

Department of Homeland Security **Office of Inspector General**

Transportation Security Administration Office of Inspection's Efforts To Enhance Transportation Security






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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

SEP 24 2013

MEMORANDUM FOR: John W. Halinski
Deputy Administrator
Transportation Security Administration

Roderick Allison
Assistant Administrator
Transportation Security Administration

FROM: Anne L. Richards 
Assistant Inspector General for Audits

SUBJECT: *Transportation Security Administration Office of Inspection's Efforts To Enhance Transportation Security*

Attached for your action is our final report, *Transportation Security Administration Office of Inspection's Efforts To Enhance Transportation Security*. We incorporated the formal comments from the Transportation Security Administration in the final report.

The report contains 11 recommendations aimed at improving the operations of the Transportation Security Administration's Office of Inspection. Your office concurred with all of the recommendations. As prescribed by the *Department of Homeland Security Directive 077-01, Follow-Up and Resolution for Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation.

The OIG considers recommendation #2 resolved and closed. Recommendations #5, 7, 9, 10 and 11 are resolved and open. The other recommendations will remain unresolved and open. Once your office has fully implemented the recommendations, please submit a formal closeout request to us within 30 days so that we may close the recommendations. The request should be accompanied by evidence of completion of agreed-upon corrective actions.

Please email a signed PDF copy of all responses and closeout requests to OIGAuditsFollowup@oig.dhs.gov.



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Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to appropriate 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 John E. McCoy II, Deputy Inspector General for Audits, at (202) 254-4100.

Attachment



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Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FY	fiscal year
LEAP	Law Enforcement Availability Pay
OHC	Office of Human Capital
OIG	Office of Inspector General
OOI	Office of Inspection
OPM	Office of Personnel Management
TSA	Transportation Security Administration
USC	United States Code



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Executive Summary

The Office of Inspection in the Transportation Security Administration (TSA) conducts inspections, internal reviews, and covert testing to ensure the effectiveness and efficiency of TSA's operations and administrative activities, and to identify vulnerabilities in TSA security systems. Additionally, the office carries out internal investigations of the TSA workforce to ensure its integrity. We conducted an audit of this office to determine whether it is efficient and effective in its efforts to enhance transportation security.

The Office of Inspection did not operate efficiently. Specifically, the office did not use its staff and resources efficiently to conduct cost-effective inspections, internal reviews, and covert testing. The office employed personnel classified as "criminal investigators," even though their primary duties may not have been criminal investigations as required by Federal law and regulations. These employees received premium pay and other costly benefits, although other employees were able to perform the same work at a lower cost. Additionally, the office did not properly plan its work and resource needs, track project costs, or measure performance effectively. Quality controls were not sufficient to ensure that inspections, internal reviews, and covert testing complied with accepted standards; staff members were properly trained; and work was adequately reviewed. Finally, the office could not always ensure other TSA components took action on its recommendations to improve TSA's operations.

As a result of these issues with the office's cost-effectiveness and quality controls over its work products, TSA was not as effective as it could have been, and management may not be able to rely on the office's work. Additionally, the Office of Inspection may not have fully accomplished its mission to identify and address transportation security vulnerabilities. With the appropriate classification and training of staff and better use of resources, the office could improve the quality of its work. The appropriate number of reclassifications and more precise cost savings cannot be determined without an objective and comprehensive review of position classifications. If TSA does not make any changes to the number of criminal investigator positions, we estimate that it will cost as much as \$17.5 million over 5 years for premium Law Enforcement Availability Pay. The office could realize further savings in training, travel, supplies, and other special employment benefits, including statutory early retirement, if its personnel classified as criminal investigators were reclassified to noncriminal investigator positions.

We made 11 recommendations to TSA that, when implemented, should lead to more efficient and effective operations, improve transparency and accountability, and enhance its efforts to protect the Nation's transportation systems.



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Background

TSA is responsible for protecting the Nation's transportation systems. The agency provides airline and other transportation security through passenger, baggage, and container screening, as well as other security programs. The mission of the TSA Office of Inspection (OOI) is to (1) ensure the effectiveness and efficiency of TSA's operations and administrative activities through inspections and internal reviews, (2) identify vulnerabilities in security systems through operational testing, and (3) ensure the integrity of TSA's workforce through comprehensive special investigations. At the time of our audit, OOI was composed of the following four divisions:

- Inspections and Investigations Division – inspects TSA program components, including Federal Air Marshal Service, Federal Security Directors' offices, and TSA Headquarters' offices to ensure that TSA's policies and procedures are being followed. Additionally, the division identifies vulnerabilities in passenger, baggage, and cargo operations. The division also investigates alleged criminal and administrative misconduct of TSA employees.
- Internal Reviews Division – assesses TSA programs and operations for efficiency, effectiveness, and compliance with laws, regulations, and TSA policies. In addition, the division conducts audits of air carriers in accordance with *Government Auditing Standards*, to determine their compliance with 9/11 security fee requirements. From 2008 through 2011, the division audited approximately \$4.8 billion in 9/11 security fees and identified approximately \$12.6 million in fees that were owed to the Federal Government.
- Special Operations Division – plans, conducts, and reports results of covert testing to identify vulnerabilities in transportation security systems. Covert testing is designed to identify security vulnerabilities and address deficiencies by recommending corrective actions.
- Business Management Office – supports the three operational divisions by managing OOI's communications and information systems and coordinating resources.



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As shown in table 1, OOI reported the following accomplishments from fiscal year (FY) 2010 through the first quarter of FY 2012:

Investigations Opened	930
Reports of Inspections	93
Reports of Internal Reviews	56
Reports of Special Operations (Covert Testing)	16

Source: Totals based on data provided by OOI.

In FY 2011, the TSA Office of Human Capital (OHC) conducted a position management review in OOI and reported that the office could gain efficiencies by restructuring its organization, realigning its workload, reclassifying positions, and refocusing on core functions and purpose.¹ In FY 2012, at the direction of the TSA Administrator, OHC began an Organizational Transformation Initiative. The initiative is designed to support the agency's ongoing evolution into a high-performance counterterrorism organization and ensure that each TSA office executes its assigned responsibilities efficiently, effectively, and economically. As a result, OOI changed its organizational structure and, in an effort to reduce the number of supervisory layers, eliminated several positions. (Appendix C contains more information on OOI's current organizational structure.)

OOI staff is composed primarily of personnel employed in positions classified by TSA as criminal investigators, transportation security specialists, and program analysts who operate in a matrix environment in which individuals assist divisions other than the one to which they are assigned. For example, in addition to conducting investigations, criminal investigators may conduct inspections or covert testing. According to data provided by OOI's Business Management Office, in FY 2011, TSA allocated approximately \$43.5 million to OOI, of which \$27.2 million was spent on salaries for 205 employees, including 35 transportation security specialists and 124 criminal investigators. Transportation security specialists supervise, lead, or perform inspections, investigations, enforcement, or compliance work. TSA defines a criminal investigator as an individual who plans and conducts investigations of alleged or suspected violations of Federal criminal laws.

According to TSA Management Directive No. 1100.88-1, *Law Enforcement Position Standards and Hiring Requirements*, criminal investigators are considered law enforcement officers. By law, however, to qualify for statutory enhanced retirement

¹ TSA OHC Position Management Review, *Office of Inspection*, August 2011.



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benefits, only those Federal employees whose duties include "primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States" qualify as law enforcement officers.² Office of Personnel Management (OPM) regulations require law enforcement officers to spend in general an average of at least 50 percent of their time investigating, apprehending, or detaining individuals suspected or convicted of violating criminal laws of the United States.³

Law enforcement officers are entitled to special statutory employment benefits. For example, they are entitled to retire at age 50 with full benefits after only 20 years of service.⁴ They receive a faster accruing pension. They also are eligible to receive extra pay known as Law Enforcement Availability Pay (LEAP).⁵ Although TSA is exempt from certain personnel management provisions of Title V of the United States Code (USC), including the LEAP statute, TSA Management Directive No. 1100.88-1, *Law Enforcement Positions Standards and Hiring Requirements*, incorporates LEAP.⁶ To receive LEAP, which is an additional 25 percent premium above base pay, 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.⁷

Because of their position classifications, OOI criminal investigators are eligible for LEAP and entitled to early retirement. These benefits are more costly to the government than regular benefits.⁸ Approximately 97 percent of OOI's criminal investigators

² 5 United States Code (USC) § 8331(20), § 8401(17), 5 Code of Federal Regulations (CFR). § 831.902; see also 5 CFR. § 842.802.

³ 5 CFR §§ 831.902, 842.802. These regulations define and establish requirements for law enforcement officers. This workload requirement does not apply to individuals who qualify to be in a secondary position, such as first-level supervisors to criminal investigators or those in administrative positions.

⁴ 5 USC §§ 8336(c), 8412(d)(2).

⁵ 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).

⁶ TSA's Management Directive No. 1100.88-1 also incorporates the statutory and regulatory definitions of "law enforcement officer" referred to throughout this report. TSA is not exempt from Title V provisions concerning law enforcement retirement.

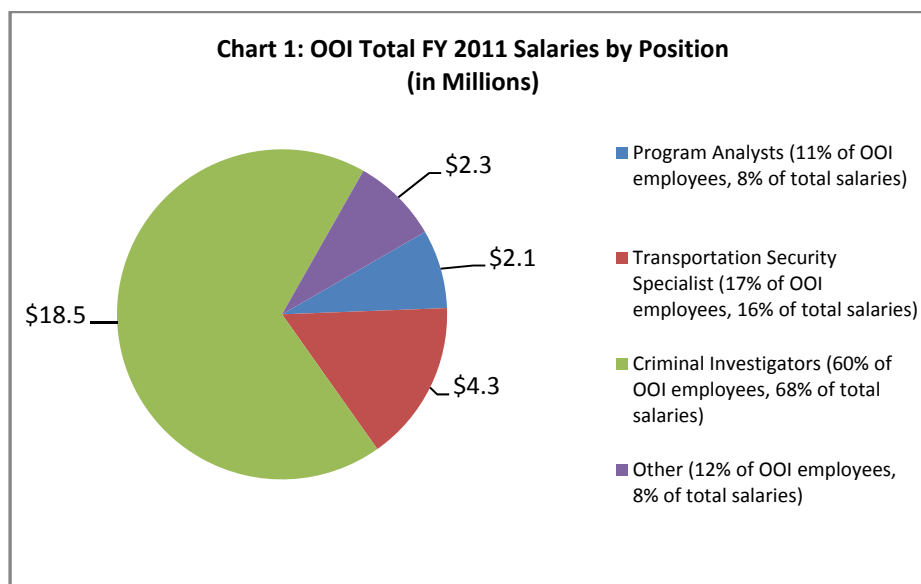
⁷ See 5 CFR §§ 550.181-186, particularly § 550.184, Annual certification. Each newly hired criminal investigator and the appropriate supervisory officer must certify the investigator is expected to meet the substantial hours requirement in § 550.183 during the upcoming 1-year period. 5 CFR § 550.184(a).

