OFFICE OF INSPECTOR GENERAL

Oversight Review of the United States Citizenship and Immigration Services, Investigations Division

Homeland Security

June 6, 2016

OIG-16-96-IQO

DHS OIG HIGHLIGHTS

Oversight Review of the United States Citizenship and Immigration Services, Investigations Division

June 6, 2016

Why We Did This

We conducted this review as part of the planned periodic review of the Department of Homeland Security (DHS) component internal affairs offices by the DHS Office of Inspector General in keeping with the oversight responsibilities mandated by the Inspector General Act of 1978, as amended.

What We Recommend

We recommended that USCIS consider removing the Investigations Division from the Management Directorate, ensure that criminal investigators work at least the minimum number of LEAP hours required or terminate the employees' entitlement to LEAP, and update current policy manuals to reflect current practices and implement a process for issuing interim policy changes that ensures that changes are communicated to all.

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

What We Found

We determined that investigations conducted by the Investigations Division were generally thorough and complete. We, however, found issues related to the Division's placement within the organization, discrepancies in policy, adherence to policy, and the application of rights advisements. Additionally, we found that the criminal investigators assigned to the Division did not maintain the mandatory minimum number of hours required to receive Law Enforcement Availability Pay (LEAP) and that managers and investigators did not comply with LEAP certification requirements.

USCIS Response

USCIS will conduct two comprehensive updates to their investigative policies and their business processes. The Office of Security and Integrity (OSI) will complete a comprehensive agency-wide investigations policy update, including review and development of relevant management directives, instructions and/or internal procedures. The update will also include policies covering evidence, sworn statements, recording interviews, and evaluating prosecutorial merit of allegations. OSI will also conduct a comprehensive business process analysis of its investigatory practices that will include validation of an appropriate and reasonable timeframe for conducting an investigation and producing corresponding reports.

We issued 25 recommendations, USCIS concurred with 24 of those recommendations.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

June 6, 2016

MEMORANDUM FOR: The Honorable León Rodríguez
Director
United States Citizenship and Immigration Services

FROM: John Roth
Inspector General

SUBJECT: *Oversight Review of the United States Citizenship and Immigration Services, Investigations Division*

Attached for your action is our final report, *Oversight Review of the United States Citizenship and Immigration Services, Investigations Division.* We incorporated your formal comments in the final report.

The report contains 25 recommendations aimed at improving the United States Citizenship and Immigration Services, Investigations Division. Your office concurred with all but one of our recommendations. Based on information provided in your response to the draft report, we consider recommendations 2, 12, 13, 16, 17, 19, 21, 22, and 23 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for the 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. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Based on information provided in your response to the draft report, we consider recommendations 1, 3, 6, 10, 11, 14, 15, 18, 24, and 25 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions.

Recommendations 4, 5, 7, 8, 9, and 20 are resolved and closed.

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 McCoy, Assistant Inspector General, Office of Integrity and Quality Oversight, at (202) 254-4100. You can also send your response to IQO@oig.dhs.gov.

Attachment

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Abbreviations

AUO	Administratively Uncontrollable Overtime
CIGIE	Council of the Inspectors General on Integrity and Efficiency
IDCMS	Investigations Division Case Management System
INV	Investigations Division
LEAP	Law Enforcement Availability Pay
MOA	Memorandum of Activity
OIG	Office of Inspector General
OSI	Office of Security and Integrity
U.S.C.	United States Code
USCIS	United States Citizenship and Immigration Services

SUMMARY

The Office of Integrity and Quality Oversight, Investigations Quality Assurance Division conducted an oversight review of the United States Citizenship and Immigration Services (USCIS), Office of Security and Integrity (OSI), Investigations Division (INV) from May 2015 to August 2015. The review covered INV activity from October 1, 2012, to April 1, 2015 (fiscal year (FY) 2013 through the second quarter of FY 2015). We conducted this review as part of the planned periodic review of the Department of Homeland Security (DHS) component internal affairs offices by the DHS Office of Inspector General (OIG) in keeping with the oversight responsibilities mandated by the *Inspector General Act of 1978*, as amended.

The review focused on two primary areas: organizational management and investigative/inquiry management. In conducting the review, we assessed compliance with *DHS Management Directive 0810.1*, OSI's *Investigations Division Operational Guidance*, OSI's *Management Inquiry Handbook*, INV's *Intake Group and Field Office Case Processing Procedures*, and referenced guidelines established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), as applicable.

Generally, we found that investigations conducted by the Investigations Division were thorough and complete. We, however, found issues related to the Division's placement within the organization, discrepancies in policy, adherence to policy, and the application of rights advisements. Additionally, we found that the criminal investigators assigned to the Division did not maintain the mandatory minimum number hours required to receive Law Enforcement Availability Pay (LEAP). We further found that the Division Chief and assigned investigators did not comply with LEAP certification requirements.

We made 25 recommendations: 2 directed at the Director of USCIS and 23 recommendations to the Investigations Division Chief Supervisory Investigative Specialist (Division Chief).

BACKGROUND

United States Citizenship and Immigrations Services (USCIS) is a component agency within the Department of Homeland Security (DHS) that oversees lawful immigration to the United States. USCIS is comprised of seven directorates and seven program offices. Directorates are director-led departments in charge of multiple divisions or offices. Program offices have a specific function and are led by a chief.

Under section 453(a)(1) of the *Homeland Security Act of 2002*, Pub. L. No. 107-296, 116 Stat. 2135, 2199 (as codified at 6 United States Code (U.S.C.) § 273(a)(1)), the USCIS Director is responsible for "conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of [U.S.] Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department." The USCIS Director delegated this responsibility to the Office of Security and Investigations which was renamed the Office of Security and Integrity (OSI) and later restructured to report to the Associate Director of the Management Directorate. OSI established the Investigations Division (INV) to conduct investigations of allegations involving employee misconduct.

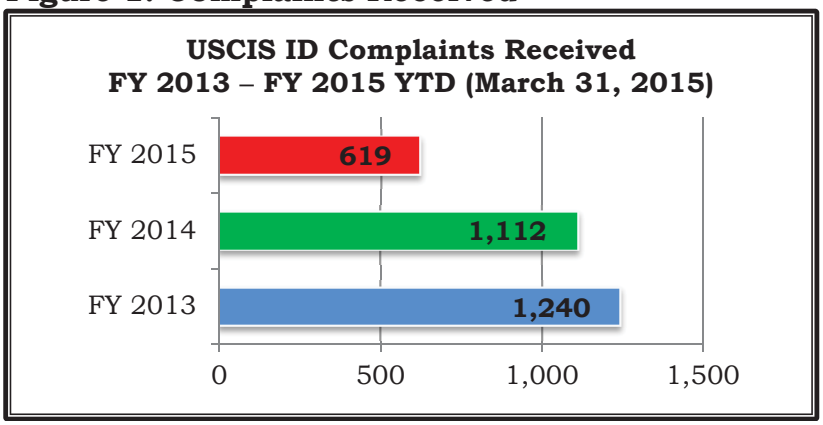
INV is managed by a Chief Supervisory Investigative Specialist (Division Chief) and a Deputy Chief Supervisory Investigative Specialist (Deputy Division Chief). INV is divided into four branches: Investigations Operations Branch, Special Investigations Branch, Western Region Branch, and Eastern Region Branch. As of May 14, 2015, INV was composed of 43 investigators and staff, located in Burlington, VT; Houston, TX; Kansas City, MO; Laguna Niguel, CA; Los Angeles, CA; New York, NY; Orlando, FL; and Washington, DC.[1]

An analysis of information provided by the Division Chief revealed that from October 1, 2012, to March 31, 2015, INV received 2,971 unique allegations[2] (see figure 1). INV retained 1,554 of the received allegations for investigation or inquiry (see figure 2). INV further referred 1,417 allegations to other entities. Also during the inspected period, INV closed 366 investigations.

[1] In May 2007, USCIS was allowed to adjust the Immigration and Naturalization Benefit Application and Petition Fee Schedule to enhance investigative operations by increasing investigative personnel to a total of 78. *Federal Register/Vol. 72, No. 103/Wednesday, May 30, 2007,* p. 29851.

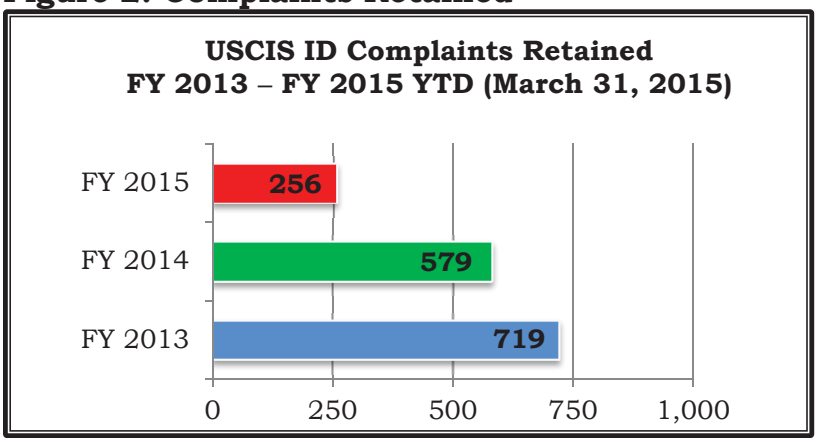
2 USCIS INV records included an additional 308 complaints marked as "duplicate" and 10 complaints marked as "open." The INV staff concluded that those complaints should not be counted in the stated total because they were not unique complaints.

