

# **CBP Needs Better Data to Justify Its Criminal Investigator Staffing**





# DHS OIG HIGHLIGHTS

## *CBP Needs Better Data to Justify Its Criminal Investigator Staffing*

**April 29, 2016**

### **Why We Did This Audit**

U.S. Customs and Border Protection's (CBP) Office of Internal Affairs (IA) has oversight authority for all aspects of CBP operations, personnel, and facilities to ensure compliance with all CBP-wide programs and policies relating to corruption, misconduct, or mismanagement. From October 1, 2010, through March 12, 2015, CBP received 11,367 allegations of misconduct by its employees. IA investigated 6,524 of those allegations, of which 819 were classified as criminal.

We performed this audit to determine whether CBP has an effective process to identify the required number of criminal investigators needed to accomplish its mission in an efficient and cost-effective manner.

### **What We Recommend**

We recommend that CBP IA perform a position description review of the office, identify and capture key workload data elements, ensure reliability of investigative data, conduct a comprehensive workload analysis, and develop performance measures for its Investigative Operations Division.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 254-4100, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

### **What We Found**

In January 2015, CBP converted 183 of its 212 investigative program specialists to new criminal investigative positions without determining the appropriate number of investigators needed to effectively and efficiently accomplish its mission. CBP cannot ensure the criminal investigators are appropriately classified because it did not properly assess major duties its criminal investigators perform, did not conduct an adequate analysis of its staffing needs, and did not develop performance measures to assess the effectiveness of its investigative operations.

Without a comprehensive process and analysis to determine the appropriate number of criminal investigators, CBP may have improperly spent the approximately \$3.1 million it paid for criminal investigators' premium pay in fiscal year 2015. Furthermore, if CBP does not make any changes to the number of criminal investigator positions, we estimate that it will cost as much as \$22.6 million over 5 years for premium Law Enforcement Availability Pay.

### **CBP's Response**

CBP concurred with all five recommendations but raised issues about the audit's timing, the financial impact of converting its investigative program specialists to criminal investigators, and the number of criminal investigators needed to accomplish its mission.



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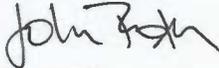
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Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

April 29, 2016

MEMORANDUM FOR: The Honorable R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

Matthew Klein  
Assistant Commissioner  
Office of Internal Affairs  
U.S. Customs and Border Protection

FROM: John Roth   
Inspector General

SUBJECT: *CBP Needs Better Data to Justify Its Criminal  
Investigator Staffing*

Attached for your action is our final report, *CBP Needs Better Data to Justify Its Criminal Investigator Staffing*. We incorporated the formal comments provided by your office.

The report contains five recommendations aimed at improving CBP's Office of Internal Affairs' effectiveness and efficiency in its use of criminal investigators to conduct its mission. Your office concurred with all five recommendations.

Based on information provided in your response to the draft report, we consider recommendations 1 through 5 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts. Please send your response or closure request to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Mark Bell, Assistant Inspector General for Audits, at (202) 254-4100.



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**Abbreviations**

CAD	Credibility Assessment Division
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FY	fiscal year
GAO	Government Accountability Office



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HRM	Office of Human Resources Management
HSAC	Homeland Security Advisory Council
IA	Office of Internal Affairs
ICE	U.S. Immigration and Customs Enforcement
IOD	Investigative Operations Division
JIC	Joint Intake Center
JICMS	Joint Integrity Case Management System
LEAP	Law Enforcement Availability Pay
OIG	Office of Inspector General
OPM	U.S. Office of Personnel Management
OPR	Office of Professional Responsibility
USC	United States Code



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### Background

U.S. Customs and Border Protection (CBP) is responsible for safeguarding our Nation's borders from dangerous people and materials while facilitating legitimate trade and travel. In fiscal year (FY) 2015, CBP employed approximately 60,000 personnel. CBP's Office of Internal Affairs (IA)<sup>1</sup> has oversight authority for all aspects of CBP operations, personnel, and facilities to ensure compliance with all programs and policies relating to corruption, misconduct, or mismanagement. IA's Investigative Operations Division (IOD) investigates criminal and serious administrative misconduct by CBP employees. See appendix C for an overview of CBP's process for investigating misconduct allegations.

As of April 2015, IOD employed 289 personnel that included 180 criminal investigators, 81 investigative program specialists, and 28 administrative support personnel. Of the criminal investigator and investigative program specialist positions, 53 are temporarily assigned to IOD from CBP's Credibility Assessment Division (CAD) to perform pre-employment screening of new employees.

The Department of Homeland Security (DHS) Management Directive 0810.1, *The Office of Inspector General*, dated June 10, 2004, requires components to refer allegations of potentially criminal employee misconduct to the DHS Office of Inspector General (OIG) Office of Investigations for review. Allegations not retained by DHS OIG are referred back to components for completion of the investigation. See appendix D for a flowchart of CBP's investigative process. Since the inception of DHS, the U.S. Immigration and Customs Enforcement's (ICE) Office of Professional Responsibility (OPR) has investigated allegations of criminal misconduct by CBP employees not retained by DHS OIG.

In August 2005, CBP requested from the DHS Secretary the authority to establish an integrity investigations unit, staffed with criminal investigators, to investigate CBP employee misconduct. The Secretary granted CBP the authority to establish an integrity investigations office staffed with investigative program specialists and not criminal investigators. In June 2006 and July 2008, CBP again requested from the DHS Secretary the authority to staff IA with criminal investigators and conduct criminal investigations of alleged CBP employee misconduct. If approved, responsibility for investigating allegations of

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<sup>1</sup> Shortly before the issuance of this report, CBP announced it was changing the name of its Office of Internal Affairs to the Office of Professional Responsibility. However, we will continue to use IA in this report as that was the name of the office during the time we conducted our audit work.



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criminal misconduct by CBP employees not retained by DHS OIG would transfer from ICE OPR to CBP IA.

CBP maintained that this new responsibility would provide the component with better oversight of its workforce and ensure that allegations are addressed in a more timely manner. Both requests for criminal investigative authority were denied. However, on August 29, 2014, the DHS Secretary delegated authority to CBP IA, allowing it to conduct investigations of criminal misconduct by CBP employees for those allegations not retained by DHS OIG.

There has been an ongoing debate concerning the roles and responsibilities between CBP and OIG. It was reported that in April 2010 the Chairman of the Senate Homeland Security and Governmental Affairs ad hoc subcommittee on disaster recovery and intergovernmental affairs warned the DHS Secretary of “coordination and information sharing problems between DHS’ investigative units.” It was also reported that the former DHS Acting Inspector General stated that CBP IA had a “crucial complementary role” to the OIG’s criminal investigative function. But he also emphasized that it is OIG that has the authority and the responsibility within DHS for investigating allegations of corruption.

After receiving authority to conduct criminal investigations, CBP requested that its investigative program specialists be converted to newly established criminal investigator positions. Criminal investigator positions qualify for the same special statutory employment benefits as law enforcement officers. Such benefits include retirement at age 50 with full benefits after only 20 years of service<sup>2</sup> and Law Enforcement Availability Pay (LEAP).<sup>3</sup> LEAP amounts to an additional 25 percent premium above base pay.