⁸ Eligibility for law enforcement retirement coverage must be "strictly construed" because the benefits are "more costly to the government than more traditional retirement plans and often results in the retirement of important people at a time when they would otherwise have continued to work for a number of years." *Bingaman v. Department of the Treasury*, 127 F.3d 1431, 1435 (Fed. Cir. 1997) (citing *Morgan v. Office of Personnel Management*, 773 F.2d 282, 286-87 (Fed. Cir. 1985)).



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received LEAP during the period of our audit. The salary for criminal investigators is capped and varies based on the differing locality pay of each duty station. For example, criminal investigators based in OOI headquarters in the Washington, DC, area have a salary cap of approximately \$164,000, which includes LEAP and locality pay. From financial information we obtained from TSA, we determined that in FY 2011, the median pay for an OOI criminal investigator was \$161,794 and the median pay for a transportation security specialist was \$117,775. TSA's records showed that in FY 2011, salaries for criminal investigators, who comprised about 60 percent of OOI staff, accounted for \$18.5 million, or 68 percent, of the \$27.2 million in total salaries paid. Furthermore, OOI paid criminal investigators approximately \$6.1 million in LEAP over FYs 2010 and 2011. For purposes of this audit, we did not review the cost to TSA of other statutory law enforcement benefits such as early retirement. Chart 1 shows the total salaries paid by position in OOI for FY 2011.



Source: OIG generated based on data provided by OOI's Business Management Office.

In April 2012, the Department of Homeland Security (DHS) Office of Inspector General (OIG) Office of Investigations issued a *Report of Inspection for TSA's Office of Inspection, Inspections and Investigations Division* on OOI's process of conducting investigations into TSA employee misconduct. As a result of its inspection, the Office of Investigations determined that the Inspections and Investigations Division's investigative process complied with applicable policies, directives, and law enforcement standards. Because the Office of Investigations recently reviewed this process, we focused our audit on OOI's other products, services, and operations, and on personnel matters.



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Results of Audit

OOI did not operate efficiently. Specifically, it did not use its staff and resources efficiently to conduct cost-effective inspections, internal reviews, and covert testing. The office employed personnel classified as “criminal investigators,” even though TSA did not ensure their primary duties were criminal investigations as required by Federal law and regulations. These employees received premium pay and other benefits, although other employees could have performed the same work at a lower cost. Additionally, the office did not properly plan its work and resource needs, track project costs, or measure performance effectively. Quality controls were not sufficient to ensure that inspections, internal reviews, and covert testing complied with accepted standards; staff members were properly trained; and work was adequately reviewed. Finally, the office could not always ensure that other TSA components took action on its recommendations to improve TSA’s operations.

As a result of the issues that we identified with OOI’s cost-effectiveness and quality controls over its work products, TSA was not as effective as it could have been, and management may not be able to rely on OOI’s work. Additionally, OOI may not have fully accomplished its mission to identify and address all transportation security vulnerabilities. With the appropriate classification and training of staff and better use of resources, OOI could improve the quality of its work. The appropriate number of reclassifications and more precise cost savings cannot be determined without an objective and comprehensive review of position classifications. If TSA does not make any changes to the number of criminal investigator positions, we estimate that it will cost as much as \$17.5 million over 5 years on premium LEAP.⁹ OOI could also realize further savings in training, travel, supplies, and other special employment benefits, including statutory early retirement, if its personnel classified as criminal investigators were reclassified to noncriminal investigator positions. With significant changes to OOI’s operations, TSA can become more efficient and effective, improve transparency and accountability, and enhance its efforts to protect the Nation’s transportation systems.

Use of Criminal Investigators

OOI did not use its staff and resources efficiently in carrying out its work. The office did not have a process to ensure that its criminal investigators met their positions’ criminal investigative workload requirement or were properly classified as criminal investigators. Rather than investigating criminal cases, the

⁹ We did not estimate the cost savings for other law enforcement special employment benefits.



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majority of the criminal investigators' workload consisted of noncriminal cases; monitoring and reporting on criminal cases; and carrying out inspections, covert testing, and internal reviews. Such work could have been performed by other OOI employees who do not receive LEAP, and who are not eligible for statutory early retirement and other costly law enforcement benefits.

OOI did not ensure that its criminal investigators met the Federal workload requirement for law enforcement officers, which makes them eligible for LEAP (provided they meet the substantial hours requirement) and entitles them to early retirement. Specifically, the office could not ensure that its criminal investigators spent an average of at least 50 percent of their time investigating, apprehending, or detaining individuals suspected or convicted of criminal offenses. Additionally, some supervisory criminal investigators may not have been properly classified. Their classification depends on correctly classifying the individuals they supervise, and OOI had no assurance that subordinates were properly classified, based on the Federal workload requirement for criminal investigators. Although not able to demonstrate that criminal investigators met the Federal workload requirement for law enforcement officers, (a prerequisite for receiving LEAP), OOI personnel in these positions and their supervisors received LEAP during the period of our audit.

DHS Management Directive 0810.1, *The Office of Inspector General*, requires OOI to refer allegations of potentially criminal employee misconduct to the DHS OIG Office of Investigations for review. Any case not retained by OIG is referred back to OOI. According to the April 2012 Office of Investigations report, OOI closed 1,125 cases in FYs 2010 and 2011, of which 253, or approximately 22.5 percent, were criminal in nature.

OOI criminal investigators primarily monitored and reported to TSA management the results of collateral criminal investigations conducted by other Federal, State, or local agencies, or they investigated administrative cases of alleged employee violations of TSA policy. Table 2 shows the Office of Investigations' categorization of 1,125 investigative cases closed by OOI in FYs 2010 and 2011. The statistics in table 2 are based on the number of cases managed, not the time spent working on cases. Thus, these statistics do not address the Federal workload requirement for criminal investigators, which is based on time spent working on criminal investigations.



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Table 2. FY 2010 and FY 2011 Closed Case Categorization			
Type of Case	Category Description	Number	Percent of Total
Collateral	Criminal investigations conducted by other Federal, State, or local agencies, which OOI monitored and reported the results or investigated administratively.	577	51.3%
Administrative	Investigations of TSA employee misconduct that violated TSA policy.	295	26.2%
Criminal (other than collateral)	Criminal investigations submitted for acceptance or declination to a U.S. attorney or State or local prosecutor when appropriate.	253	22.5%
Total Cases		1,125	100%

Source: DHS OIG Office of Investigations Report #Q12-TSA-HQ-120003, *Report of Inspection for TSA's Office of Inspection, Inspections and Investigations Division*, April 19, 2012.

In its 2011 position management review of OOI, OHC concluded that OOI's investigative workload did not support the number of criminal investigators in the office. According to an FY 2011 OOI workload assessment, criminal investigators spent, in 1 year, an estimated 25 to 30 percent of their time on all investigations-related activities, whether monitoring collateral cases or conducting administrative and criminal investigations. Based on the OOI workload assessment, OHC raised concerns in its review about the number of criminal investigators in the Inspections and Investigations Division. In its report, OHC also noted that TSA is focused on transportation security and has a limited law enforcement function; therefore, modeling OOI after a law enforcement agency might not be appropriate.

As a result of its review, OHC concluded that OOI could improve its efficiency, and recommended that the office eliminate criminal investigator positions not supported by the criminal investigative workload, either through attrition or reassignment to an appropriate position. Following its position review, OHC contracted with a company to conduct comprehensive position classification audits of some OOI positions. These audits, the findings of which were presented to OHC in February 2012, confirmed OHC's findings that positions were misclassified.

Subsequently, OHC reversed its position, and no longer concurred with the contractor's findings regarding reclassifications. In its *Summary of Classification Determinations* dated June 2012, OHC maintained that these position classifications were secondary law enforcement positions, and as such there was "no required percentage of time or workload level required to sustain their



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classification as law enforcement. As of August 2012, OHC had not taken action to reevaluate and reclassify criminal investigator positions. Although OHC concluded in 2011 that OOI's investigative workload did not support the number of criminal investigators and recommended eliminating positions, in December 2012, OOI posted multiple vacancy announcements to hire more criminal investigators nationwide.

In June 2012, in response to OHC's position management review findings, the OOI Assistant Administrator at the time agreed to consult with OHC to assess the office's needs and determine the appropriate positions to perform OOI's work. The former Assistant Administrator also agreed to begin tracking criminal investigators' workload statistics to ensure that they met the minimum 50 percent criminal investigative activity legal requirement. OOI Letter No. 0007.2, dated August 2012, requires its employees to track work hours, including LEAP hours, in its data management system.

OOI criminal investigators were also assigned to inspections, covert tests, and internal reviews, all of which could be accomplished by other personnel who do not receive LEAP or other statutory law enforcement benefits. Our review of 29 reports that were issued between FY 2010 and the first quarter of FY 2012 by various OOI divisions showed that criminal investigators composed:

- 61 percent of OOI personnel who conducted the 5 inspections;
- 50 percent of OOI personnel who conducted the 10 covert testing modules; and
- 51 percent of OOI personnel who conducted the 14 internal reviews.

These results show that criminal investigators performed work not related to criminal investigations. Using criminal investigators to conduct noncriminal investigations is not an efficient use of resources. Paying LEAP to employees who are not required to document the hours that they spend conducting criminal investigations does not comply with TSA Management Directive 1100.88-1, which incorporates the LEAP statute. It also cost TSA more in salary and benefits because the noncriminal investigators could have been performed the work. Additionally, TSA has no assurance that the LEAP availability hours were properly certified because the component is unable to determine whether the criminal investigators met the Federal workload requirement for that position.



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OOI did not ensure its criminal investigators met the Federal workload requirement for law enforcement officers, which qualifies them for LEAP and other statutory law enforcement benefits. OOI did not require all staff to enter time spent working on projects into its database, which would support the hours charged to its criminal investigations. Without evidence to support the classification and workload of the 124 criminal investigators in OOI, there is no assurance that these positions are properly classified. Using noncriminal investigators who do not receive LEAP to perform inspections, covert tests, and internal reviews could result in future cost savings. Specifically, we estimate that over a 5-year period, OOI could save as much as \$17.5 million in LEAP if its 124 criminal investigators were reclassified to noncriminal investigator positions. However, the appropriate number of reclassifications and more precise cost savings cannot be determined without an objective and comprehensive review of position classifications.

