

**GAO**

Report to the Chairman, Committee on  
Homeland Security and Governmental  
Affairs, U.S. Senate

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October 2012

**RELIGIOUS  
COMPENSATORY  
TIME**

Office of Personnel  
Management Action  
Needed to Clarify  
Policies for Agencies



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Highlights of [GAO-13-96](#), a report to the Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate

## Why GAO Did This Study

Since 1978, federal agencies have been required to allow employees to adjust their work schedules to engage in religious observances, to the extent that such modifications do not interfere with the efficient accomplishment of an agency's mission. As requested, this report identifies the similarities and differences in policies of selected agencies concerning compensatory time off for religious observances for law enforcement officers (LEO) and air transportation safety and security (ATSS) personnel and describes their rationale for adopting the policies. GAO selected seven agencies for this review based on their substantial concentrations of LEO and ATSS personnel. GAO evaluated the agencies' policies and interviewed agency officials.

## What GAO Recommends

GAO recommends that OPM (1) establish time frames for finalizing proposed revised regulations for compensatory time off for religious observances and (2) work with CBP to ensure its policies and practices on the disposition of unused compensatory time off for religious observances is in compliance with statute and OPM's implementing regulations. OPM agreed with the overall findings and recommendations. The Department of Homeland Security (DHS) agreed with the recommendation and will work with OPM. OPM, DHS, and the Departments of Justice, Transportation, and Treasury provided technical comments that GAO incorporated where appropriate.

View [GAO-13-96](#). For more information, contact Yvonne D. Jones at (202) 512-2717 or [jonesy@gao.gov](mailto:jonesy@gao.gov).

October 2012

# RELIGIOUS COMPENSATORY TIME

## Office of Personnel Management Action Needed to Clarify Policies for Agencies

### What GAO Found

All seven of the agencies in GAO's review—U.S. Customs and Border Protection (CBP), Federal Aviation Administration, Federal Bureau of Investigation, Federal Bureau of Prisons, U.S. Immigration and Customs Enforcement (ICE), Internal Revenue Service (IRS), and Transportation Security Administration—have written policies supporting an employee's ability to earn and use compensatory time off for religious observances. GAO identified several similarities in agency policies and supporting documents in the categories of: (1) employee eligibility, (2) applicability across geographic locations, (3) schedule planning, and (4) implementation. These similarities generally support greater flexibility for employees to seek compensatory time off for religious observances. For example, all agencies have policies that apply to all occupational groups of the agencies' geographical locations and facilities, regardless of a facility's size or the number of employees who work there. In most cases, officials said the agencies followed existing federal rules when developing policies and that they wanted to provide their employees with additional scheduling flexibility. However, IRS introduced additional controls to monitor excessive accumulation of unused compensatory time off for religious observances based on findings by IRS's Inspector General.

GAO identified differences in the way agencies administer their policies on compensatory time off for religious observances in five different categories: (1) caps on the number of pay periods to earn and use compensatory time off for religious observances, (2) repaying compensatory time off for religious observances that was taken in advance, (3) the forms or other documentation required to make the request and providing a reason for request, (4) other types of schedule adjustments referenced in the policy, and (5) disposition of unused compensatory time off for religious observances. For example, IRS has a 120-day cap and ICE has a six pay period cap for earning and using compensatory time off for religious observances.

Some of the differences are within the discretion of the agency and may reflect individual needs of the agency, but in one area the differences in policy may reflect a lack of clarity in Office of Personnel Management (OPM) regulations. For example, CBP policy states that unused compensatory time off for religious observances will be converted to regular compensatory time, which according to an OPM official, is not authorized under statute or OPM's implementing regulations. In OPM's view, compensatory time off for religious observances and regular compensatory time are different forms of compensatory time off that are separately authorized; serve different purposes; and are subject to differing conditions for earning, using, and retaining, as well as liquidating. OPM officials stated they are updating regulations that they believe will address the disposition of unused compensatory time off for religious observances, but have not set a timetable for completing the proposed revised regulations. Without such clarification on the disposition of unused compensatory time off for religious observances in OPM's regulations, agencies may have policies that are not consistent with OPM's views on the proper disposition of unused compensatory time off for religious observances.

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## Abbreviations

ATSS	air transportation safety and security
BOP	Federal Bureau of Prisons
CBA	collective bargaining agreement
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
EEO	equal employment opportunity
EEOC	U.S. Equal Employment Opportunity Commission
FAA	Federal Aviation Administration
FBI	Federal Bureau of Investigation
FLRA	Federal Labor Relations Authority
FLSA	Fair Labor Standards Act
ICE	U.S. Immigration and Customs Enforcement
IRS	Internal Revenue Service
LEO	law enforcement officer
LWOP	leave-without-pay
NTEU	National Treasury Employees Union
OPM	U.S. Office of Personnel Management
TIGTA	Treasury Inspector General for Tax Administration
Treasury	Department of Treasury
TSA	Transportation Security Administration

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**G A O**

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**United States Government Accountability Office**  
Washington, DC 20548

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October 12, 2012

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate

Dear Mr. Chairman:

Since 1978, federal statute has required agencies to allow employees the option to engage in overtime work and receive equal compensatory time off to make up for lost time due to religious observances. The statute provides that agencies may make exceptions when necessary to efficiently carry out the mission of the agency. Further, federal antidiscrimination laws promote a federal workplace that is fair, equitable, and free from discrimination and retaliation, including as it relates to religious beliefs, practices, and observance.

In response to your interest in federal agencies' religious accommodation leave policies for federal law enforcement officers (LEO) and air transportation safety and security (ATSS) personnel, you asked us to identify the similarities and differences in policies of selected agencies concerning compensatory time off for religious observances for these groups of personnel and determine the agencies' rationale for adopting their policies.<sup>1</sup>

We selected seven federal agencies with significant numbers of LEO and ATSS personnel based on their U.S. Office of Personnel Management (OPM) occupational group and description, including personnel in the investigation and transportation groups and the correctional officer series. Six selected agencies each had over 10,000 employees in these

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<sup>1</sup> For purposes of this report, we are defining "law enforcement officer" as an individual authorized to perform any of four specific functions: (1) conduct criminal investigations, (2) execute search warrants, (3) make arrests, or (4) carry firearms. In addition, some of these law enforcement officers are responsible for care and custody of convicted offenders. We defined ATSS personnel to include Transportation Security Administration's federal air marshals and passenger and baggage screeners/handlers, or transportation security officers, and Federal Aviation Administration's air traffic controllers, based on the U.S. Office of Personnel Management's occupational groups and descriptions as well as agency job descriptions and other information from agency websites.