To be eligible for LEAP, criminal investigators must certify annually that they have worked and are expected to be available to work a minimum annual average of 2 or more unscheduled duty hours beyond each normal workday.<sup>4</sup> By law, only those Federal employees whose primary duties include “...the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States” qualify as law

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<sup>2</sup> 5 United States Code (USC) § 8336(c), 8412(d)(2).

<sup>3</sup> Congress enacted the *Law Enforcement Availability Pay Act of 1994* “to provide premium pay to criminal investigators to ensure the availability of criminal investigators for unscheduled duty in excess of a 40 hour work week based on the needs of the employing agency.” 5 USC § 5545a(b).

<sup>4</sup> 5 Code of Federal Regulations (CFR) §§ 550.181-186, particularly § 550.184, Annual certification.



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enforcement officers for retirement coverage purposes.<sup>5</sup> U.S. Office of Personnel Management (OPM) regulations require law enforcement officers to spend in general an average of at least 50 percent of their time performing these primary duties. Conversely, OPM specifically states that a law enforcement officer's primary duties do not involve maintaining order, protecting life and property, or guarding against or inspecting for violations of law.

From October 1, 2010, through March 12, 2015, CBP received 11,367 allegations of misconduct by its employees. DHS OIG, ICE OPR, or CBP management investigated 4,777 allegations of misconduct by CBP employees, and CBP IA investigated 6,524 allegations. There was not enough information available in CBP's case management system, the Joint Integrity Case Management System (JICMS), to determine the lead investigative agency for the remaining 66 allegations; see table 1.

**Table 1: Allegations Investigated by Lead Investigating Agency from October 1, 2010, through March 12, 2015**

<b>Lead Investigating Agency</b>	<b>Number of Allegations</b>	<b>Percentage of Total</b>
CBP IA	6,524	57%
CBP Management	2,234	20%
OIG Office of Investigations	1,518	13%
ICE OPR	1,025	9%
Incomplete Data	66	1%
<b>Total</b>	<b>11,367</b>	<b>100%</b>

*Source:* OIG analysis of data obtained from JICMS.

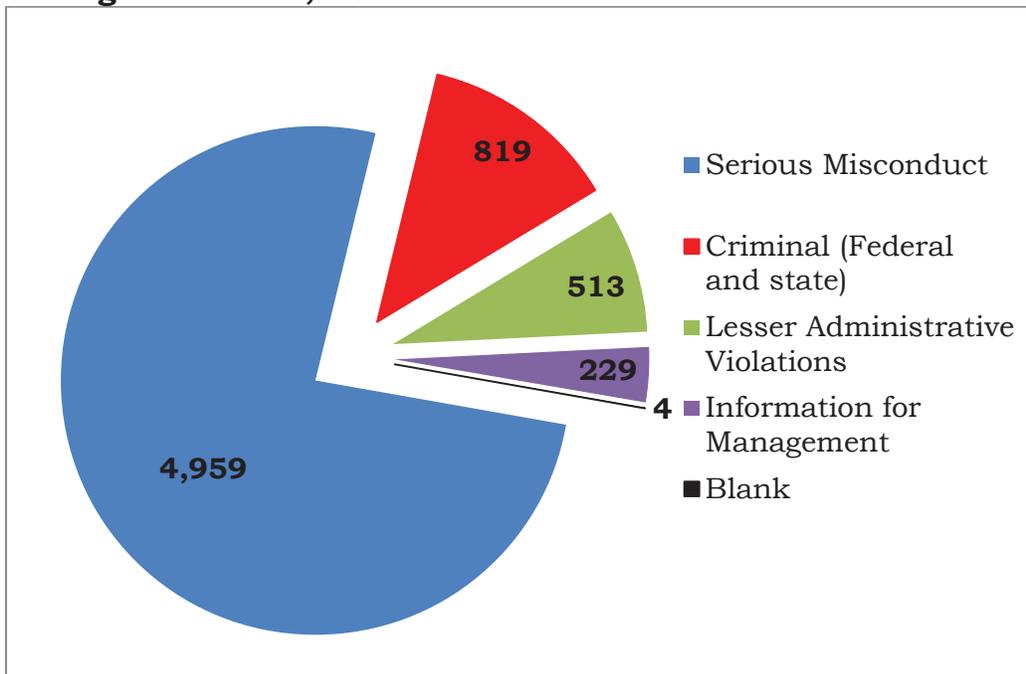
CBP IA investigated 6,524 allegations, of which 819 (13 percent) were classified as criminal, while 4,959 (76 percent) were classified as serious misconduct as shown in figure 1. Serious misconduct includes misuse of Government databases, abuse of position for personal gain, or association with known criminals or illegal aliens.

<sup>5</sup> 5 USC § 8331(20), § 8401(17), 5 CFR §831.902; *see also* 5 CFR. §842.802.



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**Figure 1: Allegations Investigated by CBP IA from October 1, 2010, through March 12, 2015**



Source: OIG analysis of investigative data obtained from JICMS.

### Results of Audit

In January 2015, CBP converted 183 of its 212 IOD investigative program specialists to new criminal investigative positions without determining the appropriate number of investigators needed to effectively and efficiently accomplish its mission. CBP cannot ensure the criminal investigators are appropriately classified because it did not assess major duties its criminal investigators perform, did not conduct an adequate analysis of its staffing needs, and did not develop performance measures to assess the effectiveness of its investigative operations. Without a comprehensive process and analysis to determine the appropriate number of criminal investigators needed, CBP may have improperly spent the approximately \$3.1 million it paid for criminal investigators' premium pay in FY 2015. Additionally, if CBP does not make any changes to the number of criminal investigator positions, we estimate that it will cost as much as \$22.6 million over 5 years for premium Law Enforcement Availability Pay.



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### **CBP Did Not Properly Assess the Major Duties of Its Investigative Personnel**

CBP cannot ensure that its criminal investigators are performing duties required of that position most of their time. In January 2015, CBP automatically converted 183 of its investigative program specialists who met certain retirement and training requirements to criminal investigator positions. However, according to OPM classification guidelines, eligibility for the criminal investigator position should be based on the work of that position.

Classification of employees into the correct positions is an essential part of the human resources management process. When classifying positions, Federal agencies are required to include information about the position that is significant to its classification and keep the position descriptions up to date.

According to OPM's *The Classifier's Handbook*,<sup>6</sup> position descriptions document the job's major duties,<sup>7</sup> responsibilities, and qualifications required to accomplish the work, which management uses to make personnel decisions. For a new position description, such as CBP's criminal investigator position, OPM guidance states that it should be validated within a reasonable timeframe based on actual work performed. This is consistent with CBP's guidance<sup>8</sup> that states position descriptions are subject to review 6 months after incumbency to ensure accuracy.

CBP offices must receive approval from CBP's human resources office for position descriptions they develop or update. These offices must also receive approval from the Department's Office of the Chief Human Capital Officer. However, according to CBP's Office of Human Resources Management (HRM) officials, HRM does not verify the major duties of employees covered under a position description. Instead, this office verifies that duties listed within position descriptions match OPM position descriptions. Furthermore, these officials said that HRM does not require that the major duties in each position

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<sup>6</sup> The Handbook provides guidance for selecting, interpreting, and applying classification standards to those who classify positions. OPM approves and issues position classification standards that must be used by Federal agencies to determine the title, series, and grade of positions.