Our cost savings estimate does not take into account a potential increase in overtime pay, which could result from criminal investigators being converted to transportation security specialists or program analysts. Criminal investigators who receive LEAP are not generally eligible to receive overtime pay, but transportation security specialists and program analysts are eligible.¹⁰ During FYs 2010 and 2011, OOI paid approximately \$109,000 in overtime pay to 66 individuals in these two job positions. If all 124 criminal investigators (approximately twice the number of OOI's transportation security specialists and program analysts who received overtime pay during this 2-year period) were converted, we estimate the increase in overtime pay would be approximately \$218,000 based on pay data from FYs 2010 and 2011. This potential increase in overtime pay is significantly less than the \$6.1 million paid in LEAP for the same 2-year period.

In addition to the LEAP savings, OOI could realize savings if its criminal investigators were reclassified as transportation security specialists or other noncriminal investigator positions. These savings would come from cost categories such as training, travel, supplies, and other benefits, including statutory early retirement and a faster accruing pension. OHC reached this same conclusion in its position management review.

When OOI was established in September 2003, TSA management may have believed that the number of criminal investigators on staff was appropriate to

¹⁰ Criminal investigators who receive LEAP pursuant to 5 USC § 5545(a) are exempt from the overtime provisions in the Fair Labor Standards Act of 1938, as amended, but may still receive Title V overtime pay.



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meet the office's mission. However, in the 10 years since its establishment, neither OOI nor TSA has conducted a comprehensive workforce analysis, which would help determine the correct set of skills and the appropriate number of personnel to accomplish the office's mission cost-effectively. In addition, OOI has not demonstrated the need to retain the current number of criminal investigators.

According to OPM's *Introduction to the Position Classification Standards*, OPM and Federal agencies are responsible for carrying out the classification system in accordance with the principles set forth in law. This guide states that Federal managers are responsible for organizing work to accomplish the agency's mission in the most efficient and economical manner. The policy of the Federal Government is to assign work in a way that will make optimum use of available resources.¹¹

Although OPM has overall responsibility for establishing the basic policies and guidance governing position classification and management for most Federal agencies, TSA is exempt from OPM classifications.¹² TSA has established its own position classifications and classification management procedures. However, with respect to law enforcement, TSA's policy is to adhere to OPM requirements so that TSA criminal investigators will be entitled to enhanced retirement benefits. Without OPM's approval, TSA criminal investigators would not qualify for enhanced retirement benefits covered in 5 USC Chapters 83-85 because TSA is not exempt from these provisions.¹³ These benefits are only provided to those law enforcement personnel who are covered under the statutory and regulatory definitions of "law enforcement officer."

TSA is required to submit to OPM a list of law enforcement positions, separating the primary and secondary positions.¹⁴ TSA also is required to establish and maintain a file regarding the position classification, the officer's actual duties, and all background material used to make the determination, to ensure compliance with OPM regulations regarding law enforcement retirement benefits. OPM has the authority to audit these files.¹⁵ Additionally, OPM can respond to requests for interpretations of classification issues and advisory opinions. Although OPM does not have the authority to require TSA to reclassify

¹¹ OPM, *Introduction to the Position Classification Standards*, August 2009.

¹² 49 USC § 40122(g).

¹³ 49 USC § 40122(g)(2)(G).

¹⁴ 5 CFR § 842.808(a).

¹⁵ 5 CFR § 842.808(c).



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positions, OPM may determine that positions have been misclassified and therefore do not qualify for law enforcement retirement benefits.

In our opinion, as a subject matter expert, OPM can help TSA ensure that OOI law enforcement positions are properly classified according to statutes and regulations. This could help establish an efficient and cost-conscious organizational structure for OOI. Noting that OOI took no action to reclassify position misclassifications it had previously identified, we believe that OPM would conduct this work independently and objectively. Without an objective and comprehensive workforce analysis of law enforcement position designations, OOI cannot ensure that it is using its staff and funding as efficiently as possible.

Planning, Performance, and Quality Control

OOI did not effectively plan its work, did not adequately measure its performance, and did not have quality control procedures to ensure that all divisions complied with standards that the office had committed to using in its work. OOI also could not require other TSA offices to respond to its recommendations. In addition, TSA did not hold OOI accountable for developing and implementing effective quality controls over its resources, staffing, and operations. As a result of the issues that we identified with OOI's quality controls over its work products, TSA management may not be able to rely on this work, and the office may not have accomplished its mission to identify and address transportation security vulnerabilities.

OOI did not create an annual work plan to identify projects for each division to complete and the resources needed for each project. OOI divisions were not required to submit annual work plans for approval to ensure that OOI's planned work was consistent with TSA's priorities. Without an approved plan, OOI may not have been held accountable for accomplishing planned projects and could not effectively measure its annual performance.

OOI did not establish adequate performance measures or set standards to demonstrate its improvement over time. The office also did not create outcome-based performance measures, which would compare the results of its activities with the intended purpose, to assess its operations. Although OOI collected data to measure each division's output, such as the number of recommendations made, the number of offices inspected, and new investigations opened, these measures did not tie output to goals. During our



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audit, OOI indicated that it would begin to include more outcome-based metrics in its performance measures.

Without an annual work plan and without adequate outcome-based performance measures, OOI could not prepare an annual budget plan based on proposed work. Although OOI submitted a spending plan to TSA based on historical data, including its salary obligations, travel, contracts, and training, it did not track actual spending against the plan. Without a work plan as a basis for an annual budget plan, OOI was unable to demonstrate that it was effectively managing and distributing its resources.

OOI did not have accurate information on project costs. Not all OOI personnel were required to record hours spent on projects or report other resource-related information in the existing data management system, and use of the system varied by division. Recording project hours provides the basis for estimating and tracking project costs. Without consistent use of the data management system, OOI could not accurately measure project costs and could not ensure efficient use of resources.

OOI did not establish quality control procedures to ensure that all its divisions complied with applicable professional standards, such as *Government Auditing Standards* and the *Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation*. Although OOI is not required to follow these standards, the office committed to using them in conducting its work. For instance, although during our audit it took steps to comply, the Internal Review Division had not been externally peer reviewed as required by *Government Auditing Standards*.

To determine air carriers' compliance with 9/11 security fee requirements, OOI conducts audits in accordance with *Government Auditing Standards*. For audits that meet all applicable requirements in *Government Auditing Standards*, OOI should include a compliance statement in the report. For audits that do not meet all applicable requirements, OOI should include a modified compliance statement in the report identifying the requirement or requirements that were not met. Consequently, until a peer review is completed, all OOI reports claiming to meet *Government Auditing Standards* should have modified statements.

OOI also did not have policies and procedures to ensure that its staff members met these standards' training requirements to maintain technical proficiency.



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Following these standards would help OOI operate more efficiently and effectively and would enhance its credibility.

OOI supervisors in the office's three operational divisions did not adequately review the supporting work papers for reports of inspections, covert testing, and internal reviews. Of the 29 reports issued between FY 2010 and the first quarter of FY 2012 that we reviewed, only 6 had evidence of supervisory review. Supervisory review ensures that the work performed has met its objectives and that the findings, conclusions, and recommendations are adequately supported. Without consistent supervisory review, OOI could not ensure the quality of its reports or that it had adequately identified and addressed security vulnerabilities.

OOI did not have effective quality controls on data entry and review in its management information system; therefore, it could not be certain of the accuracy and reliability of its trend analyses and updates on the status of its operations. For example, misspelling words in the system could result in employees not identifying all of the investigations in a query when totaling the number of investigations. In October 2011, after receiving conflicting information on the number of investigations OOI had completed, the TSA Deputy Administrator at the time identified data accuracy as an issue.

Our review of 29 OOI reports showed that the office did not ensure that its employees documented their independence in conducting work. According to *Government Auditing Standards* and *Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation*, audit and inspection organizations and individual auditors, program analysts, and inspectors must be free from personal, external, and organizational impairments to independence. None of the files associated with the 29 reports we reviewed contained documented evidence of staff member independence. Without such verification prior to conducting reviews, OOI could not ensure that its work was free from potential or actual employee bias or impairment, which could have jeopardized the integrity of the work. As a best practice, OOI should consider having each employee assigned to OOI audits, evaluations, and inspections complete an independence statement for each project to which they are assigned. This will ensure that staff are free from personal impairments to independence, and maintain documentation of the steps taken to identify potential personal independence impairments.



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OOI's recommendations resulting from its inspections, covert testing, and internal reviews were not always implemented. According to an OOI official, TSA offices were not required to respond to or implement OOI's recommendations because OOI did not have the authority to require compliance with its recommendations. OOI also did not have a formalized process to monitor responses and implementation of recommendations or a resolution process to resolve instances of nonconcurrency. As a result, TSA may have missed opportunities to address transportation security vulnerabilities.

Conclusion

OOI did not use its staff and resources efficiently to conduct cost-effective inspections, internal reviews, and covert testing. The office employed personnel classified as "criminal investigators" even though TSA did not ensure their primary duties were criminal investigations as required by Federal law and regulations. These employees received premium pay and other benefits although other employees could have performed the same work at a lower cost. Also, paying LEAP to employees who are not required to document the hours they spend conducting criminal investigations does not comply with TSA Management Directive 1100.88-1, which incorporates the LEAP statute. In addition, OOI's work had several quality control issues, and TSA may not have implemented the office's recommendations. By analyzing and realigning the OOI workforce to better suit its mission, TSA could realize cost savings, improve transparency and accountability, and enhance its efforts to protect the Nation's transportation systems.

Recommendations

We recommend that the Assistant Administrator for the Office of Inspection:

Recommendation #1:

Ensure that the Office of Inspection's criminal investigators in primary positions meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity and meet all Law Enforcement Availability Pay requirements as a condition of receiving this premium pay.



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Recommendation #2:

Finalize and implement the Office of Inspection's management directive on policies and procedures concerning Law Enforcement Availability Pay to require all employees receiving Law Enforcement Availability Pay to document their work hours in the Office of Inspection's database.

We recommend that the Transportation Security Administration's Deputy Administrator:

Recommendation #3:

Conduct an objective workforce analysis of the Office of Inspection, including a needs assessment, to determine the appropriate staffing levels to accomplish the office's mission cost effectively. In conjunction with this analysis, perform a position classification review of the Office of Inspection to ensure that all staff positions are properly classified and ensure that those conducting the review, such as the TSA Office of Human Capital or the Office of Personnel Management, are independent of the process.

Recommendation #4:

Upon completion of the workforce analysis and position classification review, reclassify criminal investigator primary positions that do not or are not expected to meet the Federal 50 percent minimum legal workload requirement appropriately. In addition, ensure that secondary law enforcement positions are properly classified in accordance with Federal regulations. So long as they are supervisors, their proper classification depends on the correct classification of the individuals they supervise.

