U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division

Review of the Drug Enforcement Administration's Use of the Diversion Control Fee Account

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I-2008-002

EXECUTIVE DIGEST

INTRODUCTION

The Office of the Inspector General (OIG) initiated this review in response to congressional concern about the Drug Enforcement Administration's (DEA) use of the Diversion Control Fee Account (Fee Account). The Chairman of the Permanent Subcommittee on Investigations of the Senate Homeland Security and Governmental Affairs Committee (the Chairman) wrote to the OIG stating that he had been informed that the DEA may have been using Fee Account funds to pay for agency activities unrelated to the Diversion Control Program. The Chairman's letter also stated that the DEA may have prohibited Diversion Investigators from working overtime and initiating travel and did not hire new Diversion Investigators due to a lack of Fee Account funds. (See Appendix I for the Chairman's letter to the Inspector General.)

The mission of the DEA's Diversion Control Program is to prevent, detect, and investigate the redirection from legitimate channels of controlled pharmaceuticals (such as narcotics, stimulants, and depressants) and certain listed chemicals (such as ephedrine). Federal law requires the DEA to recover "the full costs of operating the various aspects" of its Diversion Control Program through the fees charged to DEA registrants, such as manufacturers, distributors, dispensers (including physicians), importers, and exporters of controlled substances and listed chemicals.[1]

The objectives of our review were to determine whether the DEA had used Fee Account funds for non-diversion control activities and whether it had fully funded its Diversion Control Program by using the Fee Account as required by law. Our review assessed these issues between fiscal year (FY) 2004 and FY 2007. We chose this time period for our review because FY 2004 was the first full year after the DEA created an organization within headquarters known as the Validation Unit to review and ensure that every Fee Account expense over $500 is related to a diversion control activity.[2]

[1] 21 U.S.C. § 886a(1)(C).

[2] In March 2003, the DEA created the Validation Unit to certify (or validate) that all spending requests for Fee Account funds exceeding $500 are for legitimate diversion control-related activities. The unit reviews documents related to requests for Fee Account funding to determine whether the expense is related to a diversion control activity. If an expense only partially supports the Diversion Control Program, such as a field office's rent or utility cost, the Validation Unit determines the portion of the expense that should be funded by the Fee Account.

The DEA established the Validation Unit to address concerns of registrants and diversion control employees about how it was using Fee Account funds.

To examine the DEA's use of Fee Account funds and assess the allegations referred to us, we reviewed documents pertaining to the Fee Account; conducted interviews with Office of Diversion Control, Financial Management Division, and Office of Chief Counsel personnel at DEA headquarters; and conducted interviews with diversion control employees at three DEA field divisions we visited and telephone interviews with employees in four additional DEA field divisions. We also reviewed financial documents to determine whether Fee Account funds had been used for non-diversion control activities. To assess whether the DEA fully funded its Diversion Control Program salary costs with Fee Account funds, we analyzed work hour data for FY 2004 through FY 2007.

RESULTS IN BRIEF

We did not substantiate the allegations that the DEA misused Fee Account funds for non-diversion control activities between FY 2004 and FY 2007. However, 14 out of the 34 (41 percent) Diversion Investigators in field divisions we interviewed told us that they thought that the DEA had used Fee Account funds inappropriately.[3] We believe that the DEA's recent policy of using more Special Agents and Intelligence Analysts within the Diversion Control Program to support investigations, combined with inaccurate understandings of how the DEA is permitted to use the Fee Account, contributed to this misperception among Diversion Investigators.

However, although we found no use of Fee Account funds for non-diversion activities, our review concluded that the DEA did not fully fund all Diversion Control Program salary costs with the Fee Account, as required by 21 U.S.C. § 886a(1)(C). Our analysis showed that the DEA used an estimated $15.4 million of its appropriated funds to support criminal diversion investigations between FY 2006 and FY 2007 that it could have charged to the Fee Account based on the DEA's definition of the Diversion Control Program at the time the costs were incurred.

These findings are summarized in more detail below.

[3] When discussing interview data, we use Diversion Investigators to mean Diversion Program Managers, Diversion Group Supervisors, and Diversion Investigators assigned to field divisions.

We did not substantiate the allegations that the DEA misused Fee Account funds for non-diversion control activities between FY 2004 and FY 2007.

In our review of DEA obligations exceeding $500, interviews with diversion control personnel at headquarters and in the field, various DEA documents concerning diversion, and an investigation of the allegations themselves, we found no instance of the DEA using Fee Account funds for non-diversion control activities between FY 2004 and FY 2007.[4] In addition, our analysis of a random sample of 265 obligations of $500 and under in the three field divisions we visited showed that all of the obligations were for allowable diversion control activities. We found that 247 of 265 (93 percent) of the expenses were for a supply or service for a diversion control employee, to support a diversion investigation, for travel or training of a diversion control employee, or for a government vehicle funded through the Fee Account (fee-funded). The remaining 18 obligations (7 percent) were for office supplies that were approved and signed by a Diversion Program Manager as part of the DEA's process for ensuring that Fee Account expenses of $500 and under are legitimate diversion control expenses.

We also reviewed a sample of 50 DEA-wide diversion obligations exceeding $500 to assess whether they were used for diversion control activities and whether they had been validated by the Validation Unit as required.[5] We found that all 50 obligations were used for diversion control activities. Three had not been validated as required, but we were able to determine from their written justifications that these obligations represented diversion control activities.

In addition to reviewing two samples of obligations of Diversion Control Program expenses to determine whether the DEA used Fee Account funds for non-diversion activities, we reviewed the allegations the Chairman had reported to the OIG. We categorized the allegations into three general categories: (1) that the DEA did not adequately fund overtime, travel, and investigative expenses to support diversion investigations because of a lack

[4] An obligation is an action by an authorized individual that creates a liability on the part of the government to make a disbursement at a later time. When an authorized individual incurs an obligation on behalf of the government, it reduces the available balance of funding remaining in an allowance used to fund the obligation. Obligations of $500 and under represented 68 percent of all diversion program obligations from FY 2004 through the second quarter of FY 2007.

[5] To ensure that we reviewed expenses in certain categories, we subjectively sampled 10 obligations from 5 different categories of spending.

of Fee Account funds; (2) that the DEA had not hired new Diversion Investigators because of a lack of Fee Account funds; and (3) that the DEA used Fee Account funds to pay for salaries and other associated costs of Special Agents and Intelligence Analysts who did not perform diversion control activities.

Regarding the first general category of allegations, we found that overtime, travel, and equipment purchases had been limited during the period of our review because of two specific events that occurred during FY 2006, which restricted the amount of money in the Diversion Control Program budget. First, a delayed collection of registration fees resulted in the DEA collecting less in funds than expected. Second, the DEA incurred costs from the settlement of an overtime lawsuit brought by Diversion Investigators. To ensure that the Fee Account had funds to pay for the increased overtime costs that resulted from the lawsuit, in July 2006 the Deputy Assistant Administrator Office of Diversion Control began requiring advance approval for all purchases of fee-fundable equipment, travel expenses not related to investigations, and overtime. The DEA also temporarily restricted the overtime hours available to field divisions.

Our interviews in the three field divisions we visited indicated that these restrictions had not undermined diversion control operations. For example, when we asked Diversion Investigators whether Fee Account funding was adequate for their diversion control investigations, 25 of 27 (93 percent) told us that it was. We also found that most requests submitted to the Office of Diversion Control for overtime, travel, and equipment had been approved. From July 2006 through September 2007, the Office of Diversion Control recorded 327 requests to use Fee Account funds in areas that had been restricted. The DEA approved 311 (95 percent) of those requests. However, the DEA does not track, and we were unable to determine the number of requests made by Diversion Investigators that were not submitted by their Diversion Program Managers to the Office of Diversion Control at headquarters.

Regarding the second general category of allegations that the DEA was not hiring new Diversion Investigators, we determined that the DEA had not hired any Diversion Investigators since November 2005. Office of Diversion Control managers told us that they had suspended the hiring of Diversion Investigators because they were awaiting a final decision regarding a request to reclassify the Diversion Investigator position to include law enforcement authority. However, in September 2007 the Office of Personnel Management rejected this request, stating that a new position was not warranted because the proposed position is essentially the current Special Agent position. DEA managers stated that because the proposal is no longer pending they would begin hiring additional Special Agents dedicated to diversion control.

Managers also stated that their decisions regarding the hiring of new Diversion Investigators will depend on the results of an ongoing staffing study to determine the optimal balance of Diversion Investigators and Special Agents in field divisions.

In addition, we did not substantiate the third general category of allegations that the DEA used Fee Account funds to pay for salaries and other associated costs of Special Agents and Intelligence Analysts who did not perform diversion control activities. We examined the DEA's method of calculating fee-fundable salary costs and found that it accounts for time that fee-funded Special Agents and Intelligence Analysts spend on matters other than criminal diversion investigations. We found that the DEA charges the Fee Account only for Special Agent and Intelligence Analyst salary costs associated with diversion investigations. Also, during our site visit interviews, field division managers and supervisors stated that the Special Agents and Intelligence Analysts assigned to diversion control worked almost exclusively on diversion investigations and that the minimal amount of time they spent on other duties did not interfere with their support of the diversion investigations.

We examined how some Diversion Investigators came to believe that the DEA had used the Fee Account inappropriately. For example, 14 of 34 (41 percent) Diversion Investigators we interviewed in field divisions told us that they thought the DEA was using Fee Account funds inappropriately. In reviewing the allegations referred to us by the Chairman and in our interviews with Diversion Investigators, we found that Diversion Investigators' primary concern was based on two perceptions regarding the DEA's use of Fee Account funds. First, Diversion Investigators questioned whether the increased use of Fee Account funds for Special Agent and Intelligence Analyst salaries was worth the additional costs to the Diversion Control Program. Second, Diversion Investigators had misperceptions about whether the DEA was allowed to use Fee Account funds for certain diversion control activities.

Regarding the first of those two perceptions, 13 of 34 (38 percent) of the Diversion Investigators we interviewed questioned whether the additional Special Agents and Intelligence Analysts were worth the additional costs they represented to the Diversion Control Program. According to one supervisor, from the Diversion Investigators' perspective fee-funded Special Agents cost more in terms of salary and benefits than Diversion Investigators, but do not generally perform all Diversion Investigator duties such as regulatory investigations. Diversion Investigators also tended to view fee-funded Intelligence Analysts as an unnecessary cost to the Fee Account because Diversion Investigators were used to performing the investigative support tasks of Intelligence Analysts themselves.

Since 2004, the DEA began increasing the number of Special Agents assigned to diversion control groups because they perform law enforcement duties Diversion Investigators cannot, such as serving warrants and conducting surveillance activities.[6] In FY 2006, the DEA also began assigning Intelligence Analysts to diversion investigations to analyze data, prepare background profiles on targets, and conduct database checks. At the same time, the number of Diversion Investigators decreased due to attrition. Meanwhile, between FY 2004 and FY 2007, the number of Diversion Investigators and administrative support staff for the Diversion Control Program traditionally funded through the Fee Account decreased by 51 positions (from 786 to 735). The number of fee-funded Special Agents and Intelligence Analysts increased by 79 positions (from 10 to 89) during that time.[7]

Moreover, we believe that an inaccurate understanding of the scope of activities that are fee-fundable contributed to Diversion Investigators' perception that the DEA used Fee Account funds inappropriately. During our interviews with Diversion Investigators, we asked whether what was and was not covered by the Fee Account was clear to them. Eight Diversion Investigators out of 24 (33 percent) stated that it was not clear and that the line between what could and could not be paid for with Fee Account funds was blurred. We also found that all Diversion Program Managers did not necessarily know that the DEA could fund investigations from the Fee Account as long as the investigations pertained to a controlled substance or listed chemical, even if no Diversion Investigator was involved in the investigation.

We discussed with DEA diversion control managers the misconceptions of their staff concerning the Fee Account. They told us that the DEA had provided its employees with guidance regarding the Fee Account in the form of the *Diversion Control Fee Account User's Guide*. The guide was last updated in October 2005 and is available on the DEA's Intranet site to all DEA employees. However, the guide primarily describes

[6] See U.S. Department of Justice Office of the Inspector General, *Follow-Up Review of the Drug Enforcement Administration's Efforts to Control the Diversion of Controlled Pharmaceuticals*, Evaluation and Inspections Report I-2006-004 (July 2006), for a discussion on the Diversion Control Program's need for Special Agents.

[7] On January 16, 2008, the DEA informed the OIG that on December 20, 2007, Congress approved the reprogramming of 108 vacant Diversion Investigator positions to Special Agent positions. This increased the number of authorized fee-funded Special Agent FTEs to 97 for FY 2007.

the Validation Unit's role in Fee Account spending and does not give an overall description of the DEA's requirements for using Fee Account funds. Managers also told us that they had conveyed information pertaining to Fee Account spending to diversion control employees through conferences for Diversion Program Managers and that they regularly respond to questions from diversion control personnel about how the Fee Account can be used. Nonetheless, these managers told us that they believe that more communication with diversion control personnel about the Fee Account may be needed.

The DEA did not fully fund all diversion control salary costs with the Fee Account.

Our review determined that for FY 2006 and FY 2007, the DEA did not include in its Diversion Control Program budget or charge the Fee Account an estimated $15.4 million in Diversion Control Program salary costs that were directly related to Diversion Control Program activities.[8] The $15.4 million represented 8 percent of the total salary costs ($188 million) funded by the Fee Account in those years. It included $14.1 million for Special Agent salaries and $1.3 million for Forensic Chemist (Chemist) salaries that were attributable to diversion investigations.