<sup>7</sup> OPM defines major duties as those that represent the primary reason for the position's existence, and which govern the qualifications requirements. Typically, they occupy most of the employee's time and include only those duties currently assigned, observable, and expected to continue or recur on a regular basis over a period of time.

<sup>8</sup> Customs Directive 51511-001, *Classification Under the General Schedule*, March 1, 1989.



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description be supported by a documented workload review or require a plan for validating the major duties associated with newly established positions.

As of October 2015, CBP could not ensure that the major duties of the employees it automatically converted into criminal investigator positions met OPM requirements for such positions. Instead, CBP established the new criminal investigator position descriptions based on duties described in OPM classification guidelines and then automatically converted employees they deemed eligible. OPM guidance specifically states that eligibility for the criminal investigator position should not be an automatic process, but instead should be based on the work of that position.

Additionally, CBP did not comply with OPM's requirement to keep its position descriptions up to date for its investigative program specialist positions not converted to criminal investigator positions within IOD. CBP has not updated those position descriptions since 2005. These position descriptions were developed prior to the creation of CBP IA and were for investigator positions within its predecessor, the Management Inspections and Integrity Assurance Division. CBP's guidance requires position descriptions to be reviewed 6 months after reorganization or establishment of a new program. As of October 2015, CBP had not updated its position descriptions for these positions.

Without verifying major duties of its criminal investigators or keeping position descriptions up to date, CBP cannot ensure criminal investigators are meeting the requirements to qualify for law enforcement premium pay and benefits. As a result, CBP cannot ensure that it is using staff and funding as efficiently as possible.

### **CBP Did Not Determine Appropriate Staffing Needs Prior to Converting Its Investigative Personnel**

CBP did not perform a comprehensive workload analysis to determine appropriate staffing needs prior to converting investigative program specialists to criminal investigators. CBP made staffing and hiring decisions based primarily on subjective rather than data-driven justifications. This occurred because CBP does not collect or maintain sufficient data to perform a comprehensive workload analysis. Furthermore, data captured from investigations of employee misconduct is not always reliable or easily retrievable, which makes it difficult for CBP to conduct analyses of investigative data and make informed decisions.

As previously noted, CBP IA investigated 819 allegations of criminal misconduct from October 1, 2010, through March 12, 2015. In addition, ICE



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OPR investigated 1,025 allegations of criminal misconduct of CBP employees during the same timeframe. If CBP had criminal investigative authority as of October 1, 2010, and could have investigated these 1,025 allegations that were investigated by ICE OPR, then the number of allegations of criminal misconduct investigated by CBP would total 1,844 for that 4.5-year timeframe. Based on this information, we estimate the average caseload for each of the 180 criminal investigators CBP employed as of April 2015 would range from 2 to 3 criminal misconduct cases annually.

According to Office of Management and Budget, data-driven reviews are a management practice proven to produce better results.<sup>9</sup> According to the agency, data-driven reviews help organizations identify, plan, and potentially improve existing human capital practices to support mission goals and objectives.

Without accurate and sufficient workload data, CBP is limited in its ability to analyze its workloads, justify resource needs, and ensure that it has the proper number and type of positions to perform effectively and efficiently. As a result, CBP converted 183 staff to criminal investigators and issued a vacancy announcement for 35 criminal investigators without proper justification, which results in increased costs to the Federal Government.

### **CBP Performed Limited Workload Analysis**

CBP performed an analysis of its investigator workload using JICMS data. However, it limited its analysis to an examination of the number of investigators located at each field office location and the number of allegations assigned to each field office investigator during FY 2014. CBP's analysis did not consider other factors such as the type of allegation, case complexity, or number of subjects involved in the allegation.

Additionally, CBP acknowledged in its analysis that it did not take its expanded criminal investigative authority into consideration or determine whether the ratio of average allegations assigned to each field office was appropriate. CBP could not conduct a more refined data-driven analysis because it does not capture adequate investigator workload data, and information that is captured has data reliability and accessibility problems.

According to OPM's *Introduction to the Position Classification Standards*, revised August 2009, agencies are responsible for establishing, classifying, and

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<sup>9</sup> Office of Management and Budget Circular A-11, *Preparation, Submission, and Execution of the Budget*, June 2015.



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managing their own positions. OPM recognizes position management as key to the proper and responsible use of limited financial and personnel resources. DHS Office of the Chief Human Capital Officer defines position management as “a systematic approach for determining the number of positions needed, the skill and knowledge requirements of those positions, and the grouping of duties and responsibilities among positions.” Both the Office of Management and Budget and DHS’ Office of the Chief Human Capital Officer note that personnel estimates should be based on workload data.

CBP maintains that the financial impact of converting its investigative program specialists to criminal investigators was negligible. The basis for its conclusion is that prior to the conversion, the investigative program specialists were already receiving Federal law enforcement retirement coverage. Also, these individuals received administratively uncontrollable overtime at the rate of 25 percent, which is the same rate as LEAP.

We disagree with CBP’s conclusion that the financial impact of the conversion was insignificant. Without verifying major duties of its criminal investigators and keeping position descriptions up to date, CBP cannot ensure its criminal investigators are meeting the requirements to qualify for law enforcement pay and benefits. Without such assurance, CBP cannot determine whether the LEAP costs it pays to these individuals is justified.

Also, CBP did not conduct a comprehensive workload analysis of IA before the conversion of its investigative program specialists to criminal investigators. Therefore, the component cannot justify that the 25 percent administratively uncontrollable rate it previously used was appropriate.<sup>10</sup> Consequently, the component is unable to determine if the financial impact of converting CBP IA staff to criminal investigators was negligible as it claims.

### **CBP Cannot Accurately Assess or Track Investigator Workload Data**

CBP does not have an effective tool to accurately assess investigator workload data and cannot determine the amount of time spent on specific investigative activities. JICMS contains some relevant investigative data such as allegation classification (criminal or non-criminal), date reported, and the primary officer and supervisor assigned to the case. However, the data is specific to an allegation and does not include time spent performing specific investigative activities, such as:

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<sup>10</sup> 5 CFR § 550.151 authorizes agencies to provide premium pay to employees for overtime work performed that cannot be controlled administratively. This rate ranges from 10 to 25 percent.



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- conducting interviews;
- preparing or executing warrants or subpoenas;
- making arrests;
- conducting searches or seizures;
- conducting surveillance; and
- preparing reports of investigation.

CBP also does not have a timekeeping system that captures time spent working on these key investigative activities. Criminal investigators record their normal duty hours in the CBP Overtime Scheduling System, which is recorded as 8 hours per workday and is not specific to any investigation or key duties performed. Information on time spent on key investigative activities is necessary to determine whether the majority of duties qualify for a criminal investigator classification.

In addition, CBP IA does not require its investigators to record their LEAP hours in the system, which instead are recorded manually on a spreadsheet. This further limits CBP’s ability for data analysis and decision making for staffing purposes.

**JICMS Data Is Not Always Reliable, Accessible, or Useful**

JICMS data is not always reliable or easily accessible because CBP did not assign responsibility for ensuring investigative data entered into JICMS is accurate and complete. Joint Intake Center (JIC) employees told us that they classify allegations and queue them to field office investigators who are responsible for ensuring allegations are correctly classified. However, CBP IA field office investigators we interviewed stated that they do not change or update data initially entered by the JIC. For example, during our review of JICMS data from October 1, 2010, through March 12, 2015, we noted inconsistencies in the classification of certain allegations of employee misconduct. See table 2.