We recommend that the Assistant Administrator for the Office of Inspection:

Recommendation #5:

Require the Office of Inspection to develop a detailed annual work plan to be approved by its Assistant Administrator. This plan should contain project-specific information, including purpose, duration, realistic cost estimates, and required staffing.



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Recommendation #6:

Ensure that the Office of Inspection develops outcome-based performance measures for its programs, projects, and operations to evaluate efficiency and effectiveness.

Recommendation #7:

Periodically assess the results of the Office of Inspection's performance measures to assess the office's progress toward meeting the intended goals and revise programs as necessary.

Recommendation #8:

Ensure that the Office of Inspection requires staff members to document hours spent on projects in its management information system, and ensure that criminal investigators document hours to support Law Enforcement Availability Pay.

Recommendation #9:

Establish a quality assurance program to ensure that the Office of Inspection complies with applicable professional standards such as *Government Auditing Standards* and the *Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation*. This program should include the following:

- Tests of the quality and reliability of data in the office's management information system.
- Evidence that staff meet continuing professional education requirements.
- Documentation of staff's independence for each project.
- Quality control reviews to ensure that the work products meet professional standards.

Recommendation #10:

Ensure that the Office of Inspection completes its action to have an external peer review of its efforts to audit air carriers expeditiously and continues to have an external peer review of this work at least once every 3 years. Those reports previously issued that were not in compliance with *Government Auditing*



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Standards need to be modified and reissued with language identifying that the Office of Inspection was not in full compliance with *Government Auditing Standards* at the time the audits were conducted.

Recommendation #11:

Develop and implement a policy for recommendation follow-up and resolution to ensure that other TSA offices respond to all recommendations issued by the Office of Inspection and establish a resolution process when an office does not concur with a recommendation.

Management Comments and OIG Analysis

In its response to our draft report, TSA acknowledged its responsibility to ensure that OOI is managed effectively and concurred with all of our recommendations. The component disagreed with some of our findings regarding OOI's use of criminal investigators and with our conclusion that OOI did not use its criminal investigators in an efficient and cost-effective manner. TSA also disagreed that noncriminal investigators were able to perform the same work at a lower cost and that OOI did not properly administer LEAP. Additionally, according to the component, we limited our review to the inspections, audit, and special operations functions of the office which employ only a small number of criminal investigators. However, we reviewed all OOI divisions which employed 114 criminal investigators during our audit. Our work included analyzing staffing and pay data for all 114 of OOI's criminal investigators, including 93 (approximately 82 percent of OOI's criminal investigators) in OOI's investigations portion of the Inspections and Investigations Division

We maintain our position that OOI did not ensure its criminal investigators met the Federal legal workload requirement for law enforcement officers, which entitles them to statutory benefits such as early retirement, and qualifies them for LEAP. OOI did not require all staff to enter time spent working on projects into its database, which would support the hours charged to its criminal investigations. Without evidence to support the workload and classification of the criminal investigators in OOI, there is no assurance that these positions are properly classified.

OOI could not substantiate that all of its criminal investigators primarily were engaged in the investigation, apprehension, or detention of criminals or suspected criminals. To be eligible for LEAP, criminal investigators must first



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qualify as law enforcement officers within the meaning of statutory provisions that provide for early retirement, namely 5 USC § 8331(20) and § 8401(17). Both of these provisions define law enforcement officers as employees whose duties are primarily the investigation, apprehension, or detention of criminals or suspected criminals.

OOI also could not substantiate that its criminal investigators spent an average of at least 50 percent of their time on criminal investigations, as required by OPM regulations. OPM regulations define a law enforcement officer (which TSA considers a criminal investigator to be) as “an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.”¹⁶ These regulations require criminal investigators in primary positions to spend an average of at least 50 percent of their time performing such duties.

TSA does not dispute our assessment that the statutory law enforcement retirement provisions and implementing regulations require that criminal investigators in primary positions generally spend at least 50 percent of their time performing criminal investigative work. Additionally, TSA acknowledges that OOI’s criminal investigators performed noncriminal investigative work. However, for several reasons, the component does not believe the work was inappropriately performed by these criminal investigators or that criminal investigators were improperly classified and/or were not entitled to LEAP. According to OHC’s *Analysis of Mainstream Operations – Office of Inspections*, criminal investigators work on non-investigative activities such as inspections, covert testing, and internal reviews. Criminal investigators assist various OOI divisions and conduct work other than investigations. We also question OOI’s use of criminal investigators, rather than noncriminal investigators, who could have performed this work at a lower cost of salary and benefits.

¹⁶ 5 CFR § 831.902 defines law enforcement officers for purposes of the Civil Service Retirement System. The definition of law enforcement officer for purposes of the Federal Employees Retirement System is basically the same except for the addition of a “rigorous position” requirement. 5 CFR § 842.802. “Rigorous position” means the duties are so physically demanding that employment opportunities should be limited to “young and physically vigorous individuals.”



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In its response, TSA disagreed with some of our conclusions related to work performed by OOI criminal investigators. TSA noted that the number of cases opened and closed does not reflect the amount of time dedicated to an individual case. Additionally, the component does not believe that it can be inferred that OOI's referral of cases to DHS OIG for investigation means that all resulting OOI investigations are administrative in nature. In addition, according to TSA, the outcome of a case does not dictate the nature of the investigation or reflect the necessary knowledge, skills, and experience needed to plan and conduct the investigation in which there are allegations or suspected violations of criminal law.

Prior to our audit of OOI, OIG's Office of Investigations conducted a review to determine whether OOI's investigations complied with professional standards. In its April 2012 report, the Office of Investigations determined that the caseload for criminal investigators assigned to OOI's Inspections and Investigations Division consisted primarily of work on administrative investigations, which are noncriminal cases; or collateral cases (that is, criminal investigations conducted by other agencies) that OOI monitored and reported on. For these collateral cases, the interviews or documents that OOI obtained were not necessary to resolving the criminal case. According to the report, OOI closed 1,125 cases in FYs 2010 and 2011, of which 872, or approximately 77.5 percent, were collateral or administrative in nature.

In our analysis, we pointed out the number of criminal cases closed in FYs 2010 and 2011 to demonstrate that the majority of the investigative caseload was collateral or administrative, not criminal. We maintain that monitoring and reporting on criminal investigations conducted by other agencies does not meet the legal requirement for law enforcement officers to investigate, apprehend, or detain suspected or convicted criminals at least 50 percent of the time. We also maintain that employing a pool of criminal investigators for a "just-in-case scenario" is inefficient and defeats Congress' intent regarding special law enforcement statutory benefits such as early retirement and LEAP.

Congress intended to make eligibility for law enforcement and criminal investigator status restrictive and specifically did not extend the benefits to all persons who work in a law enforcement capacity. Consequently, employees whose primary duties involve maintaining law and order, protecting life and property, and guarding against or inspecting for violations of law do not qualify as law enforcement officers, and do not receive early law enforcement



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retirement or LEAP.¹⁷ When Congress extended law enforcement benefits to employees in the Federal Employees Retirement System, it made clear that such coverage under this system is even more restrictively defined than in the Civil Service Retirement System, and that eligibility for law enforcement officer benefits must be “strictly construed” because of the additional cost of early retirement coverage.¹⁸

Because the Office of Investigations had recently completed its review of OOI’s Inspections and Investigations Division, we did not review OOI’s investigative work papers or test the quality of OOI’s investigative work. As a result of its inspection, the Office of Investigations determined that OOI’s Inspections and Investigations Division’s investigative process complied with applicable policies, directives, and law enforcement standards. In its response to our audit, TSA noted the results of DHS OIG Office of Investigations’ report. However, as noted in our report, the focus of our audit was not to assess OOI’s compliance with investigative standards, but rather to focus on OOI’s other products, services, and operations, as well as the overall effectiveness and efficiency of OOI.

At the time of our review, OOI did not require all staff to enter time spent working on projects into its database, and OOI could not provide data on the number of hours criminal investigators spent on criminal investigations. For purposes of determining law enforcement eligibility, it is critical to determine the amount of time an employee spends performing qualifying law enforcement duties. In its response, TSA acknowledged that OOI’s previous data management system was “incomplete.” Therefore, the component contended we could not conclude that OOI’s criminal investigators did not meet the statutory workload requirements for law enforcement officers or that criminal investigators were paid LEAP for work that could have been performed by noncriminal investigative personnel.

However, as with any audit report, when an auditee cannot support a cost, that cost is questioned. In this case, we question OOI’s use of its resources. The Inspector General Act Amendments of 1978, as amended, defines a questioned cost as, among others, “a finding that, at the time of the audit, such cost is not supported by adequate documentation; or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.” Further, according to Office of Management and Budget Circular A-123, Appendix C, “when an agency’s review is unable to discern whether a payment was proper as

¹⁷ 5 CFR §§ 831.902; 841.802.

¹⁸ *Bingaman v. Department of the Treasury*, 127 F.3d 1431, 1435 (Fed. Cir. 1997).



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a result of insufficient or lack of documentation, this payment must also be considered an error.” Consequently, we questioned costs for all of OOI’s criminal investigators because OOI did not have support for the number of hours they spent performing criminal investigations and could not ensure that it was complying with Federal regulations for law enforcement officers.

TSA’s response also mentions that our report includes budget savings that according to the component are based on an assumption that noncriminal investigator personnel could replace all of OOI’s criminal investigators. Additionally, TSA notes that this assumption was made without any demonstration that transportation security specialists or program analysts are qualified to “perform the work of criminal investigators.” The component also questions our calculation of potential overtime savings using past performance as a basis for estimation. However, OHC’s position classification review indicated that the majority of OOI’s work does not support the criminal investigator classification and acknowledged that efficiencies could be gained through position reclassifications.

We disagree with TSA’s assessment of our budget savings calculations for several reasons. We did not recommend that noncriminal investigators replace all of OOI’s criminal investigators. Rather, we noted that noncriminal investigative activity could be performed by staff in other job series, such as transportation security specialists or program analysts, at a lower cost. Until a thorough workforce analysis, needs assessment, and position classification review are conducted, OOI will not be able to improve its cost-effectiveness. Also, without evidence to support the workload and classification of OOI’s criminal investigators, there is no assurance that these positions are properly classified.

TSA also has not demonstrated that the work performed by its criminal investigators requires the use of criminal investigators especially because these individuals performed non-investigative work or investigations that were collateral or administrative in nature. Therefore, we believe using past performance as a basis for cost estimation is reasonable since there is no evidence to suggest that future work will be significantly different than what has been done in the past.

We understand that TSA may incur overtime costs if criminal investigators are reclassified to noncriminal investigator positions. However, the additional overtime costs would be significantly less than those paid for LEAP and other law enforcement statutory benefits, such as early retirement. Approximately 97



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percent of the OOI criminal investigators received LEAP during the period of our review.

