 there were 194 state and local government labs in the United States that performed DNA analysis on evidence from crime scenes and participated in CODIS.[34]

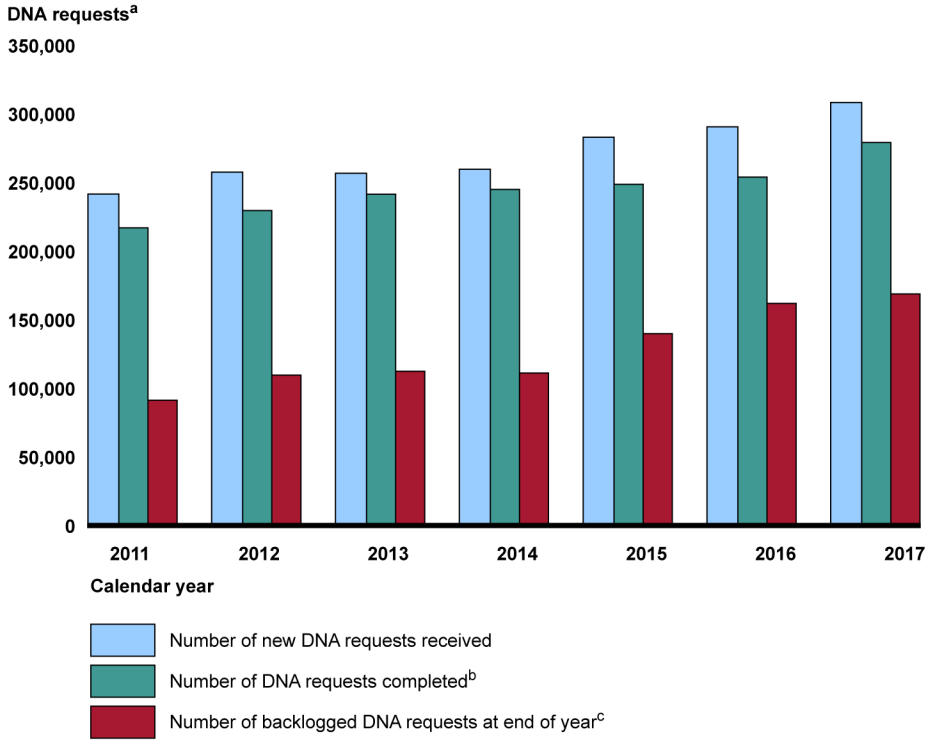
These CEBR data show that from 2011 through 2017 requests for DNA analysis outpaced labs' ability to complete new and existing requests each year, resulting in a backlog. However, labs have consistently completed more requests over time, as shown in figure 4 below. According to our analysis, state and local government labs participating in the CEBR program from 2011 through 2017 generally represent the level of workloads and backlogs from state and local government labs that perform DNA analysis on evidence taken from crime scenes and participate in CODIS nationwide.[35]

[33]As part of the grant application process, NIJ requests applicants for CEBR grants to provide data from all labs in their jurisdiction, even if certain labs will not be using CEBR funds.

[34]As of January 1, 2018, there were 201 total government labs that participated in CODIS in the U.S. Of these 201, 3 are federal labs and are thus not eligible for CEBR grants; of the remaining 198 state and local government labs, 194 perform DNA analysis on evidence taken from crime scenes and 56 perform analysis on samples taken from convicted offenders and arrestees (52 labs do both, which is why the two numbers are greater than 198).

[35]NIJ seeks to collect data from CEBR grantees in years they did not apply for CEBR funding to keep the data consistent; we included this data in our analysis. According to information provided by OJP, as of January 1, 2018, CEBR grantees represented 189 of the 194 state and local government labs in the U.S. that perform DNA analysis on evidence taken from crime scenes and participate in CODIS. For the 5 labs not included, we determined that they constituted a small portion of backlog data in other years so as not to substantively affect results (for example, less than three percent since 2012). We were unable to identify the number of labs that did not participate in the CEBR program for years 2011 through 2016. However, NIJ officials said that CEBR grantees have generally been representative of all state and local government labs in the U.S. that participated in CODIS in prior years as well. In addition, to ensure that fluctuations in the population of CEBR grantees during these years did not significantly affect our results, we compared data on the number of requests backlogged and the annual rate of change in the number of requests backlogged for each year from all grantees (including those grantees who reported data from some but not all years between 2011 and 2016) to data from a subset of grantees (including those that provided data for all years between 2011 through 2016). We found that any fluctuations did not affect overall conclusions about trends in DNA analysis in these prior years.

Figure 4: Requests for Crime Scene DNA Analysis, Requests Completed, and Backlogged Requests at State and Local Government Labs, from Calendar Year 2011 through 2017



Source: GAO analysis of DNA Capacity Enhancement and Backlog Reduction (CEBR) grant program data. | GAO-19-216

[a]By "DNA requests" we mean requests for biology screening and/or DNA testing such that if a request requires one or both, it is counted once.

[b]Some requests may be closed by administrative means rather than through analysis, such as when a suspect pleads guilty before the evidence is analyzed or when the victim has not consented to participate in the criminal justice process. These requests are included in the number of requests received but are not included in the number of requests completed.

[c]NIJ defines a "backlogged" request for crime scene DNA analysis as a request that has not been closed by the issuance of a report to the submitting agency within 30 days of receipt in the lab. The number of backlogged requests is larger than the difference between the number of new requests and the number of requests completed because backlogs also include outstanding requests from previous years.

In addition to reviewing CEBR data on workloads and backlogs, we also reviewed CEBR data to better understand average reported turnaround times. NIJ defines turnaround time for a request for DNA evidence as the time from when the lab receives the evidence to the time when the lab issues a report with the results of the analysis to the submitting agency. From 2011 through 2017, the average turnaround time for requests

across CEBR grantees remained relatively constant, around 150 days.[36] Average turnaround time was generally higher for requests associated with nonviolent crimes than requests associated with violent crimes during this same time period. These turnaround time data provide insights but may not be representative of turnaround times for state and local government labs nationwide because the number of grantees that reported turnaround time data was smaller than those that reported workload and backlog data.[37]

Nevertheless, these data are consistent with what stakeholders we interviewed—including representatives from NIJ, IACP, and ASCLD—said about turnaround times. They said that labs generally prioritize requests associated with violent crime, such as homicide and sexual assault, ahead of those associated with less-violent crime, such as property crimes.[38] Regarding sexual assault specifically, representatives from ASCLD and IACP said law enforcement and labs generally prioritize requests where the victim did not know the identity of the alleged offender (i.e. stranger sexual assault) ahead of requests where the identity of the alleged offender is known.[39]

Although aggregate trends show an increase in the nationwide backlog, individual labs have varying levels of requests awaiting analysis and differ

[36]The averages we present in this paragraph represent a weighted mean of the reported turnaround time for requests for DNA analysis in each calendar year. To obtain a weighted average for each calendar year, we weighted the mean turnaround time reported by each grantee by the number of requests completed in the calendar year.

[37]CEBR grantees reported turnaround times less frequently than they reported other data, such as the number of requests received, the number of requests completed, and backlogged requests. For instance, for 2017 data, 40 of 138 grantees reported average turnaround times for requests associated with violent crimes, 42 of 138 grantees reported average turnaround times for requests associated with nonviolent crimes, and 89 of 138 grantees reported average overall turnaround times (turnaround times that include all requests). These aggregated average turnaround times may not fully reflect turnaround times associated with “expedited” or “rushed” requests. Specifically, when NIJ collects turnaround times from grantees, NIJ asks for turnaround times associated with non-priority (i.e. non-expedited or non-rushed) requests. However, according to ASCLD officials, crime labs’ IT systems may or may not be able to separate requests into those that were expedited and those that were not expedited for purposes of reporting turnaround time to NIJ.

[38]According to IACP officials, prioritization practices may also be influenced by state law.

[39]The Joyful Heart Foundation, a survivors’ advocacy organization, stated that as awareness around the sexual assault kit backlog and the value of DNA evidence has increased in the past several years, sexual assault is being more readily included in prioritization.

in average turnaround times. For example, among the 82 grantees for which we had complete data from 2011 through 2017, 22 grantees (27 percent) reported an overall decrease in the backlog during this time. Additionally, while the average reported turnaround time (including requests associated with both violent and nonviolent crime) in 2017 was about 150 days, averages among grantees that spanned from 20 to 580 days.

NIJ does not collect data on the number of backlogged SAKs at labs and NIJ officials stated that it may be difficult to quantify these data.

Data on Backlogged SAKs at Labs

The CEBR program does not specifically collect data on the number of backlogged SAKs at labs. NIJ officials said the CEBR program is designed to support DNA analysis for all crimes, thus NIJ does not focus on obtaining data associated with only one type of crime (i.e. sexual assault).

According to NIJ officials, obtaining data on the number of SAKs awaiting analysis may be burdensome for labs or may produce unreliable data. According to NIJ and ASCLD officials, SAKs are considered one piece of evidence within a request that may contain other pieces of evidence, such as weapons, carpets, and bedsheets—and labs' IT systems may not be configured to track each piece of evidence separately. However, according to an ASCLD official and one lab official we interviewed, some labs have modified their IT systems to be able to track SAKs, usually in response to state laws mandating the tracking or reporting of SAKs.

Additionally, DNA stakeholders used differing terminology to identify SAKs within their labs and IT systems, which may further complicate reporting on the number of SAKs awaiting analysis at labs. Specifically, some DNA stakeholders described a SAK as an "item" with multiple "samples" inside; others described a SAK as an "item" with multiple "items" or "sub-items" inside; and yet others disagreed that SAKs were considered an "item" altogether and preferred the term "piece of evidence" or "package of items."

Source: GAO analysis of NIJ and stakeholder interviews.| GAO-19-216

In addition to CEBR grantee data, we identified two other sources of nationwide data on DNA evidence processing at government labs: (1) the Bureau of Justice Statistics (BJS) Census of Publicly Funded Forensic Crime Labs, and (2) Project FORESIGHT, a research project at West Virginia University's College of Business and Economics. We determined that the most useful data for showing aggregate nationwide trends was CEBR data. Information about this determination can be found in appendix I. Information on these additional data sources and considerations for reviewing DNA evidence data can be found in appendix II.

Scientific Advancements and Other Factors Have Increased Demand for DNA Analysis of Crime Scene Evidence Beyond Labs' Capacities

Based on a review of a selection of literature and discussions with DNA evidence stakeholders, we identified the following factors that are reported to have contributed to an increased demand for DNA analysis of crime scene evidence beyond labs' capacities, thereby contributing to increased backlogs:[40]

- **Scientific advancements.** Recent scientific advancements have increased the quality of DNA analysis by allowing lab analysts to obtain DNA profiles from smaller amounts of biological evidence. For instance, "touch DNA" samples—which become available when DNA is transferred by the simple touching of an object—can now be used to yield DNA profiles. Further, many older and unsolved cases from the "pre-DNA" era are being reopened and subjected to DNA analysis in hopes of solving these crimes. Thus, scientific advancements have increased the amount of evidence that is eligible to be analyzed and, as a result, have increased the demand for DNA analysis.
- **Decreases in turnaround times.** Labs that decrease their turnaround time for DNA analysis may see corresponding increases in requests from law enforcement, according to preliminary results from Project FORESIGHT, a research project designed to help crime labs evaluate their efficiency.[41] Other DNA stakeholders, including NIJ and labs that we met with also made similar observations. Thus, as law enforcement officials are able to obtain the results of DNA analysis from labs more quickly, they may request DNA analysis more often.
- **Increased awareness among law enforcement.** Increased awareness among law enforcement officers of the value of DNA analysis in solving current and older cases has led to law enforcement agencies submitting more DNA evidence to labs for analysis. Additionally, law enforcement officials' awareness of the usefulness of CODIS has contributed to increased demand. Specifically, NIJ and other stakeholders we interviewed stated that the volume of DNA profiles in CODIS from convicted offenders and arrestees as well as potential perpetrators has increased significantly over recent years. This, in turn, has increased the likelihood of obtaining a "hit" or

[40]For more information about how we selected the literature and a list of the stakeholders we interviewed for this review, see appendix I.

[41]Project FORESIGHT, run out of West Virginia University's College of Business and Economics, is a research project designed to help crime labs evaluate their efficiency and inform resource allocation decisions. Project FORESIGHT obtains data from public and private labs that participate in the project.

investigative lead when comparing a DNA profile from a potential perpetrator to DNA profiles in CODIS.[42]

- **Recent legislation requiring SAK analysis.** State legislation requiring SAK analysis has contributed to an increase in demand for DNA analysis. As of September 2018, we identified at least 27 states that had enacted laws requiring law enforcement to submit SAKs for testing that come into law enforcement possession.[43] Eleven of these states also required the submission for testing of previously untested SAKs. Twenty-three of these laws were passed in 2014 or later.

In addition to the factors that have contributed to increased demand, resource challenges and constraints on government labs' capacities are reported to have helped contribute to backlogs. State and local labs generally receive appropriations from state or local governments, which may direct local funding priorities based on state law or local policy. Additionally, some of these labs report facing lengthy hiring and training processes for forensic analysts, and often lose staff to private or federal labs which may offer higher pay, further limiting lab capacity for completing analysis. Officials at one lab stated that increased quality standards from the FBI and accrediting bodies also require lab resources. Further, according to NIJ, some labs face space constraints that limit their ability to hire additional staff or purchase additional equipment.

[42]Additionally, when deciding whether to submit DNA evidence for analysis, law enforcement and prosecutors may consider jurors' expectations that DNA analysis is presented. The literature and stakeholders commonly refer to this as the "CSI effect," which is named after a television program that features the use of DNA in solving criminal cases.

[43]Legislation varies by state. For instance, some states may require the analysis of SAKs as well as other evidence relating to sexual assault, or may require that unreported SAKs not be analyzed.

The Amount of Unsubmitted DNA Evidence Nationwide is Unknown and Various Factors Contribute to this Unsubmitted Evidence

According to our review of data sources and the DNA evidence stakeholders with whom we spoke, there have not been any recent attempts to quantify levels of all types of unsubmitted DNA evidence in law enforcement custody nationwide. However, certain state and local jurisdictions have performed inventories of their previously unsubmitted SAKs, some of which have been supported by DOJ's National Sexual Assault Kit Initiative (SAKI) grant program. We also identified factors that are reported to have contributed to unsubmitted SAKs, as well as other types of DNA evidence in law enforcement custody. These include archived biological evidence from the pre-DNA era and limited lab capacity, among other factors.

The Amount of Unsubmitted DNA Evidence Nationwide Is Unknown though Some Jurisdictions Have Inventoried Previously Unsubmitted SAKs

We were unable to find data that could definitively quantify levels of unsubmitted DNA evidence in law enforcement custody nationwide. According to DNA evidence stakeholders and our own review of potential data sources, there have been no recent attempts to quantify unsubmitted DNA evidence associated with all types of crime nationwide.

Regarding non-SAK DNA evidence, stakeholders said there may be reasons why there have been no recent attempts to quantify this unsubmitted evidence. Specifically, they stated that it is difficult to quantify non-SAK DNA evidence because this evidence is generally not confined to standardized containers or known to contain biological evidence. In contrast, SAK evidence is generally confined to a box which is thought to contain at least some biological evidence. Further, there has been strong advocacy for the analysis of SAKs, which some stakeholders said has influenced the passage of state laws requiring SAK inventories and analysis, and otherwise increased attention on unsubmitted SAKs.

Regarding SAKs specifically, although there is no definitive count of unsubmitted SAKs in law enforcement custody nationwide, certain state and local jurisdictions have performed inventories to identify previously unsubmitted SAKs. Some of these efforts have been supported by SAKI grants. The information below provides a description of three large-scale efforts to inventory and/or submit to labs for analysis previously unsubmitted SAKs in law enforcement custody. Additional information on these and other efforts are in appendix V, along with a list of challenges

associated with inventorying SAKs within jurisdictions or quantifying them across jurisdictions.[44]

Sexual Assault Kit Initiative Grantee Data

SAKI grants provide funding to state law enforcement agencies and units of local government to help them address unsubmitted SAKs. SAKI grants require grantees to first take an inventory of unsubmitted SAKs; however, according to BJA officials, some jurisdictions had already identified unsubmitted SAKs prior to receiving SAKI funds. As of June 2018, 38 SAKI grantees identified a total of 102,837 previously unsubmitted SAKs (59,614 SAKs identified prior to receiving SAKI funds, and 43,223 identified after receiving SAKI funds).

New York County District Attorney's Office Grantee Data

In 2015, New York County District Attorney's Office (DANY) awarded nearly $38 million in grants to 32 jurisdictions (grantees) across 20 states to help them analyze SAKs. DANY and SAKI program administrators coordinated to ensure that the DANY and SAKI programs complemented each other and did not duplicate resources. Funding awarded through DANY's program is only allowed to be used for costs associated with analyzing SAKs; thus, DANY did not provide funds for grantees to perform inventories.[45] Nevertheless, DANY tracks the number of SAKs submitted to labs for analysis, which DANY officials said serves as a proxy for previously unsubmitted SAKs. As of September 2018, DANY program grantees submitted 62,915 SAKs to labs for analysis.

Data from State Efforts to Inventory Unsubmitted SAKs

As of September 2018, we identified at least 26 states with laws that require the conducting of SAK inventories where evidence had not yet been submitted for lab analysis. We found that legislation varied by state. For example, some states require one-time inventories and other states require annual inventories; additionally, some states require inventories of SAKs and others require inventories of sexual assault cases (which often include SAKs). Twenty-four of these laws were passed in 2014 or later.

[44]The additional information in appendix V includes data on activities resulting from inventorying and/or submitting for DNA analysis previously unsubmitted SAKs, including counts of SAKs for which DNA analysis was completed, and counts of resulting criminal investigations, among other things. Data from these efforts may overlap, therefore it is not possible to combine totals from each effort without potentially duplicating results.

[45]The DANY grant solicitation did not distinguish between "unsubmitted" SAKs in law enforcement jurisdiction and "backlogged" SAKs in laboratories. Specifically, according to the DANY SAK Program grant solicitation, a SAK eligible for analysis with grant funds is one that is connected to a reported sexual assault that has not been analyzed within 365 days of being booked into law enforcement evidence regardless of the reason it had not been analyzed.

For example, Idaho passed a law requiring a one-time inventory of unsubmitted SAKs by December 2016 and an annual inventory of SAKs beginning in January 2017. As of September 2018, Idaho had identified 1,933 unsubmitted SAKs. Similarly, Texas passed a law requiring a one-time inventory of sexual assault cases with unsubmitted DNA evidence that was collected between September 1, 1996 and July 1, 2011. As of August 2017, Texas reported 18,955 cases.

Archived Evidence Not Subjected to DNA Analysis and Other Factors Contribute to Unsubmitted DNA Evidence in Law Enforcement Custody

Based on a review of a selection of literature and discussions with DNA evidence stakeholders, we identified the following factors that are reported to have contributed to unsubmitted DNA evidence—including non-SAK DNA evidence and SAKs—being stored in law enforcement custody. These factors are as follows:[46]

- **Archived biological evidence not subjected to DNA analysis.** For several decades before the relatively recent scientific advancements in DNA analysis and the widespread use of CODIS, law enforcement submitted evidence to labs to identify or analyze biological material to support investigations, and then archived that evidence for future use. For instance, they may have performed biology screening to identify what fluid was on clothing, or they may have tested blood samples to see if there was a blood type match. In addition, some evidence with biological material remains in law enforcement storage because other forensic evidence was used and the case was adjudicated without performing DNA analysis. For example, the lab could use other evidence such as a fingerprint to identify or confirm a potential perpetrator and the suspect could plead guilty before the lab analyzed the evidence.
- **Evidence collection practices**. Crime scene investigators often collect more evidence from crime scenes than is needed because they only have one chance to collect such evidence and they may not know which evidence will be most useful to the case. This evidence may or may not contain biological material and may remain in law enforcement custody, depending on the circumstances of the case and relevant laws and policies.
- **Limited lab capacity.** Labs may face resource constraints such as limited funding and lengthy hiring and training processes which can limit overall lab capacity for completing analysis. As a result, some

[46]For information about how we selected the literature and a list of the stakeholders we interviewed for this review, see Appendix I.

labs may implement policies which limit the amount of DNA evidence that law enforcement officials can submit. In addition, stakeholders said some law enforcement agencies may not submit DNA evidence to a lab if the lab has previously been slow to provide results.

- **Misunderstandings between law enforcement and labs about evidence submission policies.** In some jurisdictions, law enforcement policy may determine what evidence law enforcement agencies submit to labs, while in other jurisdictions lab policy may be the guiding protocol. Misunderstandings between law enforcement and labs about each other's policies can be a source of confusion. In some instances, stakeholders said this may cause investigators not to submit evidence to the lab. For example, a law enforcement officer may not submit evidence to the lab for analysis if he or she believes that the crime lab will be unwilling to accept it or unable to analyze it.
- **Case-specific determinations for SAKs.** Law enforcement officials may not submit DNA evidence if they do not believe the evidence will add value to the case.[47] For example, if a suspect in a sexual assault case claims that a sexual encounter was consensual, DNA analysis may not provide any value to the specific investigation because the suspect admitted to the sexual encounter. Further, law enforcement officials' perception of the victim's credibility or the circumstances of the case may influence the decision to pursue an investigation and submit DNA evidence for analysis. Law enforcement officials may have other reasons for not submitting SAKs, such as when charges have not been filed or the alleged offender has already been adjudicated.
- **Sexual assault victim consent for DNA analysis.** After undergoing a sexual assault exam at a hospital or rape crisis center, sexual assault victims may not want their SAKs submitted for DNA analysis for various reasons. NIJ refers to these SAKs—where the victim has consented to the collection of the SAK but has not consented to participate in the criminal justice process—as "unreported" SAKs. According to NIJ, an unreported SAK cannot be submitted to a laboratory for analysis, unless applicable law provides. As a result, the DNA evidence either remains in the hospital or rape crisis center, or is transferred to law enforcement where it remains in law enforcement custody.

[47]In many jurisdictions, law enforcement officials and prosecutors no longer have the ability to make case-specific determinations because state laws mandate SAK submission.