**Table 2: Inconsistencies in Classification of Misconduct Allegations from October 1, 2010, through March 12, 2015**

<b>Allegation</b>	<b># of Allegations</b>	<b># Classified as Criminal</b>	<b>% Criminal</b>	<b># Classified as Non-Criminal</b>	<b>% Non-Criminal</b>
Drug Smuggling	520	463	89%	57	11%
Physical Abuse of Detainees	321	158	49%	163	51%
<b>Totals</b>	<b>841</b>	<b>621</b>	<b>74%</b>	<b>220</b>	<b>26%</b>

Source: OIG analysis of data obtained from JICMS.



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In addition, JICMS does not provide CBP with useful management information in a user-friendly manner. CBP estimates it spends about \$1 million annually to support JICMS despite the system's inability to meet CBP's reporting and decision-making needs. JIC officials stated JICMS does not allow for ad hoc reporting and requires programmers to retrieve much of the data captured. In a memorandum dated May 11, 2015, IOD's Acting Director stated that programmers conduct data pulls that are reduced to a spreadsheet, which staff must manually sort and verify.

Without a comprehensive workload analysis to determine the appropriate number of criminal investigators needed, CBP cannot ensure its investigative operations are being carried out in an efficient and cost-effective manner.

### **CBP IA Did Not Establish Performance Measures**

CBP IA did not develop performance measures or goals to assess the effectiveness of its operations. According to OPM, performance measures are an important tool to assess the performance and results of an organization and its employees. These measures should be specific, measurable, realistic, objective, and time-sensitive. Performance measures could include investigations accepted for prosecution, time to complete investigations, warrants executed, or number of cases referred to management for action.

Without well-developed performance measures that are supported by valid, verified data, CBP cannot ensure that IOD is meeting mission requirements effectively and efficiently. Data is available in JICMS that could be used to help measure performance, such as determining the number of days elapsed between when an allegation is reported and closed and the number and type of allegations assigned to each field office. However, as noted earlier, the data in JICMS is not always reliable or readily accessible. Thus, such determinations cannot be made without extensive, time-consuming manual verification.

### **Additional Observation**

#### **Polygraphers Were Not Properly Classified**

CBP did not properly classify its polygraphers in accordance with Federal regulations. According to CBP officials, in August 2014, CBP determined that employees performing pre-employment polygraphs within IA's CAD received law enforcement retirement benefits and pay even though they were not authorized to receive such compensation. However, after that determination, CAD assigned 53 employees performing pre-employment polygraphs to IOD, where



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they could receive law enforcement officer retirement benefits and pay, and then detailed them back to CAD.

According to CBP officials, this transfer was performed to allow those employees assigned to IOD, who would no longer receive law enforcement retirement benefits and pay in CAD, to retain those benefits even though their duties remain unchanged. As a result, CAD created an artificial shortage of employees and backfilled those positions they transferred to IOD from other offices within CBP, even though those employees within IOD are still performing pre-employment polygraphs. Overall, CBP has spent \$212,112 to train individuals to backfill the positions of those polygraphers CAD transferred to IOD. Consequently, those 53 employees performing pre-employment polygraphs in IOD reduced available funding designated for IOD's investigators to perform their investigative duties.

### **Conclusion**

CBP maintains that converting the 183 investigative program specialists to criminal investigators did not affect program costs. However, as criminal investigators, these individuals became eligible for LEAP, which is an automatic 25 percent premium above base pay.

Furthermore, CBP has not:

- assessed its staffing needs based on data-driven justifications;
- validated major duties its criminal investigators perform; or
- developed program measures within IA.

CBP does not have an effective tool to determine the amount of time its investigators spend performing key investigative activities. Without identifying the required number or type of investigators CBP needs based on a comprehensive workload analysis, it may not be able to justify approximately \$3.1 million in premium pay we estimate it paid its criminal investigators in FY 2015. Additionally, if CBP does not make any changes to the number of criminal investigator positions, we estimate that it will cost as much as \$22.6 million over 5 years for premium LEAP.



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### Recommendations

**Recommendation 1:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection perform a position description review to ensure that all investigator positions are properly described and classified based on a validation of major duties.

**Recommendation 2:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection identify and capture data elements necessary to perform a comprehensive workload analysis of its investigative workforce within its Office of Internal Affairs. The data elements should be based on major duties performed.

**Recommendation 3:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection develop and implement procedures to ensure investigative workload data elements are complete, accurate, and reliable.

**Recommendation 4:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection conduct a comprehensive workload analysis of its Investigative Operations Division, including a needs assessment, to determine the appropriate staffing levels to accomplish the office's mission efficiently and cost effectively.

**Recommendation 5:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection develop performance measures and goals to ensure the Investigative Operations Division is meeting mission requirements efficiently and effectively.

### OIG Analysis of CBP Management Comments

CBP concurred with all five recommendations. A copy of CBP's response, in its entirety, is included in appendix B. CBP also acknowledged its responsibility to continually assess its structures, operations, processes, and systems and to implement changes to more effectively perform mission-critical tasks. We agree with CBP's acknowledged responsibility to use its staff and resources in a cost-effective manner.

Although CBP concurred with our recommendations, it raised issues regarding the timing of this audit, the financial impact of converting its investigative program specialists to criminal investigators, and the number of criminal investigators needed to accomplish its mission.



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In its response to our draft report, CBP disagreed with the timing of our audit and questioned the audit's initiation soon after CBP was granted criminal investigative authority by the Secretary. CBP stated at the time our audit was started, it was (1) in the process of converting its eligible investigative program specialists to criminal investigators and (2) conducting a "comprehensive review of the IA field organization and staffing model." CBP maintained that OIG's recommendations in this report repeat many of the items already identified in CBP's self-initiated review.

We disagree with CBP's assertion that our audit started at an inappropriate time when the conversion of its investigative program specialists to criminal investigators was "still in its infancy." According to CBP's technical comments to our Notice of Findings and Recommendations, IA did not perform a comprehensive workload analysis to determine appropriate staffing needs prior to converting its staff to criminal investigators. We believe taking a proactive approach, as we did, will potentially prevent funds from being spent inappropriately.

As a result of our review, we concluded that CBP could avoid potentially paying more than \$3.1 million a year in unsupported LEAP costs at the taxpayers' expense. In a prior report<sup>11</sup> we issued in 2013, we had similar findings with TSA's Office of Inspection. We reported that it would cost TSA as much as \$17.5 million over 5 years in LEAP pay if it did not make any changes to the number of its criminal investigator positions. Therefore, we believe it is in the best interests of CBP and the American taxpayers to determine the appropriate number of criminal investigators needed sooner rather than later. Additionally, CBP needs to distinguish between the number of criminal investigators needed to accomplish its mission and the number of individuals or manpower needed to perform this work. CBP should consider using a mix of criminal and non-criminal investigators to conduct its work.

Regarding CBP's claim that it was already conducting a comprehensive review of IA, we asked numerous times throughout our audit whether any such efforts were underway. We requested this information from IA as well as CBP's Office of Administration, Human Resources Management, and Office of Chief Counsel. However, CBP did not provide us with sufficient evidence to support this claim.