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occupational groups based on recent data from OPM’s Central Personnel Data File. These included three components in the Department of Homeland Security (DHS)—U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA); two components in the Department of Justice (DOJ)—Federal Bureau of Investigation (FBI) and Federal Bureau of Prisons (BOP); and one agency in the Department of Transportation—Federal Aviation Administration (FAA).<sup>2</sup> We selected the seventh agency, the Internal Revenue Service (IRS) in the Department of Treasury (Treasury), because of their unique role as criminal investigations of tax matters.

In evaluating agency policies, we reviewed agency documentation, such as guidance, and collective bargaining agreements to identify similarities and differences in the policies. We reviewed applicable federal statutes and regulations, as well as proposed regulations, and executive branch policies and guidance. Since OPM is responsible for administering the statute on compensatory time off for religious observances and the U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing the federal antidiscrimination statute requiring religious accommodations, we interviewed officials from each on their duties and responsibilities concerning compensatory time off for religious observances for federal employees and reviewed applicable EEOC cases. We developed a structured interview instrument to discuss agency policies on schedule adjustment for religious accommodation, and the rationale for such policies, with human resource or human capital officials, field supervisors, and civil rights or diversity officials, from the selected agencies and their “parent” departments. We also interviewed LEO association representatives as well as union representatives about whether, from their viewpoint and the viewpoint of those they represented, there were any problems or concerns with schedule accommodation or compensatory time for religious observance at the selected agencies.

We conducted this performance audit from December 2011 through October 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

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<sup>2</sup>For purposes of this report, we are referring to both agencies and components as “agencies”.

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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.

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## Background

Federal law has prohibited religious discrimination in employment since the enactment of the Civil Rights Act of 1964.<sup>3</sup> Title VII of the act, as amended, provides that discrimination against any employee or applicant for employment based upon his or her religion is prohibited, and that employers must accommodate religious beliefs, practices, and observances, unless doing so would pose an undue hardship on the employer.<sup>4</sup> In addition, Congress enacted Title IV of the Federal Employees Flexible and Compressed Work Schedules Act of 1978, which provided the authority for federal employees to work overtime and receive equal compensatory time off in order to meet requirements for religious observance, which is the focus of this report.<sup>5</sup> This statute, which was codified in 5 U.S.C. § 5550a (hereinafter “section 5550a”), directed OPM to “prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements.” Enactment of the statute permits federal employees covered under section 5550a to exercise the tenets of their faiths without being forced to lose a portion of

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<sup>3</sup>Pub. L. No. 88-352, 78 Stat. 241 (July 2, 1964).

<sup>4</sup>See 42 U.S.C. § 2000e-2 and § 2000e-16 which prohibit discrimination in nonfederal and federal employment, respectively, on the basis of religion. See also, 42 U.S.C. § 2000e(j), which defines “religion” to include the requirement to reasonably accommodate.

<sup>5</sup>Pub. L. No. 95-390, § 401, 92 Stat. 755 (Sept. 29, 1978).

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their pay or annual leave. FAA and TSA are not subject to 5 U.S.C. § 5550a nor OPM's regulations implementing section 5550a.<sup>6</sup>

Issued in 1978, OPM regulations provide that:<sup>7</sup>

- employees may elect to work overtime for time lost for meeting religious requirements;
- to the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall in each instance afford the employee the opportunity to work compensatory overtime and grant the requested compensatory time off for religious observances;
- employees may work compensatory overtime either before or after the grant of compensatory time off for religious observance;
- if compensatory time off was granted in advance, the time should be repaid by compensatory overtime work within a "reasonable amount of time"; and
- premium pay provisions for overtime work do not apply to compensatory overtime work performed under this authority.<sup>8</sup>

In addition, OPM issued guidance to federal agencies to supplement the regulations providing that:

- agencies should require employees to submit a written request for an adjusted work schedule in advance;

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<sup>6</sup>Under 49 U.S.C. § 40122(g), FAA was authorized to develop a personnel management system under which only specified provisions of Title 5 of the U.S. Code would apply in order to provide for greater flexibility in, among other things, the hiring and compensation of personnel. Therefore FAA is excluded from many provisions of Title 5 including section 5550a. The Aviation and Transportation Security Act applied the personnel management system of the FAA to TSA employees, and further authorized TSA to make any modifications to the system it considered necessary. See 49 U.S.C. § 114(n). TSA was provided further flexibility under the Aviation and Transportation Security Act for the employment of its screener personnel. See section 111(d) of Pub. L. No. 107-71, 115 Stat. 597, 620 (Nov. 19, 2001). 49 U.S.C. § 44935 note.

<sup>7</sup>OPM issued interim rules in 1978. See 43 Fed. Reg. 46288, October 6, 1978. In 1986, OPM adopted these interim rules as final. See 51 Fed. Reg. 23036, June 25, 1986. OPM regulations are found at 5 C.F.R. part 550, subpart J.

<sup>8</sup>Premium pay provisions for overtime work in subpart A of Part 550 of Title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938 (FLSA), as amended, codified at 29 U.S.C. §§ 201-219. The FLSA establishes standards for minimum wage and overtime pay.



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- when deciding whether an employee's request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization;
  - a supervisor may deny an employee's request if modifications of an employee's work schedule would interfere with the efficient accomplishment of the agency's mission;
  - an employee should specifically state that his or her request for an adjusted work schedule is for religious purposes and should provide acceptable documentation of the need to abstain from work;
  - if an employee's request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance;
  - an employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances; and
  - if an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employees rate of basic pay in effect when the extra hours of work were performed.