Figure 1: Complaints Received



Source: USCIS INV

Figure 2: Complaints Retained



Source: USCIS INV

Table 1 depicts the most prevalent allegations retained for investigation or inquiry. Six of the top 14 allegations retained involved potential criminal violations of law (denoted on the table with an asterisk). In total, approximately 33 percent of the allegations retained involved suspected violations of law.

The DHS Office of Inspector General (OIG) Hotline Operations reported receiving 2,637 USCIS-related complaints from various sources, including INV, for the period reviewed. DHS OIG initiated investigations on 79 (3 percent) of those complaints.

TABLE 1: MOST PREVALENT ALLEGATIONS RETAINED
FY 2013 – FY 2015 YTD (March 31, 2015)

ALLEGATION	FY2013	FY2014	FY2015	TOTAL
Request for Assistance/Information	116	76	37	229
Disrespect Toward Supervisor or Management	66	65	35	166
Unauthorized Use - TECS or Other Law Enforcement Resource*	66	29	17	112
Failure to Comply with Instructions, Direction or Assignment	26	45	19	90
Bribery*	43	22	14	79
Inappropriate Off-Duty Conduct	25	34	20	79
Conflict of Interest - Violation of Ethical Standards*	31	30	8	69
Failure to Report Arrest	26	22	2	50
Performance of Duties - Failure to Follow Laws, Rules	40	4	4	48
Hostile Work Environment	12	24	9	45
Misstatements or Misrepresentations*	27	13	5	45
Security Procedure Violations	18	26	1	45
Falsification or Concealment of Fact*	13	23	6	42
Threatening, Intimidating, Harassing or Provoking Another*	13	5	8	26
MOST PREVALENT ALLEGATIONS	522	418	185	1125
ALL OTHER ALLEGATIONS	197	162	70	429
TOTAL	719	580	255	1554

Source: USCIS INV *Potential criminal violations

RESULTS

Review of Operational Management

Placement within The Organization

INV is organizationally assigned to the Management Directorate. The Directorate's mission is diverse and encompasses a great deal of the agency's most critical support functions. As a result, the Directorate manages or oversees most of the agency's personnel and contractors assigned to support functions.

According to the USCIS website, the Management Directorate is responsible for the following:

- procurement;
- management of facilities property, equipment, and other material resources;
- planning, budget and performance, strategic and competitive sourcing, and financial and capital asset management;
- IT systems infrastructure and support;
- ensuring equal employment opportunities and inclusion for current and potential USCIS employees;
- human resources and personnel recruitment, hiring, training, leadership development, employee benefits, and work-life programs;
- immigration forms, print services, and receipt and intake of immigration benefit applications; and
- management of security and emergency operations.

In reviewing the narratives associated with complaints received by INV and examining investigations conducted by INV during the reviewed period, the inspection team noted potential conflicts arising from INV's placement under the Management Directorate. We specifically observed notations in case records and were told of instances where managers in the Management Directorate instructed INV not to conduct investigations on allegations that may have warranted investigations. We were also told of situations in which the Management Directorate's involvement so hampered the investigative process that it crippled INV's ability to effectively and completely investigate allegations.

INV management told the inspection team that in November of 2014, the Associate Director of the Management Directorate told them that they had no legal authority over contractors and that all contractor-related allegations should be referred to the contracting office. The contracting office also falls under the Management Directorate. Since receiving such instruction, INV has not pursued investigations where the subject of the allegation is a USCIS contractor.

In our review, we found uninvestigated allegations in which contract employees were purported to have been involved in bribery schemes, compromised USCIS databases, misuse of law enforcement databases, distribution of child pornography, and misuse of USCIS information in order to harass a complainant. These allegations were appropriately referred to the DHS OIG who elected to return them to INV for investigation/inquiry. The subject contractors were referred to the contracting office and INV took no further action to validate whether the offending contract employees had actually done what they were accused of doing. INV further did not ensure that the subject contract employees were not part of a broader network attempting to manipulate USCIS systems for nefarious reasons, nor did INV determine whether the actions of subject contract employees exposed USCIS to greater threats. Simply referring the allegations to the contracting office did not fully address the allegation nor did it prevent potentially harmful individuals from obtaining employment on different contracts.

We additionally heard unverified accounts from some INV employees who claimed that officials in the Management Directorate purposely declined to take action against employees whom investigators found to have violated laws and policies. Some INV employees with whom we spoke theorized that the Management Directorate staff involved themselves in the investigative process in an effort to shield certain employees from the disciplinary process and/or to preserve relationships with contractors. Other employees speculated that management did it as a means of expeditiously removing misbehaving employees. In either case, the Management Directorate's involvement in investigative decisions has led to feelings of distrust and questions as to the Directorate staff's motivation.

The *Counsel of the Inspectors General on Integrity and Efficiency's* (CIGIE) *Quality Standards for Investigations* require that an investigative organization "must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude."[3] The Standards further explain that, "This standard places upon agencies, investigative organizations, and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties."[4] Finally, the Standards impart that, "An investigative organization's independence can be affected by its position within the hierarchical structure of the subject Government entity."[5]

The Quality Standards for Investigation also discuss how personal impairments and external impairments can hamper an organization's independence. The

[3] *CIGIE Quality Standards for Investigation*, November 2011, Section B, p. 6.
[4] Ibid., p. 7
[5] Ibid.

following is an excerpt from the Quality Standards discussing the subject of impairment:[6]

- **Personal Impairments**—Circumstances may occur in which an investigator may experience difficulty in achieving impartiality because of their views and/or personal situations and relationships. These impairments may include the following:

    1. Official, professional, personal, or financial relationships that might affect the extent of the inquiry; limit disclosure of information; or weaken the investigative work in any way;
    2. Preconceived opinions of individuals, groups, organizations or objectives of a particular program that could bias the investigation;
    3. Previous involvement in a decision-making or management capacity that would affect current operations of the entity or program being investigated;
    4. Biases, including those induced by political or social convictions that result from employment in, or loyalty to, a particular group or organization; and
    5. Financial interest in an individual, an entity, or a program being investigated.

- **External Impairments**— Factors external to the investigative organization may restrict its ability to conduct an independent and objective investigation and issue reports of investigation. Such factors include:

    1. Interference in the assignment of cases or investigative personnel;
    2. Restriction on funds or other resources dedicated to the investigation or to investigative organizations;
    3. Influence on the extent and thoroughness of the investigative scope, the way in which the investigation is conducted, the individual(s) who should be interviewed, the evidence that should be obtained, and the content of the investigative report; and
    4. Denial of access to sources of information, including documents and records.

The Quality Standards for Investigations recommend that in order for investigative entities to "achieve maximum independence, the investigative function should be positioned outside the staff or reporting line of the unit or employees under investigation."[7] USCIS's placement of its internal affairs component within the Management Directorate is unique within the Department. The internal affairs components for the Department's largest departments (Customs and Border Protection, Immigration and Customs

[6] Ibid.
[7] Ibid.

Enforcement, Transportation Security Administration, and the National Protection and Programs Directorate) report directly to at least the second most senior official of their respective organizations.

Recommendations

1. We recommend that the Director of USCIS consider removing the Investigations Division from the Management Directorate and assigning the division to the Deputy Director level or above.

Policy

INV's primary policies are formally memorialized in three manuals: *Investigations Division Operational Guidance* (July 2012), OSI's *Management Inquiry Handbook* (February 2009), and *OSI Investigations Division Intake Group and Field Office Case Processing Procedures* (September 2008). While conducting the review, the inspection team observed that INV was sporadic and inconsistent in following the policies delineated in their policy manuals. We found that written policies ranging from when permission is needed to record interviews to addressing rights advisements and notifications to interviewees were usurped by instructions issued through email or disseminated orally. For example, both Section 10.3 of the *Investigations Division Operational Guidance* and Section 8.3.1(B) of the OSI *Management Inquiry Handbook* require management approval to record interviews. In practice, INV agents are required to record all interviews. Further, neither manual mandates transcribing recordings, but in practice, all recordings are transcribed through a contracted transcription service.

Ultimately, we deemed it impossible to evaluate INV operations relative to the standards set forth in the policy manuals. Our conclusion was further reinforced by what we learned during discussions with INV employees and through the survey we disseminated to all employees. Some employees complained that INV's policies changed too frequently, sometimes multiple times in the same day. Many employees complained that policy changes are seldom documented in a formal way and are frequently only communicated orally or through email. This leads to confusion among employees and can also lead to mistakes or inconsistent work products.

