



Office of Inspector General
U.S. Government Accountability Office

Law Enforcement Availability Pay:

**Premium Pay Compensation Not Supported by
Agency Need**

March 2018
OIG-18-2



Office of Inspector General U.S. Government Accountability Office Report Highlights

March 26, 2018

LAW ENFORCEMENT AVAILABILITY PAY:

Premium Pay Compensation Not Supported by Agency Need

Objectives

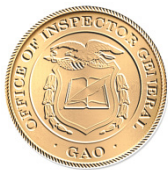
This report addresses (1) the extent to which agency need, as directed by management or self-identified by a criminal investigator, required Forensic Audits and Investigative Service's (FAIS) criminal investigators to work hours beyond their regularly scheduled 40-hour workweek; and (2) whether criminal investigators met the Law Enforcement Availability Pay (LEAP) Act substantial hours eligibility requirement for receiving LEAP premium pay.

What OIG Found

The LEAP Act of 1994, as amended, established a uniform compensation system for federal criminal investigators who, by the nature of their duties, are often required to work excessive and unusual hours. The LEAP Act authorized a 25 percent increase in base salary as long as specific requirements of the LEAP Act were met. Our analysis shows that GAO may not have a significant need for FAIS investigators to work beyond their regular 40-hour workweek, whether unscheduled (LEAP) or scheduled overtime. Specifically, of the total 4,973 LEAP premium pay hours reported by FAIS criminal investigators, and certified by their managers for fiscal year 2017, we found that 21 percent (1,056 hours) was reported as hours "worked." The remaining 79 percent (3,917 hours) was reported as "hours available to perform unscheduled work." To obtain a complete picture of the agency's need for work beyond a regular 40-hour workweek, we also examined scheduled (overtime) hours and found no overtime hours for fiscal year 2017. We also found that GAO used an incorrect formula for determining compliance with the LEAP premium pay substantial hours eligibility requirement. As a result, five of eight FAIS criminal investigators did not meet the LEAP substantial hours requirement and therefore erroneously certified their eligibility and received LEAP premium pay totaling \$79,603.

What OIG Recommends

OIG is making three recommendations intended to ensure that GAO's use of LEAP premium pay is consistent with its investigative needs. Specifically, we recommend GAO evaluate the need for criminal investigators to work or be available to work beyond a 40-hour workweek in support of GAO's investigative needs; modify WEBTA to ensure compliance with the substantial hours requirement for eligibility; and determine whether to cancel LEAP certifications for five criminal investigators and suspend the investigators' entitlement to LEAP premium pay for an appropriate period. In its written comments to the report, GAO agreed with our recommendations and stated that actions are underway to address them.



O I G

Office of Inspector General

United States Government Accountability Office

March 26, 2018

To: Gene L. Dodaro
Comptroller General of the United States

From: Adam R. Trzeciak
Inspector General

Subject: Transmittal of Office of Inspector General's (OIG) Audit Report

Attached for your information is our report, *Law Enforcement Availability Pay: Premium Pay Compensation Not Supported by Agency Need* (OIG-18-2). The audit objectives were to evaluate (1) the extent to which agency need, as directed by management or self-identified by a criminal investigator, required FAIS criminal investigators to work hours beyond their regularly scheduled 40-hour workweek; and (2) whether criminal investigators met the LEAP Act substantial hours eligibility requirement for receiving LEAP premium pay.

The report contains three recommendations intended to ensure that GAO's use of LEAP premium pay is consistent with its investigative needs. GAO agreed with our recommendations and stated that actions are underway to address them. The agency also provided technical comments that we incorporated, as appropriate. Management comments are included in Appendix II of our report. Actions taken in response to our recommendations are expected to be reported to our office within 60 days.

We are sending copies of this report to the Executive Committee, GAO's Congressional Oversight Committees, the Audit Advisory Committee, and select GAO managers, as appropriate. The report is also available on the GAO website at <http://www.gao.gov/about/workforce/ig.html>.

If you have questions about this report, please contact me at (202) 512-5748 or trzeciaka@gao.gov.