Under 21 U.S.C. § 886a(1)(C), the DEA is required to recover "the full costs of operating the various aspects" of its Diversion Control Program (such as salaries for Special Agents, Chemists, and Intelligence Analysts involved in diversion investigations) through the fees charged to DEA registrants. The statute also provides the DEA with discretion to define the scope of fee-fundable activities included in the Diversion Control Program and, in doing so, to control which of its activities must be funded from the Fee Account and which can be paid for out of appropriated funds.

To define diversion control activities and determine the fees to be collected to fund them, the DEA uses its authority under 21 U.S.C. § 821 to "promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances and to listed chemicals." In Final Rule notices published in the *Federal Register*, the DEA lists and explains the activities that it has determined are part of the Diversion Control Program (and that are therefore fee-fundable) and notifies registrants of the amount

[8] The reprogramming of 108 vacant Diversion Investigator positions to Special Agent positions discussed in Footnote 7 increased the number of fee-funded authorized Special Agent FTEs by 27, from 70 to 97 for FY 2007. As a result, we estimate that the Special Agent and Chemist salary costs attributable to the Diversion Control Program but not funded with the Fee Account for FY 2006 and FY 2007 totaled $11.2 million.

of fees they are required to pay. The most recent Final Rule was published on August 29, 2006.

The DEA has defined the salary costs for Special Agent, Intelligence Analysts, and Chemists attributable to Diversion Control Program activities as fee-fundable. Each year, Congress authorizes the number of Special Agent, Intelligence Analyst, and Chemist full-time equivalents (FTE) that the DEA can charge to the Fee Account based on estimates provided by the DEA.[9] However, when ongoing investigations exceed the cumulative number of authorized FTEs the DEA allows Special Agents to continue working on the investigations, but does not charge the Fee Account for more positions (or FTEs) than are congressionally authorized. The DEA funds any salary costs for Special Agents, Intelligence Analysts, and Chemists attributable to Diversion Control Program activities above the authorized levels with appropriated funds.

Although directly related to Diversion Control Program activities, the $15.4 million in salary costs that we identified were above the authorized levels, and the DEA paid for these costs with appropriated funds. Additionally, the $15.4 million in salary costs was not included in the Diversion Program's budget. The DEA determines the amount of fees to charge registrants based on its estimate of the costs to operate the Diversion Control Program's fee-fundable activities. The Diversion Control Program's budget must reflect all fee-fundable costs so the DEA has an accurate reflection of the program's true costs when it set registration fees. Including these additional costs would not have increased fees significantly. For example, if the DEA had computed the FY 2006 through FY 2008 fees based on the total salary costs for the time that Special Agents and Chemists spent on diversion investigations, the 3-year registration fee for physicians would have increased by $19 from $551 to $570, approximately $6 per year.[10]

[9] An FTE is the number of total hours worked divided by the maximum number of compensable hours in a work year. The DEA defines 1 full-time work year as 2,080 hours (or 2,600 hours for Special Agents conducting criminal investigations). One worker occupying a full-time job all year would consume one FTE. Similarly, two employees working for 1,040 hours each would consume one FTE.

[10] The DEA computed the current fees based on the estimated costs of operating the Diversion Control Program for FY 2006 through FY 2008. The current fees will be in place until the DEA next raises fees.

CONCLUSIONS AND RECOMMENDATIONS

We did not substantiate the allegations that the DEA misused Fee Account funds for non-diversion control activities from FY 2004 through FY 2007. We reviewed a statistical sample of obligations of $500 and under in three field divisions as well as a sample of obligations over $500 for spending Fee Account funds and found that all the obligations were for legitimate diversion control activities. In addition, interviews with DEA personnel and documents pertaining to the use and availability of Fee Account funds did not substantiate allegations that the DEA had used Fee Account funds for non-diversion control activities.

Moreover, while the DEA had restricted diversion-related overtime, travel, and other related expenses, we determined that the DEA had legitimate reasons for these restrictions. The DEA restricted the use of funds for these purposes because of a delayed collection of registration fees and because funds were needed to cover the costs of an increase in the rate of Diversion Investigator overtime resulting from the settlement of a lawsuit. Although the DEA imposed restrictions on purchases of equipment, travel expenses not related to investigations, and overtime, our interviews in the three field divisions we visited indicated that these restrictions did not undermine diversion control operations. The allegations also stated that the DEA did not hire new Diversion Investigators because of a lack of Fee Account funds. We found that the DEA's reason for not hiring new Diversion Investigators – that it was awaiting an Office of Personnel Management decision on reclassifying the Diversion Investigator position – was reasonable.

However, many Diversion Investigators we interviewed still perceived that Fee Account funds were being used inappropriately. We believe that the DEA's recent policy of using more Special Agents and Intelligence Analysts within the Diversion Control Program, combined with an inaccurate understanding of how the DEA can use the Fee Account, contributed to the Diversion Investigators' perception.

We also concluded that for FY 2006 and FY 2007, the DEA did not fund all Diversion Control Program activities through the Fee Account. We identified an estimated $15.4 million in salary costs for Special Agents and Chemists between FY 2006 and FY 2007 attributable to criminal diversion investigations that were not included in the program's current budget and were not paid with Fee Account funds.

As a result of our review, we recommend that the DEA:

1. Determine the total of actual and planned program costs, including salary costs attributable to diversion control activities, especially for Special Agents, Intelligence Analysts, and Chemists, and include these costs in the Diversion Control Program's budget from this point forward.

2. Provide more information to DEA personnel on the requirements governing the use of Fee Account funds, particularly for salary and other associated costs of Special Agents and Intelligence Analysts.

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BACKGROUND

Introduction

The Drug Enforcement Administration (DEA) is the primary agency for enforcing the provisions of the *Controlled Substances Act* that pertain to the diversion of controlled pharmaceuticals, such as narcotics, stimulants, depressants, and regulated chemicals such as ephedrine.[11] The DEA's Diversion Control Program seeks to prevent, detect, and investigate the redirection of controlled pharmaceuticals and regulated chemicals from legitimate channels while ensuring an adequate, uninterrupted supply to meet legitimate needs. The Diversion Control Program is funded through registration fees that manufacturers, distributors, dispensers (such as physicians), importers, and exporters of controlled substances and certain regulated chemicals pay into an account called the Diversion Control Fee Account (Fee Account). Federal law under 21 U.S.C. § 886a(1)(C) (§ 886a) directs the DEA to set the fees "at a level that ensures the recovery of the full costs of operating the various aspects of the Diversion Control Program."

The Office of the Inspector General (OIG) initiated this review in response to a letter from the Chairman of the Permanent Subcommittee on Investigations of the Senate Homeland Security and Governmental Affairs Committee (the Chairman).[12] The letter provided allegations the Subcommittee had received that the DEA was using Fee Account funds to pay for agency activities unrelated to the Diversion Control Program, such as funding the salaries of Special Agents and Intelligence Analysts who did not perform diversion control activities. The allegations also stated that because of a lack of Fee Account funds, the DEA may have prohibited Diversion Investigators from working overtime and initiating travel and did not hire new Diversion Investigators. Our review assessed the validity of the allegations since fiscal year (FY) 2004, which was the first full year after the DEA created the Validation Unit within DEA headquarters to review and ensure that every Fee Account expense over $500 is related to a diversion control activity.[13]

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[11] 21 U.S.C. 822(a)(1) and 822(a)(2).

[12] See Appendix I for the Chairman's letter.

[13] In March 2003, the DEA created the Validation Unit, which is independent of the Office of Diversion Control, to certify (or validate) that all spending requests for Fee Account funds exceeding $500 are for legitimate diversion control-related activities. The unit reviews documents related to requests for Fee Account funding to determine whether the expense is related to a diversion control activity, and, if the expense only partially supports

(Cont.)

In this report, we examine whether the DEA used funds from the Fee Account for non-diversion activities and whether the DEA fully funded its Diversion Control Program with Fee Account funds as required.

Diversion Control Program

The DEA's Diversion Control Program has two main functions. The first is performing regulatory oversight of all registrants that provide controlled pharmaceutical products and regulated chemicals to the public to ensure that the registrants are complying with the requirements of the *Controlled Substances Act.* This is done through routine regulatory investigations of registered drug or chemical handlers as well as by providing information and assistance to registrants. The second function is to identify and investigate (administratively, civilly, or criminally) those persons responsible for diverting controlled pharmaceutical products and regulated chemicals from legitimate channels, whether through willfully negligent or criminal acts. This is done by conducting criminal and civil investigations.

The DEA's diversion control activities are directed and supported from DEA headquarters, but are conducted primarily through the DEA's field divisions. Historically, DEA's headquarters-based diversion control activities have been largely centralized within the Office of Diversion Control. Over the last few years, the DEA has decentralized various support and operational functions, such as the planning of training and the coordinating of criminal diversion investigations, to other headquarters sections.

Diversion Control Activities Conducted at Headquarters

The Office of Diversion Control is located within the DEA's Operations Division. The Office of Diversion Control provides policy direction, program guidance, and support to DEA diversion control staff in the field. It also coordinates all regulatory activities, such as working with registrants and other members of the chemical and pharmaceutical community to help prevent the diversion of controlled pharmaceuticals and listed chemicals. The section within the Office of Diversion Control that plays the largest role in managing Fee Account spending is the Diversion Planning and Resources Section (ODA). ODA oversees the development of budget submissions, issues Fee Account financial policies, and tracks and analyzes requests for purchases and funds distributed to DEA headquarters and field offices.

the Diversion Control Program, such as a field office's rent or utility cost, the portion of the expense that should be funded by the Fee Account.

ODA also manages personnel, develops administrative guidelines, and develops recruitment efforts for the Diversion Control Program.

ODA works closely with the Office of Resource Management in the DEA's Financial Management Division to create the Diversion Control Program's budget request and maintain the Table of Organization, a comprehensive listing of positions within the DEA offices. The Office of Resource Management analyzes diversion staffing and payroll data to determine payroll hours and staffing levels.

Diversion Control Program Structure in the Field

The DEA domestic field structure consists of 21 field divisions, each headed by a Special Agent in Charge, and 227 sub-offices located throughout the United States. Nineteen of the 21 field divisions have a Diversion Program Manager who supervises all diversion control personnel in the field division. Sixty-three of these offices and sub-offices have one or more groups of Diversion Investigators led by a diversion Group Supervisor. The DEA has also assigned Special Agents and Intelligence Analysts to assist some diversion groups. Below is a description of these positions and their roles and responsibilities:

- Diversion Investigators investigate regulatory, civil, and criminal matters pertaining to DEA registrants. They do not have law enforcement authority so they cannot perform law enforcement functions such as serving warrants, conducting surveillance, managing confidential informants, or working undercover. Diversion Investigators rely on DEA Special Agents or other law enforcement personnel to conduct tasks requiring law enforcement authority.[14]

- Special Agents conduct diversion investigations and assist Diversion Investigators by performing investigative tasks that require law enforcement authority such as surveillance, registering and working with confidential informants, serving search warrants, and making arrests.

- Intelligence Analysts support diversion investigations by analyzing data from wiretaps, prescription records, and interviews of

[14] The DEA has sought law enforcement authority for Diversion Investigators. In September 2005, the DEA submitted a request to the Department of Justice to reclassify the Diversion Investigator position to one with law enforcement authority through a new law enforcement occupational series. However, in September 2007 the Office of Personnel Management rejected this request, stating that a new position was not warranted because the proposed position is essentially the current Special Agent position.

confidential informants; preparing background profiles on investigative targets; and performing database checks.

The DEA created Tactical Diversion Squads in 1996. The squads conduct criminal diversion investigations and are composed of teams of Diversion Investigators, Special Agents, and state and local law enforcement personnel. Tactical Diversion Squads are currently located in five DEA field divisions: Denver, St. Louis, Houston, New Orleans, and Boston.

History of the Fee Account

In 1971, DEA's predecessor, the Bureau of Narcotics and Dangerous Drugs, instituted a fee on registrants of controlled substances to cover the administrative costs of processing their registrations. The annual fees collected from registrants totaled about $15 million and were not intended to cover the costs to the agency of performing its diversion control activities. Instead, congressionally appropriated funds financed the bulk of the Diversion Control Program's activities.

In October 1992, Section § 886a of the *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993* (Appropriations Act of 1993) established the Fee Account.[15] This Act changed the funding of the Diversion Control Program beginning in FY 1993 from the DEA's congressionally appropriated funds to fees paid by registrants, including doctors, pharmacies, hospitals, manufacturers, distributors, importers, and exporters of controlled substances. The Act stated that the DEA must set its registration fees "at a level that ensures the recovery of the full cost of operating various aspects of" the Diversion Control Program. While Congress mandated that the Fee Account be used to support the Diversion Control Program only, it did not include any specific criteria on what constituted the program. Thus, most of the specific information about what can and cannot be charged to the Fee Account is found only in notices issued by the DEA through the *Federal Register.*

The DEA established a registration fee schedule in a Final Rule published in the *Federal Register* on March 22, 1993.[16] The rule stated that:

> activities contained in the [diversion] program which give rise to the fees consist of Diversion Investigators, analysts, technicians, and clerical

[15] See Pub. L. No. 102-395, codified at 21 U.S.C. § 886a.