We analyzed OOI's overtime and LEAP data for all OOI divisions for FYs 2010 and 2011 and noted that the amounts paid for overtime are significantly less than those paid for LEAP. During this 2-year period, OOI paid approximately \$109,000 in overtime pay to 66 individuals who were either transportation security specialists or program analysts. If all 124 criminal investigators (approximately twice the number of OOI's transportation security specialists and program analysts who received overtime pay during this 2-year period) were converted, we estimate the increase in overtime pay would be approximately \$218,000 based on pay data from FYs 2010 and 2011. This potential increase in overtime pay is significantly less than the \$6.1 million paid in LEAP for the same 2-year period.

TSA concurs that OOI needs a comprehensive workforce analysis but does not believe our report fully reflects the scope of the work conducted by OHC during its reviews. Both TSA and OIG acknowledge that OOI's criminal investigator position descriptions have been classified and certified by OHC in accordance with TSA established criteria. However, TSA characterizes the work completed by OHC in FY 2011 as a limited position management review of General Schedule-15 equivalent secondary law enforcement positions assigned to OOI Headquarters. Similarly, the component minimized the results of the 2012 desk reviews by stating in its response that these reviews were conducted on seven employees, (five of whom were supervisory criminal investigators and two who were in noncriminal investigative positions) none of whom were in the Inspections and Investigations Division. However, there is no mention in OHC's report that its position management review was limited to this division. Rather, the key findings section of the report indicates that the review was conducted of OOI.

As a result of the desk reviews, TSA maintains that OHC did not implement the recommendations because they were not based on a correct set of job responsibilities for the positions in question. An OHC official defended this position by affirming that the contractor did not fully understand the unique nature of OOI's operations and concluding that a more thorough analysis was needed to make an accurate assessment. In an effort to understand OHC's reversal of position, we requested additional information, but it was never provided to us.



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Following its position review, OHC contracted with a company to conduct desk audits of some OOI supervisory positions to ensure that these positions were properly classified. The desk audits confirmed OHC's findings that positions' series, pay bands, or both were misclassified. In addition, the contractor concluded that positions outside of its audit scope were also misclassified. Although the contractor was responsible for auditing only specified supervisory positions, in the course of its audits and interviews, it was necessary to determine the "exact nature of the work supervised to ascertain the proper series for the manager positions." In doing so, the contractor found many positions' occupational series and pay bands were misclassified. Specifically, the contractor found that many positions were classified as criminal investigators when "little or no work of this nature presently exists within the OOI organizations we reviewed."

OHC's position regarding the findings of the contracted desk audits changed over the course of several months. Initially, OHC's notes indicated that it concurred with the contractor's findings and believed the recommendations should be implemented. Later, OHC supported implementing the rebanding but not the reclassification recommendations for two reasons: (1) the reclassification would negatively affect its criminal investigators and (2) OOI's Assistant Administrator at the time agreed to track the criminal investigator workload and backfill positions with transportation security specialists as positions became vacant.

Subsequently, OHC reversed its position, and no longer concurred with the contractor's findings regarding reclassifications. OHC maintained that these position classifications were secondary law enforcement positions, and as such, not subject to the percentage of time or workload level required to sustain their classification as law enforcement officers. As we stated in our report, OPM regulations do not require secondary criminal investigators to meet this workload requirement. For example, this requirement does not apply to individuals whose primary duties are to serve as first-level supervisors to law enforcement officers. However, according to regulations, a supervisory criminal investigator's primary duty should be as a first-level supervisor of law enforcement officers. Specifically, the subordinates of a supervisory criminal investigator should be spending on average at least 50 percent of their time conducting criminal investigations. OOI could not support that its criminal investigators spent 50 percent of their time conducting criminal investigations.



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In its response, TSA notes that OOI, in conjunction with OHC, is scheduling a workforce analysis project, which will include a review of criminal investigator positions in both the Audits and Inspections Division and the Security Operations Division. However, we note in particular there is no mention of a similar type review to be conducted of the criminal investigators in the Internal Affairs Division (formerly the Investigations portion of the Inspections and Investigations Division). At the time of our review, Investigations included the majority (approximately 82 percent) of criminal investigators in OOI.

We maintain our position that OOI has not demonstrated the need to retain the current number of criminal investigators. Using transportation security specialists or program analysts to perform inspections, covert tests, and internal reviews could result in future cost savings because they do not receive LEAP and other law enforcement benefits. Further, a general investigator can supervise, lead, or perform work involving planning, conducting, or managing investigations that do not involve criminal violations of Federal laws, such as administrative cases. According to OPM, when an investigation or inquiry leads to a criminal violation, it is usually referred to a criminal investigator, which in TSA's case generally would be the DHS OIG Office of Investigations. A general investigator is not considered a law enforcement officer like a criminal investigator is, and does not qualify for LEAP.

Finally, TSA notes that OOI's Business Management Office provided to OIG planned work and proposed accomplishments that were used to prepare the annual budget plan which is required for the congressional budget justification. According to TSA, the annual budget plan is updated throughout the year based on adjustments to work schedules. Furthermore, according to TSA, although the spending plan considers historical data, it is primarily focused and constructed around current and future leadership priorities, changes in existing programs, and the cost of newly implemented programs.

As noted in our report, OOI did not create an annual work plan to identify projects for each division to complete and the resources necessary for each project. Additionally, the office did not establish adequate outcome-based performance measures or set standards to demonstrate its improvement over time. Without an annual work plan or adequate outcome-based performance measures, OOI could not prepare an annual budget plan based on proposed work. OOI also did not have accurate information on project costs as not all OOI personnel were required to record hours spent on projects or report other resource-related information in the existing data management system.



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Therefore, OOI could not accurately measure project costs and ensure efficient use of resources.

In conclusion, we emphasize that numerous changes are necessary to improve OOI's efficiency and effectiveness. Our recommendations will improve transparency and accountability and should help TSA enhance its national transportation security efforts.

Response to Recommendation #1

Recommendation 1: We recommend that the Assistant Administrator for the Office of Inspection ensure that the Office of Inspection's criminal investigators meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity and meet all Law Enforcement Availability Pay requirements.

TSA Concurred: According to TSA, OOI implemented a Resource Allocation Management system to ensure that cases are classified and work hours are documented. Supervisors will review these hours on a quarterly basis. Additionally, OOI agreed to participate in an independent workforce review in conjunction with OHC to evaluate the workloads and classifications for criminal investigators in OOI. TSA stated an independent contractor will conduct this review to determine how many criminal investigators are needed to meet TSA's demand and which positions are appropriately categorized as primary or secondary law enforcement positions as outlined in 5 CFR § 842.802 and 5 CFR § 831.902. TSA also indicated that the Resource Allocation Management system will ensure that OOI's workload is correctly managed and recorded. Further, the component will pay LEAP in accordance with applicable laws and policies. TSA estimates this will be completed in June 2014.

OIG Analysis: TSA's response to this recommendation did not address specifically how OOI will ensure that primary criminal investigators meet the legal requirements to spend at least 50 percent of their time on criminal investigative activity. TSA's response is related to recommendation 3, in which we recommended that TSA perform another objective workforce analysis and ensure that the recommendations are implemented.

This recommendation is unresolved and will remain open until OOI provides documentation to indicate how it will ensure that its criminal investigators are meeting the legal requirement to spend at least 50 percent of their time



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conducting criminal investigations, which is required to qualify them as law enforcement officers and make them eligible for LEAP.

Response to Recommendation #2

Recommendation 2: We recommend that the Assistant Administrator for the Office of Inspection finalize and implement the Office of Inspection's management directive on policies and procedures concerning Law Enforcement Availability Pay to require all employees receiving Law Enforcement Availability Pay to document their work hours in the Office of Inspection's database.

TSA Concurred: TSA stated that, pursuant to OOI Letter No. 0007.2, dated August 2012, OOI supervisors will ensure that LEAP hours are documented in OOI's Resource Allocation Module system and reviewed quarterly. TSA requested that the recommendation be closed because the directive is already in place and was provided to OIG.

OIG Analysis: We have received and reviewed the management directive and determined that it satisfies this recommendation. Accordingly, this recommendation is resolved and closed.

Response to Recommendation #3

Recommendation 3: We recommend that the TSA Deputy Administrator conduct an objective workforce analysis of the Office of Inspection, including a needs assessment, to determine the appropriate staffing levels to accomplish the office's mission cost effectively. In conjunction with this analysis, perform a position classification review of the Office of Inspection to ensure that all staff positions are properly classified and ensure that those conducting the review, such as the TSA Office of Human Capital or the Office of Personnel Management, are independent of the process.

TSA Concurred: According to TSA, OOI and OHC are in the process of scheduling a workforce review. OHC has completed a detailed description of the requirements to conduct the workforce analysis and position classification review. The project plan for these reviews is scheduled to be completed by October 1, 2013. TSA anticipates the reviews to begin during the first quarter of FY 2014 and the estimated completion date is April 2014.



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OIG Analysis: As part of its response to recommendation 1, TSA stated that OOI had agreed to participate in an independent workforce review in conjunction with OHC to evaluate the workloads and classifications for criminal investigators in OOI. According to TSA, an independent contractor will conduct this review to determine how many criminal investigators are needed to meet the agency's demand and which positions are appropriately categorized as primary or secondary law enforcement positions as outlined in 5 CFR § 842.801 and 5 CFR § 831.902. In its response, TSA indicated that this workforce review will be conducted in both the Audits and Inspections Division and the Security Operations Division. However, we note in particular that there is no mention of a similar type review to be conducted of the criminal investigators in the Internal Affairs Division (formerly the Investigations portion of the Inspections and Investigations Division). At the time of our review, Investigations included the majority (approximately 82 percent) of criminal investigators in OOI.

The complete results of the independent workforce analysis, needs assessment, and position classifications should be provided to the TSA Deputy Administrator and the Assistant Administrators of OHC and OOI. The recommendations from these efforts should be implemented, and the TSA Deputy Administrator should be notified of any nonconcurrency with conclusions and recommendations.

This recommendation is unresolved and will remain open until TSA provides a copy of the independent workforce analysis, needs assessment, and position classification review for all criminal investigators in OOI, as well as documentation of how it implemented the results. Once OOI provides documentation to support the action taken on the outcomes, we will close this recommendation.

Response to Recommendation #4

Recommendation 4: We recommend that the Deputy Administrator for the Office of Inspection, upon completion of the workforce analysis and position classification review, reclassify primary criminal investigators who do not meet the Federal 50 percent minimum legal workload requirement appropriately. In addition, ensure that secondary law enforcement positions are properly classified in accordance with Federal regulations. Their proper classification depends on the correct classification of the individuals they supervise.