Attachment

Table of Contents

Introduction	1
Objectives, Scope, and Methodology	1
Background	2
Need for Investigative Work Beyond a Regular Workweek is Lacking	4
Calculation Errors Resulted in Erroneous Certifications	5
Conclusion	6
Recommendations for Executive Action	7
Agency Comments and Our Evaluation	7
Appendix I: Objectives, Scope, and Methodology.....	9
Appendix II: Comments from the U.S. Government Accountability Office	11
Appendix III: OIG Contact and Staff Acknowledgments	13
Appendix IV: Report Distribution.....	14

Figure

Figure 1: WEBTA LEAP Hours by Activity for Fiscal Year 20174

Abbreviations

LEAP	Law Enforcement Availability Pay
FAIS	Forensic Audits and Investigative Service
OPM	Office of Personnel Management

Introduction

The Law Enforcement Availability Pay (LEAP) Act of 1994, as amended,¹ established a uniform compensation system for federal criminal investigators who, by the nature of their duties, are often required to work excessive and unusual hours. The purpose of LEAP is to provide premium pay to criminal investigators to ensure their availability for unscheduled work in excess of a 40-hour workweek based on the needs of the employing agency. The LEAP Act authorized a 25 percent increase in base salary (LEAP premium pay) as long as specific requirements of the LEAP Act were met. Among these requirements is a condition that criminal investigators maintain an annual average of 2 or more unscheduled duty hours per workday.

Although not a law enforcement agency, GAO employs criminal investigators in its Forensic Audits and Investigative Service (FAIS) team to conduct investigative activities and to manage GAO's FraudNet hotline.² FAIS is the only GAO team with criminal investigators hired under the U.S. Office of Personnel Management's (OPM) position classification series 1811 who can be eligible to receive LEAP premium pay. During fiscal years 2016 and 2017, GAO employed 8 to 10 criminal investigators authorized to receive LEAP premium pay, and incurred LEAP premium pay costs of \$127,136 and \$149,026, respectively.

Objectives, Scope, and Methodology

This is our second report related to GAO's implementation of the LEAP Act. Our first report focused on GAO controls over annual certifications required by the LEAP Act.³ This report addresses (1) the extent to which agency need, as directed by management or self-identified by a criminal investigator, required FAIS criminal investigators to work hours beyond their regularly scheduled 40-hour workweek; and (2) whether criminal investigators met the LEAP Act substantial hours eligibility requirement for receiving LEAP premium pay. Our work does not question the investigative function of GAO's mission or whether FAIS criminal investigators performed duties consistent with OPM's position classification series 1811, Criminal Investigator.

To achieve our audit objectives, we reviewed relevant sections of the LEAP Act and corresponding regulations, and GAO's LEAP and overtime policies and procedures. Through interviews and documentation review, we gained an understanding of modifications made to GAO's time and attendance application, WEBTA, including when FAIS criminal investigators and managers began using WEBTA to record, track, and report unscheduled hours (1) worked and (2) available, but not called upon, to perform work.⁴ We analyzed WEBTA data for fiscal year 2017 to identify the number and category of hours FAIS criminal investigators worked, or reported availability to work, beyond their regular 40-hour workweek. In addition, we obtained an understanding of how WEBTA was used to support annual LEAP certifications.

¹5 U.S.C. §5545a.

²U.S. Department of Justice, Office of Justice Programs defines a federal law enforcement agency as an organizational unit, or subunit, of the federal government with the principle functions of prevention, detection, and investigation of crime and the apprehension of alleged offenders. Examples of such agencies include the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco and Firearms (ATF).

³OIG, *PREMIUM PAY: Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act*, [OIG-15-3](#) (Washington, D.C.: Sept. 16, 2015).

⁴FAIS managers began using WEBTA to record their LEAP premium pay hours on April 18, 2016. Band II criminal investigators did not begin reporting LEAP premium pay hours in WEBTA until October 23, 2016.

To assess the reliability of the WEBTA data we spoke with officials knowledgeable of WEBTA functionality and reporting, reviewed biweekly payroll data, and conducted electronic testing (e.g., verification that the LEAP transaction code was only used by authorized FAIS criminal investigators). Additional information on our scope and methodology is presented in appendix I.

We conducted this performance audit from March 2017 through March 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

In 1994, Congress enacted the LEAP Act amending Chapter 55 of title 5 of the United States Code, to establish a new type of premium pay referred to as “availability pay” or “LEAP.” The purpose of the act was to provide premium pay to criminal investigators to ensure the availability of criminal investigators for unscheduled duty in excess of a 40-hour workweek based on the needs of the employing agency.⁵ Unscheduled duty is defined as those hours in which a criminal investigator works, or is determined to be available to work, which are not part of the investigator’s regularly scheduled 40-hour workweek or regularly scheduled overtime hours.⁶ According to regulations supporting the act, the need for a criminal investigator to be available to work unscheduled hours during a designated period may be (1) at the direction of the agency or (2) self-identified by the criminal investigator.

The LEAP Act authorized premium pay to criminal investigators performing duties consistent with OPM’s criminal investigator job classification and fulfilling the conditions and requirements of the LEAP Act and related federal regulations. By law, LEAP premium pay is fixed at 25 percent of a criminal investigator’s rate of basic pay; however, such pay is subject to a biweekly pay limit that cannot exceed the greater of the biweekly rate payable for (1) General Schedule GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for level V of the Executive Schedule.⁷ Although authorized to receive the 25 percent premium pay, certain investigators may receive only a portion of the authorized 25 percent premium pay.⁸ As a result, total LEAP premium pay can vary based on the composition of LEAP-eligible FAIS criminal investigators, including the number of investigators and their base salaries.