In 2005, OPM proposed revisions to the regulations that would have standardized procedures and definitions concerning compensatory time for religious accommodation.<sup>9</sup> OPM proposed that agencies must require employees to perform the compensatory overtime within three pay periods after taking advanced compensatory time off for religious observance, and that agencies may require employees seeking time off to provide documentation to ensure the legitimacy of their request.<sup>10</sup> The

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<sup>9</sup>See 70 Fed. Reg. 1068, January 5, 2005.

<sup>10</sup>According to OPM officials, the proposed revisions were part of a larger package and no specific event prompted revisions to regulations on compensatory time for religious accommodation.

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proposed regulations were published and OPM received comments but took no further action.<sup>11</sup>

EEOC is responsible for, among other things, providing guidance to employers concerning religious discrimination and for adjudicating discrimination complaints and hearing appeals brought by complainants from federal agencies. EEOC has issued regulations requiring that agencies “[m]ake reasonable accommodations to the religious needs of applicants and employees when those accommodations can be made without undue hardship on the business of the agency.”<sup>12</sup> EEOC also has issued guidance suggesting that employers adopt flexible leave and scheduling policies and facilitate voluntary substitutions and shift swaps to enable employees to practice their religion.

Table 1 provides information on occupation types and staffing levels within each of these agencies, including the department in which each is located and the number of LEO and ATSS personnel in each agency.

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<sup>11</sup>According to OPM officials, OPM decided not to complete and issue the regulations after commenters expressed concern about the proposal to require documentation for requests for compensatory time off for religious observances (that the requirement was not clear or that it might require agencies to make judgments about the legitimacy of religious observance) and about the proposal to allow three pay periods to earn compensatory time after taking time off for religious observance (some commenters thought this was too restrictive).

<sup>12</sup>29 C.F.R. § 1614.102(a)(7).

**Table 1: Law Enforcement Officers and Air Transportation Safety and Security Personnel in Selected Agencies**

Department	Agency	OPM group	Number of law enforcement officers	Number of air transportation safety and security personnel	Percentage of total population of law enforcement officers and air transportation safety and security personnel represented
Department of Homeland Security	U.S. Customs and Border Protection				
		Customs and Border Protection Officer GS-1895	21,362		7.8%
		Border Patrol Agent Series GS-1896	21,302		7.8
	U.S. Immigration and Customs Enforcement				
		General Inspection, Investigation, and Compliance Series GS-1801	6,148		2.2
		Criminal Investigating Series GS-1811	6,976		2.5
	Transportation Security Administration				
	Transportation security officers	Compliance Inspection and Support Series SV-1802		51,804	18.9
	Federal Air Marshal	SV-180 <sup>a</sup>			
Department of Justice	Bureau of Prisons				
	Correctional officers	Correctional Officer Series GS-0007	17,826		6.5
	Other correctional law enforcement officers		18,260		6.7
	Federal Bureau of Investigation	Criminal Investigating Series GS-1811	13,816		5.0
Department of Transportation	Federal Aviation Administration	Air Traffic Control Series GS-2152		20,387	7.4
Department of Treasury	Internal Revenue Service	Criminal Investigating Series GS-1811	2,665		1.0
<b>Total law enforcement officer and air transportation safety and security personnel represented</b>			<b>108,355</b>	<b>72,191</b>	<b>66.0%<sup>b</sup></b>

Source: GAO analysis of most recently available data in OPM's Central Personnel Data File as of March 2012.

Note: For purposes of this report, we are defining "law enforcement officer" as an individual authorized to perform any of four specific functions: (1) conduct criminal investigations, (2) execute search warrants, (3) make arrests, or (4) carry firearms. In addition, some of these law enforcement officers are responsible for care and custody of convicted offenders. We defined ATSS personnel to include TSA federal air marshals and passenger and baggage screeners/handlers, or transportation security officers, and FAA's air traffic controllers based on the OPM's occupational groups and descriptions as well as agency job descriptions and other information from agency websites.

<sup>a</sup>The total number of federal air marshals is sensitive security information.

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<sup>b</sup>Total number of LEOs and ATSS combined as identified in OPM's Central Personnel Data File is approximately 273,667. Total does not include TSA's federal air marshals.

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## Some Agency Policies on Compensatory Time off for Religious Observances May Not Be Subject to or Consistent with OPM Regulations or Guidance; Rationales for Policies Vary

### Agency Policies Share Similarities That Support Compensatory Time off for Religious Observances

All seven of the agencies in our review, including the two agencies not subject to section 5550a, have written policies supporting an employee's ability to earn and use compensatory time off for religious observances.<sup>13</sup> The agency policies include varied amounts of detail, but in most cases they outline who may earn and use compensatory time off for religious observances and how and when such compensatory time may be sought. Two of the agencies—BOP and FBI—are covered by DOJ's policy. The remaining five agencies—CBP, ICE, TSA, FAA, and IRS—have their own agency policies and are not covered by department-wide policies.

The agency policies are similar in several ways including: (1) employee eligibility, (2) applicability across geographic locations, (3) schedule planning, and (4) implementation. First, all of the agencies have policies that cover all occupational groups and none include language in their policies that make a distinction between the eligibility of LEOs and non-LEOs or ATSS and non-ATSS personnel. However, while FAA's policy applies to all employees, the policy is superseded by a collective

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<sup>13</sup>As noted, FAA and TSA are not subject to 5 U.S.C. § 5550a and are therefore not required to make compensatory time off for religious observances available to their employees; however, both agencies have policies that do make compensatory time off for religious observances available.

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bargaining agreement that allows the air traffic controller bargaining unit employees to use only annual leave for religious observances, according to FAA officials.<sup>14</sup> As a result, the bargaining unit employees are unable to earn and use compensatory time off for religious observances, although all other FAA employees may do so.<sup>15</sup>

Second, all agency policies apply to all of the agencies' geographical locations and all facilities, regardless of a facility's size or the number of employees who work there. All of the agencies in our review have numerous locations, facilities, and installations, such as airports and federal prisons, of varying size and purpose with thousands of employees spread across the country. Despite the geographic diversity, all agency employees at every facility and installation have the same ability to seek compensatory time off for religious observances, with the aforementioned exception of air traffic controller bargaining unit employees at FAA.

Third, all of the agency policies provide employees with flexibility to plan their schedules. Typically an employee earns compensatory time off for religious observances by performing work outside of his or her normal duty hours. All of the agency policies allow their employees the flexibility to earn this compensatory time both before and after the religious accommodation has been made. In addition, none of the policies include caps or other numerical limits on the amount of compensatory time that can be earned and used.

