



JANUARY 28, 2014

EXAMINING TSA'S CADRE OF CRIMINAL INVESTIGATORS

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Chairman, House Subcommittee on Transportation Security

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Department of Homeland Security

Ms. Karen Shelton Waters [\[view PDF\]](#)
Assistant Administrator, Office of Human Capital, Transportation Security Administration,
U.S. Department of Homeland Security

Ms. Anne Richards [\[view PDF\]](#)
Assistant Inspector General, Office of Audits, U.S. Department of Homeland Security

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Committee on
HOMELAND SECURITY
Chairman Michael McCaul

Opening Statement

January 28, 2014

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**Statement of Subcommittee Chairman Richard Hudson (R-NC)
Subcommittee on Transportation Security
Committee on Homeland Security**

“Examining TSA’s Cadre of Criminal Investigators”

Remarks as Prepared

I would first like to thank our witnesses, not only for being here today, but also for their public service. I appreciate their willingness to come forward and work on ways to solve the difficult issues the Transportation Security Administration faces.

The problem before us today is not a new one, and can in fact be traced back to the legislation that created the Transportation Security Administration, two months after the terrorist attacks of 9/11.

The Aviation and Transportation Security Act, or ATSA, gave TSA sweeping authorities to, among other things, create its own employee classification system, rather than adhere to the Office of Personnel Management (OPM) system like the vast majority of other federal agencies. At the time, Congress determined it was best to align TSA with the Federal Aviation Administration (FAA), which also has its own employee classification system, separate and apart from OPM.

Today, TSA has 20% more employees than FAA, and we continue to see significant challenges with the size and scope of TSA’s workforce -- challenges that are likely exacerbated by TSA’s exemption from OPM’s system.

Today’s hearing is an opportunity to examine one glaring example of the problem.

TSA has roughly 100 employees in the Office of Inspection who are classified as criminal investigators. In order for these criminal investigators to receive premium law enforcement pay, TSA is required to confirm that they spend the majority of their time on long-term criminal investigations relating to alleged or suspected violations of federal criminal law. The IG’s Office found no evidence that TSA had actually done this, and yet these criminal investigators are still receiving premium pay.

According to the IG, TSA's criminal investigators spend the majority of their time investigating noncriminal cases, monitoring criminal cases conducted by other agencies, and carrying out inspections, covert tests, and internal reviews. Noncriminal investigators or other non-law enforcement employees could just as easily carry out the bulk of these tasks.

All of these activities appear valuable, particularly the covert testing, so it is not my intent to disparage the hard work of these men and women. However, the IG estimates that if TSA does nothing to correct this situation of misclassification, it will cost the taxpayer at least \$17.5 million over the next five years in premium pay alone. That does not include other expenses such as law enforcement officer training, weapons, ammunition, vehicles, communications equipment, and enhanced retirement benefits.

What message does it send to the law enforcement officers who put their lives on the line every day to keep us safe, or those who have lost their jobs due to budget cuts, if TSA does not play by the same rules as other agencies?

We are all accountable to the taxpayer and this Subcommittee is responsible for holding TSA to standards the American people expect and deserve.

Today, we have the Assistant Administrators of two offices in TSA with significant potential to fix this problem. Mr. Allison, you have been in your position for a year and four months. In that time, I understand you have tried to make some changes. I hope you will share those today and provide us with suggestions on how we can resolve this problem. I look forward to hearing specifically how you intend to address all of the IG's recommendations.

Ms. Shelton-Waters, it was not too long ago that you testified before this Subcommittee as the head of TSA's acquisition office. As the head of the Office of Human Capital, it is your duty to ensure that TSA is not abusing the unique authority it has been given to maintain its own employee classification system, and to provide the Office of Inspection the tools and support it needs to make significant changes.

Finally, Ms. Richards, I look forward to hearing directly from you on the numerous recommendations put forth in your report, and how we can bring greater accountability to TSA's Office of Inspection and shine light on TSA's employee classification system.