To be eligible for LEAP premium pay, each criminal investigator must attain an annual average of 2 or more unscheduled duty hours per workday—referred to as the substantial hours requirement.⁹ Criminal investigators and their supervisors must certify each year to their agency head or designee that the investigator met the substantial hours requirement in the previous year and is expected to do so in the following year. FAIS used WEBTA to record all LEAP hours and to compute the annual daily average of each criminal investigator for fiscal year 2017. This average is computed by dividing the total unscheduled duty hours for the annual period by the

⁵5 U.S.C. §5545a(b).

⁶5 U.S.C. §5545a(a)(3) and 5 C.F.R. §550.182(a).

⁷5 U.S.C. §5547(a) and 5 C.F.R. §550.105.

⁸LEAP premium pay is paid to criminal investigators throughout the year based on investigator’s certifications that they are expected to meet the substantial hours requirement in the upcoming year.

⁹5 U.S.C. §5545a(d)(1) and 5 C.F.R. §550.183(a).

number of regular workdays. Hours recorded on a non-regular workday (i.e., Saturday and Sunday) are not included in the criminal investigator's substantial hours determination unless the hours are worked.

In response to numerous inquiries from federal law enforcement associations and agencies, former Senator Dennis W. DeConcini, a key sponsor of the LEAP legislation, stated that the intent of the LEAP Act was, in part, to "establish a uniform system of compensation for the unique work conditions and excessive hours commonly required of federal criminal investigators, thus eliminating the varied and disparate compensation previously provided under administratively uncontrollable overtime regulations..." and the administrative burden associated with overtime pay systems to achieve cost savings while maximizing investigative time and efforts.¹⁰ Further, Senator DeConcini also clarified that hours available for performing unscheduled work were not to be "...all off duty hours during which an investigator is reachable by telephone, radio or pager...."

In August 2015, FAIS revised its LEAP policy and procedures for its criminal investigators.¹¹ Among other things, the policy defined criminal investigators' roles and responsibilities (i.e., managerial and non-managerial), LEAP eligibility, and WEBTA reporting requirements. The procedures addressed unscheduled work and availability hours including weekday and weekend duty, time and attendance reporting, and regularly scheduled overtime and holiday pay.

FAIS procedures direct criminal investigators to record all unscheduled hours worked or available for unscheduled work in WEBTA. FAIS LEAP policy and procedures also require that two criminal investigators (an agent and manager) be placed in "duty" status for a seven day period on a rotating basis. The period covers regular workdays until 10:00pm, and Saturdays and Sundays from 8:00am to 10:00pm. Other than requiring criminal investigators to carry mobile phones and to respond within three hours, FAIS LEAP policy and procedures place no restrictions on personal activities while an investigator is in availability status.

In September 2015, we reported that FAIS did not have effective policy and procedures to ensure compliance with LEAP Act requirements.¹² Specifically, procedures designed to support annual certifications and to ensure agents were meeting the substantial hours requirement were discontinued or did not exist. As a result, FAIS lacked assurance that unscheduled duty hours were sufficient, and certifications were made, in compliance with legal and regulatory requirements. In response to our work, GAO revised its LEAP policy and procedures and modified WEBTA to provide a mechanism criminal investigators could use to record all unscheduled hours (worked or available) based on agency need.

¹⁰Administratively Uncontrolled Overtime (AUO) is an increment of up to 25 percent of basic pay paid on an annual basis for substantial amounts of overtime work that cannot be controlled administratively and that is required on an irregular basis. Senator DeConcini's statement may be found at 140 Cong. Rec. S15266 (daily ed. Nov. 30, 1994).

¹¹Implementation of the LEAP policy and procedures was delayed until agreement was reached between GAO and the GAO Employees Organization, IFPTE, Local 1921 regarding implementing the authorized format for capturing LEAP hours (i.e., WEBTA) and the timing of duty agent assignments. Agreement on these issues occurred on November 1, 2016.