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<sup>14</sup>Although the FAA has approximately 22,347 air traffic controllers, as shown in table 1, not all are subject to the negotiated restriction on using compensatory time off for religious observances. Approximately 15,000 air traffic controllers are subject to the restriction in the collective bargaining agreement and other approximately 7,000 either are in a different bargaining unit with an agreement that permits the use of compensatory time off for religious observances or not in a bargaining unit and thus fall under FAA management policy, which also permits the use of compensatory time off for religious observances.

<sup>15</sup>According to FAA officials, the bargaining union negotiated with the FAA to offer only annual leave for religious observance. A 2008 Federal Claims Court decision held that FAA did not have the authority to provide its employees with regular compensatory time for overtime worked instead of paying employees at the overtime rate required by FLSA. The court found that the statute providing FAA with flexibility in establishing a new personnel management system (49 U.S.C. § 40122(g)) removed FAA's authority (under 5 U.S.C. §§ 5543 and 6123) to grant regular compensatory time in lieu of overtime pay under FLSA. See *Abbey v. United States*, 82 Fed. Cl. 722 (2008). In light of the *Abbey v. United States* decision, the FAA and the union negotiated that employees also could not earn compensatory time off for religious observances for overtime worked, but could use annual leave for religious observance.

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Lastly, through interviews with agency officials, we also identified similarities in the ways agencies implement their policies, which further support employees' ability to seek compensatory time off for religious observances. First, all agencies we reviewed notify their employees of their right by law to file a complaint of discrimination. ICE provides this information in its religious accommodation policy, which states that any employee who believes he or she has been discriminated against based on religious practices may file an equal employment opportunity (EEO) complaint. Other agency officials stated that employees have the right to file an EEO complaint of discrimination if their request for compensatory time off for religious observances was denied. For example, officials at CBP stated that whenever a supervisor or other decision maker denies an employee's religious accommodation request, the supervisor issues a written decision to the employee specifying why the request was denied and notifies the employee of his or her right to file an informal EEO complaint within 45-calendar days from the date of receiving the response. However, with the exception of ICE, information on how to file EEO complaints is not included in agencies' policies.<sup>16</sup> In addition, employees covered by collective bargaining agreements (CBA) may also file grievances with the agencies or through their unions and may be informed of such a process by their union representative.

Each agency we reviewed also provides managers and supervisors with diversity training that includes some information on religious accommodations in general, although agencies vary in whether they specifically cover issues on religious compensatory time off. As we have previously reported, diversity training can help an organization's management and staff increase their awareness and understanding of diversity as well as develop concrete skills to assist them in communicating with a diverse workforce.<sup>17</sup> Such training can provide employees with an awareness of their differences—including cultural, work style, and personal presentation—and an understanding of how diverse perspectives can improve organizational performance. In our review, some agencies provide training on sensitivity and awareness of religious accommodations, such as accommodations for dress and

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<sup>16</sup>Such guidance may be found in other agency documents; however, we did not include them in the scope of our review.

<sup>17</sup>GAO, *Diversity Management: Expert-Identified Leading Practices and Agency Examples*, [GAO-05-90](#) (Washington, D.C.: Jan. 14, 2005).

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personal grooming, while others provide additional information on schedule adjustments for religious observances. ICE provides its managers and supervisors with information on EEOC's definition of religion, governing laws, and the duty of the agency to provide reasonable accommodations. CBP's awareness training for supervisors provides examples of different methods for providing schedule adjustments for religious accommodations other than compensatory time off for religious observances, such as voluntarily swapping shifts with other employees. For some agencies, the additional EEO training and information complements language included in policy outlining management's responsibility regarding approval of religious accommodation requests. For example, TSA's policy states that management should not make any judgment about the employee's religious beliefs when deciding whether an employee's request for an adjusted work schedule should be approved.

Finally, all of the agencies use automated time and attendance systems to record data on earned and used compensatory time off for religious observances, as stated in OPM's regulations. Supervisors can use data in time and attendance systems to monitor the number of hours employees are accumulating or using and to determine whether employees are within the cap for the number of pay periods outlined in the agency policy guidance. Some systems enable the employee to submit automated requests directly to their supervisor. For example, ICE states in its policy that employees are to make official requests for compensatory time through the agency's time and attendance system. IRS states in its policy that first-level supervisors are to use the agency time and attendance system to maintain records of compensatory time off for religious observances earned and used. None of the agencies in our review told us that management routinely reviews the level of compensatory time off for religious observances requested, accrued, or used, and the agencies have no requirement to report out on such data.

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### Policy Differences Exist and OPM Regulations Do Not Specify Proper Administration of Unused Compensatory Time off for Religious Observances

Several differences exist in the way agencies administer their policies on compensatory time off for religious observances. These differences fall into different categories: (1) caps on the number of pay periods to earn and use compensatory time off for religious observances, (2) repaying compensatory time off for religious observances that was taken in advance, (3) the forms or other documentation required to make the request and the reason for request, (4) other types of schedule adjustments referenced in the policy, and (5) disposition of unused

compensatory time off for religious observances. See table 2 for additional information.