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**Statement of
Roderick Allison
Assistant Administrator, Office of Inspection
and
Karen Shelton Waters
Assistant Administrator, Office of Human Capital
Transportation Security Administration
U.S. Department of Homeland Security
before the
United States House of Representatives
Committee on Homeland Security
Subcommittee on Transportation Security
January 28, 2014**

Chairman Hudson, Ranking Member Richmond, and members of the Subcommittee, I appreciate the opportunity to appear before you to discuss the Transportation Security Administration's (TSA) Office of Inspection (OOI). I am joined today by Karen Shelton Waters, TSA's Assistant Administrator for the Office of Human Capital.

TSA OOI ensures the integrity and effectiveness of TSA's employees and programs, which are entrusted with safeguarding our nation's transportation systems, as well as the security systems used to safeguard the traveling public.

TSA OOI's mission is to ensure the integrity, efficiency, and effectiveness of TSA's workforce, operations, and programs through objective audits, covert testing, inspections, and criminal investigations. Every day, TSA's nearly 60,000 employees screen 1.8 million air travelers, and perform the vetting for more than two million new airline passenger reservations and 14 million transportation worker records against the Federal Government's consolidated

terrorist watch list. It is critical to our mission that the TSA workforce and its programs adhere to the highest standards of conduct.

TSA's Office of Inspection

TSA OOI has a wide range of responsibilities including criminal investigations, audit and compliance cases, as well as covert testing efforts. We investigate allegations of criminal and administrative misconduct of TSA employees and contractors; conduct inspections of TSA operations to ensure all offices and airports are in full compliance with federal laws, regulations, and current policies; and evaluate the effectiveness of our transportation security systems through covert testing and audits designed to identify system vulnerabilities and provide mitigation strategies. Of these, there are 100 criminal investigators who handle allegations of criminal and administrative misconduct. The criminal investigators have an average of 17 years of federal experience, including an average of 7 years of service at TSA.

In 2012, at Administrator Pistole's direction, TSA OOI initiated integrity tests at airports around the country to assess compliance with our core value of integrity in handling the property of passengers. Since 2012, TSA OOI's criminal investigators have conducted more than 2,530 integrity tests in 114 airports around the country. At times, the tests included local law enforcement and Department of Homeland Security (DHS) Office of Inspector General (OIG), Office of Investigations agents. I am pleased to report that we have found 99.7 percent compliance. In fact, only 7 TSA employees failed the covert tests and all 7 were removed from federal service.

TSA is required by DHS Management Directive 0810.1 to refer allegations of criminal misconduct to the DHS OIG, so the DHS OIG may determine which cases it will retain and investigate. Any case DHS OIG does not choose to investigate is referred back to TSA OOI.

This responsibility requires the employment and retention of investigators who are professional, capable, and able to appropriately handle criminal investigation cases. In FY 2013, TSA referred 423 new cases to the DHS OIG, which retained 12 cases. The remaining 411 cases were referred back to TSA OOI for investigation.

Efficiency

During FY 2013, TSA OOI's 100 criminal investigators completed 887¹ total investigations including 309 of the 411 newly opened cases referenced above, of which the majority were criminal investigations. TSA OOI's criminal investigators used their expertise and knowledge of law, regulation, and policy to investigate and close these complex cases, thus ensuring the highest standards of integrity and professionalism within our workforce.

Additionally, TSA OOI partners with the TSA Office of Professional Responsibility (OPR) to ensure that allegations of misconduct are thoroughly investigated and that discipline is appropriate, consistent, and fair across the agency.

Since becoming the Assistant Administrator of TSA OOI, I have focused on making our office more efficient and effective in carrying out its mission. During FY 2013, TSA OOI closed over 55 percent of investigations within 90 days of initiation. In FY 2013, TSA OOI completed 25 workers' compensation fraud investigations which resulted in cost avoidance to the government of over \$3,000,000. Our office also conducted over 400 covert tests, which focused on potential vulnerabilities in existing policies, procedures, supervision, and training.

Furthermore, OOI implemented risk-based initiatives through the development and implementation of tools, conducted risk-based analysis of information for program development and execution, and collaborated with internal and external stakeholders.