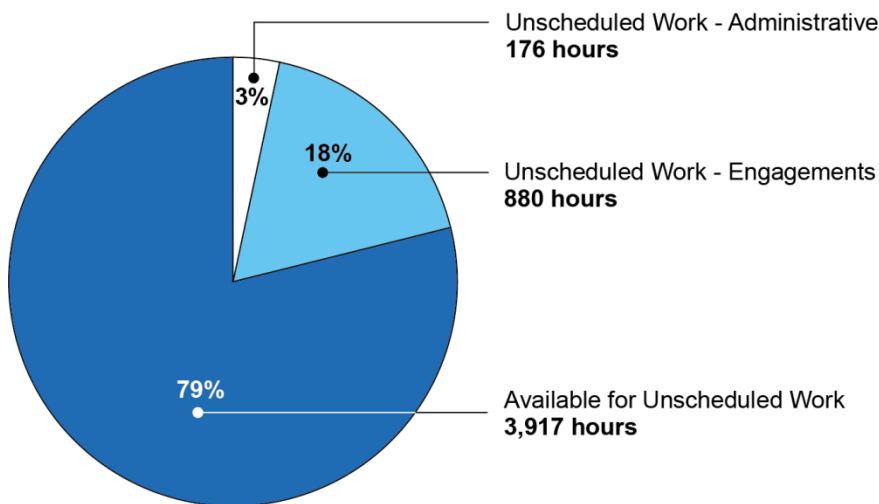
¹²[OIG-15-3](#).

FAIS criminal investigators and managers also use WEBTA to compute the cumulative daily average of LEAP hours attained to help ensure compliance with the substantial hours requirement. In planning our current audit, we noted that, due to delays in implementing WEBTA modifications, FAIS managers and Director of Investigations were unable to certify that the non-managerial criminal investigators met the substantial hours requirement in fiscal year 2016. Modifications to WEBTA in support of LEAP annual certifications were fully implemented in fiscal year 2017.

Need for Investigative Work Beyond a Regular Workweek is Lacking

To obtain a complete picture of the agency's need for criminal investigators to work beyond their regular 40-hour workweek, we examined both unscheduled (LEAP) and scheduled (overtime) hours as certified in WEBTA for fiscal year 2017. Our analysis of the total 4,973 LEAP premium pay hours reported by FAIS criminal investigators, and certified by their managers for fiscal year 2017, found that 21 percent (1,056 hours) was reported as hours "worked." This includes unscheduled work associated with specific GAO engagements and various administrative codes primarily related to management and operations¹³ and developing potential criminal investigations, as shown in figure 1 below. The remaining 79 percent (3,917 hours) was reported as "hours available to perform unscheduled work."

Figure 1: WEBTA LEAP Hours by Activity for Fiscal Year 2017



Source: OIG's analysis of WEBTA data. | OIG-18-2

LEAP premium pay is used exclusively to compensate FAIS criminal investigators for unscheduled hours beyond a regular 40-hour workweek. However, a criminal investigator may also earn overtime for work in excess of 10 hours on a workday or for work on a day outside their regular workweek if such work is scheduled and approved in advance.¹⁴ We reviewed WEBTA data to determine whether scheduled overtime may have been used to compensate

¹³FAIS management and operations is defined as team based management, support, and related activities, including security program, website operations, and preparation of website documents.

¹⁴Forensic Audits and Investigative Service *Investigative Procedures Chapter 15 Unscheduled Duty Hours* (Aug. 14, 2015).

FAIS criminal investigators for work performed beyond their regular 40-hour workweek. Our review found that FAIS criminal investigators performed no scheduled overtime during fiscal year 2017.

As shown by our analysis above, GAO may not have a significant need for FAIS investigators to work beyond their regular 40-hour workweek, whether unscheduled (LEAP) or scheduled overtime.

Using WEBTA data, our analysis of LEAP-Available hours for fiscal year 2017 identify an opportunity for GAO to more closely examine the basis of its need for FAIS criminal investigators to be available for unscheduled work beyond the 40-hour workweek. For example:

- Two managers reported few LEAP hours on investigative tasks.¹⁵ One manager reported 100 percent of LEAP hours (775 hours) as LEAP-Available hours; a second manager reported 90 percent (411 hours) as LEAP-Available hours. Further, in 34 instances, both managers reported at least 4 LEAP-Available hours on the same day.
- Non-managerial criminal investigators' LEAP charges showed similar results. Of the seven reviewed, five charged at least 73 percent of their total LEAP hours to the LEAP-Available code; two of these charged 97 percent and 96 percent. Two of the seven criminal investigators charged 31 percent and 52 percent of their total LEAP hours to LEAP-Available.
- Criminal investigators reported 1,244 weekend available hours certified by both the criminal investigators and their supervisors. A closer look at the available hours reported revealed that 93 percent (1,156 hours) were for 14-hour or more days. One investigator reported 16 hours of availability time on four separate occasions; another investigator recorded 12 hours to LEAP-Available and 8 hours to mission work for a total of 20 hours on a single day.