CEBR Program Goals Are Not Consistently Documented and Its Performance Measures Do Not Fully Reflect Selected Attributes of Successful Performance Measures

CEBR Program Goals Are Not Consistently Documented So As to Clearly Communicate Intended Program Results

We identified statements in NIJ and CEBR program documentation that communicated program-wide goals, but the documentation did not consistently identify the same goals or the same number of goals.[48] For example, a stated goal of improving the quality of DNA testing was included in 2 of 4 NIJ documents we reviewed and increasing the efficiency of testing was only stated in one of these documents. NIJ officials clarified that the CEBR program has two goals: (1) to increase laboratory capacity for DNA analysis, and (2) to reduce backlogs of DNA evidence awaiting analysis. The inconsistency of the goals can be seen across goal statements outlined in various NIJ sources as seen in table 1 below.

[48]Program-wide goals are different than goals for individual grants. The CEBR grant program allows grantees to create their own goals and objectives within the framework of overall program-wide goals.

Table 1: DNA Capacity Enhancement and Backlog Reduction Grant Program (CEBR) Goals Listed in National Institute of Justice (NIJ) Documentation and NIJ Officials' Clarifications

Source	CEBR Goal(s)
Goals as stated in NIJ documentation	
CEBR grant solicitation (fiscal year 2018)	The overarching goal is to assist eligible States and units of local government to increase laboratory capacity and reduce the number of samples awaiting analysis in both the casework and database sections.[a]
NIJ website (2018)[b]	The goals are to assist eligible states and units of local government to: • Process, record, screen and analyze forensic DNA and/or DNA database samples. • Increase the capacity of public forensic DNA and DNA database laboratories to process more DNA samples, thereby helping to reduce the number of forensic DNA and DNA database samples awaiting analysis.
NIJ report (2018)[c]	The main objectives are to improve the quality of testing and increase the efficiency of evidence processing in forensic DNA laboratories.
NIJ report (2017)[d]	The goal is to help increase the throughput of evidence processing at the nation's forensic DNA laboratories and improve the quality of testing.
NIJ officials' clarification of goals	
NIJ officials' clarification (2018)	The CEBR program has two goals: Increase laboratory capacity for DNA analysis. This refers to increasing samples analyzed, reducing processing times, and increasing the number of DNA profiles uploaded into the FBI's Combined DNA Index System (CODIS)—all while either maintaining or increasing the quality of DNA analysis at labs. Reduce backlogs of DNA evidence awaiting analysis. This refers to reducing the number of backlogged requests awaiting analysis by more than the number of requests that become backlogged during the same timeframe.

Source: GAO analysis of NIJ documentation and interview with NIJ officials. | GAO-19-216

[a]"Sections" refers to areas within labs that perform different types of analysis; the "casework" section refers to the section that performs DNA analysis on evidence from crime scenes, victims, and suspects; the "database" section refers to the section that performs DNA analysis on samples collected from convicted offenders, arrestees, and others as authorized by law.

[b]DOJ, OJP, NIJ, DNA Capacity Enhancement and Backlog Reduction Program, https://www.nij.gov/topics/forensics/lab-operations/evidence-backlogs/Pages/backlog-reduction-program.aspx. Accessed June 4, 2018.

[c]DOJ, OJP, NIJ, Report Forensic Science Fiscal Year 2017 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities. (Washington D.C.: April 2018). NIJ officials stated that this report is intended for a different audience than grant applicants to emphasize that improvements in quality and throughput are achieved through innovations such as more sensitive chemistries, faster technologies, and streamlined workflows, all of which, according to NIJ officials, can help increase efficiency and decrease backlogs.

[d]DOJ, OJP, NIJ, Report Forensic Science Fiscal Year 2016 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities. Washington D.C.: May 2017). NIJ officials stated that this report is intended for a different audience than grant applicants to emphasize that improvements in quality and throughput are achieved through innovations such as more sensitive chemistries, faster technologies, and streamlined workflows, all of which, according to NIJ officials, can help increase efficiency and decrease backlogs.

While NIJ officials' explanations help clarify their goals for us, such clarifications are not documented and thus are not available to congressional decision-makers who help determine if the CEBR program is achieving its intended results. Moreover, after NIJ officials clarified that the CEBR program has a goal to reduce backlogs, as described in the last row of table 1, NIJ later reported that eliminating the nationwide backlog is not a program goal. Officials stated they believe the goal of eliminating backlogs is unachievable in the foreseeable future because increases in demand for DNA analysis are driven by factors outside of NIJ's control. Thus, officials said they are not comfortable setting an unachievable goal and reporting data related to that goal that may be misinterpreted. However, they also feel they need to have a goal to reduce or eliminate backlogs because this, they said, was an original purpose of the program. This further exacerbates the lack of consistency and clarity available to Congress.[49]

Standards for Internal Control in the Federal Government state that management should define goals clearly to enable the identification of risks and define risk tolerances.[50] In doing so, management defines goals in clear and specific terms so they can be understood, including clearly defining what is to be achieved. Consistently documenting CEBR program goals would better position NIJ to clearly communicate intended program results.

[49]NIJ officials reported that they have responded to Congress numerous times in the past and have provided context about the CEBR program and challenges related to backlog reduction.

[50]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (September 2014).

CEBR Performance Measures Do Not Fully Reflect Selected Attributes of Successful Performance Measures

We found that the CEBR program's six program-wide performance measures do not fully reflect the five selected attributes of successful performance measures we evaluated them against.[51] The purpose of performance measures is to assess progress against goals, and while there is no single correct method to develop successful performance measures, we have selected attributes that, if met, will help performance measures assess progress toward goals.[52] See table 2 for a summary of our analysis, and see appendixes VI and VII for more information about CEBR performance measures and the criteria we evaluated them against.

[51]NIJ requires data from grantees related to other performance measures, such as DNA analysis throughput for the lab and average turnaround times. However, we did not include these data or measures in our scope because NIJ does not use them for program-wide reporting.

[52]Our prior work establishes 9 attributes of successful performance measures: linkage, clarity, measurable targets, objectivity, reliability, core program activities, limited overlap, balance, and government-wide priorities. GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures, GAO-03-143 (Washington, D.C.: November 2002)*. We selected 3 of the 9 attributes (linkage, clarity, and measurable targets) because they are foundational. By foundational, we mean that without them, other attributes are less relevant or important. We selected 2 of the 9 attributes (core program activities, balance) because they assess the extent to which the performance measures cover a variety of aspects of performance. For additional detail about our selection of these criteria, see appendix I.

Table 2: Assessment of DNA Capacity Enhancement and Backlog Reduction Program-wide Performance Measures Against Five Selected Attributes of Successful Performance Measures

	Linkage Measure is aligned with program goals	Clarity Measure is clearly stated and is consistent with the methodology used to calculate it	Measurable Target Measure has a numerical goal	Core Program Activities As a group, measures cover the activities that an entity is expected to perform to support the intent of the program	Balance As a group, measures ensure that key program priorities are covered
Number of Forensic Cases Analyzed[a]	●	●	○	○ (Evaluated as a group)	◖ (Evaluated as a group)
Number of Forensic DNA Profiles[b] Uploaded to the FBI's Combined DNA Index System (CODIS)[c]	●	●	○		
Percentage Increase in Forensic DNA Profiles Uploaded to CODIS from the Previous Year	●	◖	●		
Number of Convicted Offender and/or Arrestee Database Samples Analyzed[d]	●	●	○		
Number of Convicted Offender and/or Arrestee Database Samples Uploaded to CODIS	●	●	○		
Number of CODIS Hits[e]	●	●	○		

Legend: Measure fully reflects criterion ●

Measure partially reflects criterion ◖

Measure does not reflect criterion ○

Source: GAO analysis of CEBR program-wide performance measures. | GAO-19-216

Note: Gray shading represents attributes that are foundational to successful performance measurement systems. By "foundational," we mean that, without them, other attributes are less relevant or important.

Note: For all measures except one—percentage increase in forensic DNA profiles uploaded to CODIS from the previous year—NIJ directs grantees to only include requests analyzed or samples tested where CEBR funds were used to help with overtime, supplies, outsourcing, and/or personnel.

[a]"Forensic cases" refers to requests for DNA analysis on evidence from crime scenes, victims, and suspects.

[b]A DNA profile is generally considered a unique genetic identifier based on the genetic constitution of an individual.

[c]CODIS is a system that allows federal, state, and local labs to exchange and compare DNA profiles electronically. As a result of processing evidence from crime scenes, only DNA profiles believed to belong to a potential perpetrator can be uploaded into CODIS.

[d]"Convicted offender and/or arrestee database samples" refers to DNA analysis on samples taken from convicted offenders, arrestees, and other categories of persons as authorized by law.

[e]The FBI defines a hit as "a confirmed [DNA profile] match that aids an investigation and one or more of the case(s) involved in the match are unsolved."

Linkage

We determined that all six performance measures aligned with at least one CEBR program goal, although the goals are not consistent across documentation, as we have discussed.

Clarity

We found that 5 of the 6 measures are clearly stated and the names and definitions are consistent with the methodologies used to calculate them.[53] We also found that one measure—the Percentage Increase in Forensic DNA Profiles Uploaded to CODIS from the Previous Year—is partially consistent with the methodology used to calculate it. Specifically, by referencing "profiles uploaded to CODIS," the name of the measure implies that it includes all DNA profiles uploaded into CODIS when, upon clarification, NIJ officials stated that it only reflects DNA profiles uploaded to the national level of CODIS.[54]

Additionally, we found that the name of the measure—as stated in OJP's Fiscal Year 2018 Performance Budget (the most recent OJP performance budget in which the measure was included)—contained two inconsistencies in the wording, as compared to the documentation NIJ provided us that clarifies how the measure is worded and calculated. First, the name of the measure in the performance budget document—percent increase in the number of DNA profile uploads into the Combined DNA Index System (CODIS) from the previous fiscal year—does not clearly specify that these are DNA profiles from crime scene evidence only, rather than a combination of DNA profiles from crime scene

[53]CEBR grantees we interviewed cited minor issues with reporting performance data to NIJ but generally said that, over time, NIJ has clarified any reporting issues when it comes to performance measures. We also found that NIJ provides clarifying instructions to grantees through its web-based data reporting tool.

[54]CODIS has three levels where DNA profiles can be stored and searched (the Local DNA Index System – LDIS, the State DNA Index System – SDIS, and the National DNA Index System – NDIS. However, not all DNA profiles uploaded into LDIS and SDIS are searched at the NDIS level. Specifically, according to FBI officials, eligibility requirements for which DNA profiles may be uploaded and stored in LDIS, SDIS, and NDIS are based on applicable law and policy for each jurisdiction. According to officials, these laws and policies are written into CODIS software for each jurisdiction, and these rules (1) govern whether DNA profiles can be uploaded into LDIS, SDIS, or NDIS in the first place, and (2) dictate whether DNA profiles will be automatically "pushed" to the next level of CODIS (from LDIS to SDIS, and from SDIS to NDIS).

evidence and DNA profiles from convicted offenders and arrestees. In contrast, the name of the measure in documentation provided by NIJ uses the phrase "forensic DNA profiles," which means profiles from crime scene evidence only. This is supported by NIJ documentation which shows how the measure is calculated.

Second, the name of the measure in the performance budget document says "from the previous fiscal year" but NIJ documentation shows that NIJ uses the calendar year as its basis for year-over-year comparison. Ensuring that performance measure information reported externally matches how NIJ calculates the measure would help ensure NIJ is accurately reporting results.

Measurable Target

Five of the 6 measures do not have associated targets (numerical goals). One measure—percentage increase in forensic DNA profiles uploaded to CODIS from the previous year—had a target to increase the number of forensic DNA profiles uploaded to CODIS by 7 percent in 2018. Officials said setting targets associated with the other five performance measures would not be meaningful.[55] Specifically, these measures assess outcomes associated with activities funded by CEBR grants and grantees can choose the amount of funds they spend on a variety of activities—some of which are not easily or immediately measurable, such as training lab staff and procuring equipment.[56] Thus, if NIJ were to set a program-wide target, for instance, for the "number of forensic cases analyzed," the target might be rendered useless because grantees could choose to spend most of their money on procuring equipment that year. However, this particular challenge can be overcome by first establishing a measure

[55]NIJ officials stated that award recipients are required to provide target measures to assess their goals but NIJ does not attach targets to many of its performance measures because there are numerous uncontrollable and unpredictable factors that can contribute to erratic changes in targets on a short term and long term basis.

[56]Other activities include: salary and benefits for additional lab employees, overtime for lab staff, outsourcing, efficiency studies, and costs associated with accreditation, among others.

that has a clear direction that indicates progress, then setting an associated target.[57]

NIJ officials cited two additional reasons why they hesitate to set program-wide targets. First, officials said it is generally not NIJ's role or responsibility to set such targets. Rather, NIJ is responsible for ensuring that each CEBR grantee sets and accomplishes its individual goals and targets. Second, NIJ officials said they do not want to be held accountable for outcomes that are out of NIJ's control. For instance, NIJ cited the enactment of new laws, increases in crime rates, and technological advancements as factors outside of NIJ's control that are increasing the demand for DNA analysis. Thus, officials said, setting a program-wide target for reducing the backlog, for example, and then not meeting it may be interpreted as reflecting poorly on the CEBR program, when, in reality, there may be outside factors at play.

We agree that monitoring the performance of individual grantees is important; however, we disagree that concerns about not meeting targets due to external factors is reason to avoid setting targets. To the contrary, reviewing instances where the program missed or exceeded targets can provide opportunities to identify factors that are outside of the control of

[57]We have previously reported that, prior to setting targets, managers must first create performance measures that have a clear direction that indicates progress (so that it is meaningful if the results of the measure go up or down). To do this, it may be necessary to utilize multiple data points that, understood together, indicate progress. Once a performance measure with a clear direction indicating progress has been established, managers can then set a numerical target. See GAO, *Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges*, GAO-15-454, (Washington D.C.: June 2015), page 20. For example, NIJ could create a measure that assesses the "number of forensic cases analyzed" relative to the amount of funds expended for DNA analysis. Specifically, DOJ could determine a target or threshold for the number of cases analyzed while simultaneously taking into account the funding provided for DNA analysis as described in this simplified scenario: In 1 year, a grantee had a total of $100.00 in grant funds and expended $50.00 on DNA analysis and another $50.00 on equipment. In that year, the grantee was able to process fifty cases, so the level of production was $1.00 per case. During the next year, the grantee only expended $10.00 on analysis and processed ten cases. The level of production was still $1.00 per case. The target when taking into account funding provided could remain steady at $1.00 per case or could aim for improved efficiencies with a target of $.80 per case. We have not fully explored this hypothetical example and are providing it only as a means to show how two or more data points, understood together, can be used to establish a performance measure with a clear direction; and once a measure with a clear direction is established, a target can be set.

the program, which if reported alongside measures, can clarify results.[58] Thus, NIJ is not accountable for results driven by external factors; rather, NIJ is responsible for explaining external factors that affect reported results. If data collected are insufficient for gauging progress, or if additional detail is needed to fully explain performance, NIJ is responsible for obtaining the necessary information to make sense of performance results.[59]

Further, NIJ can set achievable targets to alleviate its concerns about being held accountable for unrealistic targets. For instance, targets related to reducing backlogs may focus on reductions in the rate of growth, which may be more achievable than focusing on reductions in size. In addition, other potential targets—such as targets related to the number or percent of grantees expected to achieve certain outputs or outcomes—may be set based on the grantees' prior trends. Therefore, setting targets related to aspects of program performance beyond CODIS uploads—for which NIJ has already established a target—would better position NIJ to demonstrate the extent to which performance is meeting expectations in other areas to Congress and other stakeholders.

Core program activities

As a group, the measures do not cover any core program activities. "Core program activities" means that, as a group, measures cover the activities that an entity is expected to perform to support the intent of the program. Based on our review of "permissible uses of funds" listed in CEBR solicitations, we identified the following core program activities: adding staff or funding additional staff hours, adding equipment and supplies, providing training, outsourcing DNA analysis or testing, and

[58]As we have previously reported, performance reporting systems should include information to help clarify aspects of performance that are difficult to quantify or explanations for factors that were outside the control of the agency. This information is critical to understanding underlying factors that may affect reported performance. See GAO, *Information Sharing: DHS Could Better Define How it Plans to Meet Its State and Local Mission and Improve Performance Accountability*, GAO-11-223 (Washington D.C.: December 2010), p. 50. Additionally, reviewing areas where the program missed or exceeded targets can also provide an opportunity to understand factors within NIJ's control that contributed to program results. For example, in areas where the program exceeded expectations, NIJ may be able to identify and share best practices; and in areas where the program fell short of expectations, NIJ may be able to identify problems and develop corrective actions. See GAO, *Agencies' Annual Performance Plans Under the Results Act: An Assessment Guide to Facilitate Congressional Decisionmaking*, GAO/GGD/AIMD-10.1.18 (Washington, D.C.: February 1998).

[59]See GAO, *Managing For Results: Data-Driven Performance Reviews Show Promise But Agencies Should Explore How to Involve Other Relevant Agencies*, GAO-13-228, (Washington, D.C.: February 2013), p.19.

other/crosscutting activities.[60] For a list of NIJ's permissible uses of funds, see appendix VIII. NIJ did not have its own list of core program activities and agreed that these uses of CEBR funds represented core program activities intended to achieve the purposes of the program. These core activities represent the strategies CEBR grantees use to achieve CEBR goals. These strategies can be used by grantees for labs that analyze crime scene DNA evidence and/or labs that test convicted offender and arrestee samples.

However, NIJ's performance measures do not track the extent to which grantees use these strategies or the extent to which these tools may have an effect on desired outcomes. NIJ officials said NIJ's financial IT system—the data system that tracks grantee spending of CEBR funds—is not configured to track grantee spending by the activities listed in the "permissible uses of funds" for the purposes of performance measurement. According to NIJ, any insights that might be gained by obtaining this information—either from reconfiguring its financial IT system or through other means (such as reviewing grantee documentation after awards are closed)—would not be worth the effort to collect it. Further, NIJ reported that there are challenges to breaking down expenditures by type of DNA analysis (i.e., analysis of crime scene evidence vs. analysis of samples from convicted offenders and arrestees).

However, determining a reasonable approach to measure core program activities would help NIJ have the information managers and stakeholders need to understand how the program works and how it might be improved. For example, NIJ could compare how labs spend CEBR funds to industry best practices, and thereby inform strategy for the CEBR program.[61] NIJ would not necessarily need to sort the various "permissible uses of funds" into the same groupings of "core program activities" we identified. Rather, NIJ could consider what information

[60]"Other/crosscutting" activities include: contracting for DNA audits, contracting for process mapping or other efficiency studies, administrative expenses, and activities associated with and including accreditation, among other things.

[61]According to NIJ, NIJ and the Scientific Working Group on DNA Analysis Methods—a national organization that serves as a forum to discuss, share, and evaluate forensic biology methods and protocols, among other things—will be developing a publication citing lab best practices for improving efficiencies to better assist lab stakeholders across the country. According to NIJ, they aim to have this publication available by spring of 2020. To inform this effort, NIJ intends to identify CEBR award recipients that have improved their capacity, decreased their backlogs significantly, or have publicly presented their efforts to increase productivity.

would be most useful for NIJ as it manages the program and for Congressional authorizers and appropriators as they oversee the program, and seek to obtain that information.

Balance

As a group, the measures cover 1 of 4 key program priorities. "Balance" means that, as a group, measures should ensure that a balance of key program priorities is covered. Based on our review of CEBR program documentation, we identified the following key program priorities: increase samples analyzed, reduce turnaround time, actual decrease in the backlog (i.e. reduction of aggregate nationwide backlog), and increase quality of analysis.[62] We found that all six performance measures relate to increasing samples analyzed.

NIJ collects data associated with 2 of the 4 program priorities—turnaround times and backlogs—from grantees, but NIJ does not consider these data to be associated with the six program-wide performance measures it uses to assess program progress, although NIJ does report these data to some extent in external reports.[63] NIJ officials stated that they do not include these additional measures as part of their official measures because there are too many confounding factors that could make turnaround time and backlogs increase. Thus, officials said, reporting such data would require too many caveats and explanations to ensure stakeholders understand that the CEBR program is achieving success.

NIJ officials also stated that one CEBR performance measure—percentage increase in forensic DNA profiles uploaded to CODIS from the previous year—reflects, among other things, CEBR contributions to

[62]NIJ officials agreed with these key program priorities but clarified that our original identification of the priority of increasing the quality of analysis should be changed to "maintain or increase" the quality of analysis. They also said that the priority "actual decrease in the backlog" should be viewed in context of increasing demand for DNA analysis.

[63]See DOJ, OJP, NIJ *Report Forensic Science: Fiscal Year 2016 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities*, (Washington, D.C.: May 2017). See also DOJ, OJP, NIJ *Report Forensic Science: Fiscal Year 2017 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities*, (Washington, D.C.: April 2018).

enhancing the quality of DNA analysis (1 of the 4 program priorities).[64] However, we determined that, although it is possible that this measure may reflect quality improvements to some degree, it more closely relates to an increase in samples analyzed.

We recognize there are challenges to assessing the program priorities of reducing turnaround time, decreasing the actual backlog, and maintaining or increasing the quality of analysis. Without reporting on a balance of program priorities, NIJ risks overemphasizing outcomes associated with one program priority—in this case, increasing samples analyzed—over the others. Further, reporting on a balance of priorities would better position NIJ to provide information to assist Congress as it develops strategies and allocates resources to address these issues.

OJP Has Designed Controls to Achieve Its Objectives Related to Compliance with Selected Federal Requirements for Grantee Procurement, but Has Not Properly Designed All Controls for Conflicts of Interest and Lobbying Related to CEBR Grants

[64]Because DNA profiles must meet a certain standard of quality to be uploaded into CODIS, NIJ reported that this measure reflects improvements in the quality of the DNA analysis. Specifically NIJ noted this measure reflects lab investments in advancing technologies and methods, training new personnel, and implementing robotics. Further NIJ reported that this measure reflects investments in quality that prevent lab shutdowns.