CBP maintained at our Exit Conference that its ongoing corrective actions would address several of our recommendations. To allow CBP more time to

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<sup>11</sup> *Transportation Security Administration Office of Inspection's Efforts to Enhance Transportation Security*, (OIG-13-123), September 2013.



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provide documentation of its ongoing corrective actions, we granted CBP's request for a 3-week extension before issuing the draft report. However, during this extension period CBP only provided us with an occupation questionnaire, a listing of investigation position descriptions, and an informal description of CBP's position review methodology. Upon reviewing the documents provided, we concluded they were insufficient to clearly indicate how CBP is going to ensure all of its investigator positions are properly classified.

In its official response to the draft report, CBP stated it rejects any suggestion that it may have paid criminal investigators at a higher rate than allowed. Furthermore, the component claims the financial impact of converting its investigative program specialists to criminal investigators was negligible as both positions are compensated at the same overtime percentage. Although CBP stated that overtime was compensated at the same percentage, its criminal investigators must now meet certain statutory requirements to qualify as a law enforcement officer and receive LEAP that its investigative program specialists did not have to meet.

For example, criminal investigators who receive LEAP must spend an average of at least 50 percent of their time investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States. Based on our analysis of JICMS data, we determined that a majority of CBP allegations of misconduct were non-criminal. We determined that if CBP had criminal investigative authority as of October 1, 2010, and could have investigated criminal allegations investigated by ICE OPR, then the number of allegations of criminal misconduct investigated by CBP would total 1,844 for that 4.5-year timeframe. Based on this information, we estimated the average caseload for each of the 180 criminal investigators CBP employed as of April 2015 would range from 2 to 3 criminal misconduct cases annually.

CBP concluded that the financial impact of converting 183 CBP IA staff to criminal investigators was negligible. However, this is based on the primary assumption that all 183 staff were previously conducting criminal investigations. As we noted in our report, there is no data to support this assumption. CBP has not assessed, either before or after the conversion, whether its IA employees meet OPM work requirements for criminal investigator positions. As a result, CBP cannot ensure that its IA employees are classified into the proper positions. Without such assurance, CBP cannot determine whether (1) the LEAP costs it pays to these individuals is justified and (2) the financial impact of converting CBP IA staff to criminal investigators was negligible.



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CBP also takes exception to OIG's conclusion that the component converted 183 investigative program specialists to new criminal investigator positions without determining whether that number of investigators was needed to effectively and efficiently accomplish its mission. To support its position, CBP cited statistical data from its legacy agency, the U.S. Customs Service Office of Internal Affairs. For example, CBP stated that the number of its employees tripled since September 11, 2001, under its predecessor agency. To further its position, CBP cited a June 2015 Homeland Security Advisory Council (HSAC) report, which concluded that the number of CBP's criminal investigators should be significantly increased to 550.

We disagree with CBP's characterization that our logic is "nonsensical" as it relates to the number of criminal investigators it needs to carry out its mission effectively and efficiently. CBP implies that more criminal investigators are needed since the number of CBP employees has tripled since 2001. We contend that to determine the appropriate number of criminal investigators needed, a comprehensive workload analysis must be conducted. This type of effort involves evaluating numerous data elements such as case type, hours worked per case, and case complexity.

We also take exception to the HSAC's findings and recommendations cited by CBP. We believe that HSAC did not adequately justify the need for 550 criminal investigators—a significant increase from the 183 we already questioned—it recommended for CBP. We discussed HSAC's work with several of its team members and concluded that their recommendation about the number of criminal investigators CBP needs does not consider CBP's current operating environment and investigative workload data. Specifically, it is based on an analysis of the ratio of CBP's law enforcement workforce to Internal Affairs' investigators at its legacy agency, the U.S. Customs Service, and other law enforcement agencies. HSAC's conclusion does not take into account data driven analysis such as:

- historical workload data regarding the number and type of allegations received and investigations performed,
- time spent investigating allegations, and
- case complexity.

Additionally, HSAC did not determine whether the ratio of CBP's law enforcement workforce to Internal Affairs' investigators at its legacy agency and other law enforcement agencies analyzed was appropriate for using staff and resources in a cost-effective manner.



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The HSAC report noted that the number of allegations of corruption involving CBP employees may be increasing, which further justifies increases to the IA criminal investigator workforce. However, HSAC provides no data to support this assertion. Rather, HSAC notes there is data for corruption arrests, which reflects a general downward trend since spiking in 2009 and is not related to any specific workload type data. No other data analysis was performed by HSAC for purposes of staffing increases.

Based on our analysis of total CBP employee misconduct allegations in JICMS, we noted a downward trend from FYs 2011 through 2014, which contradicts the conclusions in the HSAC report. Based on the inherent limitations with the methodology used by HSAC to arrive at their estimate, we do not believe their analysis should be the sole justification for identifying the number of criminal investigators CBP needs. Rather, this work could be a starting point for discussion and supplemented with a comprehensive workload analysis of CBP IA.

HSAC and CBP both propose increases to CBP's criminal investigator workforce to proactively prevent and deter corruption within its growing workforce. As previously noted in our report, OPM and other statutory requirements require a criminal investigator to spend a majority of his or her time conducting investigations of people alleged or suspected of a violation against U.S. Federal law. Without verifying major duties of its criminal investigators or keeping position descriptions up to date, CBP cannot ensure criminal investigators are meeting the requirements to qualify for law enforcement premium pay. As a result, CBP cannot ensure that it is using staff and funding as efficiently as possible. Instead, CBP IA should consider using other positions, such as Investigative Analysts, to conduct some of its work while not incurring criminal investigator benefits.

Finally, as we noted previously, CBP agrees with all of our recommendations. Although CBP indicated it continues to analyze workload and staffing needs and develop enhanced performance measures to assess the effectiveness of its investigative operations, it has not provided any evidence this work is currently underway.

**Recommendation 1:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection perform a position description review to ensure that all investigator positions are properly described and classified based on a validation of major duties.

**CBP's Response:** Concur. According to CBP, prior to OIG's recommendation, CBP IA had already begun coordinating with CBP's Office of Human Resources



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Management's Classification Branch to conduct an agency-wide review of position descriptions to ensure all investigator positions are properly classified based on a detailed description of the incumbent's major roles. To accomplish this, subject matter experts consulted with the Acting Assistant Commissioner and IOD management over their goals and objectives, and field supervisors over specific job duties.

These position descriptions are now integrated into the FY 2016 supervisory performance management system to properly align performance objectives with IOD's organizational elements. CBP notes that these position descriptions reflect duties that its investigators were already performing before being converted to criminal investigators. CBP IA will also establish a standing review schedule for all internal position descriptions to ensure they are reviewed at regular intervals. CBP estimates this to be completed by December 31, 2016.

**OIG Analysis:** CBP stated that a review of all investigator position descriptions had already begun prior to our recommendation. However, CBP did not provide us with sufficient evidence to support this claim. This recommendation is resolved and will remain open until CBP provides us with its detailed methodology for evaluating position descriptions using OPM position classification standards and the results of this review. Also, CBP will need to provide documentation showing its schedule for repeat evaluations of these position descriptions.

**Recommendation 2:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection identify and capture data elements necessary to perform a comprehensive workload analysis of its investigative workforce within its Office of Internal Affairs. The data elements should be based on major duties performed.