WEBTA, as modified, provides GAO with the data not only to support its certification requirements, but also to evaluate its level of need for investigative work in excess of a regular 40-hour workweek. For example, our findings regarding the ratio of worked hours to "availability" hours identify an opportunity for GAO to examine its need for investigative work beyond a regular 40-hour workweek. Further, as discussed below, LEAP annual daily averages were not met as required by law. Under the act and supporting regulations, LEAP premium pay is generally an entitlement that an agency must provide if required conditions are met and bears the burden of ensuring that criminal investigators receiving availability pay comply with the substantial hours requirement.

Calculation Errors Resulted in Erroneous Certifications

The LEAP Act and related regulations established explicit requirements investigators must meet to be eligible to receive LEAP premium pay.¹⁶ Specifically, criminal investigators must be paid availability pay when the annual daily average of unscheduled duty hours the investigator (1) works or is available to work on each regular workday, and (2) works on nonregular workdays,

¹⁵A third investigative assistant director, employed at GAO for about three and one-half months, reported a total of 71 LEAP hours on 18 days to unscheduled worked-administrative.

¹⁶5 U.S.C. §5545a(d) and 5 C.F.R. §550.183.

is equal to or greater than 2 hours a day. The substantial hours requirement is reflected in both FAIS policy and procedures. Further, FAIS policy states that “GAO may deny or cancel a certification of eligibility if a criminal investigator has failed to perform unscheduled duty (availability or work) as assigned or reported or is unable to perform unscheduled duty for an extended period due to physical or health reasons.” In addition, the LEAP Act regulations also established that if a certification is denied or canceled, the investigator’s entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policies.¹⁷

At the beginning of fiscal year 2017, each criminal investigator certified that he/she was expected and will continue to meet the requirement to work or be available to work an annual average of at least 2 hours of unscheduled duty per workday. During the first quarter of fiscal year 2018, the criminal investigators along with their respective supervisors and the Director of Investigations, using WEBTA information, certified that during fiscal year 2017 they met the annual average.

However, we found that the fiscal year 2017 WEBTA LEAP averages prepared by GAO show that all 8 criminal investigators met or exceeded the annual 2-hour daily requirement because 1,111 availability hours recorded on non-workdays (e.g., Saturday and Sunday) were incorrectly included in the calculation.¹⁸ After the hours were adjusted to remove the weekend availability hours, five of the eight investigators’ averages fell below the annual 2-hour daily minimum. As a result, these investigators did not meet the LEAP substantial hours requirement and therefore were not eligible to receive LEAP premium pay totaling \$79,603.

During our audit, we discussed the calculation error with GAO executives who stated their intent to promptly address this deficiency with an interim control until the corresponding changes can be made to WEBTA regarding the substantial hours calculation.

Conclusion

LEAP premium pay was established to provide a uniform compensation system for federal criminal investigators who, by the nature of their duties, are often required to work excessive and unusual hours beyond a regularly scheduled 40-hour workweek. Our audit shows that GAO may not have a consistent need for investigative work beyond a regular workday or week. The results of our audit present GAO with an opportunity to examine its need for FAIS criminal investigators to work or be available to work beyond their regular 40-hour workweek.

Similar to our first report, this report identified a weakness in GAO’s process for ensuring compliance with the substantial hours requirement in the LEAP Act. Specifically, our report highlighted that GAO’s substantial hours calculation was inconsistent with the requirements specified in the act and supporting regulations. These errors call into question FAIS’s basis for certifying five of its eight criminal investigators as eligible for LEAP premium pay. In response to our work, FAIS and senior GAO executives have expressed their intention to take immediate steps to strengthen controls regarding LEAP premium pay calculations.

¹⁷5 C.F.R. §550.184(d).

¹⁸Two criminal investigators left GAO on or before the end of fiscal year 2017 and therefore did not complete a fiscal year-end certification.

Recommendations for Executive Action

To ensure that GAO's use of LEAP premium pay is consistent with its investigative needs, we recommend that the Comptroller General direct the FAIS Managing Director to work jointly with the Chief Human Capital Officer and other senior GAO executives, as appropriate, to:

1. Evaluate the need for criminal investigators to work or be available to work beyond a 40-hour workweek in support of GAO's investigative needs. If the evaluation determines the work beyond a 40-hour workweek is not consistent with GAO's needs or the intent of the LEAP Act to compensate criminal investigators for working excessive and unusual hours implement actions to remedy the situation.
2. Modify WEBTA to ensure that the year-to-date cumulative calculation of criminal investigators' annual average of unscheduled duty hours complies with the substantial hours requirement for determining eligibility for LEAP premium pay.
3. Determine, in accordance with the LEAP Act and FAIS policy, whether to cancel the fiscal year 2017 LEAP certifications for the five criminal investigators who did not meet the substantial hours requirement as reported and suspend the entitlement to LEAP premium pay for an appropriate period.