¹ The 887 completed investigations include new cases from FY 2013 as well as cases opened or investigated in the prior year.

OIG Recommendations

The OIG produced a September 2013 report entitled *Transportation Security Administration Office of Inspection's Efforts to Enhance Transportation Security* which recommended 11 improvements in TSA OOI. While the majority of these recommendations are still open, TSA has made a significant progress in addressing the OIG's concerns such as Recommendation #2, which the OIG closed when TSA finalized and implemented a Management Directive requiring criminal investigators to document their work hours properly. To adequately capture the utilization of our criminal investigators, TSA OOI uses a Resource Allocation Model (RAM) to document all criminal investigative activities and hours concurrent with the investigation, which supervisors are reviewing on a regular basis.

Additionally, TSA's Office of Human Capital (OHC) is conducting an independent workforce review to evaluate the workforce profile and the nature of the caseload in TSA OOI. This will ensure the proper assignment of cases requiring the special skills and expertise of criminal investigators. The evaluation will also include a predictive model to determine the future demand for criminal investigators. As part of this review, OHC will examine cost effective and appropriate staffing models to support TSA OOI's mission.

On December 9, 2013, I approved a work plan for TSA OOI's divisions, which contains project-specific information such as duration, cost estimates, and staffing. I am also reviewing our current fiscal year goals to develop outcome-based performance measures, and working to establish a regular review process to ensure that TSA OOI's programs, projects and operations are meeting the intended goals. TSA OOI anticipates completing this task in March of this year.

TSA produced a 90-day update to the OIG's recommendations in December of 2013, and anticipates closure of additional recommendations in the coming weeks.

Conclusion

TSA appreciates the partnership of the DHS OIG and this Committee to ensure TSA OOI is managing our security system and workforce in the most efficient, effective manner possible.

Thank you for the opportunity to appear before you today. I will be happy to address any questions you may have.

STATEMENT OF ANNE L. RICHARDS
ACTING DEPUTY CHIEF OPERATING OFFICER
DEPARTMENT OF HOMELAND SECURITY
OFFICE OF INSPECTOR GENERAL
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION SECURITY
COMMITTEE ON HOMELAND SECURITY
U.S. HOUSE OF REPRESENTATIVES
CONCERNING
“EXAMINING TSA’S CADRE OF CRIMINAL INVESTIGATORS”

JANUARY 28, 2014



Good afternoon Chairman Hudson, Ranking Member Richmond, and Members of the Subcommittee.

Thank you for inviting me here today to testify on the Transportation Security Administration (TSA) Office of Inspection's (OOI) efforts to enhance transportation security. My testimony will focus on the results of our audit to determine the efficiency and effectiveness of OOI's efforts, which we published in September 2013.

OOI 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.

We determined that OOI 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. OOI 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; that staff members were properly trained; and that work was adequately reviewed. Finally, the office could not always ensure that other TSA offices acted on its recommendations to improve 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, OOI 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 in OOI, we estimate that it will cost as much as \$17.5 million over 5 years for premium Law Enforcement Availability Pay (LEAP). OOI 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.

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. OOI's mission 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 the Federal Air Marshal Service, Federal Security Directors’ offices, and TSA Headquarters’ offices to ensure they are following TSA’s policies and procedures. Additionally, the division identifies vulnerabilities in passenger, baggage, and cargo operations; it 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. The division also 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.

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

| Table 1. Investigations Opened and Reports Completed From FY 2010 through First Quarter 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

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

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.

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*, TSA criminal investigators are considered law enforcement officers. By law, however, to qualify for statutory enhanced retirement 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 20 years of service.⁴ They receive a faster accruing pension. They also are eligible to receive extra pay known as 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 incorporates LEAP.⁶ To receive LEAP, an additional 25 percent above base pay, criminal investigators must certify annually that they have worked and are expected to be available to

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.