**Table 2: Agency Policies Display Differences in Several Categories**

Agencies	Pay period cap	Consequences of not earning compensatory time off for religious observances taken in advance	Forms or documentation required and reason for request	Other types of schedule adjustments referenced	Disposition of unused compensatory time off for religious observances
CBP	Earn and use in five pay periods; three pay periods to repay advanced use compensatory time	Annual leave taken to eliminate negative balance	<ul style="list-style-type: none"> <li>Oral request currently, but drafting a policy to use request form in the future, according to agency officials</li> <li>Policy does not address whether employees need to provide a reason for the request</li> </ul>	<ul style="list-style-type: none"> <li>Annual leave</li> <li>Leave-without-pay (LWOP)</li> <li>Requests to make other reasonable arrangements if such arrangements do not cause undue hardship on the business of CBP</li> </ul>	Employee time is converted to regular compensatory time, although CBP officials state that any subsequent liquidation of such time is at the basic pay rate
ICE	Earn and use in six pay periods; six pay periods to repay compensatory time taken in advance based on collective bargaining agreement (CBA)	Annual leave or leave without pay taken, as appropriate (based on CBA)	<ul style="list-style-type: none"> <li>Request through time and attendance system (based on CBA)</li> <li>No reason required as a general rule (based on CBA)</li> </ul>	<ul style="list-style-type: none"> <li>Flexible scheduling</li> <li>Time and place to pray</li> <li>Other workplace practices, policies, and/or practices</li> </ul>	Employee forfeits unused time (based on CBA)
TSA	Earn and use in two pay periods; employees not allowed to “bank” excess compensatory time off for an unknown future use	Required to liquidate the indebtedness—required to make a payment at the non-overtime rate	<ul style="list-style-type: none"> <li>Written request to supervisor in advance of date</li> <li>Request should specifically states that it is for religious purposes</li> </ul>	<ul style="list-style-type: none"> <li>Available compensatory time off in lieu of overtime pay</li> <li>Available compensatory time off for travel</li> <li>LWOP</li> <li>Accrued and accumulated, advance annual leave</li> <li>Adjusted work schedules</li> <li>Shift swaps for transportation security officers</li> </ul>	Employee receives payment at the nonovertime rate at time of separation from TSA



BOP and the FBI <sup>a</sup>	Earn and use in six periods	Annual leave or LWOP taken (as requested by the employee)	<ul style="list-style-type: none"> <li>OPM's Standard Form 71, Application for Leave, or other form prescribed by the department, agency, or approving official</li> <li>OPM's Standard Form 71 does not provide specifically for compensatory time off for religious observances</li> <li>Policy does not address whether employees need to provide a reason for the request<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>No additional adjustments detailed</li> </ul>	Employee forfeits unused time
FAA	No cap detailed in policy <sup>c</sup>	Annual leave, use of credit hours, or LWOP taken	<ul style="list-style-type: none"> <li>Written request for an adjusted work schedule in advance</li> <li>Request must specifically state that the request for an adjusted work schedule is for religious purposes</li> </ul>	<ul style="list-style-type: none"> <li>Annual leave</li> <li>Use of credit hours</li> <li>LWOP</li> </ul>	Employee paid at the rate of basic pay in effect when the extra hours were worked, should he or she separate or transfer before using the compensatory time set aside for religious observances
IRS	Earn and use in 120 days	Annual leave or LWOP taken as appropriate	<ul style="list-style-type: none"> <li>Written request to take compensatory time off for a specific religious observance that identifies the need to abstain from work</li> <li>Request should identify the need to abstain from work</li> </ul>	<ul style="list-style-type: none"> <li>Annual leave</li> <li>LWOP</li> <li>Previously earned compensatory time in lieu of overtime</li> <li>Change to their regularly scheduled tour of duty to accommodate their personal religious beliefs</li> </ul>	Employee paid at the rate of basic pay at the time the work was performed when separating

Source: GAO analysis of agency policies and CBAs.

<sup>a</sup>DOJ's policy covers all of its agencies.

<sup>b</sup>DOJ's Leave Administration Policy allows other "forms" than the Standard Form 71, and allows its agencies to make the determination as to how employees must request leave. The FBI has decided that employees should present and document these requests through their time and attendance system. In addition, an employee may make a request of their supervisor in writing or orally, and then follow up in their time and attendance system to document the transaction.

<sup>c</sup>CBA for air traffic controllers does not allow for these personnel to earn compensatory time off for religious observances. They may only use annual leave.

Since each agency has a different mission and different requirements of its employees, agencies developed and administered policies on

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compensatory time off for religious observances to fit their individual needs. Most of the differences are consistent with OPM regulations and guidance or otherwise within the discretion of the agency in administering compensatory time off for religious observances. In fact, OPM officials we spoke with stated that policies on compensatory time off for religious observances should not be “one-size-fits-all” and OPM recognizes agencies may have different requirements.

Moreover, all of the agencies reported few or no issues and cases within their respective agencies on administering compensatory time off for religious observances, including denying requests or granting schedule adjustments. OPM commented that a few issues had been raised at one agency concerning certain aspects of compensatory time off for religious observances over the last 5 years and have been resolved. Otherwise, according to OPM officials, they have not observed any practical problems with agencies administering the regulations nor have they received any questions or comments from EEOC concerning administration of the regulations. EEOC commented that employees have filed few cases of discrimination related to requests for a schedule change or adjustment for religious observances. We interviewed union officials from the Council of Prison Locals in the American Federation of Government Employees, National Air Traffic Controllers Association, and National Treasury Employees Union that represent bargaining units at agencies with union representation and none of them reported problems within their constituencies concerning requesting compensatory time off for religious observances or denials of compensatory time off for religious observances requests. Finally, we interviewed representatives of LEO associations and they also reported no problems within their groups concerning requesting compensatory time off for religious observances or denials of compensatory time off for religious observances requests.

Even so, while some differences in policy reflect the individual needs of agencies in our review, in one area the differences in policy may reflect a lack of clarity in OPM regulations. Specifically, regarding the disposition of unused compensatory time off for religious observances, CBP’s policy provides for conversion of unused compensatory time off for religious observances to regular compensatory time, which is not clearly authorized under section 5550a and OPM regulations, based on our discussions with OPM. The ICE and DOJ policies provide for the forfeiture of unused compensatory time off for religious observances which is contrary to OPM guidance providing that unused compensatory time off for religious observances is to be paid off at the rate of basic pay in effect when earned upon an employee’s separation or transfer.

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CBP's policy states that unused compensatory time off for religious observances will be converted to regular compensatory time at the end of five pay periods and will be subject to the regulations which govern regular compensatory time.<sup>18</sup> Under OPM regulations addressing the liquidation of regular compensatory time, payment is generally at the overtime rate.<sup>19</sup> Yet, CBP officials told us that they do not intend for employees to receive the overtime rate of pay upon liquidation of compensatory time off for religious observances which has been converted to regular compensatory time and state that controls in their time and attendance system ensure that unused compensatory time off for religious observances is paid at the rate of basic pay. Moreover, CBP officials said they recognize that the language in their policy could be misconstrued as permitting liquidation of the converted compensatory time at the overtime rate of pay and will take it into consideration when renegotiating policies in upcoming discussions with the union. According to CBP officials, the policy provision providing for the conversion of compensatory time off for religious observances to regular compensatory time was at the request of the union. The negotiability of this provision was challenged by the agency as inconsistent with OPM regulations on compensatory time off for religious observances but a decision by the Federal Labor Relations Authority (FLRA) concluded that converting unused compensatory time off for religious observances into regular compensatory time was not prohibited by OPM regulations and was therefore subject to collective bargaining.<sup>20</sup> The decision did not address the liquidation of such compensatory time.