OJP Has Designed Controls to Achieve Its Objectives Related to Compliance with Selected Federal Requirements for Transparency in Grantee Procurement Related to CEBR Grants

According to OJP officials, grantees often use grant funds to procure lab equipment and outsource DNA analysis, among other things.[65] Procurement by grantees under CEBR awards is governed by federal regulation, which specifies that grantees that are states must use their own procurement procedures.[66] Many CEBR grantees are states; nevertheless, OJP officials said they apply controls related to transparency in grantee procurement to state grantees and to non-state grantees in the same manner.

We found that OJP designed one control that went beyond what was required by regulation. Specifically, as part of the grant application process, OJP designed a control to ensure that it reviews budget documentation from grantees related to all proposed procurement contracts.[67] It also has a process to review proposed new contracts, or significant modifications to existing contracts, during the award period. Table 3 provides a description of selected federal grantee procurement requirements, as well as OJP controls designed to achieve its objectives related to compliance with these requirements. For a more detailed explanation of these requirements and controls, see appendix IX.

[65]While there are various requirements associated with grantee procurement, we selected requirements that provide OJP or others the opportunity to review the specific details of contracts, such as the name of the contractor, how much the contract is for, and what services are being procured, among other things.

[66]2 C.F.R. pt. 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Per 2 C.F.R. § 200.317, grantees that are states (including their agencies and instrumentalities thereof) must follow the same policies and procedures they use for procurements from their non-federal funds. States must comply with 2 C.F.R. § 200.322, relating to procurement of recovered materials, and ensure that every purchase order or other contract comply with any clauses required by § 200.326. A state includes any state of the U.S., D.C., the territories, and any agency or instrumentality thereof; it does not include local governments. § 200.90. All other grantees and subgrantees, including subrecipients of a state, must follow the procurement standards set forth in 2 C.F.R. §§ 318-326.

[67]A contract is a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. A contract is separate from a subaward, which is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. 2 C.F.R. §§ 200.22, 200.92.

Table 3: Office of Justice Programs (OJP) Controls Related to Transparency in Grantee Procurement

Select requirements for OJP and Capacity Enhancement and Backlog Reduction (CEBR) program grantees	OJP control designed to achieve its objectives related to compliance with requirements
OJP review of procurements[a]	
As part of the grant application process, grantees must provide information about proposed procurement contracts.[b] Grantees must also provide information to the awarding agency during the award period for proposed new contracts or significant changes to existing contracts.	OJP designed a process to review all budget documentation from grantees related to proposed procurement contracts. OJP has also designed a process to review proposed new contracts or significant modifications to existing contracts during the award period.
An awarding agency may conduct pre-procurement review of grantee procurement documents when the procurement is expected to exceed the Simplified Acquisition Threshold (currently set for grantees at $250,000)[c] and is to be awarded without competition.	OJP designed has a process to review proposed sole-source contracts in excess of the Simplified Acquisition Threshold. Grantees cannot move forward with these procurement contracts until OJP provides approval of the non-competitive approach to the procurement.
Grantees are responsible for monitoring activities under federal awards to assure compliance with applicable federal requirements and performance expectations.	OJP asks grantees about monitoring mechanisms and reviews related documentation while conducting their own monitoring activities over grantees, such as during site visits.
Reporting to Congress[d]	
Beginning October 2018 and biennially thereafter, the Attorney General is to report to the Judiciary Committees the percentage of appropriated funds that each recipient—including CEBR grantees—paid to private labs to process DNA evidence, among other things.	OJP added a requirement to the fiscal year 2018 CEBR solicitation and officials said they added a special condition to the grant terms and conditions for grantees to report the amounts expended under CEBR awards on contracts for DNA analysis.

Source: GAO analysis of grantee procurement requirements and OJP information. | GAO-19-216

[a]The first requirement comes from the CEBR grant solicitation and the DOJ Grants Financial Guide. In addition to agreeing to comply with applicable statutes and regulations, CEBR recipients agree to comply with the terms specified in the DOJ Grants Financial Guide and the solicitation. OJP outlines these requirements in the grant terms and conditions. The requirements in the guide and the solicitation are also important elements of transparency in administering CEBR grants. Other requirements come from 2 C.F.R. pt. 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

[b]A contract is a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. A contract is separate from a subaward, which is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. 2 C.F.R. §§ 200.22, 200.92.

[c]The "simplified acquisition threshold"—currently set for grantees at $250,000—means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. 2 C.F.R. § 200.88; OMB M-18-18. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property.

[d]Requirements come from Justice for All Reauthorization Act, Pub. L. No. 114-324, § 3(b)(2)(C), 130 Stat. 1948, 1950.

OJP Has Designed Some Controls to Achieve Its Objectives Related to Compliance with Selected Federal Requirements for Conflicts of Interest and Lobbying in the Administration of CEBR Grants, but Has Not Properly Designed All Controls

Conflicts of Interest

Federal law prohibits government employees from participating personally and substantially in particular government matters, such as the administration of federal grants, which will affect their financial interests.[68] We identified 4 requirements related to conflicts of interest for OJP employees who administer CEBR grants. We found that OJP has designed controls to achieve its objectives related to compliance with 3 of the 4 requirements and has not properly designed a control for 1 of the 4 requirements. We also found that OJP designed some controls that went beyond what was required by regulation. For example, OJP has a process for employees involved in administering CEBR grants whereby they must certify to their supervisor that they do not have conflicts of interest prior to each application cycle. In addition, in 2017 the U.S. Office of Government Ethics (OGE) cited a key DOJ resource—*the DOJ Ethics Handbook for On and Off-Duty Conduct*—as a model resource that other executive branch agency ethics programs may want to replicate.[69]

[68]Criminal conflict of interest statutes governing OJP employees who administer CEBR grants are codified at 18 U.S.C. Chapter 11. Although these statutes cover a variety of topics related to conflicts of interest, our review focuses on the participation of OJP employees in government actions that may conflict with their personal financial interests, as specifically provided in 18 U.S.C. § 208. We focus on acts affecting personal financial interests because related regulatory requirements cover a broad range of issues directly applicable to OJP employees who administer CEBR grants.

[69]OGE provides leadership and oversight of the executive branch ethics program, which is designed to prevent and resolve conflicts of interest. The office conducts ethics program reviews at executive branch agencies to ensure consistent and sustainable ethics program compliance with established executive branch ethics laws, regulations and policies and provides recommendations for meaningful program improvement.

Table 4 provides a description of selected federal conflict of interest requirements applicable to OJP and its employees as they administer CEBR grants and OJP controls designed to achieve its objectives related to compliance with these requirements.[70] For a more detailed explanation of these requirements and controls, see appendix X.

Table 4: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Employees

Select requirements for OJP and OJP employees	OJP control designed to achieve its objectives related to compliance with requirements
OJP employee conflict of interest requirements[a]	
Employees should not participate in matters involving specific parties, such as grants, that are likely to affect their financial interests or under circumstances that would cause a resonable person to question their impartiality.	OJP designed a process for employees involved in administering grants to review conflict of interest requirements and certify to their supervisors that they do not have conflicts of interest during each application cycle.
Employees must not engage in outside employment or other outside activities that conflict with their official duties or employment that involves certain legal practice and matters, including grants.	The Department of Justice (DOJ) has summarized applicable requirements on its ethics website the DOJ Ethics Handbook for On and Off-Duty Conduct. Employees are required to obtain written approval from the Deputy Attorney General to waive these prohibitions.
OJP ethics training requirements[b]	
New employees must complete initial ethics training and specified employees must complete annual ethics training.	OJP requires all new employees to complete initial ethics training. OJP assigns all employees to annual ethics training sessions.
OJP annual financial disclosure requirements[c]	
Senior-level employees must file public financial disclosure reports annually, and disclosures must be reviewed and certified by a designated agency ethics official. Specified less senior employees must file confidential financial disclosure reports annually, and disclosures must be reviewed and certified by a designated agency ethics official.	OJP designed a process to collect annual financial disclosure reports from all staff who administer grants. OJP's Ethics Office and OJP's Assistant Attorney General review and sign senior-level employees' reports. Less senior employees' supervisors review and sign their reports. However, OJP does not have documentation designating which officials are authorized to certify (provide final signature) these reports or the levels of review required.

Source: GAO analysis of conflicts of interest requirements and OJP information. | GAO-19-216

[a]Requirements come from 5. C.F.R. pt. 2635, "Standards of Ethical Conduct for Employees of the Executive Branch;" 5 C.F.R. pt. 3801, "Supplemental Standards of Ethical Conduct for Employees of the Department of Justice."

[b]Requirements come from 5 C.F.R. pt. 2638, "Executive Branch Ethics Program"

[c]Requirements come from 5 U.S.C. app. §§ 101-111, "Financial Disclosure Requirements of Federal Personnel" and 5 C.F.R. pt. 2634, "Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture." Regarding the administration of CEBR grants, OJP officials stated that the Principal Deputy Assistant Attorney General for OJP, National Institute of Justice (NIJ) Director, and

[70]Because OJP administers CEBR as a formula grant program in which OJP generally allocates a specific amount of federal funds to applicants if they meet certain requirements, some risks associated with conflicts of interest that affect competitive grants, such as the appearance of or actual conflicts of interest among peer reviewers, do not apply to CEBR. Peer reviewers are subject-matter experts who provide objective, independent evaluations of competitive grant applications.

NIJ Principal Deputy Director positions are subject to public disclosure, and all other positions that administer CEBR grants are subject to confidential disclosure.

As shown in the last row of table 4, we found that OJP has not properly designed a control to achieve its objectives related to compliance with federal requirements for confidential financial disclosure. OJP designed a process to collect and review annual confidential financial disclosure reports, which are required to be filed by specified less senior employees, including those who participate personally and substantially in government actions such as grants.[71] Specifically, OJP officials stated that direct supervisors collect, review, and sign these reports. However, OJP does not have documentation designating which officials are authorized to certify (provide final signature) these reports, as required.

According to regulations issued by OGE, authority to certify confidential financial disclosure reports is held by an agency's Designated Agency Ethics Official (DAEO).[72] This certification authority may be delegated to an agency's alternate DAEO or other qualified officials, such as a deputy ethics official, deputy ethics counselor, deputy standards of conduct counselor, or the equivalent. Certifiers are responsible for ensuring that reports are complete and that no interests or positions disclosed in the reports violate (or appear to violate) applicable laws and regulations.[73] OGE guidance states that agencies' written financial disclosure procedures should address which officials have been designated to review and certify reports and the levels of review and approval, among other requirements. Further, Standards for Internal Control in the Federal Government state that management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives (in this case, ensuring they are in compliance with

[71]5 C.F.R. § 2634.904(a)(defining a confidential filer and providing examples of employees required to file).

[72]5 C.F.R. § 2634.605. OGE has the authority to establish a confidential financial disclosure system pursuant to section 107 of the Ethics and Governments Act, as amended, and has issued implementing regulations found at 5 C.F.R. part 2634, as well as additional guidance to executive branch agencies. The DAEO is the officer or employee who is designated by the head of an agency to administer the provisions of Title I of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2634 within an agency. *See* 5 C.F.R. § 2638.104 (detailing DAEO responsibilities, including review and certification of financial disclosure reports).

[73]5 C.F.R. § 2634.605(b)(1). Effective January 1, 2019, this review will also include applicable Executive Orders.

regulations and guidance intended to help them identify the appearance of or actual conflicts of interest).[74] In doing so, management documents internal control to meet operational needs.

OJP officials said they follow guidance issued by DOJ's Justice Management Division (JMD)—led by DOJ's DAEO—which specifies the level of review that is required. Specifically, JMD's guidance states that "the component head designates employees, generally supervisors, to collect, review, and sign reports."[75] Thus, while OJP officials acknowledge they have not documented specific employee positions that are to review and certify confidential financial disclosure reports, they believe doing so would be a formality because JMD guidance only specifies that supervisory review is required. However, per JMD guidance, the DAEO has delegated the authority to review confidential financial disclosure reports to component heads—in this case the Assistant Attorney General (AAG) for OJP—and has directed that further designation for review of such reports be made by them.

The designation of reviewers and certifiers by OJP's AAG is unclear. For instance, OJP officials said that OJP's deputy DAEO and office heads of OJP sub-components (or deputy office heads) have a role in the review process, but officials did not consistently describe those roles. Clear designations of roles within the review process is important given that OGE's guidance states that supervisors or other intermediate officials may review and sign reports, but only those who have been delegated authority may certify reports.[76] Without documenting which employees have been delegated the authority to certify employees' confidential financial disclosure reports and the levels of review and approval required, the specific positions which have been delegated authority and

[74]GAO-14-704G.

[75]Procedures for the Confidential Financial Disclosure System, *available at*, https://www.justice.gov/jmd/procedures-confidential-financial-disclosure-system. *See also,* Human Resources Order DOJ 1200.1(directing component heads to designate Reviewing Officials to collect, review, and sign confidential financial disclosure reports).

[76]There are two places for signature on the reports (1) "Signature and Title of Supervisor/Other Intermediate Reviewer," and (2) Signature and Title of Agency's Final Reviewing Official" (certification). According to OGE regulation and guidance, review and signature of a supervisor or other intermediate reviewer is optional. *See* 5 C.F.R. § 2634.605 ("The reviewing official may request an intermediate review by the filer's supervisor… After obtaining any intermediate review… the reviewing official shall examine the report …[and] certify it by signature and date.").

the required levels of review are not clear. This may limit OJP's ability to ensure that those who review and certify reports are properly qualified to do so or that reports are reviewed by all persons OJP intends. This puts OJP at risk of failing to identify the appearance of or actual conflicts of interest among employees.

Finally, we found that OJP has designed controls to achieve its objectives related to compliance with federal requirements related to the disclosure of conflicts of interest by CEBR grantees. Table 5 provides a description of selected federal conflicts of interest requirements applicable to OJP and grantees as they administer CEBR grants and OJP controls designed to achieve its objectives related to compliance with these requirements. For a more detailed explanation of these requirements and controls, see appendix X.

Table 5: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Awarding Agencies and Grantees

Select requirements for OJP employees and Capacity Enhancement and Backlog Reduction (CEBR) program grantees[a]	OJP control designed to achieve its objectives related to compliance with requirements
Awarding agencies must establish conflicts of interest policies for grants.	OJP's conflict of interest policies for grantees require grantees to agree as a condition of award acceptance to disclose conflicts of interest in writing to OJP and to maintain written standards of conduct covering conflicts of interest for grants.
Grantees must disclose in writing any conflicts of interest to the awarding agency.	OJP grant managers are to ask grantees about their policies and procedures that address conflicts of interest during grant monitoring activities, such as site visits.

Source: GAO analysis of conflicts of interest requirements and OJP information. | GAO-19-216

[a]Requirements come from 2 C.F.R. pt. 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

Lobbying

We found that OJP has designed some controls to achieve its objectives related to compliance with federal lobbying requirements in the administration of CEBR grants but has not properly designed all controls. Federal laws contain prohibitions with respect to the use of appropriated

funds for lobbying activities and violations are subject to civil penalties.[77] This includes a prohibition on recipients of federal awards using grant funds to lobby in connection with their award.

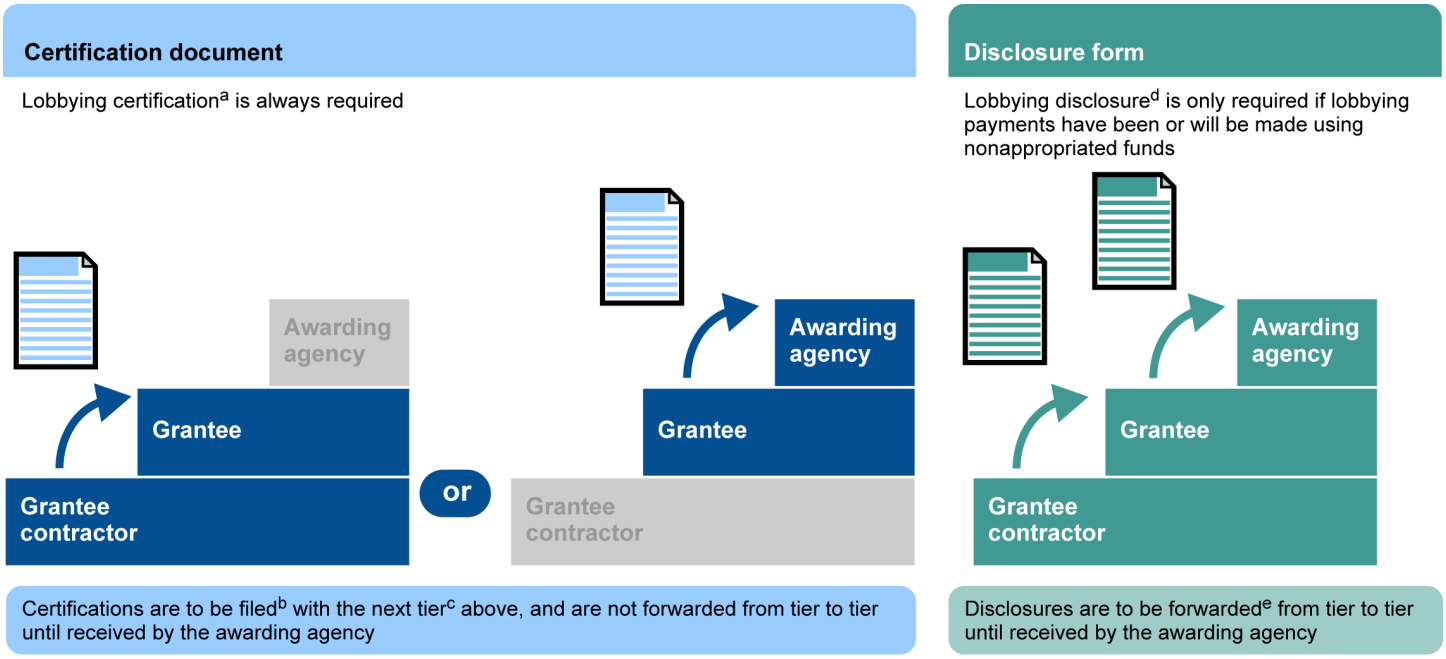
With respect to CEBR grants, we identified 4 requirements related to lobbying "certification" and "disclosure."[78] Lobbying certification refers to agreeing not to use appropriated funds to lobby. Lobbying disclosure refers to disclosing lobbying activities with respect to the covered federal action paid for with nonappropriated funds. Recipients of all federal awards over $100,000 are required to file certification documents and disclosure forms (if applicable) with the next tier above. Disclosure forms, but not certification documents, are to be forwarded from tier to tier until received by the federal agency.[79] In the case of CEBR grants, tiers include OJP, grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors. The specific requirements for filing lobbying certification and disclosure documents are shown in figure 5.

[77]*See* 18 U.S.C. 1913; 31 U.S.C. § 1352. Commonly referred to as the "Anti-Lobbying Act," 18 U.S.C. § 1913 prohibits appropriated funds from being used directly or indirectly to pay for activities (e.g., advertisements, printed materials, etc.) to influence government officials to support or oppose legislation, policies, or other matters (unless expressly authorized by Congress). OJP regards this lobbying prohibition as applicable to all federal funds, including grants, although some courts have continued to apply to only to federal employees even after its scope was expanded significantly in 2002. *See, e.g., AFGE, Local 3721 v. District of Columbia,* 2005 U.S. Dist. LEXIS 8326, *33-34 (D.D.C. May 2, 2005) (reaffirming that section 1913 only applies to federal departments or agencies and their employees despite broad prohibitory language).

[78]28 C.F.R. pt. 69, "New Restrictions on Lobbying," implements 31 U.S.C. § 1352, commonly referred to as the "Byrd Amendment." Lobbying in the context of this statute refers to paying any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. *See also* 2 C.F.R. pt. 200, Appendix II(I), which contains similar requirements. These requirements are different from lobbying registration and disclosure requirements set forth in the Lobbying Disclosure Act of 1995, as amended (codified at 2 U.S.C. §§ 1601 *et seq*.).

[79]The required certification document is set forth in appendix A to 28 C.F.R. pt. 69. The required disclosure form is set forth in appendix B to 28 C.F.R. pt. 69. Disclosure forms are only required if the recipient has used or plans to use nonappropriated funds to lobby with respect to the award. The forwarding requirements for disclosure forms are not included on the form set forth in appendix B to 28 C.F.R. pt. 69. Additional exceptions to the prohibition and disclosure requirements apply. Pursuant to the common rule for federal agencies issued by the Office of Management and Budget and implemented by DOJ, only disclosure forms, not certifications, are required to be forwarded from tier to tier until received by the awarding agency. 28 C.F.R. § 69.110(e). Any person who fails to file or amend a required disclosure form is subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. 31 U.S.C. § 1352(c)(2).

Figure 5: Lobbying Certification and Disclosure Requirements for Recipients of Federal Awards over $100,000, per 28 C.F.R. pt. 69



Source: GAO analysis of 28 C.F.R. pt 69 requirements for federal awards. | GAO-19-216

Note: The Department of Justice's regulations implement the Office of Management and Budget's government-wide guidance for 31 U.S.C. § 1352, commonly referred to as the "Byrd Amendment." Lobbying in the context of this statute refers to paying any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

[a]Lobbying certification refers primarily to agreeing not to use appropriated funds to lobby. The required certification document also requires the same certification language in all subgrant and contract documentation.

[b]According to OJP attorneys, certifications can be "filed" by including the required certification language in award or subgrant and contract documentation. Thus, there is not a need to "file" a separate certification document.

[c]Tiers can include the awarding agency, grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors.

[d]Lobbying disclosure refers to disclosing lobbying activities with respect to the covered federal action (in this case, a federal awards) paid for with nonappropriated funds. Disclosure forms are only required if the applicant, recipient, or subrecipient has used or plans to use nonappropriated funds to lobby with respect to the award. Additional exceptions to the prohibition and disclosure requirements apply.

[e]Pursuant to the regulations issued by the Department of Justice to implement the Office of Management and Budget's government-wide guidance for 31 U.S.C. § 1352, only disclosure forms, not certifications, are required to be forwarded from tier to tier until received by the awarding agency. 28 C.F.R. § 69.110(e).