[16] Final Rules published in the *Federal Register* set the fees and describe the activities that the DEA considers to be part of the Diversion Control Program.

> personnel salaries and expenses; and travel, rent, utilities, supplies, equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances.[17]

The Final Rule specifically excluded costs associated with regulated chemical control efforts, clandestine laboratory efforts, Diversion Investigators assigned to foreign posts, and the DEA's Office of Chief Counsel.

In response to the 1993 Final Rule, the American Medical Association filed a lawsuit objecting to the new fees because the Final Rule did not "provide adequate notice or explanation of the costs and scope of the Diversion Control Program to be funded through those fees." In November 1995, the United States District Court for the District of Columbia allowed the new registration fee schedule to remain in effect, but required the DEA to identify specific components of the Diversion Control Program and explain why the components could be fee-funded.

In August 2002, the DEA published another Final Rule to describe the fee-funded components of the Diversion Control Program. The August 2002 Final Rule stated that in addition to what was included in the 1993 Final Rule, other activities were also fee-fundable, such as personnel and associated costs for the operation of two Diversion Control Program data systems known as ARCOS and CSA, and the establishment of the National Forensic Laboratory Information System and Tactical Diversion Squads.

In October 2003, the DEA published a Final Rule that increased registration fees for the first time in 10 years. As part of the justification for the increased fees, the October 2003 Final Rule described new initiatives of the Diversion Control Program, including responding to the threat of OxyContin abuse and Internet-based diversion, and upgrading ARCOS. The 2003 Final Rule also clarified activities that, while supporting the Diversion Control Program, would still be funded through congressional appropriations.[18]

In December 2004, the *Consolidated Appropriations Act of 2005* (Pub. L. No. 108-447) amended 21 U.S.C. § 886a to define the Diversion

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[17] 58 Fed. Reg. 15273.

[18] These activities included two sections in the Office of Chief Counsel that litigated administrative actions related to registrants and provided legal support on regulatory policy matters; salaries and related expenses in the Office of Training specifically dedicated to the Diversion Control Program; and a portion of the Office of Forensic Sciences Special Testing Laboratory that analyzed licit drugs.

Control Program as encompassing "the controlled substance *and chemical diversion control activities*" [emphasis added] of the DEA. Previously, the user fees paid by handlers of regulated chemicals covered only the costs of their registrations and some administrative oversight, while the Chemical Diversion Control Program was funded through DEA's appropriations.

In November 2005, the DEA published a *Federal Register* notice that addressed the addition of the chemical diversion control activities to the program. This notice proposed expanding the range of diversion control activities that could be funded from the Fee Account to include positions for Diversion Investigators posted in overseas DEA offices; additional Special Agent and – for the first time – Intelligence Analyst positions; and portions of the Office of Chief Counsel, the Office of Forensic Sciences Special Testing Laboratory, and the Special Operations Division. The proposed fee was also to cover costs for the registration and control of the manufacturing, distribution, and dispensing of controlled substances as well as listed chemicals. This new fee structure went into effect in December 2006.

Concerns About the DEA's Use of Fee Account Funds

Since the late 1990s, both registrants and DEA diversion control employees have raised concerns about how the DEA is using Fee Account funds. To address complaints regarding the use of the Fee Account and to better determine the cost and parameters of the Diversion Control Program, in the late 1990s the DEA took several steps to improve its management of the Fee Account. First, in 1999 the DEA created a work group made up of personnel from the DEA Office of Diversion Control and the Office of Resource Management. The purpose of the work group was to clarify what could and could not be fee-funded, complete the 2002 Final Rule to be published in the *Federal Register,* account for money that had been collected since the Fee Account was established, and identify the full cost of the Diversion Control Program. The work group also examined overall policy questions such as whether international activities should be paid for with the Fee Account.

At approximately the same time, in February 2000, the DEA Deputy Administrator requested that DEA's Office of Inspections conduct an audit of charges to the Fee Account from FY 1994 through FY 2000 to determine their legitimacy and to review management controls in place to oversee the Fee Account.[19] The results of this audit were never finalized, but some of the preliminary results were that the DEA:

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[19] Management controls are intended to provide reasonable assurance that Fee Account funds are used only for diversion control activities.

1. did not adequately monitor costs charged to the Fee Account,

2. did not establish effective management controls after Congress required that the DEA fully fund the Diversion Control Program through registration fees in FY 1993, and

3. had no mechanism to verify salaries charged to the Fee Account.

As a result of the efforts of the work group and the Office of Inspections audit, the Deputy Administrator established a Diversion Task Force in October 2000 to review FY 1999 Fee Account charges to determine whether they were legitimate and to continue reviewing and validating obligated Fee Account funds from FY 2001 and FY 2002. In March 2003, the DEA created a permanent entity within the Office of the Deputy Administrator, Executive Policy and Strategic Planning Staff, to carry out the functions of the Diversion Task Force for all future Fee Account spending. This entity, which is independent from the Office of Diversion Control, is known as the Validation Unit. The unit is discussed later in this Background section.

Determination of the Cost of the Diversion Control Program and Registration Fees

The *Controlled Substances Act* requires that every entity that manufactures, distributes, or dispenses any controlled substance or certain listed chemicals obtain an annual registration. The amount of the registration fee depends on the DEA's estimate of the total cost of operating its Diversion Control Program for a given year. In addition, the DEA must factor into the registration fee the $15 million it is required to pay the U.S. Treasury annually to cover administrative costs.[20] For instance, if the cost of the Diversion Control Program was estimated at $200 million for a given year, the total amount the DEA would need to collect through registration fees for that year would be $215 million.

To determine the expected operating costs for the program each fiscal year, every office within the DEA that uses Fee Account funds must estimate its expenditures for diversion control activities. The DEA refers to these estimates as "spend plans." The spend plan is essentially a proposed budget for the fiscal year based on previous spending, planned enhancements, and any new initiatives planned for the next fiscal year. For example, a field office's spend plan may include funding for operational

[20] 21 U.S.C. § 886a (1992).

activities associated with a planned investigation, such as investigation-related travel, payments to confidential informants for information, or purchasing evidence. The spend plan for a headquarters entity such as the Office of Administration may request Fee Account funds for rent, renovations, and vehicle purchases. The DEA compiles the spend plans from each office into an overall financial plan for diversion control.[21]

After the budget is completed, the DEA is able to set the fee structure based on the number of registrants. As of FY 2007, there were 1.29 million registrants.[22] Eighty-one percent of registrants were medical practitioners, 11 percent were mid-level practitioners, 5 percent were pharmacies, and the remaining registrants were hospitals and clinics, researchers, teaching institutions, narcotic treatment programs, analytical laboratories, and controlled substance and regulated chemical manufacturers, distributors, reverse distributors, importers, and exporters. Table 1 presents the individual registration fees, by type of registrant, set by the DEA for FYs 1993, 2003, and 2006. Currently, certain registrants pay their fees annually and certain registrants pay their fees once every 3 years.

[21] A financial plan is the instrument by which the DEA allocates resources to its various offices and programs.

[22] According to a DEA official, each year there is a net increase of approximately 30,000 registrants.

Table 1: Registration Fees by Type of Registrant for FYs 1993, 2003, and 2006

Type of registrant	FY 1993 fee	FY 2003 fee	FY 2006 fee
Controlled substance manufacturer	$875	$1,625	$2,293
Controlled substance distributor, exporter, reverse distributor, or importer	$438	$813	$1,147
Medical practitioner, retail pharmacy, hospital/clinic, teaching institution, or midlevel practitioner*	$210	$390	$551
Researcher, analytical laboratory, or narcotics treatment program	$70	$130	$184
Regulated chemical manufacturer	—	—	$2,293
Regulated chemical retail distributor, importer, distributor, or exporter	—	—	$1,147

* Midlevel practitioners are nurse practitioners, nurse midwives, or physician assistants authorized by the state in which they practice to dispense controlled substances.

Source: DEA

As shown in Table 1, the DEA has increased registration fees twice since 1993.

Process for Spending Fee Account Funds

Every field division and headquarters office within the DEA that conducts or supports diversion control-related activities has an amount of Fee Account funds (called an allowance) allocated to it at the beginning of each fiscal year.[23] Each office's allotment is based on the spend plan it developed with approval from the Office of Diversion Control for the year. The funding for most offices is front-loaded, meaning that at the beginning of each quarter the office receives one-fourth of its annual allotment of funds. This allows personnel in the office's fiscal unit to obligate their own Fee Account expenses.

[23] An allowance is a portion of the Fee Account that the Diversion Planning and Resource Section transfers from a central account to an Allowance Manager to use in carrying out the mission of his or her organization. An Allowance Manager is an employee, usually at the management level, who is charged with managing the funding provided in an allowance. The Allowance Manager is an office-head-level official, typically the Special Agent in Charge, Laboratory Director, Country Attaché, or headquarters official at the Deputy Assistant Administrator level or higher. An Allowance Manager may delegate authority to authorize the use of funding in certain instances, such as for travel or training.

Any DEA employee can initiate a request for Fee Account funding for a purchase by submitting a request to his or her supervisor. This is referred to as a "commitment request." Examples of commitments include a request for goods or services or travel orders. The commitment request is supposed to include a written justification for why Fee Account funds should be used. The supervisor submits the request and provides the necessary documentation to the official authorized to approve the use of Fee Account funding.[24] Once the proper document is signed by the authorizing official, the request is submitted to the Allowance Manager. If the Allowance Manager approves a request that is $500 or less, then the Allowance Manager submits the request to the funding office for processing and obligation.[25] Once the commitment request is recorded in the Federal Financial System (FFS), it becomes an obligation.[26] After the funds have been expended, the expense is again entered into the FFS as an expenditure. If the expense exceeds $500, then the Allowance Manager submits the request to a unit that validates that the expense is a legitimate use of Fee Account funds. This unit is called the Validation Unit.

The Validation Unit. The Validation Unit's role is to certify (or validate) that any spending request for Fee Account funds that exceeds $500 is for a legitimate diversion control-related activity. The Validation Unit also conducts on-site reviews of offices in headquarters and field divisions on their use of Fee Account funds. (See Appendix II for the structure of the Office of Diversion Control in relation to the Validation Unit.) The Validation Unit does not determine whether the funds are available to be spent. It only determines whether the request to spend funds from the Fee Account is a legitimate diversion control activity. The Validation Unit makes its assessment based, in part, on a written justification included on the commitment request document. Even if the Validation Unit validates a request, it does not mean that Fee Account funds will ultimately be spent. The Office of Diversion Control and the Office of Resource Management share responsibility for determining whether funds

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[24] The authorizing official can be the Diversion Program Manager, Assistant Special Agent in Charge, or the Diversion Planning and Resources Section Chief.

[25] An obligation is an action by an authorized individual that creates a liability on the part of the government to make a disbursement at a later time. When an authorized individual incurs an obligation on behalf of the government, this reduces the available balance of funding remaining in the account.

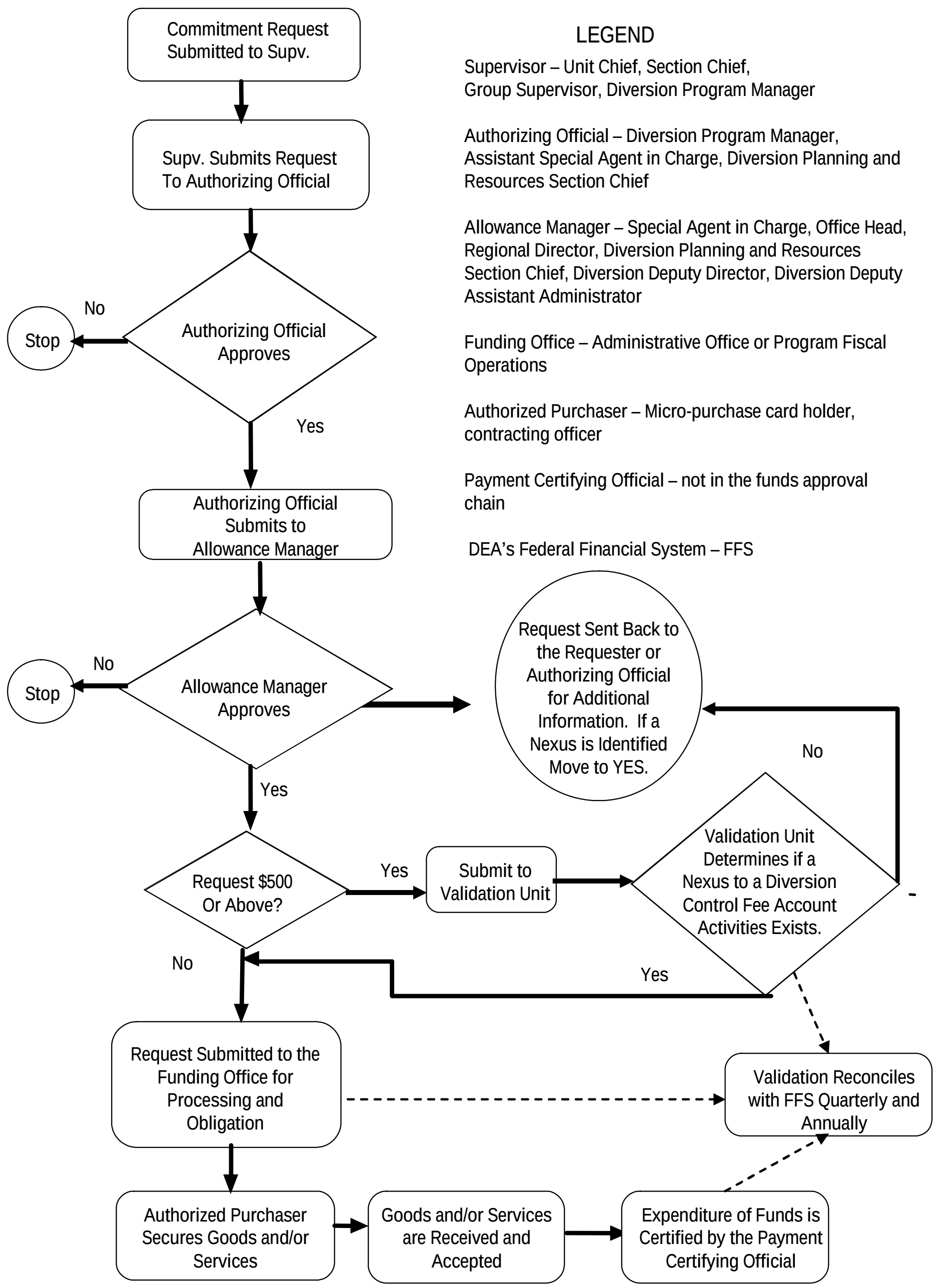
[26] The FFS is the primary DEA financial system. It is a budgeting, accounting, and reporting application that records budget execution, fixed assets, purchasing, accounts payable, disbursements, travel, accounts receivable, general ledger, and other financial transactions. The FFS allows online queries, provides reports for monitoring program costs and financial operations, and fulfills external financial reporting requirements.

are available and whether a given activity is a worthwhile diversion control expense. In addition, the Validation Unit sends ODA a copy of all validations so that it is aware of all expected (or obligated) Fee Account expenses.