**CBP's Response:** Concur. CBP stated that data elements necessary to perform a comprehensive workload analysis, including specific investigative activities, were captured on a regular basis; however, this data is collected outside of JICMS. CBP acknowledges limitations with JICMS and notes that efficient integration of investigative and workload data is not possible with the current system. CBP IA is in the process of evaluating other case management systems in use by internal affairs entities to obtain information on their capabilities. Once CBP IA further defines its system requirements, it will coordinate with the Office of Information Technology to assign a Project Manager to formally define the technical requirements and identify a new case management/workload management system. The estimated completion date for acquisition of a new case management system is March 31, 2019.



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**OIG Analysis:** We believe CBP's intent to procure a new case management system that will capture the data elements necessary to perform a comprehensive workload analysis, including specific investigative activities, meets the intent of our recommendation. This recommendation is resolved and will remain open until CBP provides us with evidence that it has procured a new case management system that is operational and can be used for comprehensive workload analysis.

**Recommendation 3:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection develop and implement procedures to ensure investigative workload data elements are complete, accurate, and reliable.

**CBP's Response:** Concur. CBP IA's internal review identified data retrieval limitations as an impediment to ensuring investigative workload elements were captured comprehensively, accurately, and reliably. Full implementation of this recommendation is tied to the acquisition of a new case management system that incorporates workload management functions as described in CBP's response to recommendation 2. It is CBP IA's goal to acquire a system that integrates workforce data and case management data to allow for a more comprehensive and reliable analysis. The estimated completion date for implementation of this recommendation is March 31, 2019.

**OIG Analysis:** We believe that CBP's intent to acquire a new case management system designed to capture data elements necessary to conduct a comprehensive workload analysis and improve data accuracy and reliability meets the intent of our recommendation. This recommendation is resolved and will remain open until CBP provides us with evidence that it has procured a new case management system that is operational and can be used for comprehensive workload analysis. CBP should also provide documentation to show how it will ensure investigative workload data elements are complete, accurate, and reliable.

**Recommendation 4:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection conduct a comprehensive workload analysis of its Investigative Operations Division, including a needs assessment, to determine the appropriate staffing levels to accomplish the office's mission efficiently and cost effectively.

**CBP's Response:** Concur. CBP indicated it is currently evaluating the use of an independent review to perform the type of comprehensive workload analysis recommended of IOD. CBP noted that IOD currently has 130 non-supervisory criminal investigators working in 22 offices throughout the U.S. The majority of



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these criminal investigators are stationed on the southwest border between Texas and California. CBP identified the types of investigations they work on and stated that IOD has never questioned whether its current staffing of criminal investigators was adequate. Furthermore, IA's focus has been on identifying the increased staffing goal for CBP's mission objectives. The estimated completion date for implementation of this recommendation is January 31, 2017.

**OIG Analysis:** CBP needs to distinguish between the number of criminal investigators needed to accomplish its mission and the number of individuals or human resources needed to perform this work. CBP needs to consider using a mix of criminal and non-criminal investigators to conduct its work. This recommendation is resolved and will remain open until CBP provides us with a copy of the workload analysis, including a needs assessment for IOD. The information to be provided should also include a detailed methodology on how the work was conducted and assumptions used.

**Recommendation 5:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection develop performance measures and goals to ensure the Investigative Operations Division is meeting mission requirements efficiently and effectively.

**CBP's Response:** Concur. According to CBP, IOD developed performance measures for all Supervisory Criminal Investigator positions that assess and evaluate the performance of employees ensuring comprehensive and timely investigations of alleged corruption and misconduct within CBP. This is accomplished through the use of traditional and innovative law enforcement techniques, leveraging intelligence and information sharing, and increasing collaboration with law enforcement partners. IOD implemented these performance plans for FY 2016 and will continue to review and enhance these measures on an annual basis. The estimated completion date for implementing this recommendation is September 30, 2016.

**OIG Analysis:** The intent of our recommendation was for IOD to evaluate its performance periodically to demonstrate IOD's progress toward meeting its intended goals and mission. This recommendation is resolved and will remain open until CBP provides documentation to support that it periodically assesses its performance measures to evaluate IOD's efficiency and effectiveness. This documentation should include steps to be taken if IOD determines that it is not meeting all of its established goals.



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### **Appendix A**

#### **Objective, Scope, and Methodology**

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This audit was initiated as an extension of an audit of the Transportation Security Administration we reported on in 2013 involving the use of criminal investigators in its Office of Inspection.<sup>12</sup> In that audit we had similar findings and reported that it would cost the Transportation Security Administration as much as \$17.5 million over 5 years in LEAP pay if it did not make any changes to the number of its criminal investigator positions. This report provides the results of our work to determine whether CBP IA has an effective process to identify the required number of criminal investigators needed to accomplish its mission in an efficient and cost-effective manner. Specifically, we determined whether CBP performed a position classification review for its criminal investigative series. We also determined whether CBP IA uses data collected in JICMS to make staffing decisions.

We obtained and reviewed applicable Federal laws, regulations, DHS and CBP policies and procedures, and OPM classification standards and guidance. We reviewed prior OIG and Government Accountability Office (GAO) reports. We conducted interviews with CBP officials within IA, IOD, JIC, Labor and Employee Relations, Position Management and Classification, Operational Design, Hiring Center, and the Office of Administration Budget office. In addition, we interviewed ICE officials within their OPR to obtain historical perspective. We interviewed CBP staff from the Washington and Bellingham Field Offices. We also conducted site visits to CBP's Tucson and Seattle Field offices to interview staff and review investigative case files. Additionally, we interviewed DHS OIG Investigations personnel.

To determine the accuracy and reliability of investigative data in JICMS, we obtained all allegations of employee misconduct from October 1, 2010, through March 12, 2015. We analyzed the data for inconsistencies, errors, and completeness. We reviewed training manuals about JICMS and interviewed CBP officials at the JIC. We selected a random sample of 30 case files to verify JICMS data to source documents. Based on our review of data, interviews with

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<sup>12</sup> *Transportation Security Administration Office of Inspection's Efforts to Enhance Transportation Security*, September 2013, (OIG-13-123).



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CBP officials, and our sample of case files, we determined that JICMS data is not sufficiently reliable to be used as a basis for staffing needs. However, we determined that JICMS data was sufficiently reliable for providing estimates of total number of allegations of CBP employee misconduct and indicating overall trends regarding reported misconduct.

We conducted this performance audit between February and September 2015 pursuant to the *Inspector General Act of 1978*, as amended, and according to 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 upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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**Appendix B**  
**CBP Comments to the Draft Report**

1300 Pennsylvania Avenue, NW  
Washington, DC 20229

MAR 16 2016



**U.S. Customs and  
Border Protection**

Commissioner

MEMORANDUM FOR: John Roth  
Inspector General

FROM: R. Gil Kerlikowske *R. G. Kerlikowske*  
Commissioner

SUBJECT: **Management's Response to OIG Draft Report: CBP Needs  
Better Workload Data to Justify Its Criminal Investigator  
Staffing (Project No. [15-084-AUD-CBP])**

Thank you for the opportunity to review and comment on this draft report. Forward looking organizations like U.S. Customs and Border Protection (CBP) should continually assess their structures, operations, processes, and systems, and when necessary, embrace and implement changes to more effectively perform mission-critical tasks and respond to ever changing priorities and requirements. CBP faces many challenges as a professional law enforcement organization with a complex and evolving mission, one that now includes delegated criminal investigative authority. CBP expressed concern over the timing of this audit when it was noticed so soon after the authority was conveyed and implemented. CBP also rejects any suggestion that CBP may have paid criminal investigators at a higher rate than allowed. Because the overtime duties of GS-1801 and GS-1811 employees are compensated at the same percentage, the financial impact of converting from one series to the other was negligible.