Table 6 provides a description of select federal lobbying requirements, including the requirements in figure 5 above, as well as OJP controls designed to achieve its objectives related to compliance with these requirements. For a more detailed explanation of these requirements and controls, see appendix XI.

Table 6: Office of Justice Programs (OJP) Controls Related to Lobbying

Select requirements for OJP, Capacity Enhancement and Backlog Reduction (CEBR) program grantees, and others[a]	OJP control designed to achieve its objectives related to compliance with requirements
Grantees are prohibited from using appropriated funds, directly or indirectly, to lobby.[b]	As a condition of award acceptance, grantees must agree to comply with OJP's "General Conditions," which includes (1) language prohibiting the use of federal funds for lobbying, and (2) a requirement that grantees follow applicable lobbying laws, as set forth in DOJ's Grants Financial Guide. OJP also follows the grantees' use of grant funds through reviewing grantees' financial reports as part of its grant approval and monitoring processes.
Agencies are required to collect certification documents and disclosure forms[c] from grantees.[d]	OJP designed a process to collect certification documents and disclosure forms from CEBR grant applicants and grantees.
If grantees issue subgrants or contracts over $100,000, agencies are to ensure grantees collect certification documents and disclosure forms from tiers[e] below them. The agency must ensure that disclosure forms are forwarded from tier to tier until received by OJP. Grantees and subrecipients are to disclose subsequent lobbying events that require disclosure or specified events that materially affect the accuracy of previously filed disclosures at the end of each quarter.	The certification document that CEBR grant applicants agree to as part of the award acceptance process provides some information about applicable requirements. However, it does not state in clear terms what the specific requirements of the law are or how they are to be carried out, and OJP does not provide clarifying guidance.
Agencies are to take such actions as are necessary to ensure that these lobbying requirements are implemented and enforced.[f]	As stated above, OJP designed a process to collect certification documents and disclosure forms from CEBR applicants. However, it is not taking actions to ensure that grantees are requiring subrecipients to certify and disclose, and that grantees forward disclosures according to the requirements set forth above.

Source: GAO analysis of lobbying requirements and OJP information. | GAO-19-216

[a]Unless otherwise noted, requirements are from 28 C.F.R. pt. 69, "New Restrictions on Lobbying," implementing 31 U.S.C. § 1352, commonly referred to as the "Byrd Amendment."

[b]18 U.S.C. § 1913 prohibits appropriated funds from being used directly or indirectly to pay for activities (e.g., advertisements, printed materials, etc.) to influence government officials to support or oppose legislation, policies, or other matters (unless the activity is expressly authorized by Congress). OJP regards this lobbying prohibition as applicable to all federal funds, including grants, although some courts have continued to apply to only to federal employees even after its scope was expanded significantly in 2002. See, e.g., AFGE, Local 3721 v. District of Columbia, 2005 U.S. Dist. LEXIS 8326, *33-34 (D.D.C. May 2, 2005) (reaffirming that section 1913 only applies to federal departments or agencies and their employees despite broad prohibitory language).

[c]Disclosure forms are only required by regulation if the award recipient or subrecipient used nonappropriated funds to lobby with respect to the CEBR grant. However, we found that OJP requires all CEBR grantees to submit a disclosure form when applying for a CEBR grant.

[d]This requirement is only applicable to federal awards over $100,000. However, all CEBR grants are for at least $150,000. Additional exceptions and requirements apply.

[e]In the case of CEBR grants, tiers include OJP, grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors.

[f]31 U.S.C § 1352; see also 28 C.F.R. § 69.410.

As shown in table 6, we found that OJP has designed some controls to achieve its objectives related to compliance with federal lobbying requirements in the administration of CEBR grants. Specifically, we found that OJP has designed controls intended to ensure that grantees agree not to use, and agree not to allow tiers beneath them to use, appropriated funds to lobby. OJP also reviews grantees' financial reports as part of its grant approval and monitoring processes. Additionally, we found that OJP designed a control intended to ensure OJP obtains lobbying certification documents and disclosure forms from grantees.

We found that OJP has not properly designed other controls to achieve its objectives related to compliance with federal lobbying requirements (see last two rows of table 5). Specifically, we found that, for subgrants and contracts over $100,000, OJP has not properly designed a control intended to ensure that (1) CEBR grantees obtain certification documents and disclosure forms, as applicable, from tiers below them, and (2) disclosure forms are forwarded from tier to tier until received by OJP. OJP requires grant applicants to agree to the certification document set forth in regulation.[80] This certification document, in turn, lists certification and disclosure requirements, and states that, "The Applicant shall require that the language of this certification be included in the award documents for all subgrants and procurement contracts (and their subcontracts) funded with Federal award funds and shall ensure that any certifications or lobbying disclosures required of recipients of such subgrants and procurement contracts (or their subcontractors) are made and filed in accordance with 31 U.S.C. § 1352."

However, OJP's certification document does not state in clear terms what the specific requirements of the law are or how they are to be carried out, and OJP does not provide guidance to grantees to clarify the requirements. Additionally, we found that OJP does not follow up with grantees to ensure they are implementing the requirements to obtain

[80]Appendix A to 28 C.F.R. pt. 69.

lobbying certification documents and disclosure forms, as applicable, from tiers beneath them, and forwarding disclosure forms to OJP.

Standards for Internal Control in the Federal Government state that management should (1) externally communicate the necessary quality information to achieve the entity's objectives (in this case, compliance with this regulation), and (2) implement control activities through policies (in this case, following up with grantees to ensure they are implementing the requirements).[81]

Although referenced in OJP and DOJ documentation, OJP officials responsible for overseeing the implementation of these lobbying requirements were not fully aware of specific legal requirements. In particular, they were not aware that tiers beneath grantees were required to file certification documents and disclosure forms, as applicable, with tiers above them; nor were they aware that disclosure forms were required to be forwarded from tier to tier until received by OJP for subgrants and contracts over $100,000.[82] According to OJP officials, this was due, in part, to OJP focusing primarily on ensuring that grant funds are not used to lobby.[83] Officials said that ensuring grant funds are not used to lobby is more important than ensuring non-grant funds used to lobby are disclosed. Moreover, OJP officials said, the specific requirements in the regulation pertaining to certification and disclosure of lobbying activities at tiers below grantees are confusing and take significant effort to understand.[84]

In 2009, the DOJ Office of the Inspector General recommended NIJ "establish procedures to ensure that the required lobbying disclosure forms are submitted for all grantees, subgrantees, and contractors, and that the disclosures are considered when evaluating grant applications for

[81] GAO-14-704G.

[82]As discussed above, OJP and DOJ have published information about the relevant lobbying regulation in agency documents, such as the lobbying certification form that recipients must execute prior to receiving award funds and the *DOJ Grants Financial Guide* which grantees agree to comply with as a condition of receiving award funds.

[83]As noted in the table 5, OJP has designed controls to (1) ensure grantees agree not to use grants funds to lobby, and (2) review grantees' financial reports as part of its grant approval and monitoring processes.

[84]28 C.F.R. pt. 69.

award."[85] However, we found that OJP did not properly design controls intended to ensure that grantees obtain lobbying disclosure forms from subgrantees and contractors, as appropriate, and forward them to OJP, as required.

At least one other agency has taken steps to clarify federal lobbying certification and disclosure requirements. In 2012, the Department of Transportation's Federal Transit Administration identified that its award recipients may not have been correctly applying these requirements. To address this issue, the Federal Transit Administration (1) issued guidance for its award administrators to remind award recipients of the requirements, and (2) requested that administrators ensure award recipients review their activities and take steps to ensure full compliance.[86]

Clearly communicating requirements to grantees would better position OJP to ensure that grantees and tiers beneath them (subgrantees and contractors) are fully aware of these requirements. For instance, while not generalizable, 3 out of the 4 CEBR grantees we spoke with were not aware of one or more of these requirements. As a result, OJP, grantees, and tiers beneath them may not be fully complying with all federal lobbying disclosure requirements. Further, CEBR subgrantees and contractors could be using their own non-grant funds to engage in lobbying activities related to CEBR grants that neither the grantee nor OJP are aware of.

Conclusions

While DOJ has awarded nearly $1 billion to CEBR and its legacy programs since 2004, as of 2017, about 169,000 requests for crime

[85]Department of Justice, Office of the Inspector General, *U.S. Department of Justice Audit of the National Institute of Justice's Practices for Awarding Grants and Contracts in Fiscal Years 2005 through 2007,* Audit Report 09-38 (Washington, D.C.: September 2009). The text we use to quote this recommendation comes from the Executive Summary of the report. Notably, this same recommendation, as stated on page 41 of the report, does not reference contractors. We used the text from the recommendation in the Executive Summary because OJP restated it, and agreed with it, in its formal response to the audit (see appendix IX of the report). The OIG closed the recommendation as implemented in 2011 as OJP designed controls intended to ensure OJP obtains lobbying disclosure forms from grantees.

[86]Federal Transit Administration, *Certifications and Disclosure of Lobbying Activities* (Washington, D.C.: August 17, 2012), www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-and-disclosure-lobbying, accessed October 15, 2018.

scene DNA analysis were backlogged at state and local government crime labs. Backlogs persist for various reasons, including scientific advancements that enable law enforcement to obtain investigative leads from smaller amounts of biological evidence.

NIJ has not consistently documented CEBR program-wide goals and CEBR performance measures do not fully reflect attributes that would help NIJ assess progress toward those goals. Thus, NIJ is limited in its ability to communicate intended program results and progress toward those results. This information could inform Congress as it seeks to address challenges in the area of DNA evidence and allocate resources to address DNA evidence backlogs, capacity enhancement, and other priorities.

Further, while questions have been raised about potential improper connections among those who profit from DNA analysis and those who advocate for CEBR funding, we found that OJP has designed controls to achieve its objectives related to compliance with selected federal requirements associated with transparency in grantee procurement. However, OJP has not documented which employees have been delegated authority to certify employees' confidential financial disclosure reports or clarified all applicable federal requirements associated with lobbying. Addressing these issues would increase transparency into how OJP identifies and addresses the appearance of or actual conflicts of interest.

Recommendations for Executive Action

We are making the following four recommendations to OJP:

The Principal Deputy Assistant Attorney General for OJP should consistently document CEBR program-wide goals to clarify intended program results. (Recommendation 1)

The Principal Deputy Assistant Attorney General for OJP should ensure that performance measures for each CEBR program-wide goal fully reflect appropriate attributes of successful performance measures. (Recommendation 2)

The Principal Deputy Assistant Attorney General for OJP should document which employee positions have been delegated certification (final signature) authority for confidential financial disclosure reports and specify required levels of review and approval. (Recommendation 3)

The Principal Deputy Assistant Attorney General for OJP should (1) clarify its guidance to grantees to specify what their requirements are under 28 C.F.R. pt. 69 with regard to obtaining lobbying certification documents, and obtaining and forwarding to OJP lobbying disclosure forms, from tiers beneath them; and (2) design a control to follow-up with grantees to help ensure they are meeting these requirements. (Recommendation 4)

Agency Comments and Our Evaluation

We provided a draft of this report to DOJ for review and comment. In written comments, which are reproduced in full in appendix XII, DOJ concurred with the four recommendations and described actions planned to address them. DOJ also provided technical comments, which we have incorporated as appropriate.

DOJ concurred with our first recommendation to consistently document CEBR program-wide goals. Specifically, DOJ's OJP stated that it will review how these goals are communicated to grant recipients, Congress and stakeholders to determine what changes may be needed to ensure that the goals are consistently communicated.

DOJ also agreed to address our second recommendation on improving performance measures. OJP stated that it plans to develop a logic model that will more clearly indicate for grant recipients the measures and quantitative goals for their projects that may be achieved with CEBR funds. This model could be useful to grantees and could help address our recommendation if it establishes clear linkages between program activities, program-wide performance measures, and program-wide goals.

In addition, DOJ agreed to address our third recommendation related to documenting which employee positions have been delegated certification (final signature) authority for confidential disclosure reports. OJP stated that it would adopt its own version of a policy implemented by DOJ's Justice Management Division, which specifies that supervisors can sign reports. We believe this action, if implemented, would address our recommendation if OJP's version of the policy included a clear designation of which employee positions have been delegated certification (final signature) authority and specified required levels of review and approval.

Finally, DOJ concurred with our fourth recommendation to clarify guidance to grantees regarding their requirements under 28 C.F.R. pt. 69, and to design a control to ensure grantees are meeting these

requirements. Specifically, OJP stated that in February 2019, it implemented a centralized standard lobbying certification procedure so all award applicants will provide their certification at the point of registration. In addition, OJP stated that, beginning with the fiscal year 2019 grant awards, OJP plans to update a checklist it uses as part of its grant monitoring. According to OJP, this update will help OJP ensure that all applicable lobbying disclosure forms—including those from tiers beneath grantees—are collected and submitted to OJP. We look forward to reviewing these actions in more detail to determine if they meet the intent of our recommendation.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, and other interested parties. In addition, the report is available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 GoodwinG@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix XIII.

Gretta L. Goodwin
Director, Homeland Security and Justice

Appendix I: Objectives, Scope, and Methodology

This report addresses the following questions:

1. What is known about the amount of backlogged crime scene DNA evidence, including sexual assault kits (SAK), in state and local government labs and the factors that contribute to such backlogs?
2. What is known about the amount of unsubmitted DNA evidence, including SAKs, in law enforcement custody and the factors that contribute to this unsubmitted evidence?
3. To what extent does the Office of Justice Programs (OJP)—the primary grant-making arm of DOJ—measure DNA Capacity Enhancement and Backlog Reduction grant program (CEBR) performance?
4. To what extent has OJP designed controls related to conflicts of interest, transparency in grantee procurement, and lobbying requirements applicable to CEBR grants?

DNA Evidence Backlog Data (Objective 1)

To describe what is known about the amount of backlogged crime scene DNA evidence in state and local labs, we reviewed data from (1) the Bureau of Justice Statistic's (BJS) Census of Publicly Funded Forensic Crime Labs,[1] (2) West Virginia University's Project FORESIGHT,[2] and (3) DOJ's CEBR grant program. We determined that the most useful data for

[1]DOJ's BJS, a component within OJP, surveys all publicly-funded crime labs in the U.S. periodically in order to provide aggregate information on services provided and resources required (according to BJS, the last survey covered 2014). This includes information on the number of requests for crime scene DNA analysis and convicted offender and arrestee samples received, the number of requests and samples completed, and the number of requests and samples backlogged.

[2]Project FORESIGHT is a research project designed to help crime labs evaluate their efficiency and inform resource allocation decisions. It is run out of West Virginia University's College of Business and Economics and uses data from participating national, state, and local labs. Data submitted from labs include data on DNA analysis workloads and backlogs, among other things. According to a representative of Project FORESIGHT, as of October 2018, 149 lab systems in the U.S. (143 government lab systems representing 275 facilities and 6 private lab systems representing 8 facilities) contributed data to the project.

showing aggregate nationwide trends was CEBR data.[3] Regarding CEBR data, we collected yearly "baseline" data from the National Institute of Justice (NIJ), the component within DOJ that administers the CEBR program, for calendar years 2011 through 2017.[4] We selected these years because in 2011 two previous grant programs were combined into what is now known as the CEBR grant program, and because 2017 is the most recent full calendar year for which CEBR grantee data were available at the time of our review.

To assess the extent to which NIJ-compiled CEBR baseline data we use in this report are reliable, we completed a number of data reliability steps, including discussing data entry issues and data limitations with NIJ and select grantees; running logic tests on the data, verifying which grantees reported data each year (2011-2017), and comparing NIJ-compiled baseline data to a limited amount of source data from grantee reports, and comparing CEBR data against other data (BJS survey data for 2014 only). After completing data reliability steps, we determined that the CEBR baseline data we use in this report are sufficiently reliable for our purpose, which is to show year-over-year trends in workloads and backlogs among state and local government labs.

We determined that state and local government labs participating in the CEBR program from 2011 through 2017 generally represent the level of workloads and backlogs from state and local government labs that

[3]BJS's Census of Publicly Funded Forensic Crime Labs occurs periodically (e.g. 2005, 2009 and 2014) and is thus not useful for showing year-over-year trends. Participation in Project FORESIGHT has increased over time; however, determining the extent to which it is generalizable to government labs in the U.S. for each year for which we desired to show trend data would have taken significant resources. In contrast, grantee participation in CEBR has been relatively consistent over time, and almost all state and local government labs are represented in CEBR data.

[4]NIJ collects baseline data—which includes data from all labs within grantees jurisdictions (not only those labs that use CEBR grant funds)—as part of the grant application process.

participate in CODIS nationwide.[5] However, we found that CEBR turnaround time data for 2017 were not reported as consistently as data for workloads and backlogs and may not be representative of nationwide turnaround times for state and local government labs. Thus, in the report, we provide an example of the types of turnaround times reported by CEBR grantees, which may provide insights into turnaround times at state and local government labs across the United States.

To ensure we had identified all possible sources of data and to better understand how labs collect and report data, we met with a non-generalizable selection of knowledgeable officials and representatives from 11 entities, including 2 national associations, 2 academic research groups, 5 CEBR grantees (or grantee labs), and 2 components within DOJ.[6] We selected the national association because it represents labs across the country; we selected CEBR grantees that differed by type of jurisdiction (state versus local) with one CEBR grantee also being a grantee of DOJ's Sexual Assault Kit Initiative grant program; we selected the academic groups based on literature we had reviewed and a recommendation from DOJ officials; and we selected NIJ because it

[5]As of January 1, 2018 there were 194 state and local government labs in the U.S. that performed DNA analysis on evidence from crime scenes and participated in the FBI's Combined DNA Index System (CODIS). According to information provided by OJP, also as of January 1, 2018, CEBR grantees represented 189 of these 194 state and local government labs. For the 5 labs not included, we determined that they constituted a small portion of backlog data in other years so as not to substantively affect results (for example, less than 3 percent since 2012). We were unable to identify the number of labs that did not participate in the CEBR program for years 2011 through 2016. However, NIJ officials said that CEBR grantees have generally been representative of all state and local government labs in the U.S. that participated in CODIS in prior years as well. In addition, to ensure that fluctuations in the population of CEBR grantees during these years did not significantly affect our results, we compared data on the number of requests backlogged and the annual rate of change in the number of requests backlogged for each year from all grantees (including those grantees who reported data from some but not all years between 2011 and 2016) to data from a subset of grantees (including those that provided data for all years between 2011 through 2016). We found that any fluctuations did not affect overall conclusions about trends in DNA analysis in these prior years.

[6]Specifically, we met with representatives from the American Society of Crime Lab Directors and the International Association of Chiefs of Police. We also met with selected CEBR grantees or grantee labs, including: Washington D.C. Department of Forensic Sciences; Dallas County, TX, Southwestern Institute of Forensic Science; Harris County, TX, Institute of Forensic Sciences; Houston, TX, Houston Forensic Science Center; and Maryland State Police. We also met with academic researchers from West Virginia University's Project FORESIGHT as well as authors of a 2010 report entitled *Unanalyzed Evidence in Law Enforcement Agencies: A National Examination of Forensic Processing in Police Departments*. Finally, we met with federal officials from OJP's NIJ and BJS.

administers the CEBR program and BJS because it has data on lab outcomes.

Unsubmitted DNA Evidence, Including SAKs, In Law Enforcement Custody (Objective 2)

To identify and describe what is known about the amount of unsubmitted DNA evidence, including SAKs, in law enforcement custody, we reviewed information and/or data related to several efforts to inventory or quantify this evidence, including SAKs, in law enforcement custody.

- **DOJ's National Sexual Assault Kit Initiative (SAKI) grant program**. We obtained SAKI data from OJP's Bureau of Justice Assistance (BJA). BJA provided us with data from grantees that covered the time period of October 2015 through June 2018. We obtained data for this timeframe because the SAKI grant program began in October 2015, and June 2018 was the latest period for which SAKI data were available at the time of our analysis. To ensure the reliability of these data, we performed electronic checks for missing or duplicate data entries among grantees, and compared BJA-manipulated (i.e. "cleaned") data to raw SAKI data to ensure that the only discrepancies between the two datasets were those discrepancies identified by BJA officials. We also reviewed related documentation, such as survey questions and instructions for reporting data, and interviewed BJA officials and representatives from a SAKI contractor. We found these data to be sufficiently reliable for our purposes, which are to describe the extent to which SAKI (1) has contributed to an understanding of the number of unsubmitted SAKs in law enforcement possession among participating jurisdictions, and (2) has reported on activities and outcomes associated with analyzing previously unsubmitted SAKs.
- **New York County District Attorney's Office (DANY) SAK grant program.** We obtained data from DANY's Sexual Assault Kit Backlog Elimination Grant Program from DANY officials. DANY officials provided us with aggregated grantee data that covered the time period of October 2015 through September 2018. We obtained data for this timeframe because it reflects the first and last quarters from which data were available at the time of our analysis. To ensure the reliability of these data, we obtained and reviewed the forms and spreadsheets DANY used to obtain these data from grantees and aggregate them. We also interviewed DANY grant program administrators to understand the processes they use to aggregate grantee data. We found these data to be sufficiently reliable for our purpose, which is to describe the extent to which DANY grants have

contributed to an understanding of the number of unsubmitted SAKs in law enforcement possession among participating jurisdictions.

- **State SAK inventory data.** We obtained publicly-available aggregated SAK inventory data from Idaho and Texas websites. To select these states, we first conducted legal research to identify states with laws requiring them to conduct inventories of SAKs where evidence had not yet been submitted for lab analysis. We selected Texas and Idaho as illustrative examples because they differed with respect to legal requirements for conducting inventories, and timeframes associated with conducting those inventories.[7] To ensure the reliability of these data, we interviewed state officials about their data collection efforts and steps they took to ensure reliability; we also followed up with officials to ensure the data we present are accurate and up to date. We found these data to be sufficiently reliable for our purpose, which is to provide illustrative examples of how state laws contribute to understanding the number of unsubmitted SAKs in law enforcement possession.
- **Reporting requirements under the Sexual Assault Forensic Evidence Reporting (SAFER) Act.** We reviewed the reporting requirements for grantees and DOJ under the SAFER Act of 2013.[8] However, no data had been reported under this Act at the time of our review.
- **Joyful Heart Foundation.** We reviewed the website where the Joyful Heart Foundation posts links to the sources of data it uses to quantify the number of unsubmitted SAKs in law enforcement custody in state and local jurisdictions nationwide. We also interviewed Joyful Heart Foundation representatives responsible for collecting and aggregating these data to discuss their methods for ensuring the data are reliable. However, given the many and varied sources of data, we did not independently perform steps to ensure each source was sufficiently reliable.
- **Academic research.** We reviewed two prior nationwide studies on the amount and reasons for unsubmitted DNA evidence in law enforcement custody (including DNA evidence associated with

[7]Texas law required a one-time inventory by October 2011 and Idaho law required a one-time inventory by December 2016, to be followed by annual inventories.