If the Validation Unit determines that the commitment request is for a legitimate diversion control activity, then it stamps the document with a Validation Unit stamp and returns an electronic copy of the validated commitment request back to the field division or headquarters office so that the expense can be processed and obligated. If the Validation Unit determines that the request is not for a valid diversion control activity, then it denies the request.

Each quarter, the Validation Unit reconciles the commitments it has validated with the actual expenditures recorded in the FFS. In this process, the Validation Unit compares the actual expenditures of Fee Account funds made by each entity within the DEA that received Fee Account funds with the validations for that quarter. The Validation Unit requests documentation from the relevant office for all expenditures over $500 for which it has no record of validation. With the additional documentation, the Validation Unit either validates the expense retroactively or determines that it is not a legitimate use of the Fee Account and arranges for the funds expended to be transferred back to the Fee Account. See Figure 1 for the DEA's process for requesting Fee Account funds.

Figure 1: Process for Requesting Fee Account Funds



Source: DEA

The Validation Unit is also responsible for determining the Fee Account's share of DEA rent and salary costs. The Validation Unit determines the Fee Account's share of rent by computing the proportion of authorized diversion control employees in each office based on the DEA's Table of Organization for that year, and makes that equal to the Fee Account's share of rent in that office. The Validation Unit uses the authorized number of employees rather than the actual number of employees because even when a position is vacant, the physical space must be reserved for the employee hired to fill the position. For example, if 10 percent of all employees on the Table of Organization for a given office were assigned to fee-fundable positions, then the Fee Account's share of rent in that office would be 10 percent of that office's rent. The Validation Unit repeats that calculation for every DEA office, and the DEA charges the Fee Account the total of all the individual rent costs.

Between FY 2004 and FY 2005, the Validation Unit determined the amount of salary costs to charge to the Fee Account simply by totaling the salary costs of all of the DEA employees in fee-funded positions. The Validation Unit did not include any time that employees who were not in fee-funded positions spent on diversion-related investigations or activities. For example, if a Special Agent expended work hours on criminal diversion investigations but was not in a fee-funded position, the DEA did not charge these hours to the Fee Account.

Starting in FY 2006, the Validation Unit based the salary charges to the Fee Account on salary costs of employees in fee-funded positions, plus cumulative diversion work hours by employees in certain other non-fee-funded positions. The DEA used the congressionally authorized number of full-time equivalents (FTE) as the maximum the Fee Account could be charged.[27] For example, if the DEA recorded 100 Special Agent diversion FTEs but the congressionally authorized number of FTEs was 50, the DEA charged the Fee Account for 50 Special Agent FTEs.

[27] An FTE is the number of total hours worked divided by the maximum number of compensable hours in a work year. The DEA defines 1 full-time work year as 2,080 hours (or 2,600 hours for Special Agents conducting criminal investigations). One worker occupying a full-time job all year would consume one FTE. Similarly, two employees working for 1,040 hours each would consume one FTE. Congress authorizes the number of Special Agent, Intelligence Analyst, and Chemist FTEs that the DEA can charge to the Fee Account each year.

OBJECTIVES, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

Objectives

The objectives of our review were to determine whether the DEA used Fee Account funds for non-Diversion Control Program activities and whether since FY 2004 the DEA has fully funded its Diversion Control Program with the Fee Account, as required by law.

Scope

Our review examined the Fee Account revenues and expenses from FY 2004 through FY 2007. We began with FY 2004 because it was the first full year after the DEA created the Validation Unit within headquarters to review and ensure that every Fee Account expense over $500 is related to a diversion control activity. We reviewed whether the DEA used Fee Account funds for non-diversion control activities and, conversely, that Fee Account funds were not available for legitimate diversion control activities.

We considered possible uses of the Fee Account for non-diversion control activities before FY 2004 to be out of the scope of our review. In addition, we did not evaluate whether the DEA used Fee Account funds effectively. Rather, we evaluated whether the DEA used Fee Account funds for activities it determined to be within the Diversion Control Program.

Methodology

Document Review

To examine the DEA's use of Fee Account funds, we reviewed federal laws; final rules published in the *Federal Register;* budget documents; DEA policies, procedures, and manuals; DEA internal inspection reports; and electronic correspondence between the Validation Unit and the DEA's Office of Chief Counsel regarding the Office of Chief Counsel's legal interpretation of how Fee Account funds can be used.

Interviews

At DEA headquarters, we interviewed the Chief of the Executive Policy and Strategic Planning Staff and all the employees of the Validation Unit. We interviewed employees within the Office of Diversion Control, including the Section Chiefs of the Planning and Resources Section, the Liaison and

Policy Section, and the Registration and Program Support Section. Outside of the Diversion Control Program, we spoke with employees within the Office of Investigative Technology and in each of the four sections of the Financial Management Division. We also interviewed attorneys in the DEA's Office of Chief Counsel and in the OIG's Office of General Counsel.

Site Visits

We conducted site visits at three DEA field divisions: Chicago, Illinois; Detroit, Michigan; and St. Louis, Missouri. We selected the Chicago field division because it is a large field division and because a DEA chemical laboratory that analyzes drug evidence is located in the city. We chose the Detroit field division and its district office in Columbus, Ohio, because the Office of Inspection in conjunction with the Validation Unit and ODA had recently conducted a review there, which noted that allegations of Fee Account misuse had been raised by personnel within the field division. We selected the St. Louis field division and its district office in Kansas City, Kansas, at the suggestion of DEA managers and because the St. Louis office has a Tactical Diversion Squad.

During these field visits, we interviewed Special Agents in Charge, Associate and Assistant Special Agents in Charge, Diversion Program Managers, Diversion Group Supervisors, Diversion Investigators, Special Agents and Intelligence Analysts assigned to the Diversion Control Program, Group Assistants, Intelligence Group Supervisors, Supervisory Budget Analysts, Administrative Officers, and a Chemical Lab Supervisor who oversees a fee-funded Forensic Chemist (Chemist). During our field visits, we became aware of other diversion control field personnel who wished to speak to us regarding the use of Fee Account funds and interviewed them.

Commitment Request and Obligation Data

To determine if Fee Account funds had been used for non-diversion control activities, we obtained the electronic records of all fee-funded obligations between FY 2004 and the first half of FY 2007 that were recorded in the FFS. From these records, we selected a random sample of obligations of $500 and under in the Chicago, St. Louis, and Detroit field divisions.[28] Based on the obligations that we selected, we asked for the associated commitment request and obligating documents from the three field divisions. On these documents, we reviewed the number of approval signatures from diversion and non-diversion control supervisors, the types

[28] The sample is statistically valid at the 95-percent confidence level with a plus or minus 10-percent error rate.

of expenses, and the number of written justifications included on these forms to determine how closely the field divisions followed the guidelines of the obligation process for expenses of $500 and under.

From the records in the FFS, we also selected a subjective sample of obligations exceeding $500 that are required to be validated by the Validation Unit. To ensure that we reviewed expenses in certain categories, we subjectively sampled 10 obligations from the 5 following categories, for a total of 50 obligations:

- infrastructure – obligations related to official government vehicles, building alterations, and utilities;

- training – obligations related to training diversion control personnel, including travel and transportation to training, as well as tuition for training conferences;

- field operations – obligations made in field divisions to support field activities;

- field support – obligations for headquarters support of field division activities, such as funding pen registers;[29] and

- headquarters support – obligations related to DEA-wide entities, including the Organized Crime Drug Enforcement Task Force Fusion Center and the El Paso Intelligence Center.

Based on the obligations that we selected, we asked for the associated commitment request and obligating documents. On these documents, we reviewed the number of supervisor approval signatures, the expense justifications, and the validation stamps to determine how many obligation records were legitimately fee-fundable and how many records the Validation Unit had properly approved or denied using their standard operating procedures.

Work Hour Data

To determine the total diversion control salary costs and assess whether since FY 2004 the DEA fully funded its Diversion Control Program using the Fee Account as required, we obtained work hour data from the DEA's Work Hours Reporting System (WRS) and the System to Retrieve

[29] A pen register is a device that records the numbers that a target telephone is dialing.

Information from Drug Evidence II (STRIDE), the DEA's laboratory analytical system, for work hours associated with criminal diversion investigations by Special Agents, Intelligence Analysts, and Chemists. The DEA tracks Special Agent and Intelligence Analyst time in its WRS database and Chemist time in STRIDE.[30] These employees record the hours charged to specific criminal investigations on their biweekly timesheets using codes known as substance identifiers that denote the primary substance or commodity involved in the investigation. These codes specify 51 principal controlled substances. The DEA has determined that 27 of the codes are always related to diversion control, and work done under them is therefore fee-fundable, and that 2 other codes may be related, depending on the case. (See Appendix III for list of principal controlled substances or commodities that the DEA considers fee-fundable.) The DEA determines the work hours expended by each type of employee to support the Diversion Control Program by adding the total number of hours associated with investigations that have one of the 27 codes that are always related to diversion control. During the time period covered by our review, the DEA did not include work hours associated with the other two codes that may or may not have been related to a diversion investigation.

[30] The Diversion Control Program has two types of Chemist positions – those that support specific investigations (Forensic) and those who evaluate controlled substances and listed chemicals for scheduling and other management purposes. Only Forensic Chemists enter their time and attendance information into STRIDE.

RESULTS OF THE REVIEW

We did not substantiate the allegations that the DEA misused Fee Account funds for non-diversion control activities between FY 2004 and FY 2007. However, many diversion control employees in field divisions we interviewed told us that they thought the DEA used Fee Account funds inappropriately. We believe that DEA's recent policy of using more Special Agents and Intelligence Analysts within the Diversion Control Program to support investigations, combined with inaccurate understandings of how the DEA can use the Fee Account, contributed to the Diversion Investigators' perception. Although we found no use of Fee Account funds for non-diversion activities, we found that the DEA did not fully fund all Diversion Control Program salary costs with the Fee Account as required by law.

We did not substantiate the allegations that the DEA misused Fee Account funds for non-diversion control activities between FY 2004 and FY 2007.

We based our determination on our review of obligations of $500 and under in three field divisions, obligations exceeding $500, interviews with diversion control personnel at headquarters and in the field, and various DEA documents concerning diversion control. The following is a discussion of what we found.

Obligations of $500 and Under

Our review found that obligations of $500 and under in the three field offices we visited were for diversion control-related activities. During our site visits to DEA field divisions in Chicago, Detroit, and St. Louis, we reviewed a random sample of 265 obligation documents for expenses of $500 and under. The Diversion Program Manager or other senior diversion control personnel in the field is supposed to approve these obligations to ensure that the commitment requests are for diversion control activities before they are obligated. We reviewed these obligations to confirm that they were in fact made for legitimate diversion control activities.

We concluded that an obligation was diversion control-related if we could confirm from information on the obligation documents that the expense fell into one of the following categories:

- supplies or services were related if they were for diversion control personnel;

- an investigation obligation was related if the case number or substance identifier was specific to a diversion investigation;

- travel was related if the person traveling was a diversion control employee or the travel was related to a diversion control activity;

- training was related if the trainee was a diversion control employee; or

- repair, maintenance, or fuel for an official government vehicle was related if the vehicle involved was a fee-funded vehicle.

We found that 247 (93 percent) of the 265 obligations were clearly for diversion control activities because they were expenses that fell into one of the categories above. The remaining 18 obligations were for office supply orders that were approved and signed by the Diversion Program Manager. We concluded that these 18 (7 percent) obligations were valid diversion control expenses because they were approved by the highest-ranking diversion control employee in the field division as part of the DEA's process for ensuring that Fee Account expenses of $500 and under are legitimate diversion control expenses. Table 2 summarizes the results of our analysis.