Noting a lack of analysis supporting the FLRA's conclusion, a Senior Counsel in OPM's Office of the General Counsel, stated that the conversion of unused compensatory time off for religious observances to regular compensatory time is contrary to section 5550a and OPM's implementing regulations, even assuming that liquidation of such

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<sup>18</sup>CBP's parent department, DHS, does not have a department-wide policy on compensatory time off for religious observances.

<sup>19</sup>5 C.F.R. § 550.114 and § 551.531.

<sup>20</sup>46 F.L.R.A. 696 (Nov. 27, 1992).

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converted leave is at the rate of basic pay in effect when earned.<sup>21</sup> In OPM's view, compensatory time off for religious observances and regular compensatory time are different forms of compensatory time off that are separately authorized, serve different purposes, and are subject to differing conditions for earning, using, retaining, as well as liquidating.<sup>22</sup> We have previously affirmed OPM's view that these two forms of compensatory time off are to be regarded as separate and distinct kinds of entitlements.<sup>23</sup>

OPM's regulations on compensatory time off for religious observances do not specifically address the proper treatment of unused compensatory time off for religious observances. Further, ICE and DOJ's policies require their employees to forfeit earned compensatory time off for religious observances if it has not been used within a certain number of pay periods, which may result in employees not being paid for time that they have earned. OPM officials said they have concerns about such forfeitures since employees did earn the time. One OPM official stated that earned compensatory time off for religious observances should remain to the credit of the employee until separation or transfer, and, as specified in OPM guidance, then liquidated at the regular rate of pay in effect when earned. However, these OPM officials recognize that section 5550a and OPM's regulations do not prohibit forfeiture and that OPM's guidance providing for the proper disposition of unused compensatory time off for religious observances is not binding on agencies, but serves as meaningful advisement for agencies in applying the law and regulations for compensatory time off for religious observances off. OPM

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<sup>21</sup>In this regard, we note that when FLRA decisions are subject to judicial review by federal courts of appeal, those courts do not accord deference to an FLRA interpretation of a statute or regulation that it does not administer, such as would be the case here where OPM has been charged with the responsibility to administer both regular overtime and compensatory time off for religious observances provisions. *United States Dept. of the Air Force v. FLRA*, 952 F.2d. 446 (D.C. Cir. 1991) and *IRS v. FLRA*, 521 F.3d 1148 (Ninth Cir. 2008).

<sup>22</sup>For rules addressing regular compensatory time for those exempt or non-exempt from the minimum wage and overtime provisions of FLSA, see 5 U.S.C. § 5543 and 5 C.F.R. § 550.114 (covering FLSA exempt employees) and 5 C.F.R. § 551.531 (covering FLSA nonexempt employees).

<sup>23</sup>See 62 Comp. Gen. 589 (1983) wherein we concluded that compensatory time off for religious observances is not subject to the aggregate salary limitation under 5 U.S.C. § 5547 which serves to limit the amount of regular compensatory time earned in lieu of monetary compensation for overtime work performed.

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officials also said they are drafting updated regulations that they believe will address the disposition of unused compensatory time off for religious observances among other things, but have not established a timetable for completing their internal review of the proposed regulations. OPM officials plan to complete their process for drafting the proposed regulations sometime next year. Without such clarification on the disposition of unused compensatory time off for religious observances in OPM's regulations, agencies may have policies that are not consistent with OPM's views on the proper disposition of unused compensatory time off for religious observances.

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### Agencies Have Various Rationales for Developing Their Policies on Compensatory Time off for Religious Observances

We discussed with department and agency officials the reasons why their agencies adopted specific policy provisions, such as time limitations. In most cases, officials said the agencies followed existing federal rules when developing policies and that they wanted to provide their employees with additional scheduling flexibility. However, two agencies—IRS and CBP—made or are making changes to their compensatory time off for religious observances policies based on findings by their department's Inspector General or EEOC.

- IRS developed its current policy following an August 2009 report by the Treasury Inspector General for Tax Administration (TIGTA). In March 2006, IRS had identified 42 employees as having balances from 101 to 305 hours of compensatory time off for religious observances. By February 2008, 18 of these employees still had balances of 80 hours or more, an amount equivalent to 2 weeks, or one pay period, and that TIGTA considered being an excessive balance. TIGTA identified that IRS needed additional controls to address such potential abuse as excess accumulation of compensatory time off for religious observances, and according to agency officials, IRS's current policy was designed to comply with this recommendation.
- CBP officials stated the agency is modifying its policy based on a 2009 EEOC administrative judge decision that included a finding that CBP failed to facilitate voluntary swaps of work schedules.<sup>24</sup> As a result, CBP established a formal process for employees requesting

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<sup>24</sup>The administrative judge's 2009 decision was affirmed on appeal and a request for reconsideration was denied in 2011.

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religious accommodations. The directive was forwarded to the agency's commissioner of June 11, 2012, where it is awaiting final agency approval.

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## Conclusion

Overall, the seven agencies we reviewed have policies in place for employees to adjust their work schedules to engage in religious observances. While most of the agencies reviewed have policies that permit employees to earn and use compensatory time to meet religious obligations, many of FAA's air traffic controllers may only take annual leave for religious observances due to their collective bargaining agreement. Many agency policies showed similarities but varied in areas such as caps for the number of pay periods employees can earn and use compensatory time and on the disposition of unused compensatory time. OPM prescribed regulations for the administration of compensatory time off for religious observances as required but these regulations do not address all aspects of implementing such a policy and some confusion exists. Specifically, agencies may be instituting practices in areas such as disposition of unused compensatory time off for religious observances in a way that OPM views as unauthorized or inconsistent with the proper administration of this authority. OPM has an opportunity to provide agencies with clarification on the administration of compensatory time off for religious observances but does not have a firm timetable for completing its internal review of proposed revised regulations. Unless OPM clarifies its regulations and works with agencies such as CBP to revise its policy, there is a continued risk agencies' religious accommodation leave policies will not be in accordance with the proper administration of this authority.