[8]The SAFER Act of 2013, Pub. L. No. 113-4, § 1002, 127 Stat. 54, 127-131, added a new purpose area and related requirements to the Debbie Smith DNA Backlog Grant Program (34 U.S.C. § 40701). This Act authorizes grants for the purpose of conducting audits of sexual assault evidence, and requires the Attorney General to publish information from these audits online.

various types of crime, not just sexual assault). These two studies were the only studies we were able to identify that assessed the amount of unsubmitted DNA evidence on a nationwide scale. However, we did not include findings from either of these studies in our report because the data supporting these studies were not current.[9]

Lastly, we identified challenges associated with inventorying SAKS within jurisdictions and quantifying SAKs across jurisdictions based on (1) qualitative survey responses that DANY officials provided us;[10] (2) relevant DOJ reports; and (3) interviews with DNA evidence stakeholders.

Factors that Contribute to DNA Evidence Backlogs and Unsubmitted DNA Evidence, Including SAKs (Objectives 1 and 2)

To identify and describe factors that contribute to backlogs of unanalyzed DNA evidence at labs and unsubmitted DNA evidence, including SAKs, in law enforcement custody, we reviewed 22 reports, including 16 government reports (or government-funded reports), 4 academic journal articles, 1 book, and 1 study from a non-governmental organization. Five of the government (or government-funded) reports included nationwide studies of public crime labs and law enforcement agencies with original research. We identified this collection of literature by conducting database searches of peer reviewed material, government reports, and conference papers using the Online Computer Library Center and ProQuest Professional database search engines. We used keywords including “DNA evidence,” “backlog,” “law enforcement,” “laboratories,” and “awaiting testing,” among others. We discussed these factors with DNA evidence stakeholders from 17 entities, including: 2 national associations; 6 grantees of the CEBR, SAKI, and or DOJ’s Sexual Assault Forensic

[9]One study provided nationwide estimates of homicide, rape, and property crime cases with forensic evidence that was not submitted to a lab. See Strom, Kevin J. et. al., *The 2007 Survey of Law Enforcement Forensic Evidence Processing* (Washington, D.C.: 2009). See https://www.ncjrs.gov/pdffiles1/nij/grants/228415.pdf, accessed Oct. 23, 2018. Another study provided nationwide estimates of homicide, rape, and property crime cases with possible biological evidence which local law enforcement agencies had not submitted to a lab. See Lovrich, Nicholas P. et.al., *National Forensic DNA Study* Report, Final Report (Washington, D.C.: 2004), https://www.ncjrs.gov/pdffiles1/nij/grants/203970.pdf, accessed Oct. 23, 2018.

[10]As part of the regular reporting DANY required of its grantees, DANY asked that grantees respond to the following question: “Have the kits that will be tested under this grant been fully inventoried?” For those grantees that responded “no,” the questionnaire asked “If no, how is your inventory process progressing?” DANY officials provided us with grantees responses to this question over time without identifying individual grantees by name. Grantees’ responses to this question provided insights into challenges they faced in performing SAK inventories.

Evidence—Inventory, Tracking, and Reporting (SAFE-ITR) grant programs; 2 states' law enforcement agencies; 4 academics and practitioners; 2 components within DOJ, and 1 additional federal agency.[11] We selected these entities based on their knowledge of crime scene DNA evidence collection, storage, and analyses; as well as their familiarity with DOJ grant programs that address crime scene DNA evidence. Finally, we conducted legal research on state laws that require law enforcement to submit SAKs for testing and that also require labs to analyze previously unanalyzed SAKs. We summarized information from these sources to identify common factors, and we included illustrative examples of the types of factors we identified in this report.

CEBR Grant Program Performance Measurement (Objective 3)

To evaluate how DOJ measures CEBR program performance, we first sought to identify CEBR program-wide goals. To do this, we reviewed OJP CEBR documentation, including the most recent CEBR grant solicitation and NIJ reports that include CEBR performance information. We also discussed CEBR goals with NIJ officials. We then assessed the CEBR program-wide goals against federal internal control standards that call for management to define goals clearly.[12]

To evaluate the extent to which CEBR program-wide performance measures reflect attributes of successful performance measures, we obtained and reviewed OJP documentation that defined the six CEBR program-wide performance measures NIJ currently uses to assess CEBR program-wide performance. This documentation included definitions of

[11]Specifically, we met with representatives from the following national associations: the American Society of Crime Lab Directors and the International Association of Chiefs of Police. We also met with select state and local labs that are grantees of the CEBR, SAFE-ITR, and/or SAKI grant programs, including: Dallas County, TX, Southwestern Institute of Forensic Sciences; Washington D.C. Department of Forensic Sciences; Georgia Criminal Justice Coordinating Council; Harris County, TX, Institute of Forensic Sciences; Houston Forensic Science Center; and Maryland State Police. We also met with representatives from the Idaho State Police and Texas Department of Public Safety. We also met with academics and practitioners, including the director of West Virginia University's Project FORESIGHT, authors of a 2010 report entitled *Unanalyzed Evidence in Law Enforcement Agencies: A National Examination of Forensic Processing in Police Departments,* the District Attorney of New York County, and a retired law enforcement officer. Additionally, we spoke to representatives from a survivors' advocacy group (the Joyful Heart Foundation). Finally, we met with federal officials from DOJ's NIJ and BJA, as well as officials from the Congressional Research Service.

[12]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014), Principle 6 – Define Objectives and Risk Tolerances (starts on page 35).

measures, the methodology used to calculate the measures, and any associated targets. To determine the extent to which DOJ's six CEBR program-wide performance measures effectively assessed progress, we compared them against 5 of 9 attributes of successful performance measures identified in our previous work.[13] We selected 3 of the 9 attributes (linkage, clarity, and measurable targets) because they are foundational. By "foundational" we mean that, without them, other attributes are less relevant or important. We selected 2 of the 9 attributes (core program activities, balance) because they assess the extent to which the performance measures cover a variety of aspects of performance.[14] To assess the extent to which NIJ's six CEBR performance measures met these criteria, two GAO analysts independently assessed each performance measure against these 5 criteria, and then met to discuss and reconcile differences. A GAO subject matter expert on performance measures provided input on the design, execution, and reporting of this audit objective.

[13]Our prior work establishes 9 attributes of successful performance measures: linkage, clarity, measurable targets, objectivity, reliability, core program activities, limited overlap, balance, and government-wide priorities. GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143 (Washington, D.C.: November 2002).

[14]We excluded 4 of the 9 attributes. Specifically, we excluded 3 of the 9 attributes (objectivity, reliability, and limited overlap) because they may not be relevant if performance measures are not aligned (linked) with program goals; they may be difficult to understand without clarity across measures; and they may lack meaning if the measures do not have targets and thus do not set performance expectations. We excluded 1 of the 9 attributes (government-wide priorities) because we determined that it is not necessarily applicable to the CEBR program. The attribute of "government-wide priorities" specifies that performance measures should cover a range of priorities, such as quality, timeliness, efficiency, cost of service, and customer satisfaction. While important, we believe it is not realistic to expect that a single grant program include performance measures that cover most or all government-wide priorities. Rather, we believe that attributes of "balance" and "core program activities"—which we did include—are sufficient to ensure that the performance measures cover an appropriate variety of aspects of performance.

OJP Controls Related to Conflicts of Interest, Transparency in Grantee Contracting, and Lobbying Applicable to CEBR Grants (Objective 4)

To evaluate the extent to OJP has designed controls related to conflicts of interest, transparency in grantee procurement, and lobbying requirements applicable to CEBR grants, we conducted legal research in these topic areas to identify federal statutes and regulations applicable to OJP and CEBR applicants, recipients, and subrecipients.[15] We also reviewed DOJ documentation such as the DOJ Ethics Handbook for On and Off-Duty Conduct, OJP Grants Management Manual, and the DOJ Grants Financial Guide to identify any additional requirements (including requirements that DOJ imposes on itself which may not stem from statute or regulation). OJP attorneys verified that the list of requirements we had compiled was complete and accurate. To determine the extent to which OJP designed controls to achieve its objectives related to compliance with these requirements, we reviewed the Fiscal Year 2018 CEBR solicitation, DOJ Departmental Ethics Website, DOJ Ethics Handbook for On and Off-Duty Conduct, DOJ Grants Financial Guide, OJP ethics training materials, and OJP's "General Conditions" for grants (available on OJP's website). To further determine the extent to which OJP has designed each control, we also obtained and reviewed a variety of CEBR program documents, including those associated with reviewing and approving CEBR grant applications, and grant monitoring. Examples of these documents include: CEBR grantee budget narratives and budget detail worksheets (submitted as part of a grant application), OJP's checklist for ensuring grantee application packages have all required information, and OJP's grant monitoring checklists (which OJP grant managers use when conducting grant monitoring activities).[16] We also discussed some of the controls that we identified with four of the CEBR grantees discussed earlier. We did not review the extent to which controls were implemented effectively (e.g. through controls testing procedures such as conducting case file reviews), nor did we review the extent to which employees were trained to implement controls effectively (e.g. through reviewing training material and/or outcomes of such training). Finally, we assessed the controls we identified as not properly designed

[15]We examined requirements applicable to subgrantees and contractors under CEBR grantees and subgrantees, and subcontractors.

[16]Grant monitoring allows grant managers to observe compliance with requirements and progress against project goals, and ensure that adequate controls are in place to improve accountability. Grant monitoring activities are carried out through communication with the grantee, desk reviews (reviews of documents in grantees' files), and in-depth monitoring (consisting of site visits and enhanced programmatic desk reviews).

against federal internal control standards which specify how management should design controls to achieve its compliance objectives.[17]

We conducted this performance audit from September 2017 to March 2019 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.

[17]GAO-14-704G. Per guidance in these standards, an existing control is not properly designed when, even if the control operates as designed, the control objective would not be met.

Appendix II: Additional Sources of Lab Data and Considerations When Reviewing DNA Evidence Data

In addition to reviewing the DNA Capacity Enhancement and Backlog Reduction (CEBR) grant program data, we also reviewed data from (1) the Bureau of Justice Statistic's (BJS) Census of Publicly Funded Forensic Crime Labs, and (2) West Virginia University's Project FORESIGHT. We determined that the most useful data for showing aggregate nationwide trends was CEBR data and used CEBR data in our report.[1] In reviewing these datasets and through discussions with lab officials, we identified a number of considerations related to analyzing and interpreting data from any of these sources, or from individual labs. These considerations may pose difficulties assessing data across labs or datasets. However, we did not find that these considerations invalidated the CEBR data we present in the report.

Additional Sources of State and Local Lab Data

BJS Census of Publicly Funded Forensic Crime Laboratories

BJS, a component within the Office of Justice Programs (OJP), surveys all publicly-funded crime labs in the U.S. periodically in order to provide aggregate information on services provided and resources required (according to BJS, the last survey covered 2014). This includes information on the number of requests for crime scene DNA analysis and convicted offender and arrestee samples received, the number of requests and samples completed, and the number of requests and samples backlogged.

Project FORESIGHT

Project FORESIGHT is a research project designed to help crime labs evaluate their efficiency and inform resource allocation decisions. It is operated through West Virginia University's College of Business and Economics and uses data from participating national, state, and local labs. Data submitted from labs include data on DNA analysis workloads and backlogs, among other things. According to a representative of Project FORESIGHT, as of October 2018, 149 lab systems in the U.S. (143 government lab systems representing 275 facilities and 6 private lab systems representing 8 facilities) contributed data to the project. A recent

[1]We also presented CEBR data in a testimony statement in July 2018. See GAO, *DNA Evidence: Preliminary Observations on DOJ's DNA Capacity Enhancement and Backlog Reduction Grant Program*, GAO-18-651T (Washington D.C.: July 18, 2018).

software project, called FORESIGHT 20/20, enables participating labs to provide data, and receive reports back from project FORESIGHT, almost automatically (with a few mouse clicks).

Considerations When Reviewing Lab DNA Evidence Data

Identifying the Universe of Labs

Data on DNA-related workloads and backlogs may be reported at different levels. Specifically, data may be reported by a single lab facility, a multi-lab system (containing more than one lab facility), or a grantee (which also may represent more than one lab facility). Additionally, data sets may include data from government labs only, or government labs and private labs. Further, DNA analysis of crime scene evidence and DNA testing of convicted offender and arrestee samples involve different processes, and some labs only perform one function or the other.

Using “Cases” Versus “Requests”

Labs or datasets may refer to “requests” for DNA analysis, or they may refer to these requests for DNA analysis as “cases.” We use “requests” in this report, since there may be several requests associated with a law enforcement “case.”

Counting Requests for DNA Analysis as One Request or Two Requests

Requests for DNA analysis may be defined and tabulated differently. In our report, we define DNA analysis as (1) biology screening (locating, screening, identifying, and characterizing blood and other biological stains and substances); and/or (2) DNA testing (identifying and comparing DNA profiles in biological samples). However, one data collection effort we reviewed and one lab we interviewed considered requests for biology screening and requests for DNA testing as separate requests. Specifically, we found that reported data on DNA requests may count requests in two ways:

1. **Biology screening and/or DNA testing as one request**. If the request requires biology screening and/or DNA testing, it is counted once as one request (such that if a request requires one or both, it is counted once)

2. **Biology screening and DNA testing as separate requests.** If the request requires only biology screening, it is reported as a "request for biology screening;" if the request requires only DNA testing, it is counted as a "request for DNA testing;" and if the request requires both biology screening and DNA testing, it is counted as two requests—one request for biology screening and one request for DNA testing.

Including or Excluding Requests Closed by Administrative Means

Data sets may or may not include requests closed by administrative means in reported data. Some requests may be closed by administrative means rather than through analysis, such as when a suspect pleads guilty before the evidence is analyzed or when the victim has not consented to participate in the criminal justice process. These requests may or may not be included in the number of requests received or the number of requests completed. A related issue occurs when law enforcement officials or prosecutors fail to withdraw requests from the lab's queue when DNA analysis is no longer needed.

Including or excluding outsourced requests

Data sets may or may not include requests that government labs outsourced to other labs for DNA analysis (including private labs). A related issue occurs when local law enforcement agencies outsource DNA analysis directly to private labs. In these instances, the DNA evidence is shipped from the law enforcement agency directly to the private lab, which performs DNA analysis. After the private lab performs DNA analysis, it provides the results of the analysis to a government lab for review and potential upload of the results into the FBI's Combined DNA Index System (CODIS).[2]

Calculating and Interpreting the Meaning of Turnaround Time for Requests

Labs or data sets may calculate turnaround times for requests differently, and interpreting turnaround time may require additional explanatory information to help understand how labs are performing, as described in the bullets below.

[2]CODIS is a system that allows federal, state, and local labs to exchange and compare DNA profiles electronically in order to develop investigative leads. Only federal, state, or local government labs that meet the FBI's Quality Assurance Standards can participate in CODIS.

- **Including/excluding "expedited" requests:** Data on turnaround time may or may not include expedited requests, which occur when law enforcement officials or prosecutors mark a request as needing to be expedited or rushed due to various factors.
- **Different start and end points:** Labs or data sets may start or end the "clock" for measuring turnaround time at different points. For instance, according to two lab directors we interviewed, some labs may begin the clock for counting turnaround time when the area of the lab that performs DNA analysis takes custody of the evidence, and other labs may not begin the clock until an analyst begins working on the request.[3] NIJ defines the ending of the clock for turnaround time as when the lab issues a report with the results to law enforcement. Lab directors also suggested there could be different ending points for turnaround time.
- **Interpreting the link between turnaround time and performance:** According to NIJ officials, a high average turnaround time may not necessarily be an indicator of poor performance at a lab or across lab populations. This is because turnaround time is a measurement that looks backward at completed requests for analysis. Thus, a lab that has made a concerted effort to clear its backlog of old requests for analysis will, in the immediate aftermath, report a higher average turnaround time. Labs may also complete requests associated with violent crimes faster than requests associated with nonviolent crimes, which may or may not be reported separately.

Analyzing "Requests" Versus More Granular Information

Depending on the purpose of the analysis, it may be helpful to review data that goes beyond "requests." According to NIJ and stakeholders we spoke with, all requests are not equal and do not take the same amount of resources. Specifically, requests for analysis may contain one or more "items" for examination, such as weapons, carpets, or bedsheets. Each item may contain multiple "samples" for analysis (e.g. multiple stains on clothing). Each sample, in turn, may be subject to multiple "tests," such as instrumental analysis, extractions, or comparative examinations. Thus,

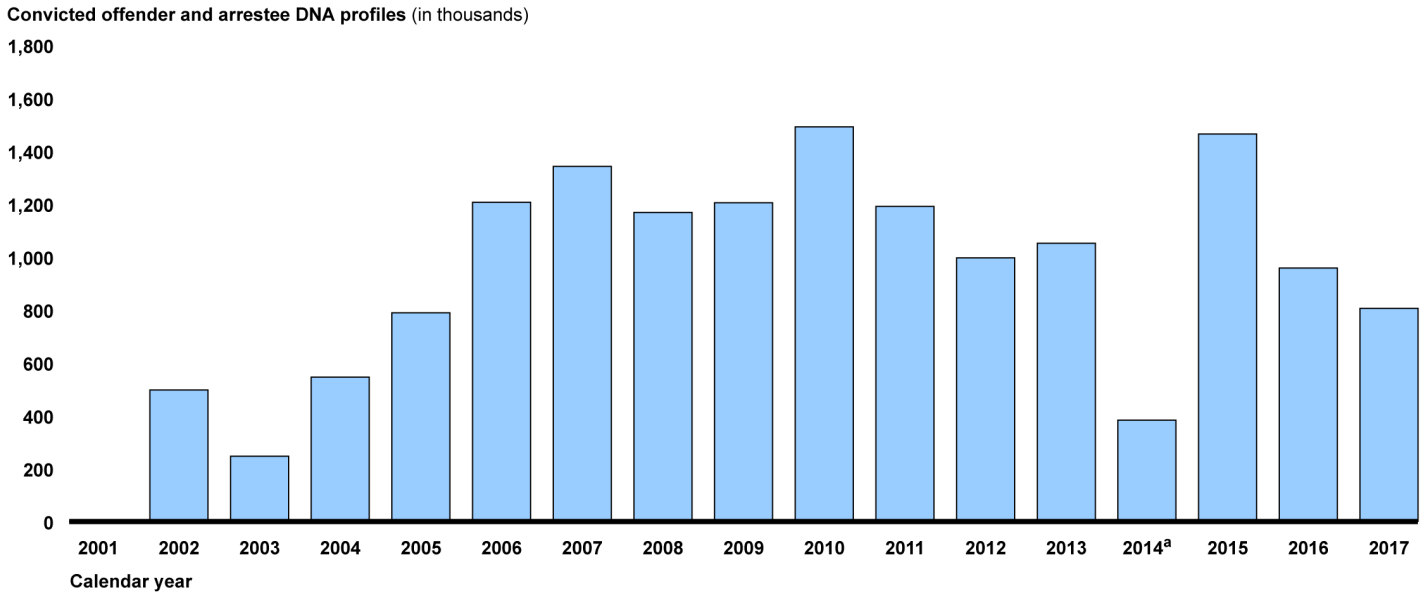
[3]Evidence associated with a given request may need to first be processed in one or more other areas of the lab—such as areas that perform latent fingerprint analysis or firearms analysis—before being processed by the area of the lab that performs DNA analysis. Thus, another potential source of confusion is that turnaround time for a given request can be thought of as (1) the time it takes to process evidence only in the area of the lab that performs DNA analysis, or (2) the time it takes to process evidence in the area of the lab that performs DNA analysis and in other areas of the lab where evidence may also need to be processed.

depending on the number of items, samples, and tests needed, requests can vary greatly in the amount of resources needed.

Appendix III: Information on Backlogs of Convicted Offender and Arrestee Samples

The processing of convicted offender and arrestee samples involves the DNA testing of the samples and the subsequent review and upload of the resulting DNA profiles into the FBI's Combined DNA Index System (CODIS). Data from the National DNA Index System (NDIS)—the national level of CODIS—show that convicted offender and arrestee sample DNA profile uploads into CODIS increased significantly from 2003 through 2010, then have generally decreased since 2010, as shown in figure 6.[1]

Figure 6: Convicted Offender and Arrestee DNA Profile Uploads into the National DNA Index System (NDIS)



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-19-216

Note: A DNA profile is generally considered to be a unique genetic identifier based on the genetic constitution of an individual. DNA samples may be taken from convicted offenders, arrestees, and other categories of persons as authorized by law.

[a]The data show a significant drop in profiles uploaded in 2014, followed by a large increase in 2015. FBI officials said this was the effect of a 2014 legal decision in California that forced state officials to remove many offender profiles from CODIS. Shortly after, California was able to reinstate the profiles, which explains the large increase in 2015.

According to NIJ, a primary reason for the growth in convicted offender and arrestee DNA profile uploads prior to 2010 was the passage of state laws requiring the collection and testing of DNA samples. For instance, NIJ reported that by 2009, the federal government and all 50 states had

[1]CODIS has multiple levels where DNA profiles can be stored and searched: the local level, the state level, and the national level. NDIS is the national level of CODIS.

passed bills requiring collection of DNA from offenders convicted of certain crimes; in addition, the federal government and many states had also passed legislation to allow collection from people who are arrested for certain crimes. According to NIJ, between 2005 and 2010, it made more than $58 million available to reduce the backlog of samples of convicted offenders and arrestees. According to officials from NIJ, the FBI, and the American Society of Crime Lab Directors, this funding helped build labs' capacities such that convicted offender and arrestee backlogs are no longer an issue of concern.