Table 2: Criteria for Determining if Obligations Were Related to Diversion Control and Number of Obligations Determined to Be Related

Criteria	**Obligations that fit criteria**
Supplies or services were for diversion control personnel	105
Expense supported an investigation with a diversion case number or substance identifier	95
Traveler was a diversion control employee or the travel was related to a diversion control activity	23
Training was for a diversion control employee	14
Expense was related to a Diversion Control Program vehicle	10
Diversion Program Manager signed the obligation form	18
Total	**265**

Source: OIG analysis

Obligations Exceeding $500

We found that all of the obligations exceeding $500 that we reviewed were valid diversion control expenses. We examined a sample of 50 obligations exceeding $500, which the DEA requires the Validation Unit to validate. Table 3 shows the number of obligation documents we reviewed for each of the fiscal years in our review period.

Table 3: Obligations Exceeding $500 Reviewed by OIG

Fiscal year	Obligations reviewed
FY 2004	10
FY 2005	13
FY 2006	16
FY 2007	11
Total	**50**

Source: OIG analysis

We determined that 46 of the obligations were diversion control-related because the requisition form or a related document contained a written justification explaining how the expense was related to diversion control. We discussed the four obligations that did not contain written justifications with the Unit Chief of the Validation Unit. Three of these obligations were for expenses related to training, but nothing on the documentation indicated why the expenses were diversion control-related. The Validation Unit Chief said the training expenses were fee-fundable because in each case the trainee was in a fee-funded position. The fourth obligation was for remodeling office space for a field division office. In this case, the obligation document we reviewed was for additional work on a project that had been previously validated under a different document number. The Validation Unit Chief provided us with documentation from the original validation that showed the number of Diversion Investigators in the office. We verified that the share of the remodeling costs charged to the Fee Account was correctly based on the share of all employees in the office who were Diversion Investigators. Three other obligation documents had not been validated as required, but we were able to determine from the corresponding written justifications how the expenses were related to diversion control. Two of these obligation documents were from FY 2005, and one was from FY 2004.

Allegations Regarding the Use of Fee Account Funds

We categorized the allegations into three general categories:

- Fee Account funds were not available for overtime, travel, and investigative expenses.

- Fee Account funds were not available for hiring new Diversion Investigators.

- Fee Account funds were being used to pay for the salaries and other associated costs of Special Agents and Intelligence Analysts who may not have been working on diversion control.

In interviewing DEA Diversion Investigators in field divisions about the use of Fee Account funds, we learned more about perceptions that funds had been spent on non-diversion control activities.[31] The interviews, along with a review of diversion control documents, further substantiated that the DEA did not spend Fee Account funds on non-diversion control activities between FY 2004 and FY 2007. We interviewed Diversion Investigators in the three field divisions we visited to determine if they had any knowledge of current use of Fee Account funds for non-diversion control activities.

In the interviews, we asked Diversion Investigators assigned to field divisions about these three categories of allegations to determine if they had any direct knowledge of misuse that had occurred since 2004 and also asked them to share any specific examples with us. We also asked them if Fee Account funding was adequate for their diversion control investigations. The results of our interviews are discussed below.

Alleged Lack of Fee Account Funds for Overtime, Travel, and Investigative Expenses. One area of concern for the Diversion Investigators was their belief that Diversion Investigators could not work overtime, initiate needed travel, or have access to certain essentials such as investigative equipment because of a lack of Fee Account funds. During our site visits, we asked Diversion Investigators about these specific areas for which Fee Account funds were alleged to be unavailable. Our review found that overtime, travel, and equipment had indeed been limited during our review period, but DEA managers provided two explanations for the limitations.

[31] When discussing interview data, we use Diversion Investigators to mean Diversion Program Managers, Diversion Group Supervisors, and Diversion Investigators assigned to field divisions.

First, managers in the Diversion Control Program restricted spending in many areas after the DEA was unable to begin to collect higher registration fees for a year after it proposed the fee increase in November 2005. Although the DEA had anticipated collecting $238 million in registration fees in FY 2006, it collected $163 million, roughly $75 million less than expected. In response, the Deputy Assistant Administrator Office of Diversion Control sent a memorandum in July 2006 to all office heads explaining that the Office of Diversion Control had projected a funding shortfall for the rest of FY 2006 and that funding for overtime, travel (unrelated to investigations), and equipment was limited. Specifically, the memorandum stated:

> Until the new [Fee Account] fee structure is collected, the following additional [Fee Account] program changes are required:
>
> - [No Fee Account] funded conferences,
> - No [Fee Account] funded travel, including government and contractor, except for investigative purposes,
> - No [Fee Account] funded overtime at Headquarters or above your Divisional quarterly allocations for field offices AND no compensatory time . . . [and]
> - No equipment purchases.

The memorandum stated that if diversion control employees needed to work more hours of overtime than allotted to the field division or need to travel or purchase equipment, their supervisors would need to receive approval from the Deputy Assistant Administrator of the Office of Diversion Control in advance and that each request would be decided on a case-by-case basis.

During our site visits, some Diversion Investigators stated to us that they were hesitant to request overtime because of these restrictions. However, we determined that, when actually requested, most requests that were submitted to the Office of Diversion Control for overtime, travel, and equipment were approved. From July 2006 through September 2007, the Office of Diversion Control recorded 327 requests to use Fee Account funds in areas that had been restricted, and approved 311 (95 percent) of those requests. Specifically regarding requests personnel submitted for equipment purchases, travel expenses, and additional overtime from July 2006 through September 2007, we found that the DEA had approved 120 (97 percent) of the 124 requests. We recognize that other requests may not have actually been submitted to the Office of Diversion Control by Diversion Program Managers.

A second restriction on Fee Account expenditures resulted from the settlement of a lawsuit brought by Diversion Investigators regarding how much compensation they would receive for overtime.[32] Previously, Diversion Investigators at the GS-12 and 13 level were exempt from the *Fair Labor Standards Act*, meaning their overtime was paid at less than 1.5 times their regular rate of pay. In early 2007, the DEA settled the lawsuit and as a result increased the overtime rate for all current Diversion Investigators at the affected grade levels. Due to the substantially higher costs for overtime and concerns about exceeding the budgeted amount of Fee Account funds for overtime, the Office of Diversion Control managers strictly limited the cumulative number of hours of overtime worked in the field divisions to 3,072 hours in May 2007. The DEA continued this restriction through May until it could ensure that enough Fee Account funds were available to pay for overtime for the rest of FY 2007. Starting in June 2007, the number of authorized hours of overtime per month increased. Table 4 shows the overtime hours authorized for use by field divisions in FY 2007.

Table 4: Authorized Hours of Overtime for All DEA Field Divisions by Month, FY 2007

Month and year	Authorized hours of overtime
October 2006	4,323
November 2006	3,660
December 2006	3,660
January 2007	3,676
February 2007	3,720
March 2007	3,785
April 2007	3,676
May 2007	3,072
June 2007	3,872
July 2007	3,989
August 2007	3,660
September 2007	3,908

Source: DEA data

Finally, during our site visits we asked the Diversion Investigators we interviewed about the adequacy of Fee Account funding for their investigations and overall diversion control operations. We found that 25 out of 27 (93 percent) of the respondents stated that Fee Account funds were adequate for their field divisions' diversion control activities and

[32] *Stephen S. Adams* v. *United States,* 51 Fed. Cl. 57 (2001).

operations. Table 5 shows the Diversion Investigators' responses to our questions.

Table 5: Diversion Investigator Responses to OIG Questions

Question	Respondents who answered "Yes"	Respondents who answered "No"
Are funds allocated through the Fee Account adequate for the field division's diversion control activities and operations?	25	2
Have you been able to get the investigative equipment that you needed?	27	4
Are operational funds for investigation expenses adequate?	27	2
Has funding always allowed you to open investigations?	26	1

Note: Response totals do not equal 34 because some respondents did not answer all questions.

Source: OIG analysis

We also asked Diversion Investigators who stated that they were not able to get investigative equipment they needed because of a lack of Fee Account funds for specific examples. In each of the three specific examples they reported to us, we determined that the issue had either since been resolved by the Office of Diversion Control or a constraint on funding had not been the underlying reason the equipment request was not met.[33] One Diversion Investigator described the need for global positioning satellite (GPS) systems for the government vehicles Diversion Investigators use to travel to unfamiliar and sometimes unsafe areas to conduct investigations. When we asked the Office of Diversion Control managers about this, they told us that they had purchased GPS systems for all diversion control vehicles, but the systems had not been installed yet. Another Diversion Investigator stated that laptop computers were necessary to conduct Internet checks of registrants, a task that would be difficult if laptops were not upgraded or replaced every few years. The Office of Diversion Control managers told us that all Diversion Investigators had their own laptops and that they were last replaced in 2005. Finally, one Diversion Investigator stated that the cellular phones Diversion Investigators use did not always provide good coverage. But when we asked the Diversion Program Manager in this field division about this problem, he told us that because different cellular telephone companies provided better coverage in some parts of the

[33] A fourth respondent could not specify the investigative equipment that he was unable to get.

field division's territory than others, no one cellular phone service was the most reliable for the entire field division and that funding constraints were not a factor in the cell phones provided to Diversion Investigators.

In terms of operational funds for investigative expenses, we concluded that the lack of Fee Account funds had not impeded diversion control operations in the three field divisions we visited. Two Diversion Investigators stated that operational funds were inadequate. However, their responses to our follow-up questions indicated that their concern was that managers had increased the controls over obtaining funding and decreased the flexibility in how funds can be used rather than making funds unavailable when needed for a justifiable investigative expense.

<u>Alleged Lack of Fee Account Funds for Hiring New Diversion Investigators</u>. We determined that the DEA had not hired new Diversion Investigators since November 2005 and that, as of October 2007, the Diversion Control Program was 112 Diversion Investigators below its authorized number of positions. Office of Diversion Control managers told us that they had suspended the hiring of Diversion Investigators because they were awaiting a final decision regarding a request to reclassify the Diversion Investigator position to include law enforcement authority.

The Office of Diversion Control managers told us that the DEA intended to reclassify the Diversion Investigator position by creating a new law enforcement job series for Diversion Investigators, a change that required Office of Personnel Management (OPM) approval. The Office of Diversion Control managers stated that the DEA decided not to hire new Diversion Investigators until OPM approved or denied the request. In September 2007, OPM denied the request to reclassify the Diversion Investigator position. Office of Diversion Control managers stated that because the proposal is no longer pending they would begin hiring additional Special Agents dedicated to diversion control. Managers also stated that their decisions regarding the hiring of new Diversion Investigators will depend on the results of an ongoing staffing study to determine the optimal balance of Diversion Investigators and Special Agents in field divisions.

<u>Alleged Use of Fee Account Funds to Pay for Salaries and Other Associated Costs of Special Agents and Intelligence Analysts</u>. We did not find that the DEA used Fee Account funds inappropriately to pay the salaries and associated costs of Special Agents and Intelligence Analysts. The allegation was that Fee Account funds were being used to compensate Special Agents and Intelligence Analysts who did not always work on diversion control activities. As stated in the Background section, the DEA began assigning Special Agents and Intelligence Analysts to the Diversion

Control Program in the past few years to conduct and assist with diversion control investigations. The allegations in the Chairman's letter and interviews we conducted in the field indicated that Diversion Investigators did not believe that these Special Agents or Intelligence Analysts were always working on diversion control investigations.

Diversion Investigators complained that the Special Agents and Intelligence Analysts assigned to their groups still had responsibilities related to their previous assignments. For example, Diversion Investigators stated that in one field division the Special Agent assigned to the diversion group still had demand reduction responsibilities and, in another field division, the Special Agent assigned to the diversion group also served in the DEA's Aviation Division approximately 1 day a month.[34] Some Diversion Investigators also told us that the Special Agents assigned to their groups would "go missing"; did not appear to be dedicated only to diversion control investigations; and would initiate and work on their own diversion control cases instead of assisting Diversion Investigators with their cases. With regard to the Intelligence Analysts, the Diversion Investigators believed that the Intelligence Analysts assigned to assist diversion control still had responsibilities related to illicit drug investigations and were not dedicated full time to diversion control activities. The Diversion Investigators stated that having other responsibilities detracted from the Special Agents' and Intelligence Analysts' ability to fully support the Diversion Control Program.

We found that the DEA's method for calculating fee-fundable salary costs accounts for time that Special Agents spend on criminal diversion investigations versus criminal investigations of illicit drugs, and charges the Fee Account only for the cumulative number of hours that Special Agents spend on criminal diversion investigations. The DEA requires all Special Agents and Intelligence Analysts to complete biweekly timesheets that show the number of hours they worked on specific investigations and other activities, including criminal diversion investigations. Each year, the DEA calculates the number of Special Agent and Intelligence Analyst full-time equivalents (FTE) spent on criminal diversion investigations.[35] The DEA

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[34] Special Agents who serve as Demand Reduction Coordinators work with community coalitions, civic leaders, state and local drug prevention organizations, treatment experts, and the general public to reduce drug use. The DEA's Aviation Division provides aviation support for drug investigations.