The stated purpose for the audit was to determine whether CBP had an effective process to identify the required number of criminal investigators needed to accomplish its mission in an efficient and cost effective manner. However, the audit was initiated shortly after CBP began implementing the Secretary's direction to convert eligible GS-1801 employees to the GS-1811 series. CBP sent a memorandum to the OIG stating that this conversion effort was "still in its infancy," and that we were undertaking a "comprehensive review of the IA field organization and staffing model." The IG produced recommendations in the audit that repeated many of the items already identified in CBP's self-initiated review.

The OIG report concludes that CBP converted 183 investigative program specialists to new criminal investigative positions without determining if that number of investigators was needed to effectively and efficiently accomplish its mission. Frankly, this conclusion is nonsensical. In the aftermath of the terrorist attacks on September 11, 2001, the U.S.



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Management's Response to OIG Draft Report: CBP Needs Better Workload Data to Justify Its Criminal Investigator Staffing (Project No. [15-084-AUD-CBP])  
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Customs Service (USCS) Office of Internal Affairs (IA) was staffed with 200 criminal investigators, responsible for investigating criminal and serious misconduct on the part of the USCS workforce, which at the time consisted of approximately 20,000 employees. In March 2003, as part of the formation of the Department of Homeland Security, law enforcement personnel from the U.S. Immigration and Naturalization Service, including the U.S. Border Patrol in its entirety, combined with uniformed components within USCS to form CBP. Over the next five years, CBP underwent a major hiring initiative, becoming the largest law enforcement agency in the United States with nearly 60,000 employees, including 45,000 sworn law enforcement officers and agents. A suggestion that after tripling in size CBP would require fewer criminal investigators than the 200 transferred to U.S. Immigration and Customs Enforcement (ICE) in March 2003 makes little sense. Furthermore, in a June 2015 report, the Homeland Security Advisory Council's CBP Integrity Advisory Panel, an independent panel of esteemed law enforcement professionals co-chaired by William Bratton, Police Commissioner, City of New York, and Karen Tandy, former head of the U.S. Drug Enforcement Administration, concluded CBP's size required an internal affairs office with a minimum of 550 fulltime 1811 investigators.

Since the conclusion of the audit, CBP continues its efforts to analyze workload and staffing needs and develop enhanced performance measures that will help assess the effectiveness of its investigative operations. In addition, CBP continues to work diligently with the OIG Office of Investigations toward the development of an integrated, intelligence driven, threat-based strategy to deter and disrupt organized criminal groups intent on undermining the integrity of border operations.

The draft report contained five recommendations that largely repeat those already identified in CBP's own self-initiated review. Despite the concerns about the audit's timing, CBP concurs with the recommendations. Specifically:

**Recommendation 1:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection perform a position description review to ensure that all investigator positions are properly described and classified based on a validation of major duties.

**Response:** Concur. Prior to the OIG's recommendation, IA had already begun coordinating with the Agency's Office of Human Resources Management's Classification Branch to conduct an agency-wide review of Position Descriptions to ensure all investigator positions are properly classified based on a detailed description of the incumbent's major roles. The position descriptions were developed over approximately one month, wherein the subject matter experts (SME) consulted with the Acting Assistant Commissioner and the Investigative Operations Division (IOD)



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### Management's Response to OIG Draft Report: CBP Needs Better Workload Data to Justify Its Criminal Investigator Staffing (Project No. [15-084-AUD-CBP])

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management over their goals and objectives and field supervisors over specific job duties. The SMEs included language related to the basic duties of a criminal investigator (surveillance, evidence collection, interviews and interrogations) that IOD agents were already performing as GS-1801s. The SMEs were also careful to provide the specific context of the Internal Affairs criminal investigator position in the introduction, and later in the position descriptions, duties specific to IOD's mission, such as employee misconduct, corruption, internal security, executive protection, and integrity promotion. The position descriptions also accounted for the specific knowledge requirements necessary to perform the functions listed, as well as other unique aspects and requirements of the position (firearms proficiency, defensive tactics capabilities, etc.). These position descriptions have now been integrated into the FY2016 supervisory performance management system to properly align performance objectives within IOD's organizational elements. (Note: To a great degree, the position descriptions reflect duties IOD investigators were already performing as 1801s with full law enforcement powers).

IA will also establish a standing review schedule for all internal Position Descriptions, to ensure they are reviewed at regular intervals. Estimated Completion Date (ECD): December 31, 2016.

**Recommendation 2:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection identify and capture data elements necessary to perform a comprehensive workload analysis of its investigative workforce within its Office of Internal Affairs. The data elements should be based on major duties performed.

**Response:** Concur. IA's self-initiated review established that data elements necessary to perform a comprehensive workload analysis, including specific investigative activities (interviews, arrests, warrants, etc.) were captured on a regular basis; however, this data is collected outside of the current automated case management system, the Joint Integrity Case Management System (JICMS). The current methods used combined with JICMS limitations prevent the efficient integration of investigative and workload data. IA has begun the process of evaluating case management systems in use by other internal affairs entities to gather information on various system capabilities and to better define IA's specific needs through a comparison with JICMS. Once IA has better defined its system requirements, it will coordinate with the Office of Information Technology to assign a Project Manager to formally define IA's technical requirements and eventually identify a new case management/workload management system. The acquisition of a new case management system that will integrate required data elements is expected to take a minimum of two years. ECD: March 31, 2019.

Interim milestones:



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1. Completion of other agency case management system evaluation. ECD: 06/01/2016
2. Assignment of a Project Manager and establishment of specific technical requirements. ECD: 02/01/2017
3. Evaluation of systems that meet identified requirements: ECD: 03/01/2017
4. Funding request for new system. ECD: 05/01/2017
5. System acquisition, deployment and implementation: 01/01/2019

**Recommendation 3:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection develop and implement procedures to ensure investigative workload data elements are complete, accurate and reliable.

**Response:** Concur. IA's internal review had identified its data retrieval limitations as an impediment to ensuring investigative workload elements were captured comprehensively, accurately and reliably. Full completion of this recommendation is tied to the acquisition of a new case management system that incorporates workload management functions, as described in the response to Recommendation 2. It is IA's goal to acquire a system that integrates workforce data and case management data to allow for a more comprehensive and reliable analysis. ECD: March 31, 2019 (see Recommendation 2 milestones).

**Recommendation 4:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection conduct a comprehensive workload analysis of its Investigative Operations Division, including needs assessment, to determine the appropriate staffing levels to accomplish the office's mission efficiently and cost effectively.