Agency Comments and Our Evaluation

The Inspector General provided GAO with a draft of this report for review and comment. In its written comments, reprinted in appendix II, GAO agreed with our recommendations and stated that actions are underway to address them.

In response to our first recommendation, GAO stated that it would evaluate the need for criminal investigators to work or be available to work beyond a 40-hour workweek as part of its annual workforce planning. In discussing the draft report, GAO stated that its investigative work requires the skill set of OPM series 1811, Criminal Investigators. We agree, but are also aware that GAO has occasionally used noncriminal investigators, under the supervision of FAIS criminal investigators, as key staff in the performance of undercover activities and investigations. Further, as we stated in our report, GAO is not a law enforcement agency; it does not apprehend or detain suspects as do federal law enforcement officers. As noted in our recommendation, if the annual evaluation determines the work performed beyond a 40-hour workweek is not consistent with GAO's investigative needs or the intent of the LEAP Act, then actions should be taken to bring its staffing level and composition in line with its needs.

Regarding our second recommendation, GAO stated that it has developed an interim mechanism to calculate criminal investigators' substantial hours requirement excluding availability hours on weekends. In addition, they also stated that they have begun working to develop a long-term solution.

In response to our third recommendation regarding cancellation of the fiscal year 2017 LEAP certifications for the five criminal investigators who did not meet the substantial hours requirement, GAO stated it has begun consulting with the Human Capital Office and Office of the General Counsel to determine the appropriate action to take. In discussing the draft report, GAO pointed out that LEAP is an entitlement which cannot be "phased out" for currently-employed FAIS criminal investigators; that new 1811 criminal investigators must be paid LEAP premium pay by virtue of their OPM series; and that it is GAO's responsibility to ensure investigative needs exist for these investigators. Once provided, LEAP premium pay is an

entitlement that may be denied or canceled only in very limited circumstances regardless of agency need for unscheduled work. As we recommended, action taken should be in accordance with the LEAP Act and FAIS policy. We noted in our report that FAIS policy established the authority for GAO to deny or cancel a certification of eligibility if a criminal investigator did not meet the substantial hours requirement as reported. The LEAP Act established that if a certification is denied or canceled, the investigator's entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policy.

In addition to GAO's actions under way to address our recommendations, GAO provided observations it believed would help readers better understand aspects of its use of LEAP. GAO noted that while the LEAP Act fixed the amount of LEAP premium pay at 25 percent of a criminal investigator's base salary, due to statutory pay limits, the fiscal year 2017 effective rate of LEAP received by the 10 FAIS criminal investigators ranged from less than 1 percent to 20 percent. Our report recognized that although criminal investigators may be authorized to receive the 25 percent LEAP premium pay, the actual percentage of LEAP received can vary based on the composition of LEAP-eligible criminal investigators, including the number of criminal investigators and their base salaries. As a result, the effective rates of LEAP premium pay to FAIS criminal investigators will change as managers and senior criminal investigators retire or separate from GAO and are replaced with criminal investigators hired at different base salary amounts.

In its response, GAO implied that our reference to FAIS's lack of scheduled overtime in our report could be misunderstood by a reader to mean that LEAP was improperly applied. We disagree with GAO's observation. Rather, our report concluded that GAO may not have a consistent need for investigative work beyond an investigator's regular workday or week. We believe that the absence of overtime and the minimal charges to LEAP work hours, indicate that the need is minimal.

Appendix I: Objectives, Scope, and Methodology

This is our second report related to GAO's implementation of the LEAP Act. Our first report focused on GAO controls over annual certifications required by the LEAP Act.¹ This report addresses (1) the extent to which agency need, as directed by management or self-identified by a criminal investigator, required FAIS criminal investigators to work hours beyond their regularly scheduled 40-hour workweek; and (2) whether criminal investigators met the LEAP Act substantial hours eligibility requirement for receiving LEAP premium pay. Our work does not question the investigative function of GAO's mission or whether FAIS criminal investigators performed duties consistent with OPM's position classification series 1811, Criminal Investigator.

To achieve our audit objectives, we reviewed relevant sections of the LEAP Act and corresponding regulations, and GAO's LEAP and overtime policies and procedures. Through interviews and documentation review, we gained an understanding of modifications made to GAO's time and attendance application, WEBTA, including when FAIS criminal investigators and managers began using WEBTA to record, track, and report unscheduled hours (1) worked and (2) available, but not called upon, to perform work.² These data included hours reported by each criminal investigator, including the date, pay period, and job (tracking) code.³ We analyzed WEBTA data for fiscal year 2017 to determine the number and category of hours FAIS criminal investigators worked or reported availability to work beyond their regular 40-hour workweek. In addition, we obtained an understanding of how WEBTA was used to support the LEAP annual certifications. We limited our review of WEBTA data to fiscal year 2017 since, in response to our prior report, actions taken by GAO to update WEBTA to provide a mechanism for recording and monitoring LEAP hours (worked and available) were not fully implemented until fiscal year 2017.