[35] An FTE is the number of total hours worked divided by the maximum number of compensable hours in a work year. The DEA defines 1 full-time work year as 2,080 hours (or 2,600 hours for Special Agents conducting criminal investigations). One worker occupying a full-time job all year would consume one FTE. Two employees working for 1,040 hours each would consume one FTE. Congress authorizes the number of Special

(Cont.)

does not charge the Fee Account for more FTEs than have been cumulatively recorded by Special Agents and Intelligence Analysts as time spent on criminal diversion investigations. In addition, the DEA compares the number of FTEs worked on criminal diversion investigations to the number of agents or analysts that were congressionally authorized in a given fiscal year. It uses Fee Account funds to pay for FTEs within the congressional authorization and uses its appropriated funds to pay for any FTEs worked beyond the congressional authorization. (See the example in the text box.)

FY 2006 Special Agent Salary Expenses Charged to the Fee Account

In FY 2006, Congress authorized that 70 FTEs for Special Agents could be paid through the Fee Account. Through examination of the Special Agent timesheets for FY 2006, the DEA determined that Special Agents spent 95 FTEs on criminal diversion control investigations. However, since Congress authorized only 70 FTEs for Special Agents to be fee-funded in FY 2006, the Fee Account paid only for the salary equivalent of the 70 FTEs for Special Agents, and appropriated funds were used to pay for the remaining 25 FTEs spent conducting criminal diversion control investigations.

Therefore, even if a Special Agent or Intelligence Analyst assigned to the Diversion Control Program had other responsibilities, DEA's method of calculating fee-fundable salary costs accounts for any time that fee-funded Special Agents and Intelligence Analysts do not spend on criminal diversion investigations. The DEA only charges the Fee Account for salary costs associated with fee-fundable investigations.

Additionally, at the three field divisions we visited we asked the Special Agents in Charge and Diversion Program Managers about their field divisions' expectations for how much time the Special Agents and Intelligence Analysts should work on diversion investigations versus illegal drug investigations. They told us that the Special Agents and Intelligence Analysts should only be conducting diversion investigations; however, it is still appropriate for them to assist in non-diversion matters when the division needs additional Special Agents or Intelligence Analysts (such as for large operations or emergencies) and to conduct collateral duties as needed by the field division. Five of the seven Group Supervisors in field divisions we visited had Special Agents or Intelligence Analysts assigned to their group. We asked them whether the Special Agents and Intelligence Analysts assigned to their groups actually worked only on diversion control matters. They stated that the time spent on other duties was minimal and did not interfere with their support of the diversion group.

Agent, Intelligence Analyst, and Chemist FTEs that the DEA can charge to the Fee Account each year.

Diversion Investigator Perceptions

Because we found that many of the allegations were unsupported, we also examined how Diversion Investigators came to the perception that the DEA had used the Fee Account inappropriately. Fourteen of 34 (41 percent) Diversion Investigators we interviewed in field divisions told us that they thought the DEA was using Fee Account funds inappropriately. In the allegations referred to us by the Chairman and in our interviews with Diversion Investigators, we found that Diversion Investigators' primary concern was based on two perceptions regarding the DEA's use of Fee Account funds. First, Diversion Investigators questioned whether the increased use of Fee Account funds for Special Agent and Intelligence Analyst salaries was worth the additional costs to the Diversion Control Program. Second, diversion control personnel had misperceptions about whether the DEA was allowed to use Fee Account funds for certain diversion control activities. Based on our discussions with diversion control personnel and our review of DEA's management of the Diversion Control Program, we believe that DEA's recent policy of using more Special Agents and Intelligence Analysts within the Diversion Control Program, combined with an inaccurate understanding of how the DEA can use the Fee Account, contributed to the Diversion Investigators' perception that the DEA used Fee Account funds inappropriately.

In addition, 13 of 34 (38 percent) Diversion Investigators we interviewed questioned whether fee-funded Special Agents and Intelligence Analysts are worth the additional costs to the Diversion Control Program. According to one supervisor, from the Diversion Investigators' perspective fee-funded Special Agents cost more in terms of salary and benefits compared with Diversion Investigators, but do not generally perform all Diversion Investigator duties such as regulatory investigations. The following excerpt from a document that we received during our field visits explains the concerns of the Diversion Investigators about fee-funded Special Agents:

> In addition to having their salaries paid by the Diversion Fee Account, the [Occupational Series] 1811 Special Agents . . . continue to receive an enhanced salary which incorporates an increased law enforcement locality pay, a 25% law enforcement availability pay (LEAP) and a higher retirement cost to be paid out of the Fee Account.[36] Not a single Diversion Investigator receives any of the previously listed enhancements. Therefore, the Fee Account will compensate a Special Agent, who almost in every instance is

[36] Availability pay is a type of premium pay that is paid to federal law enforcement officers who are criminal investigators. Due to the nature of their work, criminal investigators are required to work, or be available to work, substantial amounts of "unscheduled duty."

> not as qualified as a Diversion Investigator, more compensation . . . . Numerous Diversion offices nationally reported that Special Agents have been assigned into their Diversion groups spontaneously. Despite the amount of support offered towards Diversion related activities, their salaries are paid by the Fee Account. In addition, the Agents are directed to authorize Diversion credit cards for fuel, vehicle repairs and to purchase equipment to be funded by the Fee Account.

Some Diversion Investigators also viewed fee-funded Intelligence Analysts as an unnecessary cost to the Fee Account because Diversion Investigators were used to performing the investigative support tasks of Intelligence Analysts themselves. The Diversion Investigators we spoke with perceived that Intelligence Analysts were not needed to support diversion control and represented an unnecessary cost to the Fee Account. Several Diversion Investigators stated that they conducted their own intelligence analysis and that an Intelligence Analyst assigned full time to diversion would never have enough work to do. Some were unfamiliar with how Intelligence Analysts supported the Diversion Control Program and what their role and purpose was. Others stated that they believed the Fee Account was being used to pay for Intelligence Analysts who would not be working full time on diversion.

In addition to disagreeing with DEA's new approach to staffing the Diversion Control Program, Diversion Investigators believed that the DEA misused the Fee Account because they had misconceptions about how the DEA could use Fee Account funds. We found that Diversion Program Managers did not necessarily know that the DEA could fund investigations from the Fee Account as long as the investigations pertained to a controlled substance or listed chemical, even if no Diversion Investigator was involved in the investigation and the investigation was not labeled with a diversion case number.[37] For example, one Diversion Program Manager sent an e-mail to all other Diversion Program Managers that stated:

> I was not aware that diversion fee acct funds can be used to fund a criminal investigation . . . even if no diversion investigators are involved and no [case number indicating the case was initiated by a Diversion Investigator] is used . . . . If a "nexus" exists for a connection to a diversion case, then diversion fee acct funds can be used by the agents.

[37] *The Diversion Control Fee Account [Validation Unit] Standard Operating Procedure Number One: Validating [Fee Account] Chemical Investigative Cost, 8/15/05,* states that Fee Account funding can only be used for investigations identified by one of the DEA's fee-fundable substance identifiers and that the "case number does not have to being [sic] the Diversion Case Series (2000)." Every DEA investigation has a unique eight-digit case number that specifies the (1) field division where it was initiated, (2) the fiscal year when it was initiated, and (3) who initiated it. Cases initiated by Diversion Investigators are denoted as "2000 series" cases.

This Diversion Program Manager learned the Fee Account funds could be used in these instances from Office of Diversion Control managers. In addition, during our interviews, two Diversion Investigators stated that the Fee Account could be used to support Diversion Investigators only and not Special Agents.

The DEA's use of Fee Account funds for Special Agents and Intelligence Analysts is allowed and authorized by Congress in DEA's budget and DEA describes in notices in the *Federal Register*. For example, the August 2006 Final Rule published in the *Federal Register* states that Fee Account funds may be used to pay for Special Agents and Intelligence Analysts. It states that the Fee Account will pay for 52 additional Special Agent positions to support the Diversion Control Program "by serving warrants, providing undercover support, making arrests, and providing other functions that Diversion Investigators are prohibited from executing but that are core elements of diversion control." Further, it states that the FY 2006 cost of the Diversion Control Program includes "34 of the 67 field intelligence analysts to be phased in between Fiscal Year 2006-2007."

<u>Shifts in Use of Fee Account Funds</u>. Diversion Investigators' concerns about inappropriate use of Fee Account funds coincided with an increase in the number and associated salary costs of fee-funded Special Agents and Intelligence Analysts involved in the Diversion Control Program. Since the beginning of our review period, the DEA increased the number of Special Agents assigned to diversion control groups. The Special Agents were added to conduct and assist with diversion investigations because Diversion Investigators do not have law enforcement authority and cannot serve warrants, conduct surveillance, manage confidential informants, or work undercover.[38] In FY 2006, the DEA also began assigning Intelligence Analysts to diversion investigations to analyze data, prepare background profiles on targets, and conduct database checks.

Overall, the number of employees paid through the Fee Account increased by 28 positions (from 796 in FY 2004 to 824 in FY 2007). However, the types of personnel being fee-funded shifted from traditional diversion control positions, such as Diversion Investigators, to personnel previously not supported by the Fee Account, such as Special Agents and Intelligence Analysts. In particular, the number of Special Agents and

[38] See U.S. Department of Justice Office of the Inspector General, *Follow-Up Review of the Drug Enforcement Administration's Efforts to Control the Diversion of Controlled Pharmaceuticals*, Evaluation and Inspections Report I-2006-004 (July 2006), for a discussion on the Diversion Control Program's need for Special Agents.

Intelligence Analysts increased by 79 positions (from 10 to 89). In contrast, the number of personnel in traditionally fee-funded positions – such as Diversion Investigators and personnel in professional/administrative and technical/clerical positions – decreased by 51 positions (from 786 to 735) during the same period. Table 6 shows the number of personnel by position that were paid for by the Fee Account from FY 2004 through FY 2007.[39]

Table 6: Number of Positions/FTEs Paid by Fee Account, by Occupational Series

Occupational series	FY 2004	FY 2005	FY 2006	FY 2007	Increase or decrease FY 04 - FY 07
Traditional diversion control personnel					
Diversion Investigator	535	562	538	509	**-26**
Professional/ Administrative	97	93	96	103	**+6**
Technical/ Clerical	149	153	149	102	**-47**
Chemist	4	3	8	8	**+4**
Attorney	1	1	11	13	**+12**
Subtotal	**786**	**812**	**802**	**735**	**-51 (-7%)**
Non-traditional diversion control personnel					
Special Agent	10	19	70	70	**+60**
Intelligence Analyst	0	0	10	19	**+19**
Subtotal	**10**	**19**	**80**	**89**	**+79 (+790%)**
All fee-funded staff	**796**	**831**	**882**	**824**	**+28 (+4%)**

Source: DEA data

Inaccurate Understanding of the Parameters for Using Fee Account Funds. We believe that an inaccurate understanding among Diversion Investigators of the scope of activities fundable through the Fee Account also contributed to a perception held by Diversion Investigators that the DEA used Fee Account funds inappropriately for Special Agent and Intelligence Analyst salaries. During our interviews at the three field divisions, we asked Diversion Investigators if what was and was not covered

[39] On January 16, 2008, the DEA informed the OIG that on December 20, 2007, Congress approved the reprogramming of 108 vacant Diversion Investigator positions to Special Agent positions. This increased the number of authorized fee-funded Special Agent FTEs to 97 for FY 2007.

by the Fee Account was clear to them. Eight out of 24 Diversion Investigators (33 percent) stated that it was not clear and that the line between what could and could not be paid for with Fee Account funds was being blurred. For example, one Diversion Investigator stated that the Fee Account's nickname was "the Free Account" because it was used to pay for things not clearly related to diversion control, such as law enforcement equipment including machine guns, ammunition, and flight equipment for Special Agent use. Other Diversion Investigators stated that they were "fuzzy" on the use of the Fee Account.

We discussed with DEA diversion control managers the misconceptions of their staff concerning the Fee Account. They told us that the DEA has conveyed some information pertaining to the appropriate use of Fee Account funds to diversion control employees through written policy and at conferences for Diversion Program Managers, but we found through interviews of Diversion Investigators that this information does not always reach them. The DEA has provided its employees with limited written guidance regarding the Fee Account. The *Diversion Control Fee Account User's Guide*, which was last updated in October 2005, is available on the DEA's Intranet site to all DEA employees. However, the guide primarily describes the Validation Unit's role in Fee Account spending and does not give an overall description of the DEA's parameters for using Fee Account funds.

In addition to the conference presentations and the *Diversion Control Fee Account User's Guide*, Validation Unit managers stated that they provide information regarding the Fee Account to field division personnel when they conduct on-site reviews of headquarters offices and field divisions' use of the Fee Account. However, from FY 2004 through FY 2007 these reviews included only seven field divisions and two offices. The DEA has a total of 21 divisions and 25 headquarters offices with allowance managers. Diversion control managers also told us that they regularly respond to questions by diversion control personnel about how the Fee Account can be used.

Office of Diversion Control and Validation Unit managers told us that they believe that more communication with diversion control personnel about the Fee Account would improve the process for validating and using Fee Account funds. In fact, when we asked the Section Chief of the Office of Diversion Control about weaknesses or areas that could be improved in the process for using Fee Account funds, she stated, "communication," and added that she wanted "to get the word [about Fee Account use] out better." The Section Chief of the Executive Policy and Strategic Planning Staff stated that the validation process could be improved if field personnel had more training in the use of the Fee Account. When we asked the Unit Chief of the

Validation Unit whether field personnel were aware of the distinction between expenses covered by the Fee Account and those covered by appropriated funds, he stated that some employees were and some were not, but to have the field personnel better informed and to improve their understanding was a goal of the Validation Unit.

The DEA did not fully fund all diversion control salary costs with the Fee Account.