We discussed our observations with INV management who acknowledged that the policy manuals are out of date and that they need to document policy changes formally. INV management reported that it is in the process of drafting an update to the *Management Inquiry Handbook* and will make changes to other manuals in the near future.

The inspection team also observed two sections in the *Investigations Division Operational Guidance* that conflict with one another:

- Sections 10.2 and 13.1 both address Investigative Work Plans. Section 10.2 states that, "Your planning should begin with preparing an 'Investigative Work Plan.'" Section 13.1, seems to make the requirement optional by saying, "The decision of whether or not to prepare an Investigative Plan should be based on a number of factors…." The inspection team observed that, contrary to Section 10.2 of OSI's *Investigations Division Operational Guidance,* only 23 percent of the investigations reviewed contained an Investigative Work Plan.

- Sections 9.0 and 10.3.3 both address documenting investigative activity. Section 9.0 states that, "At a minimum, MOAs should be completed within two working days after completion of the investigative activity…." Section 10.3.3 states that "The MOA should be written within five days of the activity…."

Recommendations

2. We recommend that the Division Chief update current policy manuals to reflect current practices. We also recommend that the Division Chief implement a process for issuing interim policy changes that ensures that policy changes are communicated to all employees, accessible for reference, and implemented.

Law Enforcement Availability Pay

The Division had two employees receiving Law Enforcement Availability Pay (LEAP) during the period reviewed. INV provided spreadsheets representing the work hours performed by both employees for the period reviewed. INV did not maintain records for instances where employees were available for unscheduled duty. Our review of the spreadsheets showed that neither employee maintained an average of 2 hours of unscheduled duty in a regular work day, as required by 5 U.S.C. § 5545a. Together, the employees were deficient approximately 315 LEAP hours during the reviewed period. INV management argued that the deficiencies were mitigated by the number of hours agents spent in an "available" status, but conceded that they did not have documentation to support the claim. They further reported that although "available" hours were not tracked, "there has yet to be an instance when a LEAP [eligible] employee was not available when they should have been."

Additionally, the inspection team found that neither employee completed an annual certification attesting that he or she had "met the [LEAP average] requirement and expected to continue to meet the [LEAP average] requirement." Additionally, the Division Chief did not certify on an annual basis that all LEAP-earning employees maintained an average of 2 hours of unscheduled duty in a regular work day, as required by 5 U.S.C. § 5545(e)(1).

Other Observation

Investigators assigned to INV were eligible to receive Administratively Uncontrollable Overtime (AUO) pay until November 2013, when the USCIS Associate Director suspended its use. The Associate Director allowed subordinate managers to authorize the payment of overtime to complete assignments deemed mission critical. The inspection team found evidence in investigative case files indicating that overtime was approved for agents to complete seemingly routine reports and conduct routine assignments. We discussed the matter with INV management and attempted to obtain data on the frequency with which overtime is used and for what purposes. INV managers stated that their case management system and current processes did not capture the requested information. The inspection team advised INV management to better track the use of overtime to ensure that it is used only when mission critical and not as a *de facto* replacement of AUO.

Some of the employees with whom we spoke complained that they were expected to perform the same amount of work in 40 hours as they did when they received AUO and worked 50-hour weeks. They opined that they should not be held to the same timeliness standards as when they worked longer hours. They also told us that overtime was granted in an arbitrary manner and was not always approved when they needed it most. Employees further reported working beyond their regularly scheduled hours with no additional compensation in order to complete assigned tasks. We also discussed the need for INV to develop written policies related to the use and approval of overtime with INV management.

Recommendations

3. We recommend that the Division Chief ensure that all LEAP-eligible employees maintain at least the minimum number of LEAP hours required by 5 U.S.C. § 5545a or terminate the employees' entitlement to LEAP.

4. We recommend that the Division Chief require LEAP-eligible employees to certify on an annual basis that they have met and will continue to meet the minimum LEAP requirements.

5. We recommend that the Division Chief certify on an annual basis that LEAP-eligible employees have met and will continue to meet the minimum LEAP requirements.

6. We recommend that the Division Chief conduct an analysis of case completion timelines to determine the proper expectations.

7. We recommend that the Division Chief develop policies related to the use and approval of overtime. We also recommend that the Division Chief institute

a process for tracking the use of overtime to ensure that it is used only when mission critical.

Employee Personnel Files

The Division Chief told the inspection team that INV does not maintain personnel folders for its employees. He reported that all Employee Personnel Folders are maintained virtually within the U.S. Office of Personnel Management's eOPF database.

Recommendations

8. We recommend that the Division Chief ensure that the Investigations Division maintains files (electronic or otherwise) for each employee containing, at a minimum, annual LEAP and training certifications, emergency contact information, yearly performance plans and ratings, inventory records for issued equipment, and basic employment information.

Training

The Division Chief provided the inspection team with data containing the employee completion dates for 18 training courses that every employee was mandated by either DHS or USCIS to complete on an annual basis. In analyzing the data for calendar years 2013 and 2014, we found that INV employees completed mandatory training for only 32 and 38 percent of the courses, respectively. In 2013, INV employees attained the highest completion rates in DHS No Fear Act training (73 percent), DHS Records Management training (67 percent), and Electronic Records Management training (67 percent). In the same year, employees attained the lowest completion rates in Anti-Harassment training (4 percent), Continuity of Operations Awareness (4 percent), and Emergency Preparedness for Federal Employees training (4 percent).

INV did a better job in completing mandatory training in 2014. INV attained the highest completion rates in EEO Alternative Dispute Resolution Program training (76 percent), Anti-Harassment training (73 percent), Computer Security Awareness training (73 percent), DHS Basic Records Management training (71 percent), and DHS Electronic Records Management training (69 percent). In the same year, INV attained the lowest completion rate in Continuity of Operations Awareness training (0 percent), and Emergency Preparedness for Federal Employees training (0 percent),

Recommendations

9. We recommend that the Division Chief ensure that INV staff completes all mandatory training.

Law Enforcement Equipment Inventory

The Division Chief informed the inspection team that INV does not have any law enforcement equipment, despite having two employees in a law enforcement job series. These two employees are not issued firearms, batons, handcuffs, vehicles, or any other law enforcement equipment.

INV management and employees expressed frustration at not having basic equipment needed to conduct surveillance (i.e., radios and binoculars). They also complained that they did not have dedicated vehicles for INV. Agents have to borrow vehicles from other USCIS components when needed. The process is informal and often requires agents to call several offices in order to locate a vehicle. INV staff reported that components often seemed reluctant to lend vehicles to them.

The nature of the allegations investigated by INV necessitates that agents have the ability and means to conduct surveillance, interview witnesses and subjects, collect and safeguard evidence, and coordinate with investigative and enforcement entities. These activities often require the use of vehicles, binoculars, radios, global positioning systems, evidence storage bags, voice and video recorders, and more. INV agents should be properly equipped to perform their assigned roles.

Further, because most of the investigations conducted by INV involve USCIS component employees, it is conceivable that INV agents may encounter some level of resistance in securing vehicles for use to conduct investigative activity. Several solutions are available to address this particular concern, including equipping INV with dedicated vehicles. At a minimum, USCIS should formalize the management of shared-use vehicles to ensure proper handling and availability.

Recommendations

10. We recommend that the Division Chief ensure that INV agents are equipped with the necessary law enforcement equipment to perform their assigned roles.

11. We recommend that the Director of USCIS examine the issue of how shared vehicles are being utilized, consider assigning dedicated vehicles to INV, and

formalize the management of shared vehicles to ensure proper handling and availability.

Evidence Review

The Division Chief told the inspection team that INV agents had not collected any evidence that required safeguarding or special handling consistent with the Federal Rules of Evidence during the period reviewed. He further stated that he had adequate containers to safeguard such evidence properly should they need it.

Section 8 of the *Investigations Division Operational Guidance* adequately defines the different types and forms of evidence and discusses relevant evidentiary concepts. However, it does not address how to properly seize, safeguard, and document physical and documentary evidence. The sole related guidance simply instructs the reader that, "physical and documentary evidence should be identified and obtained as early as possible in the investigation process, in order to allow for review and analysis prior to initiation of your interviews."[8]

A failure to properly document and secure evidence could prove detrimental to the adjudication of a case. As an example of a best practice, the *Council of the Inspectors General on Integrity and Efficiency* (*CIGIE) Quality Standards for Investigations* suggests that while conducting investigations of all types, "evidence should be collected in such a way as to ensure that all known or obviously relevant material is obtained, the chain of custody is preserved, and the evidence is admissible in any subsequent proceedings."[9]

Recommendations

12. We recommend that the Division Chief develop policies and procedures specific to INV on seizure, safeguarding, and documenting evidence in cases investigated by INV.

