

#### **D. Unauthorized Illegal Activity (UIA)**

The FBI is required to notify either a U.S. Attorney or the head of a DOJ litigating component when a CI engages in illegal activity which was not previously authorized, known as unauthorized illegal activity or “UIA.” CI Guidelines, § IV.B.1. The Confidential Informant Guidelines require that notice of the unauthorized illegal activity be provided by the Special Agent in Charge of the field office operating the CI to the U.S. Attorney or DOJ component head, not by subordinate FBI field office personnel to other U.S. Attorneys’ Offices or DOJ personnel.

The FBI is not required to provide such notice when a state or local prosecuting office has filed charges against the informant for the illegal conduct, there is no clear basis for federal prosecution, and federal prosecutors have not previously authorized the CI to engage in Tier 1 OIA or been involved in an investigation that is utilizing the CI. *Id.*

Of the 120 informant files we examined during our review, we identified 12 instances, or 10 percent, where the CI engaged in unauthorized illegal activity. Under the Guidelines, the FBI was not required to notify the U.S. Attorney in 3 of the 12 cases.

In 4 of the 12 cases, the CI case files did not include sufficient information for us to determine whether charges had been filed by state or local prosecutors following arrest of the CI, and thus it was not possible to determine whether the Guidelines’ notification requirement was triggered. Our review also found that neither the field nor FBI Headquarters typically monitors whether charges are filed by state or local prosecutors following a CI’s arrest. We identified one field office that did not have any forms to record the occurrence of unauthorized illegal activity.<sup>222</sup>

The remaining five cases required notification to the U.S. Attorney’s Office. In two of the five cases, the FBI failed to provide any notification to the U.S. Attorney’s Office, in violation of the CI Guidelines. The UIA in these cases were a state arrest relating to purchasing heroin and a misdemeanor charge of manufacturing unauthorized records. The other three files contained documentation indicating that notice was provided to the U.S. Attorney’s Office by FBI field personnel, but was not provided by the Special Agent in Charge to the U.S. Attorney as required by the Guidelines.

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<sup>222</sup> Most field offices recorded information regarding unauthorized illegal activity on either a Continuing Suitability Report and Recommendation form or a customized 90-day file review form. The FBI advised the OIG that FD-302s can also be used to capture such information; however, the FBI did not provide FD-302s recording UIA information during our field office visits.