Our review determined that the DEA did not account for all salary costs associated with its Diversion Control Program and thus did not factor these costs into the program's current budget. The DEA is required to recover the full costs of operating the various aspects of its Diversion Control Program through the fees charged to DEA registrants under 21 U.S.C. § 886a(1)(C). The DEA determines the level of fees to charge registrants based on the Diversion Control Program's budget. To recover the full salary costs of Special Agents, Intelligence Analysts, and Chemists, the DEA would have to charge the Fee Account for the total number of FTEs that were expended on diversion control activities by these employees. The DEA funded these costs with appropriated funds because it is the DEA's practice to not charge the Fee Account for more positions than congressionally authorized. As stated previously, Congress authorizes the number of Special Agent, Intelligence Analyst, and Chemist FTEs that the DEA can charge to the Fee Account each year.

<u>Quantifiable Salary Costs Not Captured</u>

We estimated that between FY 2006 and FY 2007, the DEA did not include in its Diversion Control Program budget or charge to the Fee Account an estimated $15.4 million in salary costs, representing 8 percent of the total salary costs ($188 million).[40] The $15.4 million in salary costs consists of $14.1 million for Special Agents and $1.3 million for Chemists.[41] Our analysis showed that the DEA funded all Intelligence Analyst salary

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[40] The reprogramming of 108 vacant Diversion Investigator positions to Special Agent positions discussed in Footnote 39 increased the number of fee-funded authorized Special Agent FTEs by 27, from 70 to 97 for FY 2007. As a result, we estimate that the Special Agent and Chemist salary costs attributable to the Diversion Control Program but not funded with the Fee Account for FY 2006 and FY 2007 totaled $11.2 million.

[41] While there may be other costs attributable to the Diversion Control Program but not included in the budget, we only estimated the costs attributable to diversion control activities for Special Agents, Intelligence Analysts, and Chemists because they track their time on individual criminal investigations according to the primary substance involved in the investigation.

costs attributable to criminal diversion investigations through the Fee Account in FY 2006 and FY 2007.

Under §886a, the DEA is required to recover "the full costs of operating the various aspects" of its Diversion Control Program (such as salaries for Special Agents, Chemists, and Intelligence Analysts involved in diversion investigations) through the fees charged to DEA registrants. The statute also provides the DEA with discretion to define the scope of fee-fundable activities included in the Diversion Control Program and, in doing so, to control which of its activities must be funded from the Fee Account and which can be paid for out of appropriated funds.

To define diversion control activities and determine the fees to be collected to fund them, the DEA uses its authority under 21 U.S.C. § 821, to "promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances and to listed chemicals." In Final Rule notices published in the *Federal Register*, the DEA lists and explains the activities that it has determined are part of the Diversion Control Program (and that are therefore fee-fundable) and notifies registrants of the amount of fees they are required to pay. The most recent Final Rule was published on August 29, 2006.[42]

Prior to the August 2006 Final Rule, the DEA only fee-funded the actual number of Special Agents in designated fee-fundable positions. Starting in FY 2006, the DEA started charging the Fee Account salary costs of Special Agents in fee-funded positions, plus cumulative FTEs from other Special Agents not in fee-fundable positions but whose time was spent on criminal diversion investigations. The DEA used the congressionally authorized number of FTEs established in the DEA's budget as the maximum number of FTEs the Fee Account could be charged. In both FY 2006 and FY 2007, the actual number of Special Agent and Chemist FTEs attributable to diversion investigations was higher than the congressionally authorized number.[43]

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[42] The most recent fee rule was published at 71 Fed. Reg. 51105 (August 29, 2006).

[43] Prior to FY 2006, the DEA was acting within its authority to pay Special Agents engaged in diversion control activities out of appropriated funds. While we identified FTEs attributable to criminal diversion investigations in FY 2004 and FY 2005 that the DEA did not fund from the Fee Account or include in the Diversion Control Program's budget, we did not include those FTEs in our analysis. Therefore, our analysis only pertained to the Special Agent FTEs attributable to criminal diversion investigations in FY 2006 and FY 2007.

The Special Agent and Chemist costs that we identified are the salary costs associated with the difference between the congressionally authorized number of FTEs and the actual FTEs attributable to criminal diversion investigations. Although directly related to the Diversion Control Program, the $15.4 million in salary costs that we identified were above the authorized levels, and the DEA paid for these costs with appropriated funds. Because the DEA has defined the salary costs of Special Agents, Intelligence Analysts, and Chemists attributable to Diversion Control Program activities as fee-fundable and based on §886a and §821, we believe that the DEA should have included all Special Agent and Chemist FTEs attributable to criminal diversion investigations in FY 2006 and FY 2007 in the Diversion Control Program's budget. Table 7 presents the number and estimated costs of the FTEs attributable to diversion investigations but not charged to the Fee Account for Special Agents and Chemists for FY 2006 and FY 2007.[44]

Table 7: Estimate of the Number and Costs of the FTEs Attributable to Diversion Investigations but Not Charged to the Fee Account

	Special Agent			Chemist		
	Diversion control FTEs and costs not fee funded	Diversion control FTEs and costs authorized by Congress	Actual FTEs and costs attributable to diversion investigations	Diversion control FTEs and costs not fee funded	Diversion control FTEs and costs authorized by Congress	Actual FTEs and costs attributable to diversion investigations
2006	25	70	95	9	4	13
	$3,669,350			$960,498		
2007	67	70	137	3	4	7
	$10,431,364			$321,933		
Total	$14,100,714			$1,282,431		

Source: OIG analysis

We spoke with Office of Diversion Control managers about the Special Agent and Chemist FTEs attributable to diversion investigations but not charged to the Fee Account. The Deputy Assistant Administrator Office of Diversion Control was aware that the Special Agent FTEs exceeded the amount that had been congressionally authorized and therefore could be charged to the Fee Account. He stated that stopping Special Agents from continuing to investigate criminal diversion after the ceiling had been reached was not an acceptable option. When we asked ODA managers if

[44] Table 7 does not reflect the reprogramming of 27 additional fee-funded Special Agent FTEs for FY 2007 approved by Congress on December 20, 2007.

they were aware that there were more Chemist FTEs attributable to criminal diversion investigations than were charged to the Fee Account, they stated that the Diversion Control Program should increase the number of fee-funded Chemists and that, based on their analysis, the Fee Account should pay for 12 Chemist positions.

Impact of Omitting Some Salary Costs From the Diversion Control Program Budget

The Diversion Control Program budget does not reflect $15.4 million for Special Agent and Chemist salaries attributable to criminal diversion investigations. Consequently, the budget is not an accurate reflection of the true cost of the Diversion Control Program for FY 2006 and FY 2007. Because the DEA determines the amount of fees to charge registrants based on its estimate of the budget, the current budget does not allow the DEA to recover the full cost of the program as defined by the DEA.

Including the total costs for the time that Special Agents and Chemists spent on diversion investigations as part of the Diversion Control Program budget would have produced a budget that was a more accurate reflection of the program's true costs and would not have increased fees significantly. Adding these costs would increase the fees for all the registrants, but not significantly. For example, if the DEA computed the FY 2006 through FY 2008 fees based on the inclusion of the total salary costs for the time that Special Agents and Chemists spent on diversion investigations, the 3-year registration fee for physicians, who make up 81 percent of all registrants, would have increased by $19 from $551 to $570, approximately $6 per year.[45]

[45] The DEA computed the current fees based on the estimated costs of operating the Diversion Control Program for FY 2006 through FY 2008. The current fees will be in place until the DEA next raises fees.

CONCLUSIONS AND RECOMMENDATIONS

We did not substantiate the allegations that the DEA misused Fee Account funds for non-diversion control activities from FY 2004 through FY 2007. In reaching this conclusion, we reviewed a statistical sample of obligations $500 and under in three field divisions as well as a subjective sample of obligations over $500 for spending Fee Account funds and found that all the obligations were for legitimate diversion control activities. In addition, interviews with DEA personnel and documents pertaining to the use and availability of Fee Account funds did not substantiate the allegations that the DEA had used Fee Account funds for non-diversion control activities.

Moreover, while the DEA had restricted diversion–related overtime, travel, and other related expenses, we determined that the DEA had legitimate reasons for these restrictions. We found that the DEA restricted the use of Fee Account funds for these purposes because of a delayed collection of registration fees and because funds were needed to cover the settlement of an overtime lawsuit. Although the DEA imposed restrictions on purchases of equipment, travel expenses not related to investigations, and overtime, our interviews in the three field divisions we visited indicated that these restrictions did not undermine diversion control operations. The allegations also stated that the DEA did not hire additional Diversion Investigators because of a lack of Fee Account funds. We found that the DEA's reason for not hiring new Diversion Investigators – that it was awaiting an Office of Personnel Management decision on reclassifying the Diversion Investigator position – was reasonable.

However, many Diversion Investigators we interviewed perceived that Fee Account funds were being used inappropriately. We believe that DEA's recent policy of using more Special Agents and Intelligence Analysts within the Diversion Control Program, combined with an inaccurate understanding of how the DEA can use the Fee Account, contributed to the Diversion Investigators' misperception.

We also concluded that for FY 2006 and FY 2007, the DEA did not fund all Diversion Control Program activities through the Fee Account. We identified an estimated $15.4 million in salary costs for Special Agents and Chemists between FY 2006 and FY 2007 attributable to criminal diversion investigations that were not included in the program's current budget and were not paid with Fee Account funds.

As a result of our review, we recommend that the DEA:

1. Determine the total of actual and planned program costs, including salary costs attributable to diversion control activities, especially for Special Agents, Intelligence Analysts, and Chemists, and include these costs in the Diversion Control Program's budget from this point forward.

2. Provide more information to DEA personnel on the requirements governing the use of Fee Account funds, particularly for salary and other associated costs of Special Agents and Intelligence Analysts.

APPENDIX I: CONGRESSIONAL LETTER OF ALLEGATIONS

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 10, 2007

VIA U.S. MAIL & FACSIMILE (202/514-4001)

The Honorable Glenn A. Fine
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 4706
Washington, DC 20530-0001

Dear Mr. Fine:

The purpose of this letter is to request an investigation by your office into allegations that funds from the Diversion Control Fee Account are being misspent by the Drug Enforcement Administration (DEA).

The Diversion Control Fee Account (DCFA) is an unappropriated fee account authorized by Congress for the support of the Diversion Control Program of DEA. DCFA funds are obtained from fees paid by registrants, such as doctors, pharmacists, and pharmaceutical companies, which are regulated by DEA's Diversion Control Program. The Diversion Control Program works to prevent the diversion of controlled substances and listed chemicals that are lawfully manufactured, distributed, dispensed, imported, or exported in the United States. Since the program is paid for entirely by the fees of registrants, the law prohibits DCFA funds from being used for any purpose unrelated to the Diversion Control Program.

Sources have informed my office, however, that DEA may be using DCFA funds to pay for agency activities unrelated to the Diversion Control Program. My office has been told, for example, that DEA may be using DCFA funds to compensate 130 Special Agents and Intelligence Analysts who do not perform Diversion Control activities; purchase surveillance equipment and Digital Subscriber Line internet access for DEA offices where no Diversion Investigators are located; build a laboratory to combat methamphetamine, an illegal drug outside the Diversion Control Program; and rent space for an unrelated task force. My office has also been told that existing Diversion Investigators have been prohibited from working overtime and initiating needed travel, new Diversion Investigators have not been hired, and expert witnesses needed in Diversion Control cases have not been used, all allegedly due to a lack of DCFA funds.

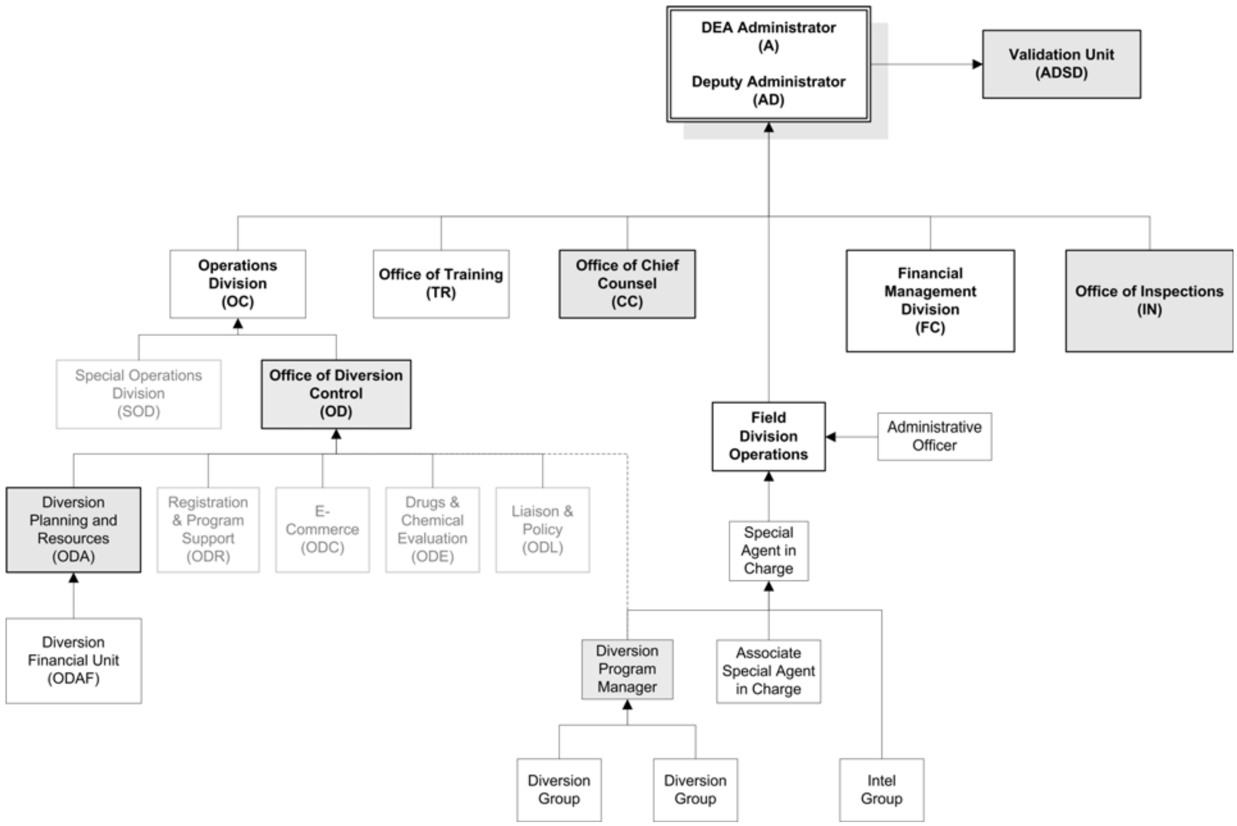
A review of these allegations is needed to determine if DCFA funds are, in fact, being misspent on activities unrelated to the Diversion Control Program. For more information, please contact David Allen of my staff at 312/226-6020. Thank you for your time and attention.