Case Management System

INV uses the Investigations Division Case Management System (IDCMS) to document complaints, track investigative activity, and catalog case records. We found that IDCMS has the functionality to capture all of the necessary and relevant information needed to process a complaint effectively. We also found that, on average, INV referred complaints to the OIG within 3 days of receipt.

[8] *Investigations Division Operational Guidance,* July 2012, Section 8, p. 13
[9] *CIGIE Quality Standards for Investigation*, November 2011, p. 14.

The inspection team noted IDCMS's document upload and retrieval capability as a best practice.

We found IDCMS to be inefficient in retrieving and analyzing data. INV management had to redo many of the data submissions initially provided to the inspection team because they contained errors or were incomplete. INV managers informed the inspection team that they use a USCIS statistician to extract statistical data from the system and produce reports. They further explained that pre-formatted or "canned" reports from the system typically have errors and employees need to revise them manually. One manager explained that the process of validating data extracted from the system was very time consuming and tedious.

The inspection team also found issues with the data contained in IDCMS. We found many fields left blank, particularly in allegations that INV referred to other entities. We also discovered approximately 300 duplicate allegations within the period reviewed. INV told the inspection team that the allegations appear to have been entered in error. Section B(1)(c) of the *OSI Investigations Division Intake Group and Field Office Case Processing Procedures* manual directs intake staff to "ensure the complaint has not been previously received/recorded, and that the complaint is not being duplicated…." It further instructs staff not to add duplicate complaints to the existing record. The existence of duplicate complaints in IDCMS may have resulted in reporting erroneous statistics in the agency's Semi-Annual Report to Congress and other documents.

Recommendations

13. We recommend that the Division Chief work with IDCMS system administrators to improve the reporting functions within the system.

14. We recommend that the Division Chief ensure that the appropriate staff completes all relevant and necessary fields in IDCMS.

15. We recommend that the Division Chief ensure that intake staff adhere to current policy and do not enter duplicate complaints into IDCMS.

INV Employee Interviews

We sent an electronic survey to all 43 OSI INV employees. We used the OMB MAX survey capability in order to make all survey responses anonymous. The survey was comprised of 17 questions regarding employees' satisfaction as well as a section to enter narrative comments. Twenty-four employees responded to the survey. Six employees contacted us with further comments.

Overall, results were mixed regarding training and communication. Employees reported difficulty in obtaining the appropriate training. They also noted that handbooks and manuals are outdated and expressed a need for additional resources, such as access to law enforcement databases. While many employees responded to the survey that they have regular meetings with managers, they do not seem to be satisfied with the amount or type of information they receive. Information is not thorough and sometimes is not consistent, which creates confusion.

Results were negative regarding office dynamics, including the ability to express concerns, bullying and retaliation, favoritism, and management interaction. Many employees noted that management does not foster an open environment for discussion and management is not receptive to employee feedback. Employees said that promotions are not based on merit, and some said that performance appraisals are arbitrary. Further, some employees provided examples of special treatment, including approval for telework. Employees generally said that they would report something that was illegal but would be hesitant to report a problem because of the fear of repercussions.

Review of Investigations/Inquiries

Case File Management

The inspection team reviewed 76 investigative files (approximately 21 percent of all investigations closed during the review period). Overall, we found the case files to be well organized and complete. The files contained the appropriate investigative reports and other case-related documentation.

Investigations

In looking at the actual conduct of investigations, we measured our observations against the *CIGIE Quality Standards for Investigations*. The Standards mandate that "investigations must be conducted in a timely, efficient, thorough, and objective manner."[10] We assessed the diligence with which investigators executed inquiries and how thorough they were in reporting findings. Not all areas reviewed applied to each case; therefore, our targeted populations varied. For example, only 28 of the 76 cases involved collection of evidence.

The inspection team found that investigators generally conducted investigations in a thorough, efficient, and objective manner. We noted that investigators conducted all relevant interviews in 93 percent of the investigations reviewed. Conflicting with Section 10.3.2 of *Investigations Division Operational Guidance,* we observed that investigators obtained sworn statements from all employee subjects and witnesses in 64 percent of the cases reviewed. We also noted that they addressed all of the relevant aspects of allegations in 96 percent of the cases reviewed and conducted fair and impartial investigations in 100 percent of the cases reviewed.

We observed that, on average, investigations were open for 289 days from initiation to completion and were open for 383 days from initiation to closure. INV management explained that an investigation is considered complete when the Report of Investigation is signed and submitted to USCIS management. The investigation is considered closed when INV receives a response from USCIS management. These figures are excessive, especially given that a majority of the investigations conducted were administrative in nature. A delay in investigating allegations could expose the agency to continued harm and impede the career of wrongly accused employee subjects.

In conducting our review of investigations, we did not find records indicating that managers conduct periodic reviews of open investigations. Similarly, we did not find policy mandating that such reviews occur. Periodic reviews by INV

[10] *CIGIE Quality Standards for Investigation,* November 2011, p. 11.

managers are important to ensure that cases progress in a timely and prudent manner.

Recommendations

16. We recommend that the Division Chief ensure that investigators conduct all relevant interviews and address all aspects of an allegation.

17. We recommend that the Division Chief ensure that investigators obtain sworn statements from employee subjects and witnesses in compliance with the *Investigations Division Operational Guidance*.

18. We recommend that the Division Chief conduct an analysis of the investigative process and implement changes that will reduce the length of time it takes to conduct an investigation.

19. We recommend that the Division Chief implement policy to ensure supervisors review ongoing investigations on at least a quarterly basis to ensure investigations progress in a timely manner.

Rights Advisements

The inspection team observed that INV compelled the subject to participate in an interview in 100 percent of the investigations we reviewed that involved subject interviews. We later confirmed through discussions with INV staff that they seldom conduct voluntary interviews of investigative subjects. They instead compel testimony from subjects using a Statement of Rights and Obligations form that includes the principle tenants of the Kalkines decision.[11] The Statement of Rights and Obligations compels subjects to make statements or face disciplinary action up to and including dismissal, but also provides that those statements may not be used against the subjects in a criminal proceeding.[12] We determined that in most instances, the Kalkines warnings were given without any serious consideration of the potential that an allegation may result in a criminal investigation or proceeding.

We observed that approximately 33 percent of the allegations retained by INV during the review period fundamentally alleged violations of law. In the agency's most recent Semi-Annual Report to Congress (January to June 2015), they reported that 49 of 116 cases (42 percent) they opened involved potential criminal misconduct. Among the total sample, we noted cases alleging bribery, the misuse of law enforcement systems, falsifications of fact, and conflict of

[11] *Kalkines v. United States,* 473 F.2d 1391 (Ct. Cl. 1973).
[12] The statement reads, "You are further advised that the answers you may give to the questions propounded to you at this interview, or any information or evidence which may be gained by reason of your answers may not be used against you in a criminal proceeding except that you may be subject to criminal prosecution for any false answer that you may give."

interest. These and other allegations claiming potential criminal violations of law should be investigated in a manner that does not foreclose the ability to use the evidence in a criminal proceeding. Use of Kalkines warnings absent a careful examination of the potential for a subject's criminal exposure may unnecessarily circumscribe the Agency's discretion to consider and pursue all appropriate remedies in response to an allegation of misconduct.

In our discussions with employees, we learned that many were confused about the agency's policies related to rights advisements. Some employees did not fully understand the differences between the various rights advisements. We also learned that there were inconsistencies across INV as to when and how to provide rights advisements.

Section 10.2.2 of the *Investigations Division Operational Guidance* requires that investigators provide employees with a Required Appearance Memorandum at least 48 hours prior to the interview. The document provides interviewees with the "name of the agent before whom the interviewee is directed to appear, the specific date, time, and location of the interview, a brief description of the misconduct alleged, and whether the employee's appearance is as a witness or a subject."[13] The inspection team found that contrary to Section 10.2.2, investigators provided the memorandums to employee interviewees in advance in only 44 percent of investigations reviewed. Our review determined that investigators provided interviewees the notice on the day of the interview.

As a best practice, the *CIGIE Quality Standards for Investigations* and other applicable standards require investigators to provide appropriate warnings to those individuals suspected of violating law or regulation.[14] Noncompliance with these policies could result in the inadmissibility of evidence in criminal, civil, or administrative proceedings.

Recommendations

20. We recommend that the Division Chief ensure that Required Appearance Memorandums are provided to employee interviewees at least 48 hours prior to an interview.

21. We recommend that the Division Chief implement procedures to evaluate the prosecutorial merit of each allegation effectively.

22. We recommend that the Division Chief mandate the use of Garrity warnings as the default rights advisement for interviews of subject employees and update policy accordingly. We also recommend that the Division Chief

[13] *Investigations Division Operational Guidance,* July 2012, Section 10.2.2(B), p. 22.
[14] *CIGIE Quality Standards for Investigations*, November 2011, pp. 11–12.

provide training to employees on the differences and proper use of rights advisements.[15]

Recording Interviews

Section 10.3 of the *Investigations Division Operational Guidance* and Section 8.3.1(B) of the *OSI Management Inquiry Handbook* require management approval to record interviews. In practice, INV agents are required to record all interviews. We discussed our observations with INV management who stated that they would update the manuals.