We included availability hours reported by FAIS criminal investigators on both regular and non-regular (e.g. Saturday and Sunday) workdays in our analysis of agency need since the investigative need to be available on those days was certified by both the criminal investigators and their supervisors on a biweekly basis through GAO time and attendance process. To determine the extent to which FAIS criminal investigators worked unscheduled hours or were available for unscheduled work, we organized the WEBTA data into two main categories: unscheduled work and available to perform unscheduled work. To provide additional clarity to hours reported as unscheduled work, we further analyzed hours to identify those associated with a specific engagement or administrative activities.

Unscheduled work:

- **Unscheduled work—engagements:** hours charged for performing activities that generally result in an external product (report or testimony).

¹OIG, *PREMIUM PAY: Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act*, [OIG-15-3](#) (Washington, D.C.: Sept. 16, 2015).

²Similar to other GAO employees, criminal investigators are responsible for accurately reporting their hours in WEBTA. Designated managers are responsible for ensuring and certifying that hours reported by assigned staff are appropriate and accurate. FAIS managers began using WEBTA to record their LEAP premium pay hours on April 18, 2016. Band II criminal investigators did not begin reporting LEAP premium pay hours in WEBTA until October 23, 2016.

³GAO job code data provide information on resource utilization across GAO, including managing resources assigned to engagements and major operational initiatives and ongoing activities. GAO uses three job code types, (1) engagement and engagement-related, (2) mission related, and (3) operational codes, to capture employee activities.

- **Unscheduled work—administrative:** hours charged to (a) engagement-related activities (e.g., general issue/topic research, recommendation follow-up); (b) mission-related activities (e.g., establishing and maintaining guidance, standards, and best practices, providing congressional support on major legislative initiatives); and (c) operational activities (e.g., general management and operations, accomplishment reporting).
- **Available for unscheduled work:** hours beyond a regularly scheduled 40-hour workweek that a criminal investigator reported as available to perform unscheduled work, if the need arose.

As preliminary results revealed that a significant number of LEAP hours were reported as available to perform, as opposed to the actual performance of, unscheduled work beyond a 40-hour workweek, we considered the possibility that another form of premium pay, scheduled overtime, may have been used to compensate criminal investigators for work performed. Therefore, in addition to LEAP hours worked, we reviewed WEBTA records to determine whether criminal investigators recorded hours under other premium pay codes for scheduled work performed beyond a regular 40-hour workweek.

We also analyzed fiscal year 2017 WEBTA data to assess controls for determining eligibility for LEAP premium pay. Specifically, we recalculated each criminal investigator's substantial hours based on the LEAP Act and supporting regulations. We compared our results to those calculated and used by FAIS to certify eligibility for LEAP premium pay for 2017.

To assess the reliability of the WEBTA data, we spoke with officials knowledgeable of WEBTA functionality and reporting, reviewed biweekly payroll data, and conducted electronic testing (e.g., verification that the LEAP transaction code was only used by authorized FAIS criminal investigators). If criminal investigators made any changes in WEBTA after the data were obtained, those changes were not captured in our analysis. However, based on our review of the trend data we observed for each job code category, we believe that if such changes did occur, they would not materially affect our findings or conclusions. We determined the WEBTA data were sufficiently reliable for our purposes.

We conducted this performance audit from March 2017 through March 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the U.S. Government Accountability Office




U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Memorandum

Date: March 19, 2018

To: Inspector General – Adam Trzeciak

From: Managing Director, Forensic Audits and Investigative Service (FAIS) – Johana Ayers 

Subject: Comments on Draft Report, *Law Enforcement Availability Pay: Premium Pay Compensation Not Supported by Agency Need* (OIG-18-2)

Thank you for the opportunity to review and comment on your draft report regarding GAO's use of Law Enforcement Availability Pay (LEAP). We welcome the results of your review as an opportunity for us to enhance our operations and already have actions underway to address the report's recommendations.

Regarding your first recommendation, we agree that we should continually evaluate criminal investigators' work and availability in support of GAO's investigative needs. Criminal investigators are integral to GAO's mission as they enable us to effectively carry out our congressional oversight role by investigating potential violations of criminal law. With their knowledge of investigative techniques and demonstrated skills in conducting interviews and interrogations, maintaining surveillance, and carrying out undercover work assignments, GAO's criminal investigators are central to helping combat fraud, waste, and abuse and ensuring integrity in federal programs. Through our annual workforce planning process, we assess and, as necessary, adjust the size and composition of our workforce to ensure we have the appropriate capabilities and capacities to meet agency needs. We will incorporate an evaluation of criminal investigators' work and availability beyond a 40-hour workweek into our existing workforce planning process.