TSA Concurred: As stated in its response to recommendation 1, OOI and OHC are scheduling an independent workforce analysis, which will include a



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classification review of criminal investigator positions in OOI. According to TSA, this workforce analysis will gather the necessary data to determine the number and type of criminal investigators needed to efficiently carry out the agency's mission. TSA indicated that at the conclusion of this review, OHC, in conjunction with OOI, will make appropriate classification decisions based on applicable Federal law and regulations.

OIG Analysis: The intent of this recommendation is to ensure that OOI's criminal investigator positions, primary and secondary, are appropriately classified according to Federal laws and regulations. Although OPM has overall responsibility for establishing the basic policies and guidance governing position classification and management for most Federal agencies, TSA is exempt from OPM classifications.¹⁹ TSA has established its own position classifications and classification management procedures. However, with respect to law enforcement, TSA's policy is to adhere to OPM requirements so that TSA's criminal investigators will be entitled to enhanced retirement benefits.²⁰ Without OPM's approval, TSA's criminal investigators would not qualify for enhanced retirement benefits covered in 5 USC Chapters 83-85 because TSA is not exempt from these provisions.

Agencies are required to classify positions and grade jobs based on the duties and responsibilities assigned to the position and the qualifications required to perform the work. TSA's planned workforce analysis, which includes a position classification review, does not meet the intent of our recommendation because it does not include all criminal investigators in OOI.

This recommendation is unresolved and will remain open until TSA provides us with results of the workforce analysis, needs assessment, and position classification review of all criminal investigators in OOI as well as documentation on implementation of the results.

Response to Recommendation #5

Recommendation 5: We recommend that the Assistant Administrator for the Office of Inspection require the Office of Inspection to develop a detailed annual work plan to be approved by its Assistant Administrator. This plan should

¹⁹ 49 USC § 40122(g).

²⁰ These benefits are only provided to those law enforcement personnel who are covered under the statutory and regulatory definitions of "law enforcement officer."



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contain project-specific information, including purpose, duration, realistic cost estimates, and required staffing.

TSA Concurred: TSA stated that OOI has developed a work plan for the Audits and Inspections Division and Special Operations Division. These plans will be combined into one plan for approval by OOI's Assistant Administrator. TSA indicated the OOI plan will be completed by September 30, 2013, and will be updated upon completion of the workforce analysis to address the staffing requirements. TSA anticipates all of this will be completed by December 2013, with additional updates through June 2014.

OIG Analysis: This recommendation is resolved and open until TSA provides a copy of the work plan signed by the Assistant Administrator, which contains project-specific information, including purpose, duration, realistic cost estimates, and required staffing. We will close this recommendation after determining that the annual work plan meets the intent of this recommendation.

Response to Recommendation #6

Recommendation 6: We recommend that the Assistant Administrator for the Office of Inspection ensure that the Office of Inspection develops outcome-based performance measures for its programs, projects, and operations to evaluate their efficiency and effectiveness.

TSA Concurred: According to TSA, OOI has developed overall performance metrics for the office, as well as detailed metrics for each division, such as (1) conduct 95 percent of scheduled risk-based, intelligence-driven covert test missions; (2) close investigative cases within 90 days; and (3) complete 95 percent of scheduled inspections with a 90 percent concurrence rate on findings. TSA stated that OOI tracks conformance to these metrics quarterly and annually. The estimated completion date for developing these metrics is December 2013.

OIG Analysis: TSA's response to this recommendation does not fully address the intent of the recommendation. The examples given were goals and not outcome-based performance measures, which would compare the results of its activities with the intended purpose to assess its operations. For example, outcome-based performance measures could include "percentage of OOI findings corrected or recommendations implemented" and "percentage of passenger and baggage screening recommendations adopted annually," both of



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which were described in OOI's strategic framework discussion document provided to OIG during our fieldwork.

This recommendation is unresolved and open until TSA provides documentation to support that OOI has developed and implemented outcome-based performance measures that evaluate the efficiency and effectiveness of the office. Upon reviewing the documentation, we will close this recommendation after determining that it meets the intent of this recommendation.

Response to Recommendation #7

Recommendation 7: We recommend that the Assistant Administrator for the Office of Inspection periodically assess the results of the Office of Inspection's performance measures to determine the office's progress toward meeting the intended goals and revise programs as necessary.

TSA Concurred: TSA stated that OOI tracks conformance to performance metrics quarterly and annually and will continue to track the outcomes. As part of its implementation plan for this recommendation, OOI will review the goals no later than September 30, 2013, to determine their validity and whether they accurately measure performance.

OIG Analysis: The intent of our recommendation was for OOI to evaluate its performance periodically using outcome-based performance measures to demonstrate OOI's progress toward meeting its intended goals and mission. This recommendation is resolved and will remain open until OOI provides documentation to support that it periodically assesses outcome-based performance measures, not only goals, for its programs, projects, and operations, to evaluate their efficiency and effectiveness.

Response to Recommendation #8

Recommendation 8: We recommend that the Assistant Administrator for the Office of Inspection ensure that the Office of Inspection requires staff members to document hours spent on projects in its management information system, and ensure that criminal investigators document hours to support Law Enforcement Availability Pay.



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TSA Concurred: TSA stated that this is currently being done by OOI personnel through the use of the Resource Allocation Management system and requests that this recommendation be closed.

OIG Analysis: OOI's Letter No. 007.2, dated August 2012, partially addresses this recommendation and satisfies recommendation 2. We have reviewed the policy and determined it satisfies our recommendation that criminal investigators document LEAP hours. However, the scope of this policy is limited because it applies to OOI's Assistant Administrator, Deputy Administrator, and all criminal investigators, but not to all OOI staff. In addition to LEAP hours, this policy requires OOI's criminal investigators to document project hours, but this requirement does not apply to OOI's other employees, based on the policy's scope. This recommendation is unresolved and open until OOI can provide documentation to support that it requires all of its employees to document project hours.

Response to Recommendation #9

Recommendation 9: We recommend that the Assistant Administrator for the Office of Inspection establish a quality assurance program to ensure that the Office of Inspection complies with applicable professional standards such as *Government Auditing Standards* and the *Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation*. The program should include the following:

- Tests of the quality and reliability of data in the office's management information system.
- Evidence that staff meet continuing professional education requirements.
- Documentation of staff's independence for each project.
- Quality control reviews to ensure that the work products meet professional standards.

TSA Concurred: According to TSA, OOI has developed and implemented a quality assurance program to address the specific activities cited in the recommendation. TSA's response identifies specific activities that were undertaken, including: the completion of an OOI Handbook and updating of handbooks for OOI divisions; development of standard operating procedures for inspections and audits of 9/11 security fee requirements; revising of checklists, which include both objectives and steps to ensure consistency; completion of an external peer review of the audit program for 9/11 security fee requirements;



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development of a certificate of “no financial interest or conflict” statement; and interview training scheduled for August and September 2013, as well as in-house training scheduled for December 2013.

OIG Analysis: TSA’s response meets the intent of our recommendation. This recommendation is resolved but will remain open until OOI can provide us documentation supporting the establishment and implementation of a quality assurance program. We will close this recommendation once support is received showing OOI ensures compliance with professional standards, including those specified in this recommendation.

Response to Recommendation #10

Recommendation 10: We recommend that the Assistant Administrator for the Office of Inspection ensure that the Office of Inspection completes its action to have an external peer review of its efforts to audit air carriers expeditiously and continues to have an external peer review of this work at least once every 3 years. Those reports previously issued that were not in compliance with *Government Auditing Standards* need to be modified and reissued with language identifying that the Office of Inspection was not in full compliance with *Government Auditing Standards* at the time the audits were conducted.

TSA Concurred: According to TSA, an independent certified public accounting firm performed an external peer review. The scope of this review was for all projects conducted from 2008 to 2011 by OOI for which Government Auditing Standards require a peer review. OOI will modify, annotate, and reissue any reports which are deficient according to the peer review findings. TSA estimates that this will be completed in December 2013.

OIG Analysis: The actions taken to obtain an external peer review address our recommendation. This recommendation is resolved and will remain open until OOI provides us with the peer review report, documentation to support any actions taken as a result of the peer review findings, and documentation that shows prior reports were modified and reissued appropriately.

Response to Recommendation #11

Recommendation 11: We recommend that the Assistant Administrator for the Office of Inspection develop and implement a policy for recommendation follow-up and resolution to ensure that other TSA offices respond to all



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recommendations issued by the Office of Inspection and establish a resolution process when an office does not concur with a recommendation.

TSA Concurred: According to TSA, OOI has established procedures to follow up on recommendations to ensure concurrence and completion. The estimated completion date is December 2013.

OIG Analysis: TSA's response meets the intent of our recommendation. This recommendation is resolved but will remain open until TSA provides sufficient documentation of the policy and procedures it has in place to track recommendations made by OOI, including follow-up, concurrence, and resolution for instances of nonconcurrence.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (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 in a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

We conducted an audit of TSA's OOI to determine whether it is efficient and effective in its efforts to enhance transportation security. Our audit covered OOI operations from FY 2010 through the first quarter of FY 2012. To achieve our audit objective, we analyzed data, reviewed documentation, and interviewed key TSA officials directly involved in the management and administration of OOI, as well as OOI employees, to determine their roles and responsibilities within OOI. We also interviewed officials from various TSA offices, including the former and current Deputy Administrators; the Assistant Administrators of OHC, Office of Security Operations, and Office of Professional Responsibility; as well as officials from the Office of Budget and Performance.

To estimate the potential cost savings that OOI could realize if OHC reclassified these criminal investigators as transportation security specialists or other noncriminal investigator positions, we first estimated the amount that the office could save in LEAP. We used FY 2011 LEAP data provided by TSA as a basis because it is the most recent period for which we have a full year of data. In FY 2011, OOI spent approximately \$3.5 million in LEAP. Using this cost figure, we estimate that OOI could save as much as \$17.5 million over the next 5 years if it did not have to pay LEAP and all of its 124 criminal investigators were reclassified to noncriminal investigator positions. We did not review potential cost savings from early retirement and other law enforcement statutory benefits.

To determine whether OOI was operating efficiently, we assessed OOI's use of personnel, specifically focusing on criminal investigators. We analyzed applicable laws and regulations, as well as DHS and TSA guidance. We reviewed budget and pay documentation from the OOI Business Management Office and analyzed other financial information provided to determine how much TSA paid to OOI's criminal investigators for LEAP. We also reviewed and relied on OHC's position management report, desk audits contracted by OHC, and supporting documentation provided by OHC. However, we did not validate the documentation supporting their findings or conclusions.