Further, neither manual mandates transcribing recordings, but in practice, a contracted transcription service transcribes all recordings. We observed in reviewing investigative files and learned through discussions with employees and survey responses that the transcription process adds unnecessary time to the investigation process. Employees told us the new transcription service contractor has a faster turnaround time than the previous contractor, but it still adds a month or more to an investigation. We again discussed our findings with INV management, but also suggested that they only transcribe the most critical interviews in order to reduce the amount of time spent on transcriptions.

Recommendations

23. We recommend that the Division Chief update policy on recording of interviews to reflect the current practice of recording all interviews.

24. We recommend that the Division Chief consider only requiring transcription for the most critical interviews and update INV policy to reflect these changes.

Investigative Reports

The inspection team concluded that agents did a commendable job in documenting the results of investigations. The team found that INV reports presented facts in an organized, logical, clear, concise, and objective manner.

Additionally, we found that contrary to sections 9.0 and 10.3.3 of OSI's *Investigations Division Operational Guidance,* investigators only completed 24 percent of Memorandums of Activity within 5 days of the subject activity. Overall, investigators completed nearly 41 percent of Memorandums of Activity

[15] With a Garrity warning, a subject employee is requested to provide information on a voluntary basis in connection with an investigation, but is advised that any statement may be used against the employee in a criminal or other proceeding. *See Garrity v. New Jersey,* 385 U.S. 493 (1967).

beyond 30 days of the subject activity, with two completed a year or more later. Similarly, we found that investigators completed only 23 percent of final Reports of Investigation within 10 days of the conclusion of the investigation, contrary to Section 14.3 of *OSI's Investigations Division Operational Guidance*. Overall, investigators completed 48 percent of Reports of Investigation beyond 30 days of the last investigative activity.

Recommendations

25. We recommend that the Division Chief evaluate whether the time parameters mandated for the completion of Memorandums of Activity and Reports of Investigation are practical and make appropriate adjustments to policy. We further recommend that the Division Chief ensure compliance with policy concerning timely reporting requirements.

Summary of Recommendations, USCIS Response, and OIG Analysis

We recommend that the Director of USCIS:

Recommendation 1: Consider removing the Investigations Division from the Management Directorate and assigning it to the Deputy Director level or above.

USCIS response: Concur. The Director is committed to ensuring appropriate independence and fairness in fulfilling his obligations to investigate misconduct. The Director will consider various options to address the concerns identified in this report. Estimated Completion Date (ECD): September 30, 2016.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides evidence that they have considered various options to address the noted perceived issues with independence resulting from the Investigations Division's placement within the organization.

Recommendation 11: Examine the issue of how shared vehicles are being utilized, consider assigning dedicated vehicles to INV, and formalize the management of shared vehicles to ensure proper handling and availability.

USCIS response: Concur. While the majority of vehicular use by INV is by rental cars while on official travel, USCIS will examine the current shared vehicle protocols and formalize a plan to ensure proper handling and availability of vehicles to INV. ECD: September 30, 2016.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides the vehicle protocol plan for the handling and availability of vehicles.

We recommend that the INV Division Chief:

Recommendation 2: Update current policy manuals to reflect current practices. We also recommend that the Division Chief implement a process for issuing interim policy changes that ensures that policy changes are communicated to all employees, accessible for reference, and implemented.

USCIS response: Concur. OSI will complete a comprehensive agency-wide Investigations policy update, including review and development of relevant management directives, instructions and/or internal procedures. Until then, USCIS OSI will operate under existing policies or updated interim guidance. ECD: September 30, 2017.

OIG analysis: USCIS's response does not meet the full intent of this recommendation. As detailed in our report, we found instances where written policy was contradictory and differed from existing practices leaving agency employees uncertain about which policies to follow. Although we applaud the agency's effort to conduct a comprehensive review of all policies, we feel that the review should be conducted in a shorter time period. Alternatively, and in keeping with our recommendation, we encourage USCIS to establish a process for issuing interim policy changes, identify and update those policies that are most critical, and issue immediate interim guidance to its employees.

In an effort to work with USCIS to resolve this recommendation, we ask that USCIS provide us with a plan on how they intend to more expediently address the identified issues with contradictory policies and practices. This recommendation is open and unresolved pending further action by USCIS.

Recommendation 3: We recommend that the Division Chief ensure that all LEAP-eligible employees maintain at least the minimum number of LEAP hours required by 5 U.S.C. § 5545a or terminate the employees' entitlement to LEAP.

USCIS response: Concur. USCIS will review the concerns identified in the report regarding the employees receiving LEAP. This review will include ensuring that all LEAP-eligible employees are compliant with the requirements of 5 USC § 5545a, or determining whether it is appropriate to discontinue the LEAP program. ECD: September 30, 2016.

OIG analysis: Although USCIS's response generally meets the intent of this recommendation, we encourage the agency to take immediate steps to ensure that LEAP earning employees are averaging the minimum number of LEAP hours required. This recommendation is open and resolved. We will close this recommendation when USCIS provides us with the results of their LEAP review and policies that will ensure all LEAP-eligible employees maintain at least the minimum number of LEAP hours required by 5 USC § 5545a.

Recommendation 4: Require LEAP-eligible employees to certify on an annual basis that they have met and will continue to meet the minimum LEAP requirements.

USCIS response: Concur. Consistent with our response to recommendation 3, USCIS will review the concerns identified in the report regarding the employees receiving LEAP. This review will include ensuring that all LEAP-eligible employees are compliant with the requirements of 5 USC § 5545a or determining whether it is appropriate to discontinue the LEAP program. ECD: September 30, 2016.

OIG analysis: Although USCIS's response does not meet the full intent of this recommendation, documents provided on March 17, 2016, show that the

agency has taken steps to have certifications completed, as required. This recommendation is closed and resolved.

Recommendation 5: Certify on an annual basis that LEAP-eligible employees have met and will continue to meet the minimum LEAP requirements.

USCIS response: Concur. Consistent with our response to recommendation 3, USCIS will review the concerns identified in the report regarding the employees receiving LEAP. This review will include ensuring that all LEAP-eligible employees are compliant with the requirements of 5 U.S.C. § 5545a, or determining whether it is appropriate to discontinue the LEAP program. ECD: September 30, 2016.

OIG analysis: Although USCIS's response does not meet the full intent of this recommendation, documents provided on March 17, 2016, show that the agency has taken steps to ensure the Division Chief certifies LEAP-eligible employees have met and will continue to meet LEAP requirements. This recommendation is closed and resolved.

Recommendation 6: Conduct an analysis of case completion timelines to determine the proper expectations.

USCIS response: Concur. OSI will conduct a comprehensive business process analysis of its Investigatory practices that will include validation of an appropriate and reasonable timeframe for conducting an investigation. ECD: January 31, 2017.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides us with the comprehensive business process analysis of Investigatory practices.

Recommendation 7: Develop policies related to the use and approval of overtime. We also recommend that the Division Chief institute a process for tracking the use of overtime to ensure that it is used only when mission critical.

USCIS response: Concur. OSI will follow the overtime approval procedures established in Section V.B.3 of USCIS MD 253-004, *Pay Administration*, which does not require that overtime be mission critical. OSI has requested that this recommendation be considered resolved and closed.

OIG analysis: USCIS's response meets the intent of this recommendation. After our inspection, the agency updated its policy on the approval of overtime and does not require overtime work to be mission critical anymore. On March 11, 2016, the agency provided us documentation to show this change in policy. We

encourage USCIS to ensure employees comply with this new policy. This recommendation is closed and resolved.

Recommendation 8: Ensure that the Investigations Division maintains files (electronic or otherwise) for each employee containing, at a minimum, annual LEAP and training certifications, emergency contact information, yearly performance plans and ratings, inventory records for issued equipment, and basic employment information.

USCIS response: Concur. This information is already maintained by the agency. For instance, basic employment information and annual performance plans and ratings are kept by the OSI Management Branch; training certifications are kept and tracked by the USCIS Office of Human Capital and Training; inventory records for issued equipment are tracked by computer-based Sunflower system, which is managed by the USCIS Office of Administration; and emergency contact information and annual LEAP certifications are kept and managed by the first-line supervisors. USCIS requested this recommendation be considered resolved and closed. On March 30, 2016, the OIG agreed to consider this recommendation resolved and closed.

OIG analysis: USCIS's response meets the intent of this recommendation. As noted in USCIS's response, they provided documentation showing that the information sought was maintained by the agency. This recommendation is closed and resolved.

Recommendation 9: Ensure that INV staff completes all mandatory training.