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## Recommendations for Executive Action

To ensure agency compensatory time off for religious observances policies are in accordance with the proper administration of OPM's regulations on compensatory time off for religious observances, we recommend the Director of OPM take the following actions:

- Establish time frames for the internal process of finalizing proposed revised regulations for compensatory time off for religious observances. Such revised regulations should provide clarification in areas such as the disposition of unused compensatory time off for religious observances.
- Work with CBP to ensure its policies and practices regarding its disposition of unused compensatory time off for religious observances

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are in compliance with section 5550a and OPM's implementing regulations.

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## Agency Comments

We provided a draft of this report to OPM, DOJ, DOT, DHS, and Treasury for review and comment.<sup>25</sup> In commenting on a draft of this report, OPM agreed with our recommendations. OPM said compensatory time off for religious observances off is an important human resource tool to support the needs of federal employees. Regarding our first recommendation, OPM agreed to issue proposed regulations in 2013 but did not commit to an exact time frame due to the numerous steps needed to review, consider public comments, and finalize draft regulations, including submission to the Office of Management and Budget for interagency clearance. OPM agreed with our second recommendation and will assist CBP in complying with the law and OPM's regulations for both compensatory time off for religious observances off and regular compensatory time off. OPM believes that although its guidance for providing for the proper disposition of unused religious compensatory time off is not binding on agencies. CBP should comply with this guidance until OPM issues explicit regulations to cover this matter. DHS also agreed with our recommendation and stated it will work to ensure its policies and practices comply with OPM's regulations. OPM, DOJ, DOT, DHS, and Treasury provided technical comments, which we incorporated where appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until seven days from the report date. At that time, we will send copies to other interested congressional committees; the Secretaries of Homeland Security, Transportation, and Treasury; the Attorney General and the Directors of the U.S. Office of Personnel Management, U.S. Customs and Border Protection, Federal Aviation Administration, Federal Bureau of Investigation, Federal Bureau of Prisons, U.S. Immigration and Customs Enforcement, Internal Revenue Service, and Transportation Security Administration. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

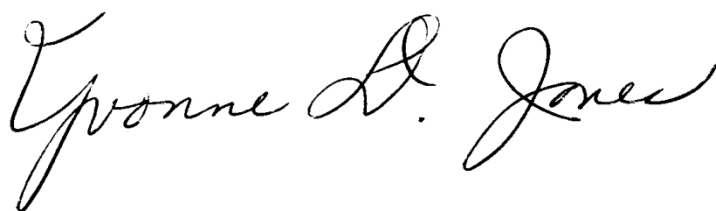
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<sup>25</sup>This report number changed to [GAO-13-96](#) after we provided agencies with the draft report [GAO-12-921](#) for comment.

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If you or your staff have any questions about this report, please contact me at (202) 512-2717 or [jonesy@gao.gov](mailto:jonesy@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Yvonne D. Jones". The signature is written in a cursive style with a large, prominent "Y" and "J".

Yvonne D. Jones  
Director, Strategic Issues



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# Appendix I: Objectives, Scope, and Methodology

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In response to your request we identified the similarities and differences in policies of selected agencies concerning compensatory time off for religious observances for law enforcement officers (LEO) and air transportation safety and security (ATSS) personnel and described their rationale for adopting the policies.

We selected seven federal agencies for our review. These agencies had a substantial concentration of LEO and ATSS personnel. Based on our previous work, we defined a LEO as an individual authorized to perform any of four specific functions: (1) conduct criminal investigations, (2) execute search warrants, (3) make arrests, or (4) carry firearms.<sup>1</sup> In addition, some of these law enforcement officers are responsible for care and custody of convicted offenders. We defined ATSS personnel to include Transportation Security Administration's (TSA) federal air marshals and passenger and baggage screeners/handlers, or transportation security officers, and Federal Aviation Administration's (FAA) air traffic controllers based on the U.S. Office of Personnel Management's (OPM) occupational groups and descriptions as well as agency job descriptions and other information from agency websites. We consulted with you and with our Applied Research and Methodology team on the engagement scope.

Using data from OPM's Central Personnel Data File, we selected six agencies with over 10,000 LEOs and ATSS employees based on their OPM occupational group and description, including personnel in the correctional officer series and the investigation and transportation groups. These included three components in the Department of Homeland Security—U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and TSA; two components in the Department of Justice—Federal Bureau of Investigation and Federal Bureau of Prisons; and one agency in the Department of Transportation—FAA. We selected the seventh agency, the Internal Revenue Service, because of their unique role in criminal investigations of tax matters. We believe the Central Personnel Data File data are sufficiently reliable for our purposes.

To accomplish our objectives, we evaluated agency policies and other documentation and identified similarities and differences in compensatory

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<sup>1</sup>GAO, *Federal Law Enforcement; Survey of Civilian Law Enforcement Functions and Authorities*, [GAO-07-121](#) (Washington, D.C.: Dec. 19, 2006).

time off for religious observances. We also reviewed applicable federal statutes and regulations, as well as proposed regulations, and executive branch policies and guidance. Since OPM is responsible for administering the statute on compensatory time off for religious observances and the U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing the federal antidiscrimination statute requiring religious accommodation, we interviewed officials from each on their duties and responsibilities concerning accommodations for federal employees and reviewed applicable EEOC cases. We developed a structured interview instrument to discuss agency policies on schedule adjustment for religious accommodation, and the rationale for such policies, with human resource/human capital officials, field supervisors, and civil rights/diversity officials, from selected agencies and their 'parent' departments. We also interviewed LEO association representatives as well as union representatives from the Council of Prison Locals in the American Federation of Government Employees, National Air Traffic Controllers Association, and National Treasury Employees Union about whether, from their viewpoint and the viewpoint of those they represented, there were any problems or concerns with schedule accommodation or compensatory time for religious observance at the selected agencies.