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Additionally, we relied on the April 2012 DHS OIG Office of Investigations' *Report of Inspection for TSA's Office of Inspection, Inspections and Investigations Division*. This report is part of OIG's oversight of DHS' internal affairs offices. OIG determined that OOI's Inspections and Investigations Division complied with applicable policies, directives, and law enforcement standards in its investigative process but made recommendations to update the division's current policies and procedures. We did not review OOI's work papers, nor did we perform tests on this work. However, we did analyze pay data and LEAP costs for all of OOI's criminal investigators, including in the Inspections and Investigations Division.

To determine whether OOI was operating effectively, we reviewed OOI's policies and procedures and work products from its Internal Reviews Division, Special Operations Division, and Inspections and Investigations Division. For our review, we judgmentally selected a sample of reports completed by each OOI division during the scope of our review. We reviewed 29 reports issued between FY 2010 and the first quarter of FY 2012: 14 internal reviews, 10 covert tests, and 5 inspections. Our sample was selected based on data provided by OOI from its information system, which was not tested for accuracy. To determine whether these reports complied with applicable professional standards, we developed data collection instruments to assist in analyzing the reports and supporting documentation using applicable professional standards. Specifically, the following standards were used as a basis for our assessments:

- *Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation;*
- *Council of the Inspectors General on Integrity and Efficiency Guide for Conducting Peer Reviews of the Audit Organizations of Federal Offices of Inspector General;*
- *Government Auditing Standards;* and
- OOI Handbooks.

This audit was performed by DHS OIG Office of Audit personnel at TSA headquarters in Arlington, VA. In addition, the team consulted with the OIG Statistician for our judgmental sampling methodology.

We conducted this performance audit between January 2012 and December 2012 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



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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
Management Comments to Draft Report


AUG 28 2013

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598



**Transportation
Security
Administration**

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General for Audits
U.S. Department of Homeland Security

FROM: J.W. Halinski 
Deputy Administrator

SUBJECT: *Agency Response to OIG Recommendations re: Transportation Security Administration Office of Inspection's Efforts to Enhance Transportation Security (OIG Project No. 12-046-AUD-TSA)*

Purpose

This memorandum constitutes the Transportation Security Administration's (TSA) formal response to the subject report. TSA recognizes its responsibility for effective management of the Office of Inspection (OOI) and the critical mission this office plays in TSA. We appreciate that the report acknowledged much of the good work and contributions OOI makes to ensure the integrity of TSA's transportation security mission.

Background

The mission of TSA's OOI is to ensure the security and integrity of TSA's operations and administrative activities through proactive compliance, efficiency, and effective inspections; internal reviews; impartial and comprehensive special investigations; and a rigorous and robust covert testing program.

OOI is composed of three divisions: Internal Affairs Division (IAD), Audits and Inspections Division (AID), and the Special Operations Division (SOD). IAD is responsible for conducting investigations of criminal and administrative misconduct of TSA employees and contractors nationwide. IAD maintains six field offices which are geographically dispersed to carry-out this mission. AID is responsible for conducting inspections and comprehensive audits of TSA program components and certain regulated parties, such as the auditing of air carriers to ensure compliance with the September 11th Security Fee requirements mandated by the Aviation and Transportation Security Act. 49 U.S.C § 44940(b). Lastly, SOD conducts covert testing of TSA-implemented security procedures to identify vulnerabilities and to address deficiencies in those systems and recommend corrective actions.

In April 2012, the Department of Homeland Security (DHS)-Office of the Inspector General (OIG) released its *Report of Inspection for TSA's Office of Inspection, Inspections and Investigations Division*. As stated by OIG, this report was part of OIG's oversight of DHS' internal affairs offices.



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OIG determined that OOI's Inspections and Investigations Division (IID)¹ complied with applicable policies, directives, and law enforcement standards in its investigative processes.

As a result of the above April 2012 review, OIG limited its current review to only the inspections/audit (AID) and special operations (SOD) functions of the office. These two divisions (AID & SOD) jointly employ twelve of the one hundred and five 1811 criminal investigators in OOI, four of whom are managers.

Discussion

TSA appreciates the ongoing efforts taken by OIG so that TSA and OIG could clarify and resolve outstanding issues raised by the audit. While TSA concurs with OIG's recommendations and is implementing these recommendations, TSA disagrees with OIG's conclusions that OOI did not use its 1811 criminal investigator workforce in an efficient and cost-effective manner, that non-1811 employees were able to perform the same work as 1811 criminal investigators at a lower cost, and that OOI did not properly administer law enforcement premium pay. TSA also notes that it has provided OIG with additional information demonstrating compliance with budgeting requirements and professional standards. As a result, TSA submits the following:

As acknowledged by OIG, TSA is authorized under the Aviation and Transportation Security Act, Public Law 107-71 (ATSA), to establish and classify positions and compensate its workforce. OOI's 1811 criminal investigators are subject to the special retirement provisions for law enforcement officers (LEO), including mandatory retirement, and employees' payment of an additional percentage of salary towards their retirement annuity. 5 U.S.C. §§ 8331(20) and 8401(17). Under these special retirement provisions, 1811 criminal investigators occupying primary law enforcement positions are required to, in general, spend at least 50 percent of their time investigating, apprehending, or detaining individuals suspected or convicted of violating criminal laws of the United States. 5 C.F.R. § 831.902, 5 C.F.R. § 842.802.

Regardless of whether they occupy primary or secondary law enforcement positions pursuant to TSA's independent pay setting authority, TSA's 1811 criminal investigators receive premium pay for unscheduled overtime pursuant to TSA policy, TSA Management Directive (MD) 1100.88-1, *Law Enforcement Position Standards and Hiring Requirements*. This premium pay compensates 1811 criminal investigators for unscheduled duty in excess of their basic 40-hour work week to ensure their availability to perform unscheduled duty that meets the needs of the Agency. Pursuant to TSA policy, 1811 criminal investigators must work, or be available to work, a minimum annual average of 2-hours of unscheduled overtime per non-excludable regular workday. TSA policy provides that for the purposes of law enforcement premium pay administration, the Agency follows the provisions of 5 U.S.C. § 5545a and 5 C.F.R. § 550.181 through § 550.186.²

¹ IID has subsequently been divided between IAD and AID. AID is now responsible for the inspection/audit functions and IAD is responsible for the criminal and administrative investigations functions.

² TSA MD 1100.88-1 does not incorporate Title 5 LEAP provisions; TSA LEAP is paid under the independent pay setting authority of the TSA and for the purposes of administration follows the Title 5 statutory and regulatory provisions referenced in the text.



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Both TSA and OIG agree that the statutory law enforcement retirement provisions and implementing regulations provide that a criminal investigator in a primary position will generally spend at least 50 percent of his/her time performing criminal investigative work. While OOI acknowledges that its criminal investigators did perform work that was not categorized as a criminal investigation, it does not necessarily follow that such work was inappropriately performed by an 1811 criminal investigator, nor does it mean that the 1811 criminal investigator is improperly classified and/or is not entitled to availability premium pay for several reasons.

As recognized by OIG, the number of cases opened and closed does not reflect the amount of time dedicated to an individual case. Additionally, it cannot be inferred that OOI's referral of cases to DHS OIG for investigation means that all resulting OOI investigations are administrative in nature. Pursuant to an agreement with OIG, OOI investigates criminal allegations that typically would have been previously referred, including time and attendance fraud, workers' compensation fraud, theft at checkpoints of less than \$2000 and domestic assaults by non-LEOs. Additionally, OIG routinely returns criminal allegations to OOI for investigations, including assault, theft, and illegal drug use cases. Moreover, the outcome of a case (i.e. administrative action) does not dictate the nature of the investigation and does not reflect the necessary knowledge, skills, and experience needed to plan and conduct the investigation where there are allegations or suspected violations of criminal law.

TSA also notes that OIG's estimated budget savings is premised on an assumption that a transportation security specialist or program analyst could replace each of OOI's criminal investigators without any demonstration that a transportation security specialist or a program analyst are qualified to perform the work of criminal investigators. Nor does TSA believe that there is any basis for the calculation of potential overtime savings, inasmuch as it is premised on an assumption that unidentified work performed by transportation security specialists and program analysts in the past accurately reflects the amount and cost of overtime that would be needed to meet OOI's mission critical needs if all 1811s were converted to non-criminal investigators.

TSA acknowledges that OOI's previous data management system for performing particular functions was incomplete. Therefore, we believe that OIG cannot draw the conclusion that OOI agents did not meet statutory workload requirements, or that 1811 criminal investigators were paid availability pay for work that could have been performed by non-1811 personnel. Moreover, we note that pursuant to TSA policy, an 1811 criminal investigator may only be decertified from receiving Law Enforcement Availability Pay (LEAP) for failure to perform unscheduled duty as assigned or reported or inability to perform unscheduled duty for an extended period of time due to physical or health reasons. *Cf. Smith v. Dep't of the Army*, 2012 MSPB 24 (2012) (finding that 5 C.F.R. § 550.184(d) permits the involuntary termination of LEAP "only for inability or unwillingness to perform the unscheduled duty.")

While TSA concurs that a comprehensive workforce analysis is appropriate for OOI, the Report does not fully reflect the scope of the TSA's Office of Human Capital's (OHC) referenced reviews and recommendations. As recognized by OIG, OOI's 1811 criminal investigator position descriptions have been classified and certified by OHC in accordance with TSA MD 1100.88-1. The fiscal year (FY) 2011 review conducted by OHC; however, was a limited position management review of K-Band (GS-15 equivalents), secondary law enforcement positions assigned to OOI Headquarters. Similarly, the 2012 desk audits were of only 7 employees, none of which were in the IID. Two employees were 1801s and the remainder were supervisory K-band 1811s. OHC did not adopt the contractor's



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recommendations because the recommendations were not based on a correct set of job responsibilities for the positions in question.

OOI, in conjunction with OHC, is scheduling a workforce analysis project, which will include a review audit of 1811 positions in both AID and SOD. The review will examine AID and SOD's workload and make a determination of the appropriate classification for each position, including primary and secondary law enforcement designation as appropriate. The review will also examine the current and projected demand for criminal investigator positions, and compare it against current staffing levels.

Finally, TSA notes that the OOI Business Management Office provided to OIG planned work and proposed accomplishments used to prepare the annual budget plan. This is a required submission as part of the annual Congressional Budget justification. The OOI annual budget plan is presented to TSA's Budget Office and updated throughout the FY based on adjustments to work schedules. Moreover, while the spending plan takes into account historical spending and data, it is primarily focused and constructed around current and future leadership priorities, changes in existing programs, and the cost of newly implemented programs.

Recommendation #1:

Ensure that the Office of Inspection's criminal investigators in primary positions meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity and meet all Law Enforcement Availability Pay requirements as a condition of receiving this premium pay.

Agency Response: Concur.