USCIS response: Concur. LearningEDGE is the USCIS system for tracking and storing employee's training records. Each fiscal and calendar year, the OSI Training Coordinator generates an OSI Training Report from the system on the completion rates for each OSI employee (see the previously furnished files with FY13, FY14, and FY15 Mandatory Training Completion Reports). Based on these records and after accounting for retiring or departing personnel, personnel on extended leave, and new employees (who have different training completion deadlines), INV completion percentages for mandatory training required of all Federal employees were 95 percent for 2013 and 94 percent for 2014. In addition, the previously furnished files include INV completion rates for 2015; INV staff achieved 100 percent completion rates for all mandatory training for FY15 and FY16 required to date. USCIS has requested this recommendation be considered resolved and closed.

OIG analysis: USCIS's response meets the intent of this recommendation. Subsequent to us providing USCIS with the draft report, they presented the inspection team with previously unavailable records showing much higher completion rates than what is documented in this report. Although the reported rates are laudable, the agency needs to continue to monitor

compliance with training requirements. This recommendation is closed and resolved.

Recommendation 10: Ensure that INV agents are equipped with the necessary law enforcement equipment to perform their assigned roles.

USCIS response: Concur. OSI will analyze the needs of the INV field staff to identify the law enforcement equipment necessary for the performance of assigned duties. If it is determined that equipment is needed based on assigned duties, USCIS will pursue procurement of this equipment by FY17. ECD: September 30, 2016.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides the inspection team with the results of their analysis and information related to procurement of necessary equipment.

Recommendation 12: Develop policies and procedures specific to INV on seizure, safeguarding, and documenting evidence in cases investigated by INV.

USCIS response: Concur. As noted in Recommendation 2, USCIS will complete a comprehensive Investigations policy update, and it will include guidance on seizure, safeguarding, and documenting evidence. ECD: September 30, 2017.

OIG analysis: Although we applaud the agency's effort to conduct a comprehensive review of all policies, we feel that the planned action does not meet the full intent of this recommendation. Protecting the integrity of evidence is vital to the successful prosecution of suspected wrongdoers. If the integrity of evidence is in doubt, it may be excluded in legal or administrative proceedings. For this reason, we encourage USCIS to promptly develop and implement policies and procedures on seizing, safeguarding, and documenting evidence in cases investigated by INV. As an alternative, OSI should develop interim guidance to address seizing, safeguarding, and documenting evidence until the comprehensive policy update is complete. This recommendation is open and unresolved.

Recommendation 13: Work with IDCMS system administrators to improve the reporting functions within the system.

USCIS response: Concur. OSI will work with the USCIS Office of Information Technology leadership to prioritize improved reporting functions within IDCMS. ECD: June 30, 2017.

OIG analysis: USCIS's response does not meet the intent of this recommendation. The recommendation says to improve the reporting functions within the IDCMS system, not prioritize them. USCIS should explore

improvements to the IDCMS reporting functions during the comprehensive investigative policy update, scheduled for completion by September 30, 2017. This recommendation is open and unresolved.

Recommendation 14: Ensure that the appropriate staff completes all relevant fields in IDCMS.

USCIS response: Concur. INV will provide all staff with a memorandum on IDCMS data entry and conduct and document refresher training to ensure the appropriate staff completes the relevant and necessary fields in IDCMS. ECD: September 30, 2016.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides the noted IDCMS data entry memorandum and documentation showing that the refresher training was conducted.

Recommendation 15: Ensure that intake staff adhere to current policy and not enter duplicate complaints into IDCMS.

USCIS response: Concur. The memorandum discussed in Recommendation 14 will include any relevant guidance on duplicate complaints. ECD: September 30, 2016.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides the noted IDCMS data entry memorandum and documentation showing that the refresher training was conducted.

Recommendation 16: Ensure that investigators conduct all relevant interviews and address all aspects of an allegation.

USCIS response: Concur. As noted in the response to Recommendation 2, USCIS will complete a comprehensive USCIS Investigations policy update, including relevant management directive, instructions, and/or internal procedures. ECD: September 30, 2017.

OIG analysis: USCIS's plan to complete a comprehensive update to policy does not meet the intent of this recommendation. This recommendation, along with recommendation 17, speaks to the need for greater oversight of investigations by INV management, not necessarily to the review and updating of policy. At a minimum, this oversight can be accomplished through periodic reviews conducted on at least a quarterly basis. This recommendation is open and unresolved. We will close this recommendation when USCIS provides confirmation that they have a system in place to routinely monitor on-going

investigations to ensure that all relevant interviews are conducted and that all aspects of an allegation are addressed during an investigation.

Recommendation 17: Ensure that investigators obtain sworn statements from employee subjects and witnesses in compliance with the *Investigations Division Operational Guidance*.

USCIS response: Concur. As noted in the response to Recommendation 2, USCIS will complete a comprehensive agency-wide Investigations policy update, which will include guidance on sworn statements. ECD: September 30, 2017.

OIG analysis: USCIS's plan to complete a comprehensive update to policy does not meet the intent of this recommendation. This recommendation, along with recommendation 16, speaks to the need for greater oversight of investigations by INV management, not necessarily to the review and updating of policy. At a minimum, this oversight can be accomplished through periodic reviews conducted on at least a quarterly basis. This recommendation is open and unresolved. We will close this recommendation when USCIS provides confirmation that they have a system in place to routinely monitor ongoing investigations to ensure that investigators obtain sworn statements from employee subjects and witnesses in compliance with the *Investigations Division Operational Guidance*.

Recommendation 18: Conduct an analysis of the investigative process and implement changes that will reduce the length of time it takes to conduct an investigation.

USCIS response: Concur. As noted in the response to Recommendation 6, USCIS will conduct a comprehensive business process analysis of its Investigatory practices and will implement any changes that can reduce the length of time it takes to conduct an investigation. ECD: January 31, 2017.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides the noted comprehensive business process analysis of investigatory practices.

Recommendation 19: Implement policy to ensure supervisors review ongoing investigations on at least a quarterly basis to ensure investigations progress in a timely manner.

USCIS response: Concur. As noted in the responses to Recommendations 2 and 6, OSI will conduct a business process analysis to validate an appropriate and reasonable timeframe for conducting an investigation and incorporate the appropriate results in a comprehensive agency-wide Investigations policy update, including relevant management directives, instructions, and/or

internal procedures. These policies will include that supervisors review ongoing investigations on at least a quarterly basis. ECD: September 30, 2017.

OIG analysis: USCIS's response indicates that it has already concluded that it will adopt a policy that will require supervisors to review ongoing investigations on at least a quarterly basis. As such, the policy can be implemented without waiting for the results of a comprehensive policy update. This recommendation is open and unresolved. We will close this recommendation when USCIS provides documentation that they have implemented a policy to conduct periodic reviews of ongoing investigations.

Recommendation 20: Ensure that Required Appearance Memorandums are provided to employee interviewees at least 48 hours prior to an interview.

USCIS response: Concur. USCIS has normally provided the notice at least 48 hours in advance. USCIS procedures, however, had the interviewee sign and date the notice at the interview. USCIS has updated its Required Appearance Memorandum to capture both the date the interviewee received the notification and the date of the interview. USCIS procedures have been updated to reflect current practices regarding exceptions to the 48-hour notice to appear, such as balancing travel schedule and budget considerations with advance notification. USCIS provided the documentation in previously furnished files. USCIS has requested that this recommendation be considered resolved and closed.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is closed and resolved.

Recommendation 21: Implement procedures to evaluate the prosecutorial merit of each allegation effectively.

USCIS response: Concur. As noted in Recommendation 6, USCIS will conduct a comprehensive business process analysis of its investigatory practices and include procedures to evaluate prosecutorial merit of each allegation effectively. ECD: January 31, 2017.

OIG analysis: USCIS's response does not meet the intent of this recommendation. Evaluating the prosecutorial merit of each allegation is a critical part of the investigative process. Interim guidance should be immediately implemented until the Investigatory analysis is complete. This recommendation is open and unresolved.

Recommendation 22: Mandate the use of Garrity warnings as the default rights advisement for interviews of subject employees and update policy accordingly. We also recommend that the Division Chief provide training to employees on the differences and proper use of rights advisements.

USCIS response: Non-Concur. As noted in Recommendation 21, USCIS will implement procedures to evaluate the prosecutorial merit of each allegation effectively, and, as noted in Recommendation 2, USCIS will complete a comprehensive agency-wide Investigations policy update, including review and development of relevant management directives, instructions, and/or internal procedures. This review process will include developing guidance on the use of the appropriate warnings based on an evaluation of the prosecutorial merit of each allegation. In connection with developing such guidance, we will evaluate whether the default use of Garrity warnings is appropriate. In the meantime, OSI will provide a Garrity warning whenever criminal prosecution is reasonably foreseeable. In addition, training on the use of the appropriate rights warning will be provided once the guidance is issued. ECD: September 30, 2017.

OIG analysis: While USCIS did not concur with this recommendation, we believe their reasoning shows an understanding of the core issue of this recommendation, that an evaluation of a subject's exposure to criminal liability needs to take place prior to conducting an interview. It continues to be our position that in the absence of such an evaluation, Garrity warnings need to be given to subject employees prior to interviews. This recommendation will remain open and unresolved until USCIS adopts a policy accordingly and provides us with a copy.