Appendix IV: Grant Programs That Address DNA Evidence Backlogs and Unsubmitted Sexual Assault Kits

The Department of Justice (DOJ) has two grant programs that primarily address DNA evidence backlogs at labs and two grant programs that primarily address unsubmitted sexual assault kits (SAK) in law enforcement custody.

Grants That Primarily Address DNA Backlogs at Labs

The DNA Capacity Enhancement and Backlog Reduction grant program (CEBR) dates back to 2004 and funds are available to address DNA evidence backlogs in labs, among other things. The CEBR program is funded by an appropriation "for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities."[1] The broad appropriations language enables the National Institute of Justice (NIJ) to allocate this funding for a variety of forensic programs. However, the Justice for All Reauthorization Act of 2016 mandated that at least 75 percent of funds made available under this appropriation be used for grants for DNA analysis or to increase the capacity of government labs to carry out DNA analysis.[2] In 2017, NIJ began the Forensic DNA Laboratory Efficiency Improvement and Capacity Enhancement (EI&CE) grant program which is intended to

[1]The appropriation language states that funds are "for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities, including the purposes authorized under section 2 of the DNA Analysis Backlog Elimination Act of 2000 (Public Law 106–546) (the Debbie Smith DNA Backlog Grant Program)." The purposes of the CEBR grant program are generally similar to the purposes of the Debbie Smith DNA Backlog Grant Program. There is no additional statutory authorization for the program.

[2]The Justice for All Reauthorization Act of 2016, Pub. L. No. 114-324, § 3(a), requires that not less than 75 percent of the funds made available under this appropriation be provided for grants for activities described under paragraphs (1), (2), and (3) of section 2(a) of the DNA Analysis Backlog Elimination Act of 2000. Those purposes include (1) To carry out, for inclusion in the Combined DNA Index System of the FBI, DNA analyses of samples collected under applicable legal authority; (2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect; and (3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analysis of samples specified in the purposes above. Prior to this, congressional reports accompanying the appropriation have directed that the Office of Justice Programs (OJP) make funding for DNA analysis and capacity enhancement a priority. OJP officials said they use CEBR funding to help meet the "75 percent" requirement discussed above.

complement the CEBR program by allowing more flexibility in how funds can be used.[3] Both CEBR and EI&CE program details are in table 7.

Table 7: Department of Justice (DOJ) Grant Programs that Address DNA Evidence Backlogs at Labs

Grant program	Year began	Fiscal year 2018 participation and amount awarded[a]	Description
DNA Capacity Enhancement and Backlog Reduction (CEBR) Program[b]	2004	127 awards $67.8 million awarded	CEBR is a formula[c] grant program administered by the National Institute of Justice (NIJ). Eligible participants are states and units of local government with existing crime labs. Award funds support capacity building and analysis at labs related to (1) DNA evidence collected from crime scenes, and (2) DNA samples taken from convicted offenders and arrestees.
Forensic DNA Lab Efficiency Improvement and Capacity Enhancement (EI&CE) Program	2017	19 awards $9.3 million	EI&CE is a grant program administered by NIJ. Awards are made competitively. Eligible participants are states and units of local government with existing crime labs. Applications must be project based. Award funds may be used to support efficiency and capacity-building at labs related to DNA and non-DNA disciplines (such as forensic analysis of latent fingerprints and firearms).

Source: GAO analysis of DOJ documents. | GAO-19-216.

[a]These amounts reflect amounts awarded in fiscal year 2018, with the actual project period beginning January 1, 2019.

[b]The CEBR program has several legacy names dating back to 2004. In 2011, grant programs that separately funded labs that (1) analyzed crime scene DNA evidence and (2) tested convicted offender and arrestee DNA samples, were combined into one grant program called the DNA Backlog Reduction Program. In 2014, this was renamed the DNA Capacity Enhancement and Backlog Reduction Program.

[c]Formula grant awards are made non-competitively to states and units of local government based on a formula set by DOJ (as opposed to a formula set by statue in the case of some grant programs) that allocates certain amounts to each state. This formula takes into account each state's population and associated crime levels, and guarantees a minimum amount for eligible applicants from each state.

[3]The EI&CE program is funded by the same appropriation as the CEBR program, and OJP officials said they also use funding provided through this grant program to meet the "75 percent" requirement discussed in the previous footnote. The CEBR program does not permit the use of funds for non-DNA disciplines. According to DOJ, enhancing capacity and improving efficiency in the processing and testing of non-DNA evidence from cases that also involve a request for DNA analysis will ultimately reduce the backlog of DNA evidence. According to NIJ officials, this is because evidence associated with a given request may need to first be processed in one or more other areas of the lab—such as areas that perform latent fingerprint analysis or firearms analysis—before being processed by the area of the lab that performs DNA analysis. Thus, according to officials, enhancing capacity and improving efficiency in other areas of the lab will result in a shorter overall lab processing time for the request as a whole.

Grants That Primarily Address Unsubmitted SAKs in Law Enforcement Custody

The Sexual Assault Kit Initiative (SAKI) program began in 2015 and addresses unsubmitted SAKs and other related challenges. SAKI is administered by the Bureau of Justice Assistance (BJA), a component within OJP which provides leadership and services in grant administration.[4] In 2016, NIJ began the Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting (SAFE-ITR) program, which provides funding to inventory SAKs, track their movement, and report on their status (e.g. in law enforcement custody, submitted to labs, etc.).[5] These grant programs are detailed in table 8.

Table 8: Department of Justice (DOJ) Grant Programs that Address Sexual Assault Kits (SAK) in Law Enforcement Custody that Have Not Been Submitted to Labs for DNA Analysis

Grant program	Year began	Fiscal year 2018 participation and amount awarded[a]	Description
Sexual Assault Kit Initiative (SAKI)	2015	32 awards $42.9 million	• SAKI is a grant program administered by DOJ's Bureau of Justice Assistance. Awards are made competitively. • Eligible participants include state law enforcement agencies and units of local government, among other entities. • Award funds support multidisciplinary community response teams that inventory, track, and analyze previously unsubmitted SAKs, and perform a variety of other related services.[b] Award funds may also be used to collect lawfully-owed DNA samples and support investigation and prosecution of cold case sexual assaults.[c]

[4]According to OJP officials, SAKI is authorized and funded by an appropriation "for a grant program for community-based sexual assault response reform." *See* Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, 131 Stat. 135, 204.

[5]According to OJP the SAFE-ITR program for fiscal years 2016 and 2017 was authorized and funded by appropriations "for a grant program for community-based sexual assault response reform," and/or "a DNA analysis and capacity enhancement program and…forensic activities." *See id.* Program requirements for fiscal years 2016 and 2017 for the SAFE-ITR program are described in NIJ's grant solicitations and are similar, but not identical, to the new authorized grant program area contained in the SAFER Act of 2013, Pub. L. No. 113-4, § 1002, 127 Stat. 54, 127 (amending 34 U.S.C. § 40701). For fiscal year 2018, DOJ is required by the Justice for All Reauthorization Act of 2016 to allocate no less than 5 percent of funds authorized and funded by appropriations for "a DNA analysis and capacity enhancement program and…forensic activities" to this new purpose areas, in addition to other requirements Pub. L. No. 114-324, § 3, 130 Stat. 1948, 1949. According to OJP officials, the fiscal year 2018 SAFE-ITR grant program fulfills this allocation requirement.

Grant program	Year began	Fiscal year 2018 participation and amount awarded[a]	Description
Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting (SAFE-ITR)	2016	3 awards $1.4 million	SAFE-ITR is a grant program administered by DOJ's National Institute of Justice. Awards are made competitively. Eligible participants are states and units of local government. Award funds support efforts to inventory, track, and report on previously unsubmitted SAKs as they move from collection through final disposition.

Source: GAO analysis of DOJ documents. | GAO-19-216

[a]These amounts reflect amounts awarded in fiscal year 2018, with the actual project period beginning on October 1, 2018 for SAKI grantees and January 1, 2019 for SAFE-ITR grantees.

[b]These other services may include, for example, producing necessary protocols and policies in support of improved coordination and collaboration among labs, police, prosecutors, and victim service providers; or providing resources to address sexual assault investigations and prosecutions.

[c]Lawfully-owed DNA samples are DNA samples that have never been collected from convicted offenders, arrestees, and potentially others, even though applicable law allows for their collection. According to BJA, collection of lawfully-owed DNA samples and investigation and prosecution of cold case sexual assaults should be undertaken only after a jurisdiction has made significant progress in addressing issues associated with unsubmitted SAKs.

Appendix V: Selected Efforts to Inventory or Quantify Unsubmitted Sexual Assault Kits and Associated Challenges

The information listed below provides descriptions of, and data from, large-scale efforts to inventory or quantify unsubmitted sexual assault kits (SAK) in law enforcement custody. For some efforts, the data provided goes beyond counts of unsubmitted SAKs in law enforcement custody, and provides downstream outputs and outcomes associated with the previously unsubmitted SAKs—including counts of SAKs analyzed, and associated CODIS hits, criminal investigations, and prosecutions.

There are challenges to obtaining reliable data on unsubmitted SAKs, discussed below. Nevertheless, we took steps to ensure the data we present below are sufficiently reliable for our purpose, which is to provide data that accurately reflect the activities and outcomes of the large-scale efforts we discuss.[1] We also note that data from these efforts may overlap, which means that it is not possible to combine totals from each effort without potentially duplicating results.

National Sexual Assault Kit Initiative (SAKI) Grantee Data

SAKI grants provide funding to state law enforcement agencies and units of local government to help them address unsubmitted SAKs. The SAKI program requires grantees to first take an inventory of unsubmitted SAKs; however, SAKI grantees may also use SAKI funds to test SAKs and pursue investigations, among other things.[2] BJA collects SAKI performance data from grantees related to these SAKI-funded activities, as well as data on activities grantees completed prior to receiving SAKI funds. BJA officials who administer the SAKI program stated that they believe the number of CODIS hits, investigations, prosecutions, and convictions connected to many of these previously unsubmitted SAKs will continue to increase over time as these outputs and outcomes often take time to materialize.

[1]See our scope and methodology in appendix I for the specific steps we took.

[2]According to BJA documentation, SAKI aims to create a coordinated community response to achieve just resolution to sexual assault cases by (1) establishing or strengthening a comprehensive and victim-centered approach, (2) capacity building to prevent high numbers of unsubmitted SAKs in the future, and (3) supporting the investigation and prosecution of cases for which SAKs were previously unsubmitted. More information on the SAKI program is in appendix IV.

Table 9: Counts of Unsubmitted Sexual Assault Kits (SAK) Inventoried, Analyzed, and Outcomes from Analysis and Investigation as Reported by 38 SAKI Grantees (October 2015 – June 2018)

	Prior to SAKI[a]	SAKI-funded[b]	Total
Collection and Storage			
Number of SAKs Inventoried (a SAKI requirement)	70,611	53,929	**124,540**
Number of unsubmitted SAKs Identified	59,614	43,223	**102,837**
Submission and Prioritization			
Number of previously-analyzed SAKs[c]	10,997	10,705	**21,702**
Number of SAKs determined not to require DNA analysis[d]	2,225	5,544	**7,769**
Number of SAKs determined to require DNA analysis	49,847	30,991	**80,838**
Number of SAKs submitted for DNA analysis	26,196	42,484	**68,680**
Lab Analysis and Reporting			
Number of SAKs tested to completion	-	33,228	**33,228**
Number of uploads to the Federal Bureau of Investigation's Combined DNA Index System (CODIS)[e]	9,599	11,336	**20,935**
Number of CODIS hits[f]	6,110	5,001	**11,111**
Number of CODIS hits to known serial sex offenders	-	832	**832**
Investigation and Prosecution			
Potential Investigations	-	4,602	**4,602**
Potential Prosecutions	-	3,682	**3,682**
Charges Resulting in Plea Bargains	-	378	**378**
Post-Trial Convictions	-	93	**93**

Source: GAO analysis of National Sexual Assault Kit Initiative (SAKI) grantee data. | GAO-19-216

Note: Blank entries indicate data from prior to the SAKI program that SAKI did not ask for or were not able to obtain from grantees.

[a]These data reflect outputs and outcomes from activities that took place by jurisdictions before the first allocation of SAKI funding. According to BJA, the SAKI program does not collect data for some pre-SAKI activities in the "Lab Analysis and Reporting" and "Investigation and Prosecution" categories, which are reflected by blank cells. As such, total activities in these instances should be considered representative of SAKI-funded activities only. BJA officials stated that they believe the actual totals for these categories would be larger if such data were available.

[b]SAKI-funded data includes only those outputs and outcomes from activities that took place as a result of SAKI funds. The SAKI program does not allow grantees to use SAKI funds to inventory SAKs that were collected after the grant application date.

[c]Previously-analyzed SAKs may appear in an inventory because the kit was discovered to have been analyzed only after it was included in the inventory. However, a previously-tested SAK may be determined to require testing under SAKI if it was only partially tested in the past—such as only subject to biological screening or analyzed using non-CODIS eligible DNA methodologies.

[d]A SAK may be determined not to require analysis if, for example, the victim chose not to participate in the criminal justice process or law enforcement determined through the facts of the case that a crime did not occur.

[e]CODIS is a database that allows federal, state, and local labs to exchange and compare DNA profiles electronically. As a result of processing evidence from crime scenes, only DNA profiles believed to belong to a potential perpetrator can be uploaded into CODIS.

[f]The FBI defines a hit as "a confirmed [DNA profile] match that aids an investigation and one or more of the case(s) involved in the match are unsolved."

New York County District Attorney's Office (DANY) Grantee Data

In 2015, DANY awarded nearly $38 million in grants to 32 jurisdictions (grantees) across 20 states to help them analyze SAKs.[3] DANY and SAKI program administrators coordinated to ensure that the DANY and SAKI programs complemented each other and did not duplicate resources. Funding awarded through DANY's SAK Program is only allowed to be used for costs associated with analyzing SAKs; thus, DANY did not provide funds for grantees to perform inventories.[4] Nevertheless, DANY tracks the number of SAKs submitted to labs for analysis, which DANY officials said serves as a proxy for previously unsubmitted SAKs. In addition, DANY collects data on outputs and outcomes that occur as a result of SAK analysis. According to DANY officials, the number of investigations, prosecutions, and convictions will increase following the end of the grant program as these outcomes often take time to materialize. Though the DANY grant program ended in September 2018, grantees will continue to share results for another year.

[3]According to DANY documentation, New York City was the first major jurisdiction to make a comprehensive effort to eliminate previously unsubmitted SAKs. According to DANY documentation, between 2000 and 2003, New York City sent out approximately 17,000 SAKs for DNA analysis. DANY officials we spoke with said that when New York County—one of the 5 counties in New York City—received windfall money from a legal settlement, the county wanted to use the money to help other jurisdictions replicate what New York City had done.

[4]The DANY grant solicitation did not distinguish between "unsubmitted" SAKs in law enforcement jurisdiction and "backlogged" SAKs in laboratories. Specifically, according to the DANY SAK Program grant solicitation, a SAK eligible for analysis with grant funds is one that is connected to a reported sexual assault that has not been analyzed within 365 days of being booked into law enforcement evidence regardless of the reason it had not been analyzed.

Table 10: Counts of Sexual Assault Kits (SAK) Submitted for Analysis, and Outcomes from Analysis and Investigation, as Reported by 32 Grantees Participating in the New York County District Attorney's Office (DANY) SAK Grant Program (as of September 2018)

	DANY program data
Collection and storage	
This step is outside of the scope of the DANY program	
Submission and prioritization	
Number of SAKs submitted for DNA analysis[a]	62,915
Lab analysis and reporting	
Number of uploads to the Federal Bureau of Investigation's Combined DNA Index System (CODIS)[b]	16,657
Number of CODIS hits[c]	8,185[d]
Investigation and prosecution	
Arrests	196
Prosecutions	184
Convictions	58

Source: GAO presentation of DANY's Sexual Assault Kit Backlog Elimination Program data. | GAO-19-216

Note: Fields under headings "Lab analysis and reporting" and "Investigation and prosecution" represent grantee-reported outputs and outcomes resulting from DANY-funded SAK analysis. DANY funds were not used to directly assist grantees with these activities.

[a]Data collected by DANY grant administrators do not include the number of unsubmitted SAKs identified. These data do, however, provide a count of the number of SAKs submitted to labs for analysis, which DANY officials said serves as a proxy for previously unsubmitted SAKs.

[b]CODIS is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases. It enables federal, state, and local labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to known convicted offenders and arrestees.

[c]The FBI defines a hit as "a confirmed [DNA profile] match that aids an investigation and one or more of the case(s) involved in the match are unsolved."

[d]Of these 8,185 CODIS hits, DANY labeled 2,785 of them as "confirmatory" hits (more of the 8,185 hits may be confirmatory hits since, at the time of our review, two of the grantees had not reported to DANY how many of their total hits were confirmatory hits). According to DANY, confirmatory hits reflect instances where the suspected perpetrator was identified and potentially convicted of the associated sexual assault prior to SAK analysis. Thus, SAK analysis and the related CODIS profile match confirm the known suspect or perpetrator. Some of these confirmatory hits may meet the FBI's definition of a CODIS hit, and others may not (see the FBI's definition of a hit in table note "c"). For instance, according to FBI officials, CODIS matches that confirm the identity of known suspects in unsolved cases—where such confirmation through DNA analysis had not already occurred—qualify as hits; however, CODIS matches that identify known perpetrators in solved cases do not qualify as hits.

Data from State Efforts to Address Unsubmitted SAKs

As of September 2018, we identified at least 26 states with laws that require the conducting of SAK inventories where evidence had not yet been submitted for lab analysis.[5] Twenty-four of these laws were passed in 2014 or later. We provide data on unsubmitted SAKs identified in Idaho and Texas in table 11 as illustrative examples of the results of these types of laws.

Table 11: Data Resulting from Laws Requiring Inventories of Unsubmitted Sexual Assault Kits (SAK) in Idaho and Texas

State	Summary of law	Inventory data
Idaho	One-time inventory by December 2016 and annual inventory beginning January 2017	• December 2016: 1,116 unsubmitted SAKs inventoried, 541 of which required analysis[a] • Update through end of 2017: 463 additional SAKs were collected during 2017 (making a total of 1,572 SAKs from both 2016 and 2017); of these, 509 were submitted to a lab and 316 were analyzed by a lab during 2017 • Update through September 2018: 354 additional SAKs were collected from January 2017 through September 2018 (making a total of 1,933 SAKs since the one-time inventory in 2016); of these, 541 were submitted to a lab during this time and 218 were analyzed during this time
Texas	One-time inventory by October 2011[b]	• February 2013: 15,823 sexual assault cases with unsubmitted evidence inventoried[c] • Update through August 2017: 3,132 additional sexual assault cases with unsubmitted evidence inventoried, making a total of 18,955 cases; of these, 16,773 have been analyzed and 2,142 remain to be analyzed.

Source: Analysis of state laws, reports, and interviews with state officials. | GAO-19-216

[a]Under the Idaho code, a SAK is not required to be analyzed if (1) there is no evidence to support a crime being committed, (2) it is no longer being investigated as a crime, or (3) an adult victim expressly indicates that no further forensic examination or testing occur. Idaho Code. Ann. § 67-2919(8).

[b]This law became effective on September 1, 2011. 2011 Tex. Gen. Laws 1105, § 18. Guidance provided by the Texas Department of Public Safety (TDPS) to law enforcement agencies instructed them to provide TDPS with data on evidence collected prior to July 31, 2011. A report was due from TDPS by February 2013.

[c]The law required law enforcement agencies to inventory "all active criminal cases for which sexual assault evidence had not yet been submitted for laboratory analysis," as opposed to an inventory of SAKs. 2011 Tex. Gen. Laws 1105, § 15(a)(1). According to a senior official from TDPS, law enforcement primarily reported cases that included SAKs. Additionally, TDPS provided guidelines to law enforcement agencies that operationalized the statutory definition of "active criminal cases." See Tex. Gov't Code Ann. § 420.003. Specifically, the guidance states that (1) the offense has to have been reported to law enforcement and the evidence must be in the custody of the law enforcement agency or an accredited crime lab, and (2) this does not apply to sexual assault evidence that was collected prior to September 1, 1996.

[5]Legislation varies by state. For example, some states require one-time inventories and other states require annual inventories; additionally, some states require inventories of SAKs and others require inventories of sexual assault cases (which often include SAKs). Other variations may apply.

Reporting Requirements under the Sexual Assault Forensic Evidence Reporting (SAFER) Act

The SAFER Act of 2013 authorizes grants for the purpose of conducting audits of sexual assault evidence, and requires the Attorney General to publish information from these audits online.[6] According to OJP officials, because no appropriations were required to be allocated for grants under this new grant purpose area until 2018, OJP was under no obligation to collect or report on this information until that time.[7] However, according to OJP officials, now that an appropriation has been made for grants for this new purpose area, OJP has taken steps to modify an existing grant program to ensure it complies with related requirements.[8] Specifically, according to OJP officials, NIJ made changes to the Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting (SAFE-ITR) grant program to ensure it fully complies with the additional statutory requirements of the SAFER Act.[9] The intent of this program is to support states and local governments as they inventory, track, and report on previously unsubmitted SAKs.[10] OJP officials said they plan to begin publishing information online from fiscal year 2018 SAFE-ITR grantees, but they said the information will be limited at first because grantees will have just begun their award periods (begins January 1, 2019).

[6]The SAFER Act of 2013, Pub. L. No. 113-4, § 1002, 127 Stat. 54, 127-131, added a new purpose area and related requirements to the Debbie Smith DNA Backlog Grant Program (34 U.S.C. § 40701).

[7]Specifically, according to OJP officials, until 2018, NIJ grantees were under no statutory obligation to submit the reports described at 34 U.S.C. § 40701(n)(4) that would have been required consistent with the SAFER Act of 2013 amendments to the Debbie Smith DNA Backlog Grant Program statutory authorization.