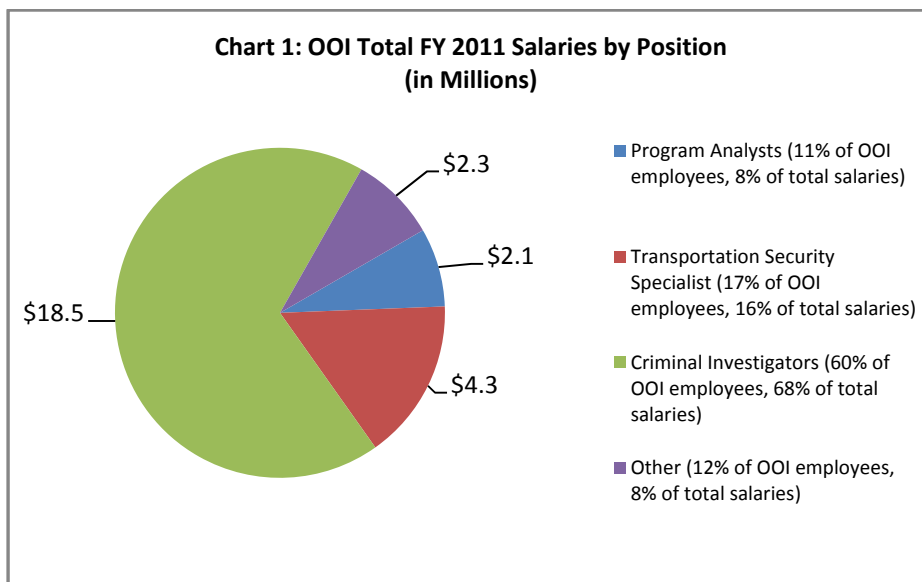
⁴ 5 USC §§ 8336(c), 8412(d)(2).

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.

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 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. OOI also 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

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).

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.

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 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 (if they meet the unscheduled hours availability 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, which is 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 the cases it closed, 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.

| 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 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 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 legal requirement to spend a minimum of 50 percent of their time on criminal investigative activity. 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, which is not an efficient use of resources. Paying LEAP to these employees costs more, and because they are not required to document the hours they spend conducting criminal investigations, it does not comply with TSA Management Directive 1100.88-1, which incorporates the LEAP statute. Using criminal investigators to perform this work also cost TSA more in salary and benefits.

OOI did not require all staff to enter time spent working on projects into its database, which would have supported the hours charged to its criminal investigations. Additionally, TSA has no assurance that the LEAP availability hours were properly certified because it was unable to determine whether the criminal investigators met the Federal workload requirement for that position. 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.⁹ 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-

⁹ 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 overtime pay per Title 5 of the USC.

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 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 August 2009 *Introduction to the Position Classification Standards 2009*, OPM and Federal agencies are responsible for carrying out the classification system in accordance with the principles set forth in law. Federal managers are responsible for organizing work to accomplish the agency's mission most efficiently and economically. The Federal Government's policy is to use available resources optimally in assigning work.

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.¹⁰ 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.¹¹ 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.¹² To ensure compliance with OPM regulations for law enforcement retirement benefits, TSA must also establish and maintain a file for each law enforcement officer with the position classification, the officer's actual duties, and all background material used to make the determination; OPM has the authority to audit these files.¹³ 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 positions, OPM may determine that positions have been misclassified and therefore do not qualify for law enforcement retirement benefits.

¹⁰ 49 USC § 40122(g).

¹¹ 49 USC § 40122(g)(2)(G).

¹² 5 CFR § 842.808(a).

¹³ 5 CFR § 842.808(c).

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 previously identified by OHC and its contractor, we believe that OPM would be the best organization to 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 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. 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.

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.

Recommendations

We made 11 recommendations to TSA that, when implemented, should lead to more efficient and effective operations, improve transparency and accountability, and enhance efforts to protect the Nation's transportation systems. TSA concurred with all of our recommendations. In late December 2013, we received updates from TSA on some of the recommendations, which we are currently reviewing. Below are the recommendations and their current status.

Our first four recommendations related to OOI's criminal investigators.

We recommended that the Assistant Administrator for OOI:

1. Ensure that OOI criminal investigators in primary positions meet the Federal 50 percent minimum workload requirement and meet all LEAP requirements as a condition of receiving this premium pay.