Recommendation 23: Update policy on recording of interviews to reflect the current practice of recording all interviews.

USCIS response: Concur. As noted in Recommendation 2, USCIS will complete a comprehensive agency-wide Investigations policy update, including relevant management directives, instructions, and/or internal procedures, and this will include issues regarding recording of interviews. ECD: September 30, 2017.

OIG analysis: USCIS's response does not meet the intent of this recommendation. USCIS should memorialize the current practice of recording interviews into a formal policy. A comprehensive policy update is not necessary to address this recommendation. This recommendation is open and unresolved.

Recommendation 24: Consider only requiring transcription for the most critical interviews and update INV policy to reflect these changes.

USCIS response: Concur. USCIS will consider and analyze which category of interviews to transcribe as part of our comprehensive policy; however, at the present time, USCIS feels the investment associated with full transcription is acceptable for the sake of having a full record of all interviews conducted. ECD: September 30, 2016.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides the noted comprehensive policy update, including an analysis of the interview transcription policy.

Recommendation 25: Evaluate whether the time parameters mandated for the completion of Memorandums of Activity (MOA) and Reports of Investigation are practical and make appropriate adjustments to policy. We further recommend that the Division Chief ensure compliance with policy concerning timely reporting requirements.

USCIS response: Concur. USCIS has updated its procedures regarding the completion times of MOAs, and, as noted in Recommendation 6, USCIS will conduct a comprehensive business process analysis of its Investigatory practices and validate an appropriate and reasonable timeframe for completing a Report of Investigation. USCIS INV will continue its practice of comprehensive quality review of all Reports of Investigation including the timeliness of all activities conducted during the course of the investigation. ECD: January 31, 2017.

OIG analysis: USCIS's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when USCIS provides us the updated MOA procedures and the noted business process analysis of investigatory practices, to include any changes involving the timeliness of completing Reports of Investigation.

Appendix A: Methodology

The OIG Office of Integrity and Quality Oversight, Investigations Quality Assurance Division, in keeping with the oversight responsibilities mandated by the *Inspector General Act of 1978*, as amended, examined USCIS INV operations to assess overall compliance with relevant DHS and USCIS policies. The OIG last reviewed USCIS INV in May 2010 and published a report of its findings in August 2010. We conducted our most recent review from May through September 2015, and the onsite portion of our review took place in June 2015. The review covered activity from October 1, 2012, to April 1, 2015 (fiscal year 2012 through the second quarter of fiscal year 2015).

Prior to the site visit, the inspection team sent a pre-inspection survey to the Division Chief asking for background information and any additional information that he wanted to share with the inspection team. The pre-inspection survey is designed to help the inspection team understand the types of investigations initiated, how INV handles classified information, the complexity of operations, and collateral duty assignments. The survey also allowed the Division Chief to identify any known deficiencies with the office and request a review of particular areas.

Additionally, prior to the site visit, we asked for and obtained policies governing INV operations, an explanation of the complaint intake process, the number of employees assigned, and operational statistics.

The Division Chief provided an analysis of information, which revealed that from October 1, 2011, to April 1, 2015, INV received 2,971 unique allegations. INV retained 1,554 of the allegations received for investigation or inquiry. INV further referred 1,417 allegations to other entities. During the period, INV closed 364 investigations. We selected a judgmental sample of 76 cases for review, representing roughly 21 percent of the total investigations closed during the period. The sample was comprised of a stratified sample by classification in equal proportion to the allegations investigated by INV. We reviewed approximately 33 percent (25) Class I allegations, 37 percent (28) Class II allegations, and 30 percent (23) Class III allegations.[16] We did not review any Class IV allegations.

During our site visit, we reviewed several administrative areas using checklists based on *DHS Management Directive 0810.1*, INV and USCIS policies, and CIGIE standards. The full list of areas reviewed is in appendix C.

[16] USCIS categorizes allegations into four categories. Class I allegations have a potential for criminal misconduct. Class II allegations involve serious non-criminal misconduct. Class III allegations involve conduct that is non-criminal in nature, but sufficiently serious to warrant a formal review. Class IV allegations involve conduct that is less serious in nature and more conducive to intervention by agency management. Our sample reflected how many cases of each class comprise the universe of cases.

The Division Chief informed us that INV had no undercover activities and did not use confidential informants or confidential funds during the covered period. Therefore, we did not look at those areas during the review.

In an effort to assess morale, we sent an electronic survey to all 43 OSI INV employees. We used the OMB MAX survey capability in order to make all survey responses anonymous. The survey included 17 questions with answer options ranging from strongly disagree to strongly agree and one free-form comment box at the end for employees to elaborate on any issues. Twenty-four employees responded to the survey, and 19 employees had incomplete surveys (they did not save answers). Of the 24 employees who responded, two employees only answered some questions, so respondent totals vary in the analysis. Eighteen of the respondents included free-form comments. Due to the number of employees, as well as their geographic locations, we were unable to contact each employee individually with a phone call or in-person interview. We offered the option for employees to contact us. Two employees submitted comments via email, and we conducted phone interviews with four other employees. We did not independently verify the information reported to us.

After the site visit, we discussed our findings with the Division Chief and allowed him the opportunity to comment. We also provided a final copy of the report to USCIS and incorporated final comments in appendix B.

Appendix B: USCIS Response

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director MS-2000
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

April 19, 2016

MEMORANDUM FOR: John Roth
Inspector General

FROM: León Rodríguez
Director
U.S. Citizenship and Immigration Services

SUBJECT: **U.S. Citizenship and Immigration Services' Response to the Draft Report "Oversight Review of the United States Citizenship and Immigration Services, Investigations Division"**

Thank you for the opportunity to comment on this draft report. U.S. Citizenship and Immigration Services (USCIS) appreciates the Office of Inspector General's (OIG) professionalism and willingness to work with USCIS throughout the review.

USCIS is pleased to note OIG's positive recognition that USCIS investigations are generally conducted in a thorough, efficient, and objective manner. Furthermore, USCIS appreciates your commendation of our agents for their excellent work in documenting the results of investigations. The Investigations Division has focused on both of these areas since its last OIG review to improve the quality of its investigations and reports by implementing best practices, strategically utilizing technology, and ensuring investigators receive adequate and ongoing training in investigative practices and techniques. USCIS is seeing the benefits of these efforts in the positive responses from leadership and OSI customers, which are echoed in your report.

The draft report contained 25 recommendations, 24 with which USCIS concurs and with which USCIS 1 non-concurs. Specifically, OIG recommended:

That the Director of USCIS:

Recommendation 1: Consider removing the Investigations Division from the Management Directorate and assigning the division to the Deputy Director level or above.

Response: Concur. The Director is committed to ensuring appropriate independence and fairness in fulfilling his obligations to investigate misconduct. The Director will consider various options to address the concerns identified in this report. Estimated Completion Date (ECD): September 30, 2016.

Recommendation 11: Examine the issue of how shared vehicles are being utilized, consider assigning dedicated vehicles to INV, and formalize the management of shared vehicles to ensure proper handling and availability.

Response: Concur. While the majority of vehicular use by INV is by rental cars while on official travel, USCIS will examine the current shared vehicle protocols and formalize a plan to ensure proper handling and availability of vehicles to INV. ECD: September 30, 2016.

That the INV Division Chief:

Recommendation 2: Update current policy manuals to reflect current practices. We also recommend that the Division Chief implement a process for issuing interim policy changes that ensures that policy changes are communicated to all employees, accessible for reference, and implemented.

Response: Concur. OSI will complete a comprehensive agency-wide Investigations policy update, including review and development of relevant management directives, instructions and/or internal procedures. Until then, USCIS OSI will operate under existing policies or updated interim guidance. ECD: September 30, 2017.

Recommendation 3: Ensure that all LEAP-eligible employees maintain at least the minimum number of LEAP hours required by 5 USC § 5545a or terminate the employees' entitlement to LEAP.

Response: Concur. USCIS will review the concerns identified in the report regarding the employees receiving LEAP. This review will include ensuring that all LEAP-eligible employees are compliant with the requirements of 5 USC § 5545a, or determining whether it is appropriate to discontinue the LEAP program. ECD: September 30, 2016.

Recommendation 4: Require LEAP-eligible employees to certify on an annual basis that they have met and will continue to meet the minimum LEAP requirements.

Response: Concur. Consistent with our response to recommendation 3, USCIS will review the concerns identified in the report regarding the employees receiving LEAP. This review will include ensuring that all LEAP-eligible employees are compliant with the requirements of 5 USC § 5545a, or determining whether it is appropriate to discontinue the LEAP program. ECD: September 30, 2016.

Recommendation 5: Certify on an annual basis that his LEAP-eligible employees have met and will continue to meet the minimum LEAP requirements.