With respect to your second recommendation, we appreciate you identifying the error in the WebTA calculation for determining whether criminal investigators are meeting the substantial hours requirement. We have already developed an interim mechanism to calculate the daily average excluding availability hours on weekends. We have also begun working to develop a longer term solution for correctly calculating whether the substantial hours requirement is being met. These actions should prevent a reoccurrence of erroneous certifications.

In response to your third recommendation, we have begun consulting with our Human Capital Office and Office of General Counsel to determine the appropriate actions for the fiscal year 2017 certifications that were based on the erroneous WebTA calculations.

In addition we have three observations that we believe would help readers better understand aspects of GAO's use of LEAP. First, as the report correctly states, while LEAP is fixed at 25 percent of a criminal investigator's base salary, the actual portion of a criminal investigator's compensation that is LEAP varies due to statutory pay limitations. We believe readers would benefit from knowing that as a result of the pay limitations, during the course of fiscal year 2017, the effective rate of LEAP for the 10 criminal investigators in FAIS ranged from less than 1 percent to 20 percent.

Second, the report explains that you examined both unscheduled and scheduled hours beyond the regular 40-hour workweek and notes that FAIS criminal investigators performed no scheduled overtime during fiscal year 2017. The law provides that criminal investigators may earn overtime only for work in excess of 10 hours on a workday or for work on a day outside the workweek if such work is scheduled and approved in advance (see 5 U.S.C. § 5542(d)). Accordingly, the first two hours of "overtime" for criminal investigators during the workday must fall under LEAP. The absence of overtime charges does not mean that LEAP has been improperly applied.

Finally, in discussing availability status, the report notes that other than requiring investigators to carry mobile phones and respond within three hours, FAIS LEAP policy and procedures place no restriction on personal activities while an investigator is in availability status. However, the LEAP statute states that available "means that an investigator shall be considered generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency" (see 5 U.S.C. § 5542(a)). The statute does not specify that agency policies and procedures should place further restrictions on personal activities while an investigator is in availability status. As such, we believe that our policy and procedures appropriately address what it means for investigators to be available.

In closing, we appreciate your time and work on this issue and believe our ongoing and planned actions in response to your recommendations will position us to more effectively manage GAO's use of LEAP going forward.

cc: Katherine Siggerud, Chief Operating Officer
Karl J. Maschino, Chief Administrative Officer
Thomas Armstrong, General Counsel
William White, Chief Human Capital Officer
William Anderson, Controller

Appendix III: OIG Contact and Staff Acknowledgments

OIG Contact

Adam R. Trzeciak, (202) 512-5748 or trzeciaka@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Evelyn Logue (Assistant Inspector General for Audit), Louise DiBenedetto (Engagement Manager), Adriana Pukalski (Legal Counsel), Michele Fejfar and Alice Feldesman made major contributions to this report. Other key contributors include Omar Torres, Melanie H. P. Fallow, Gregory Borecki, and Cynthia Taylor.

Appendix IV: Report Distribution

U.S. Government Accountability Office

Gene Dodaro – Comptroller General
Katherine Siggerud – Chief Operating Officer
Karl Maschino – Chief Administrative Officer/Chief Financial Officer
Tom Armstrong – General Counsel
William White – Chief Human Capital Officer
Johana Ayers – Managing Director, Forensic Audits and Investigative Service
Wayne McElrath – Director of Investigations, Forensic Audits and Investigative Service
William Anderson – Controller/Deputy Chief Financial Officer
Adrienne Walker – Director, Program Analysis and Operations
Adebiyi Adesina – Special Assistant to the Controller
Orice Williams Brown – Managing Director, Congressional Relations
Chuck Young – Managing Director, Public Affairs

GAO Audit Advisory Committee

GAO Congressional Oversight Committees

OIG's Mission

Our mission is to protect GAO's integrity through audits, investigations, and other work focused on promoting the economy, efficiency, and effectiveness in GAO programs and operations, and to keep the Comptroller General and Congress informed of fraud and other serious problems relating to the administration of GAO programs and operations.

Reporting Fraud, Waste, and Abuse in GAO's Internal Operations

To report fraud and other serious problems, abuses, and deficiencies relating to GAO programs and operations, you can do one of the following (anonymously, if you choose):

- Call toll-free (866) 680-7963 to speak with a hotline specialist, available 24 hours a day, 7 days a week.
- Visit <https://OIG.alertline.com>.

Obtaining Copies of OIG Reports and Testimonies

To obtain copies of OIG reports and testimonies, go to GAO's website: www.gao.gov/about/workforce/ig.html.