[8]DOJ is required by the Justice for All Reauthorization Act of 2016 to allocate no less than 5 percent of funds authorized and funded by appropriations for “a DNA analysis and capacity enhancement program and…forensic activities” for the new purpose area authorized by the SAFER Act of 2013. Pub. L. No. 114-324, § 3, 130 Stat. 1948, 1949. The Justice for All Reauthorization Act also contained additional requirements related these activities; in particular, the funds must also be used to create and operate associated tracking systems and to prioritize cases in which the statute of limitations will soon expire.

[9]The SAFE-ITR grant program began in 2016. According to OJP officials, the SAFE-ITR program for fiscal years 2016 and 2017 was authorized and funded by appropriations “for a grant program for community-based sexual assault response reform,” and “a DNA analysis and capacity enhancement program and…forensic activities.” According to these officials, program requirements for fiscal years 2016 and 2017 for the SAFE-ITR program are described in NIJ’s grant solicitations and are similar, but not identical, to requirements added by the SAFER Act of 2013 to the Debbie Smith DNA Backlog Grant Program statutory authorization.

[10]We include more information on SAFE-ITR in appendix IV.

The SAFER Act requires that grantees provide reports to DOJ every 60 days, and that DOJ publish these reports online within 7 additional days.[11] Per the Act, these reports are to include, for each grantee, among other things, the cumulative total number of samples of sexual assault evidence that, at the end of the reporting period that: (1) are in the possession of the state or unit of local government, (2) have been submitted to a lab, (3) have been analyzed to completion.[12] OJP officials said that potential SAFE-ITR grantees may consider these and other reporting requirements (not listed here) to be burdensome, especially when compared to the reporting requirements of SAKI grants.[13] As evidence of this sentiment among potential SAFE-ITR grantees, OJP officials stated that, in fiscal year 2018, they only awarded $1.4 million out of a total of $5.5 million available to SAFE-ITR grantees, due to a lack of interest among applicants. In contrast, in fiscal year 2018, the SAKI program received more applications for federal funding than they had available (they awarded $42.9 million).

The SAFER Act also allows for optional reporting of sexual assault forensic evidence information from non-grantee states and local governments. Specifically, the Act requires that the Attorney General make the reporting form that SAFE-ITR grantees use available to all states and units of local government. States and local governments can then, at their sole discretion, submit reports to DOJ for publication.[14] OJP reported that it plans to have the SAFE-ITR reporting form finalized by January 1, 2019, the start date for fiscal year 2018 SAFE-ITR grantees.

Joyful Heart Foundation Project to Aggregate State and Local Efforts to Inventory or Quantify Unsubmitted SAKs

The Joyful Heart Foundation, a survivors' advocacy organization, has ongoing work to quantify the number of unsubmitted SAKs in law enforcement custody nationwide. According to representatives from Joyful Heart, as of October 2018, they had obtained data from 35 states and 32 cities or counties.[15] The Joyful Heart Foundation reported that it obtained data made available through legislative mandates, executive

[11]34 U.S.C. § 40701(n)(4)(A),(C).

[12]34 U.S.C. § 40701(n)(4)(B).

[13]SAKI grants also allow funds to be used to conduct inventories of unsubmitted SAKs, and also require grantees to report data associated with those inventories.

[14]34 U.S.C. § 40701(n)(4)(E)(ii).

[15]Joyful Heart Foundation representatives said that in instances where they obtain data on unsubmitted SAKs in cities or counties that are located in states where they have obtained statewide data, they adjust the state data to avoid double-counting.

actions, or audits required under federal funding requirements. The Foundation reported that it also obtained data through its own public records requests. They publish the data and provide links to their sources on a publicly-available website. Representatives said they do their best to ensure the sources they obtain data from are reliable, the data is not double-counted, and the data are up to date. Nevertheless, given the many and varied sources of government and other publicly-available data used to calculate the figure, we did not independently perform steps to ensure each source was sufficiently reliable for our purposes.

Challenges to Inventorying SAKs Within Jurisdictions and Quantifying SAKs Across Jurisdictions

We identified several challenges associated with inventorying SAKs within jurisdictions and quantifying them across jurisdictions.[16] These challenges make it difficult to obtain complete and accurate counts at the jurisdiction level, and contribute to the difficulty of obtaining a definitive count of unsubmitted SAKs nationwide. The challenges we identified include the following:

- **Difficulty locating SAKs.** DOJ has reported that inconsistencies in how and where SAKs are stored may pose difficulties for SAK tracking and management. DOJ also reported that SAKs may be in law enforcement property rooms; crime labs; or in rape crisis centers, hospitals, or other medical facilities where they were originally collected. Additionally, DNA evidence stakeholders we interviewed said that a significant challenge to inventorying SAKs is the act of physically locating them.
- **Insufficient or inconsistent information technology (IT) systems.** NIJ has reported that the quality of law enforcement evidence tracking systems may be a significant challenge in many law enforcement agencies across the country.[17] Additionally, BJA officials stated that the multitude of disparate and sometimes incompatible data systems used within and across jurisdictions can make tracking and identifying a SAK difficult.[18]

[16]For information about the steps we took to identify these challenges, see our scope and methodology in appendix I.

[17]For example, when NIJ began a project to help the city of Detroit, Michigan, address its SAK backlog, NIJ reported that Detroit's police department property room "database" was a simple spreadsheet, and it was not easy to figure out which SAKs might have been analyzed over the years.

[18]For example, there may be different data systems used by the lab, the police department, and the district attorney's office within a single jurisdiction and these differences are magnified when working across different jurisdictions.

- **Lack of incentive or awareness.** According to NIJ-funded research on unsubmitted SAKs, law enforcement may be hesitant to provide counts of these SAKs since reporting the number of unsubmitted SAKs publicly may be seen as a reflection of poor performance or may expose law enforcement to legal action. Representatives from the Joyful Heart Foundation suggested that this may also reflect a lack of priority given to sexual assault cases. Additionally, BJA officials stated that some SAKI grantees have found that certain law enforcement jurisdictions may not be aware that they had unsubmitted SAKs in their custody.
- **Resource constraints.** Some stakeholders we interviewed stated, and NIJ has reported, that when law enforcement agencies perform inventories, they do not always have the needed funding, personnel, or training and technical expertise to provide complete and accurate counts. However, OJP officials and survivor advocacy representatives said that, generally speaking, jurisdictions were able to mobilize resources to perform inventories of unsubmitted SAKs once they made it a priority to do so.
- **Understanding which SAKs should be included in inventories.** There is no single definition of what qualifies as an 'unsubmitted SAK.' For instance, depending on the effort, an inventory of SAKs may or may not include SAKs that are past the statute of limitations or that were collected before a certain time period. An inventory also may or may not include unreported SAKs.[19]
- **Ensuring counts are reliable and up to date**. The number of unsubmitted SAKs is constantly changing as (1) law enforcement agencies locate or identify old SAKs in storage, (2) SAKs are submitted to labs and are therefore no longer considered "unsubmitted," and (3) new SAKs are booked into evidence. Thus, counts or inventories are a snapshot of unsubmitted SAKs at a given time and require constant monitoring and updating.

[19]According to NIJ, an unreported SAK is a SAK from a victim who has consented to the collection of the SAK but has not consented to participate in the criminal justice process. Also according to NIJ, an unreported SAK cannot be submitted to a laboratory for analysis, unless applicable law allows.

Appendix VI: DNA Capacity Enhancement and Backlog Reduction Program-wide Performance Measures

Table 12: DNA Capacity Enhancement and Backlog Reduction (CEBR) Program-wide Performance Measures, Detailed Summary

Performance measure	Definition (according to the National Institute of Justice)	Years in use since 2011	Data source	Scope of performance measure
Crime scene DNA analysis				
Number of Forensic Cases Analyzed[a]	Performance measure captures the number of cases that grantees analyzed using DNA CEBR grants, including all outsourced cases.	2011-2017	CEBR grantee performance reports (aggregated)	Lab activities funded by CEBR grants
Number of Forensic DNA Profiles[b] Uploaded to the FBI's Combined DNA Index System (CODIS)[c]	Performance measure captures the number of forensic profiles that were uploaded to CODIS from cases that grantees analyzed using DNA CEBR grant funds.	2011-2017	CEBR grantee performance reports (aggregated)	Lab activities funded by CEBR grants
Percentage Increase in Forensic DNA Profiles Uploaded to CODIS from the Previous Year	Performance measure captures the percentage increase in the total number of forensic DNA profiles uploaded to NDIS from the previous calendar year.[d]	2014-2017	FBI website hosting data from its National DNA Index System	All lab activities
Offender sample DNA testing				
Number of Convicted Offender and/or Arrestee Database Samples Analyzed[e]	Performance measure captures the number of convicted offender and/or arrestee DNA database samples analyzed using DNA CEBR grant funds.	2011-2017	CEBR grantee performance reports (aggregated)	Lab activities funded by CEBR grants
Number of Convicted Offender and/or Arrestee Database Profiles Uploaded to CODIS	Performance measure captures the number of convicted offender and/or arrestee DNA database profiles that are uploaded to CODIS from samples using DNA CEBR grant funds.	2011-2017	CEBR grantee performance reports (aggregated)	Lab activities funded by CEBR grants
Crime scene DNA analysis and offender sample testing				
Number of CODIS Hits[f]	This performance measure captures the number of CODIS hits made from forensic or convicted offender and/or arrestee DNA database profiles that are uploaded to CODIS using DNA grant funds.	2011-2017	CEBR grantee performance reports (aggregated)	Lab activities funded by CEBR grants

Source: GAO analysis of information provided by the National Institute of Justice | GAO-19-216

[a]Forensic cases refers to requests for DNA analysis on evidence from crime scenes, victims, and suspects.

[b]A DNA profile contains the genetic constitution of an individual at defined locations (also known as loci) in the DNA. Each person (except identical twins) has a unique DNA profile when used in the context of the national level of the FBI's Combined DNA Index System (CODIS), which now evaluates 20 specific DNA locations.

[c]CODIS is a system that allows federal, state, and local labs to exchange and compare DNA profiles electronically. As a result of processing evidence from crime scenes, only DNA profiles believed to belong to an unknown potential perpetrator can be uploaded into CODIS.

[d]NDIS is one part of CODIS—the national level—containing the DNA profiles contributed by federal, state, and local participating forensic labs. NDIS was implemented in October 1998. All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Lab, and Puerto Rico participate in NDIS.

[e]"Convicted offender/arrestee database samples" to refer to DNA analysis on samples taken from convicted offenders, arrestees, and other categories of persons as authorized by law.

[f]The FBI defines a hit as "A confirmed [DNA profile] match that aids an investigation and one or more of the case(s) involved in the match are unsolved."

Appendix VII: Selected Attributes of Successful Performance Measures and Consequences if Not Met

Table 13 is a summary of selected attributes of successful performance measures, including the potentially adverse consequences if they are missing, that we identified in prior work.

Table 13: Summary of Selected Attributes of Successful Performance Measures and Adverse Consequences of Not Meeting Attribute

Attribute of successful performance measure	Potential adverse consequence of not meeting attribute
Linkage Measure is aligned with program goals.	Behaviors and incentives created by measures do not support program goals.
Clarity Measure is clearly stated and the name and definition are consistent with the methodology used to calculate it.	Data could be confusing and misleading to users.
Measurable target Measure has a numerical goal.	Inability to determine whether performance is meeting expectations.
Core program activities As a group, measures cover the activities that an entity is expected to perform to support the intent of the program.	Not enough information available in core program areas for managers and stakeholders to make key decisions.
Balance As a group, measures ensure that key program priorities are covered.	Lack of balance could create skewed incentives when measures overemphasize some goals.

Source: GAO. | GAO-19-216

Appendix VIII: DNA Capacity Enhancement and Backlog Reduction Program Permissible Uses of Funds

Table 14: DNA Capacity Enhancement and Backlog Reduction Program (CEBR) Permissible Uses of Funds in 2018 Grant Solicitation

Permissible use of CEBR funds	Description
1. Salary and benefits of lab employees	Funds for additional full-time or part-time employees to directly process, record, screen, and/or analyze forensic DNA and/or DNA database samples. Funds may also be used to hire additional staff to directly perform capacity enhancement-specific activities, such as validating new DNA analysis technologies for the forensic DNA or DNA database lab. Funds are subject to applicable restrictions on supplanting.
2. Overtime for lab staff	Overtime for lab employees (excluding executive personnel) to directly process, record, screen, and/or analyze forensic DNA and/or DNA database samples. Funds may also be used to pay overtime for existing lab employees to directly perform capacity enhancement-specific activities, such as validating new DNA analysis technologies for the forensic DNA or DNA database lab.
3. Training	Funds for training (1) directly related to DNA lab, (2) appropriate continuing and professional education associated with professional meetings and conferences (no more than 8 percent of the award) and (3) travel expenses, registration fees, and learning aids not associated with professional meetings and conferences (no more than 8 percent of the award).
4. Travel	Funds for travel to conduct required site visits to public or private accredited labs that will be conducting DNA analyses on behalf of the eligible state or unit of local government to review procedures and practices prior to initial sample shipment; funds may also be used to make one additional unannounced site visit.
5. Equipment	Funds to upgrade, replace, or purchase lab equipment, instrumentation, and associated computer hardware for the lab.
6. Supplies	Lab supplies for (a) validation, (b) DNA sample analysis and (c) collection kits for offender/arrestee samples.
7. Contracts	Contracts for (a) outsourcing sample processing, (b) DNA audits, (c) process mapping or efficiency studies, (d) warranty, service, or maintenance contracts for equipment, (e) temporary lab employees, (f) validation studies for new DNA analysis technologies and (g) in-house training.
8. Direct administrative expenses	Direct administrative expenses for grant management, not to exceed 3 percent of the federal portion.
9. Costs associated with and including accreditation	Costs associated with accreditation
10. Software	Software expenses associated with running the DNA lab
11. Lab Information Management System (LIMS)	Funds may be used to support existing LIMS and existing LIMS accessories

Source: GAO analysis of CEBR grant program documentation. | GAO-19-216

Appendix IX: Controls Related to Transparency in Grantee Procurement for DNA Capacity Enhancement and Backlog Reduction Grants

Contracting by grantees and subgrantees under DNA Capacity Enhancement and Backlog Reduction (CEBR) awards is governed by 2 C.F.R. pt. 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Per the regulation, grantees that are states (including their agencies and instrumentalities thereof) must follow the same policies and procedures they use for procurements from their non-federal funds.[1] All other grantees and subgrantees, including subrecipients of grantees that are states, must follow the procurement standards set forth in the regulation.[2] Many CEBR grantees are states; nevertheless, Office of Justice Programs (OJP) officials said they apply controls related to transparency in grantee procurement to state grantees and to non-state grantees in the same manner. Table 15 provides a description of selected federal requirements related to transparency in grantee procurement, as well as OJP controls designed to achieve its objectives related to compliance with these requirements.

Table 15: Office of Justice Programs (OJP) Controls Related to Transparency in Grantee Procurement

Select requirements for OJP and Capacity Enhancement and Backlog Reduction (CEBR) program grantees	OJP control designed to achieve its objectives related to compliance with requirements
OJP review of procurements[a]	
As part of the grant application process, grantees must provide information about proposed procurement contracts.[b] Specifically, grantees should provide the name of the contractor (if known), the amount of the contract, the service to be performed or purchase to be made, and a detailed narrative justification for each contract.	OJP has designed a process to review all budget documentation from grant applicants, including proposed procurement contracts. Specifically, upon receipt of the grant application, the OJP grant manager reviews the documentation to ensure that the proposed budget equals the proposed award amount, and that all proposed costs are allowable, necessary, and applicable, and forwards the documents to a senior grant manager for approval. OJP's Office of the Chief Financial Officer (OCFO) then conducts a second review to ensure that the proposed budget equals the proposed award amount. Grantees cannot move forward with proposed procurement contracts until OJP provides approval.

[1]*See* 2 C.F.R. § 200.317. States must comply with 2 C.F.R. § 200.322, relating to procurement of recovered materials, and ensure that every purchase order or other contract comply with any clauses required by § 200.326. A state includes any state of the U.S., D.C., the territories, and any agency or instrumentality thereof; it does not include local governments. §200.90.

[2]See requirements in 2 C.F.R. §§ 318-326.

Select requirements for OJP and Capacity Enhancement and Backlog Reduction (CEBR) program grantees	OJP control designed to achieve its objectives related to compliance with requirements
Grantees must also provide information to OJP during the award period for proposed new contracts or significant changes to existing contracts.	OJP has also designed a process to review proposed new contracts or significant modifications to existing contracts during the award period. OJP grant managers review the requests to determine if the requested changes are allowable under the grant terms and conditions, are necessary and reasonable, and are consistent with the goals and objectives of the grant program. Then, grant managers' supervisors and the National Institute of Justice's Director of the Office of Grant Management review the request. OJP also has grant monitoring checklists for grant managers to use when conducting grant monitoring activities, such as site visits. The checklists include sections for grant managers to review documentation related to contracts that were modified. The grant manager ensures that OJP provided the necessary approvals. Grant managers must certify that they completed all checklist items.
Grant recipients are required to submit quarterly financial reports to show obligations and expenditures for contracts.	OJP grant managers review grant recipients' financial reports in conjunction with grant recipients' progress reports to compare the rate of expenditures with the project activity level noted in the progress report and to identify potential problems with the reports. Then, officials from OJP's OCFO perform a financial review to assess and resolve potential problems with the financial report. If OJP notifies a grant recipient of a problem with its financial report but the recipient does not submit a revised financial report, OJP may withhold grant funds.
An awarding agency may conduct pre-procurement review of an applicant's procurement documents when the procurement is expected to exceed the Simplified Acquisition Threshold[c] (currently $250,000 for grantees) and is to be awarded without competition, or if a proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold, among other reasons.	When a proposed sole-sourced contract exceeds the Simplified Acquisition Threshold, or when a contract modification changes the contract to exceed the Simplified Acquisition Threshold, grant mangers review the requests against criteria in 2 C.F.R. §200.320(f).[d] Senior grant managers and the National Institute of Justice's Director of the Office of Grants Management provide additional layers of review. Financial analysts in OJP's OCFO then review the procurement information and provide final approval of the non-competitive approach to the procurement. OJP also has grant monitoring checklists for grant managers to use when conducting grant monitoring activities, such as site visits. The checklists include sections for grant managers to review documentation related to contracts that exceed the Simplified Acquisition Threshold and contracts that were modified. The grant manager ensures that OJP provided the necessary approvals. Grant managers must certify that they completed all checklist items.
Grantees are responsible for monitoring subgrantee or contractor activities under federal awards and must assure compliance with applicable federal requirements and performance expectations.	OJP has grant monitoring checklists for grant managers to use when conducting grant monitoring activities, such as site visits. The checklists include a section for grant managers to ask grantees about their monitoring mechanisms for subgrantees and contractors and to review documentation related to such mechanisms, including documentation that demonstrates the grantee is actually conducting monitoring activities for its subgrantees or contractors. Grant managers must certify that they completed all checklist items.
Single audits[e]	
OJP is responsible for following up on single audit findings to provide reasonable assurance that grantees take timely and appropriate action to correct any deficiencies.	The Department of Justice (DOJ) has designed a notification system that helps to ensure that OJP is aware of and responds to findings related to procurements that are discovered during single audits. The Federal Audit Clearinghouse notifies the DOJ Office of the Inspector General (OIG) of significant single audit findings related to procurements. The OIG then notifies OJP, which follows-up with grantees, as applicable.

Select requirements for OJP and Capacity Enhancement and Backlog Reduction (CEBR) program grantees	OJP control designed to achieve its objectives related to compliance with requirements
	Reporting to Congress[f]
Beginning October 2018 and biannually thereafter, for each recipient of funds from the appropriation for "a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities"—which includes CEBR grantees—the Attorney General is to report to Senate and House Judiciary Committees the percentage of the amounts that were paid to private laboratories.	OJP added a requirement to the fiscal year 2018 CEBR solicitation for grantees to report the amounts expended under CEBR awards on contracts for DNA analysis. Specifically, the language says: "Recipients will be expected to report amounts expended under the award on contracts to private accredited DNA laboratories for analysis of forensic DNA casework samples or DNA database samples as detailed in the award terms and conditions. Future awards and fund drawdowns may be withheld if reports are delinquent. (In appropriate cases, OJP may require additional reports.)" OJP officials stated they added a special condition to the grant terms and conditions to require CEBR recipients to acknowledge grant funds will be withheld if they do not meet their reporting requirements. OJP officials said they would likely report this information to Congress for each grantee (as opposed to an aggregated amount for all grantees). However, they said they had not finalized the details.

Source: GAO analysis of grantee procurement requirements and OJP information. | GAO-19-216

[a]The first three requirements come from the CEBR grant solicitation and/or the DOJ Grants Financial Guide. In addition to agreeing to comply with applicable statutes and regulations, CEBR recipients agree to comply with the terms specified in the DOJ Grants Financial Guide and the solicitation. OJP outlines these requirements in the grant terms and conditions. The requirements in the guide and the solicitation are also important elements of transparency in administering CEBR grants. Other requirements come from 2 C.F.R. pt. 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

[b]A contract is a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. A contract is separate from a subaward, which is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. 2 C.F.R. §§ 200.22, 200.92.

[c]The "simplified acquisition threshold"—currently set for grantees at $250,000—means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. 2 C.F.R. § 200.88. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property.

[d]Under 2 C.F.R. § 200.320(f), procurement by noncompetitive proposals may be used only when the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or after solicitation of a number sources, competition is determined inadequate.

[e]Grantees that expend a total of $750,000 or more in federal awards in a fiscal year are required to undergo a single audit of its financial statements and federal awards or a program-specific audit, for the fiscal year. Requirements come from the Single Audit Act Amendments of 1996, Pub. L. No. 104-156, 110 Stat. 1396 (codified as amended at 31 U.S.C. §§ 7501-7506).

[f]Requirements come from Justice for All Reauthorization Act, Pub. L. No. 114-324, § 3(b)(2)(C), 130 Stat. 1948, 1950.