**Response:** Concur. IA is currently evaluating the use of an independent review to perform the type of comprehensive workload analysis recommended. IOD currently has approximately non-supervisory 130 GS-1811s working in 22 offices located throughout the United States (a per capita average of six agents per field location). The majority of these GS-1811s are stationed on the Southwest Border between Texas and California. These criminal investigators conduct over 1000 investigations of employee misconduct per year for the largest law enforcement agency in the United States with a population of approximately 60,000 law enforcement and mission support personnel. They conduct a wide range of investigations that directly impact CBP mission critical functions – mission compromising criminal activity, fraud, false statements, use of force and excessive force complaints, threats to employees (internal and external), internal thefts and systems misuse, to name but a few. To that end, IOD has never questioned whether its current minimal staffing of 1811s was adequate. IA's focus has been on identifying the correct increased staffing goal to allow all of the mission objectives established by the Commissioner and Assistant Commissioner.



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IA is evaluating the proper timeframe for such a review, as it will be critical for any analysis to capture the metrics of current IOD operations as well as proposed proactive initiatives. ECD: January 31, 2017.

**Recommendation 5:** We recommend that the Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection develop performance measures and goals to ensure the Investigative Operations Division is meeting mission requirements efficiently and effectively.

**Response:** Concur. IA IOD has developed performance measures for all Supervisory Criminal Investigators positions that assess and evaluate the performance of employees ensuring comprehensive and timely investigations of alleged corruption and misconduct in the CBP workforce utilizing traditional and innovative law enforcement techniques, leveraging intelligence and information sharing, and increasing collaboration with law enforcement partners. IOD implemented these performance plans for fiscal year 2016. IOD will continue to review and enhance these current measures on an annual basis. ECD: September 30, 2016.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover.



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### **Appendix C**

### **Overview of CBP's Process for Investigating Misconduct Allegations**

All allegations of misconduct by CBP employees are referred to the Joint Intake Center (JIC). The JIC receives, processes, and tracks these allegations and creates investigative case files in the Joint Integrity Case Management System (JICMS). For cases not retained by the DHS OIG, CBP investigators use JICMS to create reports of investigations and upload relevant information pertaining to an investigation. After investigators complete and supervisors review an investigative case file in JICMS, the JIC refers it to Human Resources Management (HRM).

HRM reviews the investigative case file and determines whether the allegation of employee misconduct is supportable. If supportable, CBP's Discipline Review Board reviews and proposes discipline for serious misconduct including suspensions for greater than 14 days, demotion, or removal. HRM refers other supportable allegations of employee misconduct to local Office of Field Operations and Office of Border Patrol management for less serious disciplinary action, including suspensions for 14 days or less, written reprimand, or counseling.

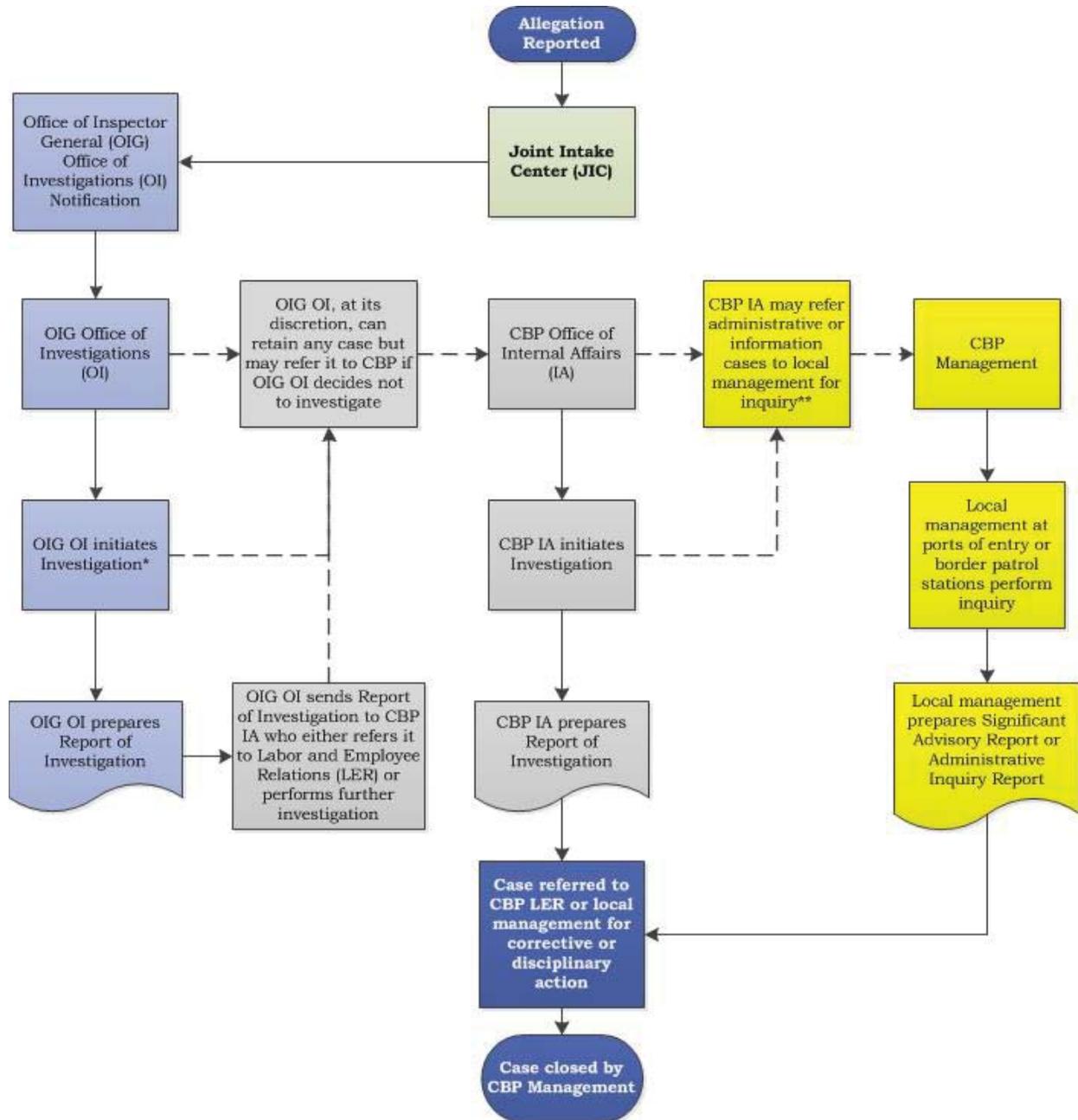
CBP initially categorizes allegations against its employees into four types. Allegations may be reclassified if new information is obtained during the review of an allegation. Examples include:

- Criminal (Federal and state) – drug smuggling, alien smuggling, perjury, bribery, or excessive use of force.
- Serious misconduct – misuse of government databases, abuse of position for personal gain, or association with known criminals or illegal aliens.
- Lesser administrative violations – misuse of government resources or creating a hostile work environment.
- Information for management – lost badge or credential for the first time or an arrest/conviction of family member.



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**Appendix D**  
**Flowchart of CBP's Investigative Process**



Source: DHS OIG analysis of CBP policies and procedures and interviews with CBP officials.

\* CBP IA may participate in joint investigations at DHS OIG's request.

\*\*CBP IA's National Fact Finder Program investigates serious, non-criminal allegations that are not being investigated by IA but should be handled other than by local management.



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**Appendix E**  
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**Appendix F**  
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