For purposes of this report, we defined schedule adjustments as anything that would require an employee to make modifications to his or her assigned schedule for religious purposes. This could include requesting compensatory time off for religious observances, using annual leave or leave without pay, or requesting schedule changes or shift swaps

We conducted this performance audit from December 2011 through October 2012 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 Office of Personnel Management



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Employee Services

SEP 14 2012

Ms. Yvonne D. Jones  
Director  
Strategic Issues Team  
U.S. Government Accountability Office  
441 G Street, NW.  
Washington, DC 20548

Dear Ms. Jones:

Thank you for the opportunity to comment on the U.S. Government Accountability Office's (GAO's) draft report (GAO-12-921) concerning the impact of the Office of Personnel Management's (OPM's) regulations and guidance on the administration of compensatory time off for religious observances in selected agencies. OPM believes religious compensatory time off is an important human resources tool to support the needs of Federal employees, and we back GAO's efforts to evaluate and improve this valuable program.

OPM has the following comments regarding GAO recommendations:

**GAO Recommendation 1:** OPM should establish time frames for finalizing proposed revised regulations for compensatory time off for religious observances, which should provide clarification in areas such as the disposition of unused religious compensatory time.

OPM agrees with the recommendation to issue regulations. We plan to issue proposed regulations in 2013, but we cannot commit to an exact time frame. As required, OPM must follow the Administrative Procedure Act (APA) in developing and issuing both proposed and final regulations. Proposed regulations are currently being cleared through OPM and must be submitted to the Office of Management and Budget (OMB) for interagency clearance before submission to the *Federal Register*. Upon submission to the *Federal Register*, the public has a 60-day comment period. We will issue final regulations after OPM reviews and considers all public comments, drafts a response, clears draft final regulations through OPM, and finalizes draft regulations through the APA clearance process, including submission to OMB for interagency clearance.

**GAO Recommendation 2:** OPM should work with U.S. Customs and Border Protection (CBP) to ensure its policies and practices on the disposition of unused religious compensatory time are in compliance with the statute and OPM's implementing regulations.

OPM agrees and will assist CBP to comply with law and OPM's regulations and guidance for both religious compensatory time off and regular compensatory time off.

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(under title 5, U.S.C., and the Fair Labor Standards Act (FLSA)).

As a result of GAO's study, we understand that CBP developed a practice of converting unused religious compensatory time off to regular compensatory time off (i.e., compensatory time off in lieu of overtime work) at the end of 5 pay periods. If so, CBP would be expected to follow the normal procedures for disposition of compensatory time off under 5 CFR 550.114 and 551.531, which could provide employees with overtime pay, rather than basic pay. These authorities for compensatory time off are entirely separate from the authority for religious compensatory time off (5 U.S.C. 5550a). These two different types of compensatory time off cannot be converted to or exchanged for each other.

Although the law (5 U.S.C. 5550a) and OPM's current regulations (5 CFR part 550, subpart J) do not explicitly address the rate of payment for unused religious compensatory time off, the law and regulations do not permit any entitlement to premium pay (including overtime) as a result of adjusting work schedules for religious observances. See 5 CFR 550.1002(d), which states "The premium pay provisions for overtime work in subpart A of part 550 of title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to compensatory overtime work performed by an employee for this purpose." Since the hours worked in lieu of the normal work schedule (i.e., religious compensatory time off) do not create any entitlement to premium pay (including overtime pay), there is no title 5 authority for CBP to convert unused religious compensatory time off to regular compensatory time off that could lead to premium pay. We also note that GAO itself affirmed OPM's view that these two forms of compensatory time off are to be regarded as separate and distinct kinds of entitlements. (See 62 Comp. Gen. 589 (1983).)

OPM's guidance at <http://www.opm.gov/oca/worksch/html/reli.htm> also states "If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed." While OPM guidance is not binding, we believe that OPM's published guidance should be followed, since OPM is responsible for interpreting the law and issuing regulations and guidance.

As stated in GAO's report, OPM developed its guidance based on the fact that religious compensatory time off and regular compensatory time off (i.e., compensatory time off in lieu of overtime work) are different forms of compensatory time off which are authorized by separate statutes, serve different purposes, and are subject to differing conditions for earning, using, retaining, and liquidating. In light of these facts and as noted in the GAO audit and OPM's guidance, we believe CBP should comply with OPM's fact sheet and the Comptroller General's decision, until we issue explicit regulations to cover this matter.

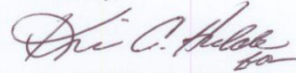


Ms. Yvonne Jones

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We look forward to the publication of the report, and we believe it will help us gain support for the publication of our planned religious compensatory time off regulations and help agencies better understand and use this valuable flexibility.

Sincerely,



Angela Bailey, Associate Director  
Employee Services

# Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 25, 2012

Yvonne Jones  
Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

RE: Draft Report GAO-12-921, "RELIGIOUS ACCOMMODATION LEAVE: Office of Personnel Management Action Needed to Clarify Policies for Agencies"

Dear Ms. Jones:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of DHS's support of employees' flexibility in earning and using compensatory time for religious accommodations. In particular, we appreciate GAO's recognition that DHS Components' policies implemented to support employees' use of religious accommodation leave cover all occupational groups regardless of law enforcement officer status, apply to all geographical locations, and provide employees with flexibility to plan their schedules.

This report contained the recommendation that the Office of Personnel Management (OPM) work with U.S. Customs and Border Protection to ensure its policies and practices on the disposition of unused religious compensatory time are in compliance with statute and OPM's implementing regulations. DHS concurs with the recommendation and will work to ensure its policies and practices comply with OPM's regulations. The Department is aware that OPM is drafting updated regulations to address the disposition of unused religious compensatory time and is committed to supporting OPM as they update these regulations.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim H. Crumpacker".

Jim H. Crumpacker  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix IV: GAO Contact and Staff Acknowledgment

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## GAO Contact

Yvonne D. Jones, (202) 512-2717 or [jonesy@gao.gov](mailto:jonesy@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above Signora May, Assistant Director; Steven J. Berke; Dewi Djunaidy; Karin Fangman; Robert Gebhart; and Greg Wilmoth made key contributions to this report.

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