Response: Concur. Consistent with our response to recommendation 3, USCIS will review the concerns identified in the report regarding the employees receiving LEAP. This review will include ensuring that all LEAP-eligible employees are compliant with the requirements of 5 U.S.C. § 5545a, or determining whether it is appropriate to discontinue the LEAP program. ECD: September 30, 2016.

Recommendation 6: Conduct an analysis of case completion timelines to determine the proper expectations.

Response: Concur. OSI will conduct a comprehensive business process analysis of its Investigatory practices that will include validation of an appropriate and reasonable timeframe for conducting an investigation. ECD: January 31, 2017.

Recommendation 7: Develop policies related to the use and approval of overtime. We also recommend that the Division Chief institute a process for tracking the use of overtime to ensure that it is used only when mission critical.

Response: Concur. OSI will follow the overtime approval procedures established in Section V.B.3 of USCIS MD 253-004, Pay Administration, which does not require that overtime be mission critical. OSI has requested that this recommendation be considered resolved and closed.

Recommendation 8: Ensure that the Investigations Division maintains files (electronic or otherwise) for each employee containing, at a minimum, annual LEAP and training certifications, emergency contact information, yearly performance plans and ratings, inventory records for issued equipment, and basic employment information.

Response: Concur. This information is already maintained by the agency. For instance, basic employment information and annual performance plans and ratings are kept by the OSI Management Branch; training certifications are kept and tracked by the USCIS Office of Human Capital and Training; inventory records for issued equipment are tracked by computer-based Sunflower system, which is managed by the USCIS Office of Administration; and emergency contact information and annual LEAP certifications are kept and managed by the

first-line supervisors. USCIS requested this recommendation be considered resolved and closed. On March 30, 2016, the OIG agreed to consider this recommendation resolved and closed.

Recommendation 9: Ensure that INV staff completes all mandatory training.

Response: Concur. LearningEDGE is the USCIS system for tracking and storing employee's training records. Each fiscal and calendar year, the OSI Training Coordinator generates an OSI Training Report from the system on the completion rates for each OSI employee (see the previously furnished files with FY13, FY14, and FY15 Mandatory Training Completion Reports). Based on these records and after accounting for retiring or departing personnel, personnel on extended leave, and new employees (who have different training completion deadlines), INV completion percentages for mandatory training required of all Federal employees were 95 percent for 2013 and 94 percent for 2014. In addition, the previously furnished files include INV completion rates for 2015; INV staff achieved 100 percent completion rates for all mandatory training for FY15 and FY16 required to date. USCIS has requested this recommendation be considered resolved and closed.

Recommendation 10: Ensure that INV agents are equipped with the necessary law enforcement equipment to perform their assigned roles.

Response: Concur. OSI will analyze the needs of the INV field staff to identify the law enforcement equipment necessary for the performance of assigned duties. If it is determined that equipment is needed based on assigned duties, USCIS will pursue procurement of this equipment by FY17. ECD: September 30, 2016.

Recommendation 12: Develop policies and procedures specific to INV on seizure, safeguarding, and documenting evidence in cases investigated by INV.

Response: Concur. As noted in Recommendation 2, USCIS will complete a comprehensive Investigations policy update, and it will include guidance on seizure, safeguarding, and documenting evidence. ECD: September 30, 2017.

Recommendation 13: Work with IDCMS system administrators to improve the reporting functions within the system.

Response: Concur. OSI will work with the USCIS Office of Information and Technology leadership to prioritize improved reporting functions within IDCMS. ECD: June 30, 2017.

Recommendation 14: Ensure that the appropriate staff completes all relevant and necessary fields in IDCMS.

Response: Concur. INV will provide all staff with a memorandum on IDCMS data entry and conduct and document refresher training to ensure the appropriate staff completes the relevant and necessary fields in IDCMS. ECD: September 30, 2016.

Recommendation 15: Ensure that intake staff adhere to current policy and not enter duplicate complaints into IDCMS.

Response: Concur. The memorandum discussed in Recommendation 14 will include any relevant guidance on duplicate complaints. ECD: September 30, 2016.

Recommendation 16: Ensure that investigators conduct all relevant interviews and address all aspects of an allegation.

Response: Concur. As noted in the response to Recommendation 2, USCIS will complete a comprehensive USCIS Investigations policy update, including relevant management directive, instructions, and/or internal procedures. ECD: September 30, 2017.

Recommendation 17: Ensure that investigators obtain sworn statements from employee subjects and witnesses in compliance with the *Investigations Division Operational Guidance*.

Response: Concur. As noted in the response to Recommendation 2, USCIS will complete a comprehensive agency-wide Investigations policy update, which will include guidance on sworn statements. ECD: September 30, 2017.

Recommendation 18: Conduct an analysis of the investigative process and implement changes that will reduce the length of time it takes to conduct an investigation.

Response: Concur. As noted in the response to Recommendation 6, USCIS will conduct a comprehensive business process analysis of its Investigatory practices and will implement any changes that can reduce the length of time it takes to conduct an investigation.
ECD: January 31, 2017.

Recommendation 19: Implement policy to ensure supervisors review on-going investigations on at least a quarterly basis to ensure investigations progress in a timely manner.

Response: Concur. As noted in the responses to Recommendations 2 and 6, OSI will conduct a business process analysis to validate an appropriate and reasonable timeframe for conducting an investigation and incorporate the appropriate results in a comprehensive agency-wide Investigations policy update, including relevant management directives, instructions, and/or internal procedures. These policies will include that supervisors review on-going investigations on at least a quarterly basis. ECD: September 30, 2017.

Recommendation 20: Ensure that Required Appearance Memorandums are provided to employee interviewees at least 48 hours prior to an interview.

Response: Concur. USCIS has normally provided the notice at least 48 hours in advance. USCIS procedures, however, had the interviewee sign and date the notice at the interview. USCIS has updated its Required Appearance Memorandum to capture both the date the interviewee received the notification and the date of the interview. USCIS procedures have been updated to reflect current practices regarding exceptions to the 48-hour notice to appear, such as balancing travel schedule and budget considerations with advance notification. USCIS provided the documentation in previously furnished files. USCIS has requested that this recommendation be considered resolved and closed.

Recommendation 21: Implement procedures to evaluate the prosecutorial merit of each allegation effectively.

Response: Concur. As noted in Recommendation 6, USCIS will conduct a comprehensive business process analysis of its Investigatory practices and include procedures to evaluate prosecutorial merit of each allegation effectively. ECD: January 31, 2017.

Recommendation 22: Mandate the use of Garrity warnings as the default rights advisement for interviews of subject employees and update policy accordingly. We also recommend that the Division Chief provide training to employees on the differences and proper use of rights advisements.

Response: Non-Concur. As noted in Recommendation 21, USCIS will implement procedures to evaluate the prosecutorial merit of each allegation effectively, and, as noted in Recommendation 2, USCIS will complete a comprehensive agency-wide Investigations policy update, including review and development of relevant management directives, instructions, and/or internal procedures. This review process will include developing guidance on the use of appropriate warnings based on an evaluation of the prosecutorial merit of each allegation. In connection with developing such guidance, we will evaluate whether the default use of Garrity warnings is appropriate. In the meantime, OSI will provide a Garrity warning whenever criminal prosecution is reasonably foreseeable. In addition, training on the use of the appropriate rights warning will be provided once the guidance is issued.
ECD: September 30, 2017.

Recommendation 23: Update policy on recording of interviews to reflect the current practice of recording all interviews.

Response: Concur. As noted in Recommendation 2, USCIS will complete a comprehensive agency-wide Investigations policy update, including relevant management directives,

instructions, and/or internal procedures, and this will include issues regarding recording of interviews. ECD: September 30, 2017.

Recommendation 24: Consider only requiring transcription for the most critical interviews and update INV policy to reflect these changes.

Response: Concur. USCIS will consider and analyze which category of interviews to transcribe as part of our comprehensive policy; however, at the present time, USCIS feels the investment associated with full transcription is acceptable for the sake of having a full record of all interviews conducted. ECD: September 30, 2016.

Recommendation 25: Evaluate whether the time parameters mandated for the completion of Memorandums of Activity and Reports of Investigation are practical and make appropriate adjustments to policy. We further recommend that the Division Chief ensure compliance with policy concerning timely reporting requirements.

Response: Concur. USCIS has updated its procedures regarding the completion times of MOAs, and, as noted in Recommendation 6, USCIS will conduct a comprehensive business process analysis of its Investigatory practices and validate an appropriate and reasonable timeframe for completing a Report of Investigation. USCIS INV will continue its practice of comprehensive quality review of all Reports of Investigation including the timeliness of all activities conducted during the course of the investigation. ECD: January 31, 2017.

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

Appendix C: Checklists and Questionnaires

- Case File Review Checklist
- Employee Management Checklist
- Evidence Review Checklist
- Field Office Operations Survey
- Firearms/Ammunition Checklist
- Property Inventory Checklist

Appendix D: Major Contributors to This Report

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