Sincerely,

Carl Levin

Carl Levin
Chairman
Permanent Subcommittee on Investigations

APPENDIX II: OFFICE OF DIVERSION CONTROL PROGRAM WITHIN THE DEA



APPENDIX III: PRINCIPAL CONTROLLED SUBSTANCES OR COMMODITIES THAT DEA CONSIDERS FEE-FUNDABLE

ODA GDEPs DCFA Fundable (FF) 2/1/06

Fee-Fundable (FF) GDEPs 3,4

FF	NonFF	Substance
	A1	Amphetamine (clandestine)
	A2	Methamphetamine (clandestine)
	A3	Crystal Methamphetamine ("ice")
	A4	P2P
	A5	Methcathinone
	A6	Other Stimulant (clandestine)
A7		Amphetamine/Stimulant Related Chemical
A8		Methylphenidate
B1		Pseudoephedrine
B2		Ephedrine
B3		Iodine/Red Phosphorus
	C1	Cocaine HCL
	C2	Cocaine Base (excluding crack)
	C3	Crack Cocaine
C4		Cocaine (pharmaceutical)
C5		Cocaine Related Chemical
	D1	Depressant (clandestine)
D2		Methaqualone
D3		Fentanyl
D4		Depressant Related Chemical
E1		Chemical Equipment (non drug specific)
G1		GHB/GBL/BD (And GHB Analogues)
G2		Ketamine (And Its Analogues)
	G3	Unspecified Analogues
	H1	Heroin
	H2	Opium
H3		Morphine Base
H4		Opium/Heroin/Morphine Related Chemical
	L1	LSD
	L2	PCP
	L3	MDA/MDMA/MDE
	L4	Other Hallucinogen
L5		Hallucinogen Related Chemical
	M1	Marijuana (foreign origin)
	M2	Marijuana (domestic origin)
	M3	Indoor cultivation
	M4	Hashish
	M5	Hashish Oil
N1		Opioid Treatment Pharmaceuticals
N2		Hydromorphone (Dilaudid)
N3		Schedule II Pharmaceutical Narcotic
N4		Schedule II Pharmaceutical Non Narcotic
N5		Schedule III Narcotic
N6		Benzodiazepine
N7		All Other Pharmaceutical Controlled Substances
N8		Oxycodone
N9		Hydrocodone
R1		Palladone
S1		Steroid (pharmaceutical)
	S2*	Steroid (clandestine)
	Z1*	No Specific Drug

* May or may not be DCFA Fundable
GDEP is only one measurse of DCFA fundability all documents are reviewed and validated on their own merit with all aspects of the request considered.

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U. S. Department of Justice
Drug Enforcement Administration

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JAN 2 8 2008

MEMORANDUM

TO: Paul A. Price
Assistant Inspector General for
Evaluation and Inspections
Office of the Inspector General

FROM: Gary W. Oetjen
Deputy Chief Inspector
Office of Inspections

SUBJECT: DEA's Response to the OIG's Report, Review of the Drug Enforcement Administration's Diversion Control Fee Account, January 2008

The Drug Enforcement Administration (DEA) has received your January 2008 report, *Review of the Drug Enforcement Administration's Diversion Control Fee Account*, and appreciates your efforts, and those of your staff, in conducting a thorough and well coordinated review. DEA concurs with the two recommendations resulting from this review and will take the necessary steps to implement the recommendations.

We are pleased to learn that the OIG's review did not substantiate any of the allegations contained in the April 10, 2007, letter from Senator Carl Levin, Chairman, Permanent Subcommittee on Investigations, that DEA misused Fee Account funds for non-diversion control activities. DEA is proud of the growth and accomplishments of the Diversion Control Program and also takes the fiscal responsibilities associated with maintaining the Diversion Control Fee Account very seriously.

DEA also appreciates the OIG's acknowledgement of DEA's Validation Unit, an independent entity designed and implemented to review and ensure that every Fee Account expense is related to a diversion control activity. The creation of this unit provides an additional level of oversight and increased management controls to the Diversion Control Fee Account.

As you are aware from the OIG's 2006 review, the diversion and abuse of legal controlled substances remains an agency priority and DEA is committed to maintaining a comprehensive and effective Diversion Control Program. DEA is equally committed to the continued integration of Special Agents and Intelligence Analysts working alongside Diversion Investigators in order to protect the American public from the threat of controlled substances being diverted to the illicit market. Ensuring the prudent and judicious expenditure of Diversion Control Fee Account funds, and maintaining the integrity of the Fee Account, are essential to a full and balanced accounting of

DEA's efforts that will continue to contribute to effective diversion control. DEA provides the following response to the OIG audit's recommendations:

Recommendation 1: Determine the total of actual and planned program costs, including salary costs, attributable to diversion control activities, especially for Special Agents, Intelligence Analysts, and Chemists, and include these costs in the Diversion Control Program's budget from this point forward.

DEA Response

DEA concurs with the recommendation. Since the Appropriations Act of 1993, which established the Diversion Control Fee Account (DCFA), DEA has expended considerable effort and achieved significant progress in measuring the scope of diversion control activities and determining the full cost of an evolving Diversion Control Program. DEA will continue to enhance these efforts by exploring and improving new and more effective methodologies, and using a variety of new and existing management tools (NFC, WRS, FFS/UFMS, STRIDE, CAST, and the ADSD database) to calculate the total actual cost of fee fundable activities, to include those that exceed congressional authorization, and ensure these costs are captured and included in the next budget submission. If current year costs are projected to exceed DCFA authority in any year, a reprogramming notification will be submitted to request a realignment to cover anticipated costs, similar to DEA's 2007 congressional reprogramming notification.

Recommendation 2: Provide more information to DEA personnel on the requirements governing the use of Fee Account funds, particularly for salary and other associated costs of Special Agents and Intelligence Analysts.

DEA Response

DEA concurs with the recommendation. As stated in the OIG's draft report, DEA has conveyed information to field division personnel pertaining to the appropriate use of Fee Account funds. This has been accomplished through presentations, lectures, and instruction at Diversion Program Manager (DPM) conferences, the Group Supervisor Institute, in-service training classes for Diversion Investigators, division management conferences, and on-site program reviews in DEA field offices. DEA will continue to educate its workforce regarding the appropriate use of Fee Account funds through these same methods and by incorporating additional Fee Account guidance and information in the *Diversion Control Fee Account User's Guide,* which is published on Webster and accessible to all DEA personnel.

Documentation detailing DEA's efforts to implement the attached action plan will be provided to the OIG on a quarterly basis until such time that all corrective actions have been completed. If you or members of your staff have any questions regarding DEA's response to the OIG's recommendations, please contact Senior Inspector Michael Stanfill at 202-307-8769.

Attachment

cc: Michele M. Leonhart
Deputy Administrator

Richard P. Theis
Director, Audit Liaison Group
Management and Planning Staff

ACTION PLAN

Review of the Drug Enforcement Administration's Diversion Control Fee Account (A-2007-005)

Recommendations	Action Planned	Projected Completion Date
1. Determine the total of actual and planned program costs, including salary costs, attributable to diversion control activities, especially for Special Agents, Intelligence Analysts, and Chemists, and include these costs in the Diversion Control Program's budget from this point forward.	**Concur.** Since the Appropriations Act of 1993, which established the Diversion Control Fee Account (DCFA), DEA has expended considerable effort and achieved significant progress in measuring the scope of diversion control activities and determining the full cost of an evolving Diversion Control Program. DEA will continue to enhance these efforts by exploring and improving new and more effective methodologies, and using a variety of new and existing management tools (NFC, WRS, FFS/UFMS, STRIDE, CAST, and the ADSD database) to calculate the total actual cost of fee fundable activities, to include those that exceed congressional authorization, and ensure these costs are captured and included in the next budget submission. If current year costs are projected to exceed DCFA authority in any year, a reprogramming notification will be submitted to request a realignment to cover anticipated costs, similar to DEA's 2007 congressional reprogramming notification.	May 2008
2. Provide more information to DEA personnel on the requirements governing the use of Fee Account funds, particularly for salary and other associated costs of Special Agents and Intelligence Analysts.	**Concur:** As stated in the OIG's Draft Report, DEA has conveyed information to field division personnel pertaining to the appropriate use of Fee Account funds. This has been accomplished through presentations, lectures, and instruction at Diversion Program Manager (DPM) conferences, the Group Supervisor Institute, in-service training classes for Diversion Investigators, division management conferences, and on-site program reviews in DEA field offices. DEA will continue to educate its workforce regarding the appropriate use of Fee Account funds through these same methods and by incorporating additional Fee Account guidance and information in the *Diversion Control Fee Account User's Guide*, which is published on Webster and accessible to all DEA personnel.	June 2008

APPENDIX V: OIG ANALYSIS OF THE DEA'S RESPONSE

On January 9, 2008, the Office of the Inspector General (OIG) sent a copy of the draft report to the Drug Enforcement Administration (DEA) with a request for written comments. The DEA responded in a memorandum dated January 28, 2008, in which it concurred with the report's two recommendations and described the actions it planned to take to implement the recommendations. As a result of the DEA's response, the recommendations are resolved and remain open.

Recommendation 1. Determine the total of actual and planned program costs, including salary costs, attributable to diversion control activities, especially for Special Agents, Intelligence Analysts, and Chemists, and include these costs in the Diversion Control Program's budget from this point forward.

Status. Resolved – open.

Summary of DEA Response. The DEA concurred with this recommendation and stated that it will continue to enhance its efforts to capture the full costs of fee-fundable activities by exploring and improving new and more effective methodologies, and by using a variety of new and existing management tools. In addition, the DEA stated that in any given year, if current costs are projected to exceed the Diversion Control Program's budget authority, a reprogramming notification will be submitted to request a realignment covering anticipated costs.

OIG Analysis. The actions planned by the DEA are responsive to the recommendation. Please provide, by October 15, 2008, a copy of the Diversion Control Program FY 2009 budget request. To enable OIG to ascertain that the FY 2009 budget request accurately reflects the total of actual costs, please provide data so we can compare the actual full-time equivalents of Special Agents, Intelligence Analysts, and Chemists attributable to the Diversion Control Program with the congressionally authorized levels and summarizing any other costs identified as fee-fundable that should be included in the Diversion Control Program's budget for FY 2009. If fee-fundable costs for FY 2008 exceed the budget authority for FY 2008, also provide documentation of the DEA's reprogramming request. Additionally, please provide the new (or proposed) DEA registration fee schedule that would go into effect in FY 2009.

Recommendation 2. Provide more information to DEA personnel on the requirements governing the use of the Fee Account funds, particularly for salary and other associated costs of Special Agents and Intelligence Analysts.

Status. Resolved – open.

Summary of DEA Response. The DEA concurred with this recommendation and stated that it has already conveyed information to DEA personnel on Fee Account requirements through presentations, lectures, and instruction at Diversion Program Manager conferences, and on-site program reviews in DEA field offices. The DEA stated that it will continue to educate its workforce regarding the appropriate use of Fee Account funds through these same methods and by incorporating additional Fee Account guidance and information in the *Diversion Control Fee Account User's Guide*, which is published on Webster (the DEA's Intranet) and accessible to all DEA personnel.

OIG Analysis. The OIG notes that the actions described by the DEA to respond to the recommendation are by and large continuations of activities it has already established and that thus far have not accomplished the goal of dispelling misperceptions about the Fee Account. The DEA did state that it is planning to modify its *Diversion Control Fee Account User's Guide* to include additional Fee Account guidance. However, we believe that the DEA should proactively provide this information to employees instead of relying on individual employees to learn by accessing information on its Intranet. Please provide a copy of the *Diversion Control Fee Account User's Guide* that has been revised to include additional Fee Account guidance; copies of inspection reports of on-site reviews completed between January 1, 2008 and September 30, 2008 during which Fee Account information was conveyed; and a description of presentations by DEA managers about how the Fee Account can be used.