Implementation Plan: As noted in response to Recommendation #2, OOI implemented a Resource Allocation Management (RAM) system to ensure that cases are classified and work hours are documented. Supervisors will review work hours on a quarterly basis.

Additionally, as noted in response to Recommendation #3, OOI previously agreed to participate in an independent workforce review in conjunction with OHC in order to evaluate the respective workloads and classifications for criminal investigators within OOI. This review will be conducted by an independent contractor to determine how many criminal investigators are needed to meet the Agency's demand and which positions are appropriately categorized as primary and/or secondary law enforcement positions as outlined in 5 C.F.R. § 842.801 and 5 C.F.R. § 831.902. The implementation of the RAM will ensure that OOI's workload is correctly managed and recorded. Further, TSA will pay LEAP in accordance with applicable laws and policies. Estimated Completion Date (ECD): June 2014.

Recommendation #2:

Finalize and implement the Office of Inspection's Management Directive on policies and procedures concerning law enforcement availability pay to require each employee receiving law enforcement availability pay to document their work hours in the Office of Inspection's database.

Agency Response: Concur.



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Implementation Plan: Pursuant to the Assistant Administrator for Inspection's August 2012 Management Directive, OOI supervisors will ensure that LEAP will be documented in OOI's RAM system and reviewed quarterly. This directive is already in place and a copy has been provided to the DHS-OIG. TSA acknowledges in the Report that OIG considers this recommendation resolved and closed.

Recommendation #3:

Conduct an objective workforce analysis of the Office of Inspection, including a needs assessment, to determine the appropriate staffing levels to accomplish the office's mission cost effectively. In conjunction with this analysis, perform a position classification review of the Office of Inspection to ensure that all staff positions are properly classified and ensure that those conducting the review, such as the TSA Office of Human Capital or the Office of Personnel Management, are independent of the process.

Agency Response: Concur.

Implementation Plan: OOI and OHC are in the process of scheduling such a review. OHC has completed a detailed description of the requirements to conduct the workforce analysis and position classification review. The project plan for the workforce analysis and classification review is scheduled to be completed by October 1, 2013, with the projected start date of the review to begin during the first quarter of FY 2014. ECD: April 2014.

Recommendation #4:

Upon completion of the workforce analysis and position classification review, reclassify criminal investigator primary positions that do not or are not expected to meet the Federal 50 percent minimum legal workload requirement appropriately. In addition, ensure that secondary law enforcement positions are properly classified in accordance with Federal regulations. So long as they are supervisors, their proper classification depends on the correct classification of the individuals they supervise.

Agency Response: Concur. As stated in Implementation Plan #1, OOI and OHC are scheduling an independent workforce analysis, which will include a classification review of OOI 1811 positions. This workforce analysis will gather the necessary data to determine the number and type of criminal investigators needed to efficiently carry out our mission. At the conclusion of this review, OHC, in conjunction with OOI, will make appropriate classification decisions based upon applicable Federal law and regulations. ECD: June 2014.

Recommendation #5:

Require the Office of Inspection to develop a detailed annual work plan to be approved by its Assistant Administrator. This plan should contain project specific information, including purpose, duration, realistic cost estimates, and required staffing.

Agency Response: Concur.



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Implementation Plan: OOI has developed a work plan for AID and SOD. These plans will be combined into one plan for approval by the Assistant Administrator. The OOI plan will be completed no later than September 30, 2013, and will be updated upon completion of the workforce analysis to address the staffing requirements. ECD: December 2013, with additional updates through June 2014.

Recommendation #6:

Ensure that the Office of Inspection develops outcome based performance measures for its programs, projects, and operations to evaluate efficiency and effectiveness.

Agency Response: Concur.

Implementation Plan: OOI has developed overall performance metrics for the office, as well as detailed metrics for each division, such as 1) conduct 95 percent of scheduled risk-based, intelligence driven covert test missions; 2) close investigative cases within 90 days; and 3) complete 95 percent of scheduled inspections with a 90 percent concurrence rate on findings. OOI tracks conformance to these metrics quarterly and annually. ECD: December 2013.

Recommendation #7:

Periodically assess the results of these measures to determine the Office of Inspection's progress toward meeting the intended goals and revise programs as necessary.

Agency Response: Concur.

Implementation Plan: As stated in Implementation Plan #6, OOI tracks conformance to performance metrics quarterly and annually. OOI will continue to track the outcomes. Additionally, the goals will be reviewed no later than September 30, 2013, to determine their validity and whether they accurately measure proscribed performance. ECD: September 2013.

Recommendation #8:

Ensure that the Office of Inspection requires staff members to document hours spent on projects in its management information system, and ensure that criminal investigators document hours to support Law Enforcement Availability Pay.

Agency Response: Concur.

Implementation Plan: This is currently being done by OOI personnel through the use of the RAM system, and it is therefore requested by TSA that this recommendation be closed.

Recommendation #9:

Establish a quality assurance program to ensure that the Office of Inspection complies with applicable professional standards such as *Government Auditing Standards* and the *Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation*. This program should include the following:



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Department of Homeland Security

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- Conduct tests of the quality and reliability of data in the office's management information system.
- Ensure staff meets continuing professional education requirements and maintain evidence of this.
- Ensure staff's independence is documented for each project.
- Conduct quality control reviews to ensure that the work products meet professional standards.

Agency Response: Concur. As of the date of this response, OOI has developed and implemented a quality assurance program and the specific activities cited in the recommendation. Specific activities undertaken include: the completion of an OOI Handbook and the update of handbooks for OOI divisions; development of standard operating procedures for inspections and September 11th Security Fee audits; revised checklists which include both objectives and steps to ensure consistency; completion of an external peer review for the September 11th Security Fee audit program; development of a certificate of no financial interest or conflict statement; and interview training scheduled for August 27-29 and September 24-26, 2013, as well as in-house training scheduled for December 3-5, 2013. ECD: December 2013.

Recommendation #10:

Ensure that the Office of Inspection completes its action to have an external peer review of its efforts to audit air carriers expeditiously and continues to have an external peer review of this work at least once every 3 years. Those reports previously issued that were not in compliance with Government Auditing Standards need to be modified and reissued with language identifying that the Office of Inspection was not in full compliance with Government Auditing Standards at the time the audits were conducted.

Agency Response: Concur. An independent CPA firm performed the external peer review referenced in the above recommendation. The scope of this review was for all projects conducted from 2008 to 2011 by OOI for which the Government Auditing Standards require a peer review. OOI will modify, annotate, and reissue any reports which are deficient according to the peer review findings. ECD: December 2013.

Recommendation #11:

Develop and implement a policy for recommendation follow up and resolution to ensure that other TSA offices respond to all recommendations issued by the Office of Inspection and establish a resolution process when an office does not concur with a recommendation.

Agency Response: Concur.

Implementation Plan: OOI has established processes to follow up on recommendations to ensure concurrence and completion. ECD: December 2013.

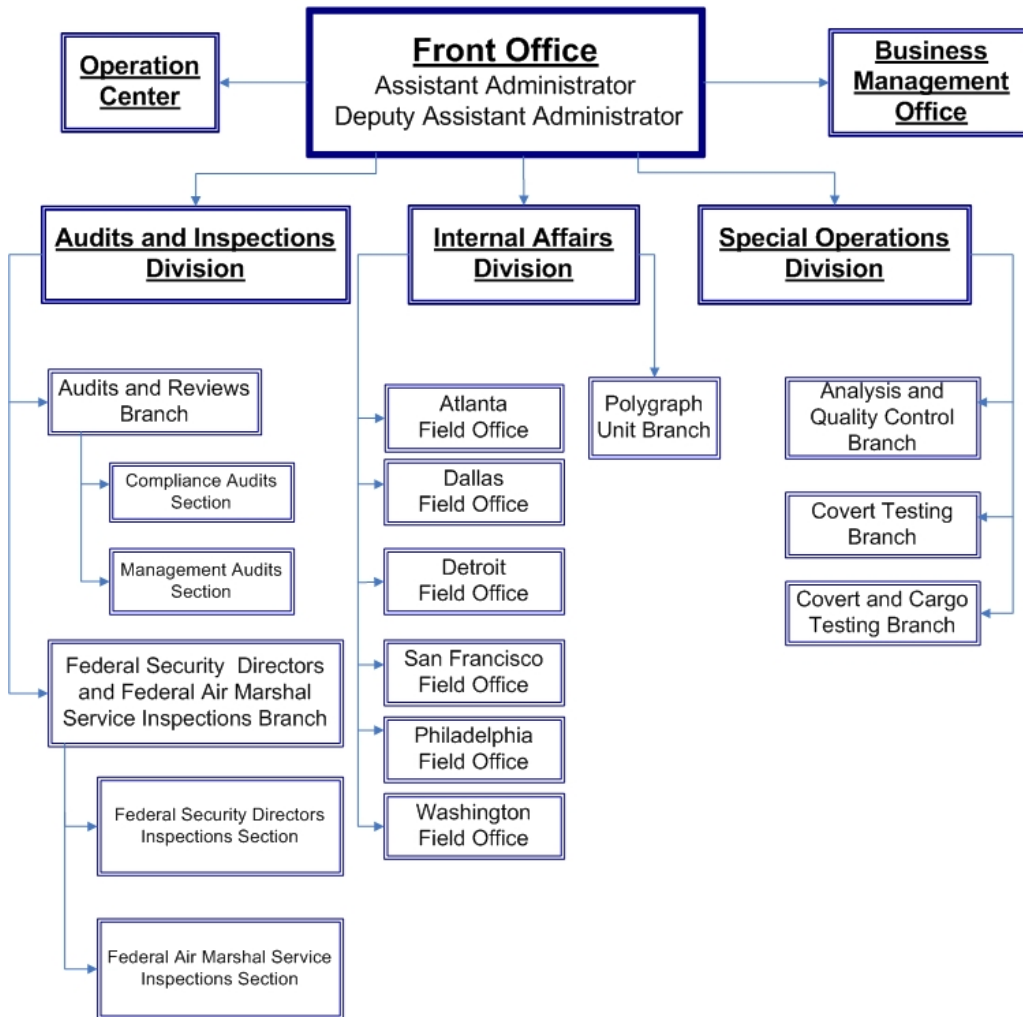


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix C
Organizational Structure of OOI as of June 2012

**Transportation Security Agency
Office of Inspection**

Effective June 3, 2012





Appendix D

Major Contributors to This Report

Paul Wood, Audit Director
Sharon Trodden, Audit Manager
Anthony Colache, Auditor-in-Charge
Gary Alvino, Program Analyst
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Keith Lutgen, Program Analyst
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Department of Homeland Security

Appendix E
Report Distribution

Department of Homeland Security

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Washington, DC 20528-0305

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