Recommendation 1 is unresolved and will remain open until OOI provides documentation showing how it will ensure that its criminal investigators are meeting the legal requirement to spend at least 50 percent of their time conducting criminal investigations, which is required to qualify them as law enforcement officers and make them eligible for LEAP. In its response to our report, TSA did not specifically state how it will ensure criminal investigators meet this requirement.

2. Finalize and implement OOI's management directive on LEAP policies and procedures to require all employees receiving LEAP to document their work hours in the OOI database.

Recommendation 2 is resolved and closed. TSA has directed that all employees who receive LEAP must document their work hours.

We also recommended that the TSA Deputy Administrator:

3. Conduct an objective workforce analysis of OOI, including a needs assessment, and perform a position classification review, ensuring that those conducting the review, such as OHC or OPM, are independent of the process.

Recommendation 3 is unresolved and open. In its response, TSA agreed to have a workforce analysis conducted of OOI, but that analysis will be limited to the Audits and Inspection Division and the Security Operations Division. TSA made no mention of an analysis of the criminal investigators in the Internal Affairs Division, which at the time of our audit, comprised approximately 82 percent of the total number of OOI criminal investigators.

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 workload requirement. In addition, ensure that secondary law enforcement positions are

properly classified in accordance with Federal regulations. Proper classification of supervisors depends on correctly classifying the individuals they supervise.

Recommendation 4 is unresolved and open. Although TSA agreed to a workforce analysis, it will be limited to the Audits and Inspection Division and the Security Operations Division.

To improve the quality of OOI's inspections, covert testing, and internal reviews, we recommended that the Assistant Administrator for OOI:

5. Require OOI to develop a detailed annual work plan to be approved by the Assistant Administrator, which contains project-specific information, including purpose, duration, realistic cost estimates, and required staffing.

Recommendation 5 is resolved and open. In its response TSA stated that OOI has developed a work plan for the Audits and Inspection Division and Special Operations Division. These plans will be combined into one plan for approval by OOI's Assistant Administrator. TSA provided its response and proposed implementation plan for corrective action. We are currently evaluating TSA's response.

6. Ensure that OOI develops outcome-based performance measures for its programs, projects, and operations to evaluate efficiency and effectiveness.

Recommendation 6 is unresolved and open. TSA responded that OOI has developed overall performance metrics for the office. In reviewing TSA's corrective action plan, we believe the proposed action does not fully address the intent of the recommendation because it focuses on goals rather than outcome-based performance measures. The recommendation will remain 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.

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

Recommendation 7 is resolved and open. TSA responded that OOI tracks conformance to performance measures quarterly and annually and will continue to track the outcomes. This recommendation will remain open until OOI provides documentation that it periodically assesses outcome-based performance measures, not only goals, for its programs, projects and operations to evaluate their efficiency and effectiveness.

8. Ensure that OOI requires staff members to document hours spent on projects in its management information system, and ensure that criminal investigators document hours to support LEAP.

Recommendation 8 is resolved and open. TSA provided its response and proposed implementation plan for corrective action. We are currently evaluating TSA's response.

9. Establish a quality assurance program to ensure that OOI 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:

- 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.

For recommendation 9, TSA provided its response and proposed implementation plan for corrective action. We are currently evaluating TSA's response.

10. Ensure that OOI expeditiously completes its action to have an external peer review of its efforts to audit air carriers and continues to have an external peer review of this work at least once every 3 years. Prior reports that did not comply with *Government Auditing Standards* need to be modified and reissued with language that OOI was not fully compliant with *Government Auditing Standards* when the audits were conducted.

Recommendation 10 is resolved and open. TSA provided its response and proposed implementation plan for corrective action. We are currently evaluating TSA's response.

11. Develop and implement a policy for recommendation follow-up and resolution to ensure that other TSA offices respond to all of OOI's recommendations, and establish a resolution process when offices do not concur with recommendations.

Recommendation 11 is resolved and open. TSA has provided its response and proposed implementation plan for corrective action. We are currently evaluating TSA's response.

Mr. Chairman, this concludes my prepared statement. I welcome any questions you or other Members of the Subcommittee may have.