Appendix X: Controls Related to Conflicts of Interest for DNA Capacity Enhancement and Backlog Reduction Grants

Criminal conflicts of interest statutes governing Office of Justice Program (OJP) employees who administer DNA Capacity Enhancement and Backlog Reduction (CEBR) grants are codified at 18 U.S.C. Chapter 11. Although these statutes cover a variety of topics related to conflicts of interest, our review focuses on the participation of OJP employees in government actions that may conflict with their personal financial interests, as specifically provided in 18 U.S.C. § 208. We focus on acts affecting personal financial interests because related regulatory requirements cover a broad range of issues directly applicable to OJP employees who administer CEBR grants. Table 16 provides a description of selected federal requirements related to conflicts of interest for federal employees, as well as OJP controls designed to achieve its objectives related to compliance with these requirements.

Table 16: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Employees

Select requirements for OJP and OJP employees	OJP control designed to achieve its objectives related to compliance with requirements
OJP employee conflict of interest requirements[a]	
Unless employees divest their financial interests or obtain a waiver or exemption, they must disqualify themselves from participating in particular matters in which they, or any person whose interests are imputed to them, have a financial interest. Employees should not participate in matters involving specific parties where it is likely to affect the financial interests of a member of their household, a covered party is involved, or under other such circumstances that would cause a reasonable person to question their impartiality.	The Department of Justice (DOJ) has summarized applicable requirements on its ethics website and in the DOJ Ethics Handbook for On and Off-Duty Conduct (Handbook). The Handbook directs employees who may have a conflict of interest or believe their impartiality might be questioned to either disqualify themselves from taking action that could affect their interest, or see OJP's Deputy Designated Agency Ethics Official (DAEO) about authorized alternatives, such as obtaining a waiver or divesting their financial interest. Further, OJP has a web-based tracking system for employees involved in administering Capacity Enhancement and Backlog Reduction Program (CEBR) grants to certify that they do not have conflicts of interest. During each application cycle, employees use the web-based system to (1) review the solicitation and relevant conflicts of interest guidance, (2) review the organizations that submitted applications, and (3) certify that they do not have any conflicts of interest. Employees' supervisors are notified of these certifications. If an employee reports the appearance of a conflict of interest and the supervisor determines a conflict exists, the supervisor may require the staff member to recuse himself or herself from dealing with a specific application or from participating in the entire application cycle.
Employees must not engage in outside employment or other outside activities that conflict with their official duties or employment that involves certain legal practice and matters, including grants.	DOJ has summarized applicable requirements on its ethics website and in the Handbook. Employees are required to obtain written approval from the Deputy Attorney General for OJP to waive these prohibitions.
OJP ethics training requirements[b]	
Agencies must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations.	The DOJ has an agency-wide ethics program, which is administered by DOJ's Justice Management Division under the direction of DOJ's DAEO. The DOJ DAEO assigned the Deputy DAEO in OJP to oversee OJP's agency ethics program, as noted above.

Select requirements for OJP and OJP employees	OJP control designed to achieve its objectives related to compliance with requirements
Each new employee must complete initial ethics training.	Each new OJP employee receives new employee ethics training and a copy of the Handbook. At this training, employees are also made aware of the DOJ ethics website.
Those required to file financial disclosure forms must complete annual ethics training.	OJP requires all employees who file public or confidential financial disclosure reports to attend OJP ethics training annually. OJP assigns employees to annual ethics training sessions and makes available a copy of the Handbook to employees at training sessions.
OJP annual financial disclosure requirements[c]	
Senior-level employees must file public financial disclosure reports within 30 days of entering a covered position, and annually thereafter; disclosures must be reviewed and certified by a designated agency ethics offical.	OJP employees in these positions are notified of their obligation to file reports via email. OJP's Ethics Office collects the reports and reviews them to identify the appearance of or actual conflicts of interest within 60 days of receipt. OJP's Ethics Office signs the reports if they believe they are complete and disclose no conflicts of interest. If the OJP Ethics Office finds a conflict, the Deputy DAEO for OJP imposes a remedy, such as disqualification (not participating in the matter), divesture (selling off interests or investments), or waiver (a waiver of the prohibition must be approved by the agency head). Then, OJP's Assistant Attorney General reviews and signs the reports. The Deputy DAEO for OJP notifies DOJ's Departmental Ethics Office when all reports have been filed, reviewed, and signed. DOJ's Departmental Ethics Office then forwards all public financial disclosure reports to the U.S. Office of Government Ethics.
Specified less senior employees must file confidential financial disclosure reports within 30 days of entering a covered position; and annually thereafter; and disclosures must be reviewed and certified by a designated agency ethics official.	OJP employees in these positions are notified of their obligation to file reports via email. Employees' supervisors collect the reports and review them to identify the appearance of or actual conflicts of interest within 30 days of receipt. Employees' supervisors sign the reports if they believe they are complete and disclose no conflicts of interest. If the supervisor finds a conflict, the supervisor and the Deputy DAEO for OJP impose a remedy, such as disqualification, divesture, or waiver. The Deputy DAEO for OJP notifies DOJ's Departmental Ethics Office when all reports have been filed, reviewed, and signed. Despite the process described, OJP does not have documentation designating which officials are authorized to certify (provide final signature) these reports or the levels of review required. Further, the designation of reviewers and certifiers within OJP is unclear. OJP officials said that OJP's Deputy DAEO and office heads of OJP sub-components (or deputy office heads) have a role in the review process, but officials did not consistently describe those roles.

Source: GAO analysis of conflicts of interest requirements and OJP information. | GAO-19-216

[a]Requirements come from 5. C.F.R. pt. 2635, "Standards of Ethical Conduct for Employees of the Executive Branch;" 5 C.F.R. pt. 3801, "Supplemental Standards of Ethical Conduct for Employees of the Department of Justice."

[b]Requirements come from 5 C.F.R. pt. 2638, "Executive Branch Ethics Program"

[c]Requirements come from 5 U.S.C. app. §§ 101-111, "Financial Disclosure Requirements of Federal Personnel" and 5 C.F.R. pt. 2634, "Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture. "Senior-level" employees include, among others, employees whose positions are classified above GS-15; or employees whose rate of basic pay is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for a

GS-15. "Specified less senior employees" include, among others, employees who occupy positions classified at GS-15 or below or employees whose rate of basic pay is fixed, other than under the General Schedule, at a rate less than 120% of the minimum rate of basic pay for a GS-15. Regarding the administration of CEBR grants, officials said that the Principal Deputy Assistant Attorney General for OJP, National Institute of Justice Director and Principal Deputy Director positions are subject to public disclosure, and all other positions that administer CEBR grants are subject to confidential disclosure.

Federal requirements related to the disclosure of conflicts of interest by grantees are found in 2 C.F.R. pt. 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." These requirements apply to OJP as they oversee grantees, and to CEBR grantees as they interact with OJP and administer grant funding through subgrants or contracts.[1] Table 17 provides a description of selected federal requirements related to conflicts of interest for federal awarding agencies and grantees, as well as OJP controls designed to achieve its objectives related to compliance with these requirements.

Table 17: Office of Justice Programs (OJP) Controls Related to Conflicts of Interest for Federal Awarding Agencies and Grantees

Select requirements for OJP and grantees[a]	OJP control designed to achieve its objectives related to compliance with requirements
Awarding agencies must establish conflicts of interest policies for grants.	OJP requires grantees to agree during the application process to (1) disclose conflicts of interest in writing to OJP, (2) maintain written standards of conduct covering conflicts of interest and employees participating in the selection, award, and administration of contracts for grants, and (3) have a documented process to check for organizational conflicts of interest with potential contractors.[b] As a condition of award acceptance, grantees must (through execution of the grant award document) agree to comply with (among other award terms and conditions) the Department of Justice's Grants Financial Guide, available on its website, which provides additional guidance concerning conflicts of interest. If a grantee does not agree to these requirements, it will not receive the award. OJP also has grant monitoring checklists for grant managers to use when conducting grant monitoring activities, such as site visits. One of the policies grant managers are instructed to check for when reviewing requirements for procurement policies and procedures is a conflicts of interest policy. Grant managers must certify that they completed all checklist items.
Grantees must disclose in writing any conflicts of interest to the awarding agency.	Same control as above.

Source: GAO analysis of conflicts of interest requirements and OJP information. | GAO-19-216

[1]A contract is a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. A contract is separate from a subaward, which is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. 2 C.F.R. §§ 200.22, 200.92

[a]Requirements come from 2 C.F.R. pt. 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

[b]Under these regulations, a contract is a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. 2 C.F.R. § 200.22.

Appendix XI: Controls Related to Lobbying for DNA Capacity Enhancement and Backlog Reduction Grants

Federal law prohibits recipients of federal awards from using appropriated funds for lobbying activities in connection with the award, and sets forth several requirements related to lobbying "certification" and "disclosure."[1] Lobbying certification refers to agreeing not to use appropriated funds to lobby. Lobbying disclosure refers to disclosing lobbying activities with respect to the covered federal action (in this case, DNA Capacity Enhancement and Backlog Reduction (CEBR) program grants) paid for with nonappropriated funds. Federal regulation requires recipients of all federal awards over $100,000 to file certification documents and disclosure forms (if applicable) with the next tier above. Disclosure forms, but not certification documents, are to be forwarded from tier to tier until received by the federal agency).[2] In the case of CEBR grants, tiers include the Office of Justice Programs (OJP), grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors. Table 18 provides a description of selected federal requirements related to lobbying, as well as OJP controls designed to achieve its objectives related to compliance with these requirements.

[1]28 C.F.R. pt. 69, "New Restrictions on Lobbying," implements 31 U.S.C. § 1352, commonly referred to as the "Byrd Amendment." Lobbying in the context of this statute refers to paying any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. See also, 2 C.F.R. pt. 200, Appendix II(I) which contains similar requirements. These requirements are different from lobbying registration and disclosure requirements set forth in the Lobbying Disclosure Act of 1995, as amended (codified at 2 U.S.C. §§ 1601 et seq.).

[2]The required certification document is set forth in appendix A to 28 C.F.R. pt. 69. The required disclosure form is set forth in appendix B to 28 C.F.R. pt. 69. Disclosure forms are only required if the recipient has used or plans to use nonappropriated funds to lobby with respect to the award. Additional exceptions to the prohibition and disclosure requirements apply.

Table 18: Office of Justice Programs (OJP) Controls Related to Lobbying

Select requirements for Capacity Enhancement and Backlog Reduction (CEBR) grantees and others[a]	OJP control designed to achieve its objectives related to compliance with requirements
Grantees are prohibited from using appropriated funds, directly or indirectly, to pay for activities (e.g., advertisements, printed materials, etc.) to influence government officials to support or oppose legislation, policies, or other matters (unless the activity is expressly authorized by Congress).[b]	As a condition of award acceptance, grantees must agree to comply with OJP's "General Conditions," which includes (1) language prohibiting the use of federal funds for lobbying, and (2) a requirement that grantees follow applicable lobbying laws, as set forth in the Department of Justice's Grants Financial Guide. OJP also follows the grantees' use of grant funds through grant monitoring activities. For example, OJP grant managers review grant recipients' financial reports in conjunction with grant recipients' progress reports to compare the rate of expenditures with the project activity level noted in the progress report and to identify potential problems with the reports, among other monitoring steps.
Applicants and recipients of federal awards must file with the agency a certification with specific language from appendix A to 28 C.F.R. pt. 69, that the applicant or grantee has not made and will not make prohibited lobbying payments.	As a condition of award acceptance, grantees must (through execution of the grant award document) agree to the certification document (among other award terms and conditions). When accepting the award, grantees must print, initial each page, and sign all award documents, and then email a scanned copy of the signed documents to the Office of the Chief Financial Officer (OCFO) for review. If a grantee does not agree to these requirements, it will not receive the award.
If the applicant or grantee has made or has agreed to make a payment using nonappropriated funds that would be prohibited if appropriated funds were used, it must file with the agency a disclosure form as set forth in appendix B to 28 C.F.R. pt. 69.	OJP requires that all CEBR applicants submit the lobbying disclosure form as part of the grant application process. Upon submission, a grant manager reviews the form for completeness and content and checks a box in an application review checklist. In the event there is lobbying activity disclosed, the grant manager forwards the form to OJP attorneys and alerts them to the lobbying activity for their review.
Certifications and disclosure forms are required to be filed with the tier[c] above for subgrants and contracts greater than $100,000. All disclosure forms, but not certifications, are to be forwarded from tier to tier until received by the agency. Grantees and subrecipients are to disclose subsequent lobbying events that require disclosure or specified events that materially affect the accuracy of previously filed disclosures at the end of each quarter.	As stated above, OJP has designed a process to collect certification documents and disclosure forms from CEBR applicants. However, the certification document that CEBR grant applicants agree to does not state in clear terms what the specific requirements of the regulation are or how they are to be carried out. The certification document sets forth the requirements for filing certifications and disclosures, as detailed above. It states: "The Applicant shall require that the language of this certification be included in the award documents for all subgrants and procurement contracts (and their subcontracts) funded with Federal award funds and shall ensure that any certifications or lobbying disclosures required of recipients of such subgrants and procurement contracts (or their subcontractors) are made and filed in accordance with 31 U.S.C. § 1352." Upon reading this, grantees or subrecipients may still be unsure of their responsibilities under the regulation and when they are to carry them out. For example, they may not understand what mechanism to use to obtain a certification document or that disclosure forms must be forwarded to the tier above until received by OJP.

Select requirements for Capacity Enhancement and Backlog Reduction (CEBR) grantees and others[a]	OJP control designed to achieve its objectives related to compliance with requirements
The agency is to take such actions as are necessary to ensure that the lobbying requirements are vigorously implemented and enforced.[d]	As stated above, OJP has designed a process to collect certification documents and disclosure forms from CEBR applicants. However, it is not taking actions to ensure that grantees are requiring subrecipients to certify and disclose, and that grantees forward disclosures according to the requirements set forth above. For example, grant managers use checklists to guide grant monitoring activities, such as site visits, to ensure that grantees are following the grant requirements they agreed to during the grant application process. While these checklists have instructions for asking questions about other grant requirements, they do not include instructions to ensure grantees are collecting certifications documents and disclosure forms from tiers below them and forwarding disclosure forms to OJP.

Source: GAO analysis of federal lobbying requirements and OJP information. | GAO-19-216

[a]Unless otherwise noted, requirements come from 28 C.F.R. pt. 69, "New Restrictions on Lobbying" which implements 31 U.S.C § 1352, commonly referred to as the "Byrd Amendment." See also, 2 C.F.R. pt. 200, Appendix II(I) which contains similar requirements. Requirements are applicable to federal awards over $100,000. However, all CEBR grants are for at least $150,000. Additional exceptions and requirements apply.

[b]This requirement is set forth in 18 U.S.C. § 1913.

[c]In the case of CEBR grants, tiers include OJP, grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors.

[d]31 U.S.C. § 1352; see also 28 C.F.R. § 69.410.

Appendix XII: Comments from the Department of Justice

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

MAR - 6 2019

Ms. Gretta L. Goodwin
Director
Homeland Security and Justice
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Goodwin:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, "DNA Evidence: DOJ Should Improve Performance Measurement and Properly Design Controls for Nationwide Grant Program" (GAO-19-216). In this report, the GAO confirms what the National Institute of Justice (NIJ) has maintained for over a decade – that laboratory capacity continues to increase, but progress to decrease backlogs in some jurisdictions has been tempered by the increased demand from law enforcement and prosecutors to conduct DNA testing. This growth in demand is due, in part, to advancements in the technology and requests to process DNA from unsolved homicides and sexual assaults, potential erroneous convictions, and unidentified human remains.

OJP's NIJ – the research, development, and evaluation arm of the Department of Justice (DOJ) – is the only Federal agency supporting forensic science programs dedicated to research, development, and evaluation, in conjunction with capacity building and technical assistance. As part of its overall strategic plan to meet the needs of the forensic science community, NIJ has aligned its programs with long-term national strategies and short term needs that arise primarily from state and local forensic laboratories that face the dual challenges of satisfying the increasing demand for forensic testing, while keeping up with the latest advances and quality-related requirements. Many forensic laboratories continue to require significant improvements to their infrastructure, relating not only to DNA processing, but other forensic disciplines that are critical in violent crime cases, especially when they lack DNA evidence.

NIJ remains steadfast that the quality of DNA testing should always remain a priority for our nation's forensic laboratories, while the two overarching goals of the DNA CEBR Grant Program are for DNA laboratories to: (1) enhance their capacity through increased productivity and increased efficiency, and (2) decrease their backlogs of DNA samples awaiting analysis.

The draft GAO report contains four Recommendations for Executive Action, directed to the Principal Deputy Assistant Attorney General of OJP. For ease of review, the recommendations are restated in bold text below, and are followed by OJP's response.

1. **The Principal Deputy Assistant Attorney General for OJP should consistently document CEBR program-wide goals to clarify intended program results.**

   The Office of Justice Programs agrees with this Recommendation for Executive Action. OJP has worked to ensure that the two overarching goals of the DNA CEBR Program - (1) enhance their capacity through increased productivity and increased efficiency, and (2) decrease their backlogs of DNA samples awaiting analysis -- have repeatedly and consistently been communicated to applicants and grant recipients through annual solicitations, webinars, seminars, and supporting grant documentation. OJP has also communicated through reports and publications, accessible to the forensic field and public, that DNA CEBR program funds can be used for improvements in quality and throughput that are achieved through innovations, such as more sensitive chemistries, faster technologies, and streamlined workflows.

   OJP will further review how DNA CEBR program-wide goals are communicated to grant recipients, Congress, and stakeholders to determine what changes may be needed to ensure that the goals are consistently communicated.

2. **The Principal Deputy Assistant Attorney General for OJP should ensure that performance measures for each CEBR program-wide goal fully reflect appropriate attributes of successful performance measures.**

   The Office of Justice Programs agrees with this Recommendation for Executive Action. NIJ captures data for multiple performance measures that are intended to reflect the comprehensive value and impact of the DNA CEBR Grant Program, and three outcome metrics, including measures that are aligned with the two overarching goals (e.g., number of cases backlogged, number of samples analyzed per analyst per month, and turnaround time) and metrics that directly measure the impact of these funds (e.g., number of cases analyzed, and number of CODIS hits). In addition, annually since 2015, OJP has reported the increase in the number of DNA profiles uploaded to CODIS.

   To better describe the interrelated nature of the measures and how each measure contributes to a comprehensive picture of program impact, OJP will develop a logic model for the DNA CEBR Grant Program. This logic model will more clearly indicate for grant recipients the measures and quantitative goals for their project and organization that may be achieved with support of funding from the DNA CEBR Program.

   OJP will also evaluate whether there is an additional suitable target value that can be accurately reported, in compliance with the Government Performance and Results Act.

2

3. **The Principal Deputy Assistant Attorney General for OJP should document which employee positions have been delegated certification (final signature) authority for confidential disclosure reports and specify required levels of review and approval.**

The Office of Justice Programs agrees with this Recommendation for Executive Action. OJP will adopt its own version of the policy implemented by DOJ's Justice Management Division (JMD), which OJP has been following as a practical matter. The JMD policy can be found at https://www.justice.gov/jmd/procedures-confidential-financial-disclosure-system.

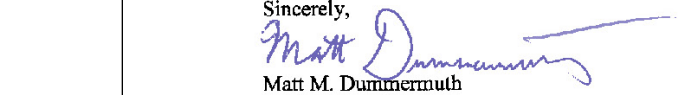
4. **The Principal Deputy Assistant Attorney General should: (1) clarify its guidance to grantees to specify what their requirements are under 28 C.F.R. pt 69 with regard to obtaining lobbying certification documents, and obtaining and forwarding to OJP lobbying disclosure forms, from tiers beneath them, and (2) design a control to follow-up with grantees to help ensure they are meeting these requirements.**

The Office of Justice Programs agrees with this Recommendation for Executive Action. In February 2019, as part of the implementation of centralized standard certifications, a lobbying certification was added to the System for Award Management (SAM.gov), which specifies that the applicant certify they will comply with the requirements of the Lobbying Disclosure Act of 1995. All award applicants are required to register with SAM.gov and, as such, will provide their certification of compliance at the point of registration.

OJP provides guidance to grant recipients regarding lobbying certification and disclosure forms in OJP's grant solicitations and the DOJ's Grants Financial Guide. Beginning with the Fiscal Year 2019 grant awards, OJP will update its annual desk review checklist to follow-up with grant recipients to ensure any applicable disclosure forms are collected and submitted to OJP, based on the requirements in 28 CFR 69.110.

If you have any questions regarding this response, you or your staff may contact Ralph E. Martin, Director, Office of Audit, Assessment, and Management, at (202) 305-1802.

Sincerely,



Matt M. Dummermuth
Principal Deputy Assistant Attorney General

cc: Lee Lofthus
Assistant Attorney General for Administration
U.S. Department of Justice

Maureen A. Henneberg
Deputy Assistant Attorney General

3

cc: David Muhlhausen
Director
National Institute of Justice

Rafael A. Madan
General Counsel

Ralph E. Martin
Director
Office of Audit, Assessment, and Management

Leigh Benda
Chief Financial Officer
Officer of the Chief Financial Officer

Robert Davis
Acting Director
Office of Communications

Richard P. Theis
Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

OJP Executive Secretariat
Control Title IT20190131102353

4

Appendix XIII: GAO Contact and Staff Acknowledgments

GAO Contact

Gretta L. Goodwin, (202) 512-8777, GoodwinG@gao.gov

Staff Acknowledgments

In addition to the contact named above, Dawn Locke (Assistant Director) and Jeff Jensen (Analyst-in-Charge) managed this review. Stephanie Heiken and Adrian Pavia, along with Pamela Davidson, Janet Temko-Blinder, Christine San, and Khristi Wilkins made significant contributions to this work. Also contributing were Charles Bausell, Daniel Bibeault, Eric Hauswirth, Susan Hsu, Ben Licht, Samuel Portnow, Rebecca Riklin, Rebecca Shea, Erinn Sauer, Adam Vogt, and William Woods.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (https://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to https://www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube.
Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts.
Visit GAO on the web at https://www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: https://www.gao.gov/fraudnet/fraudnet.htm

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548

Please Print on Recycled Paper.