

United States Senate

WASHINGTON, DC 20510

September 23, 2024

VIA ELECTRONIC TRANSMISSION

Mr. Rob Shriver
Acting Director
Office of Personnel Management

Dear Acting Director Shriver:

On January 30, 2024, we wrote to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Justice Department's Justice Management Division (JMD) about the changes they made that led to the Office of Personnel Management's (OPM) restoration of ATF's classification authority.¹ We also asked whether the Justice Department held those involved in the illegal misclassification scheme, which wasted millions of taxpayer dollars, accountable.² The Justice Department has failed to provide the information and the responsive records we requested. Our offices have obtained new records from legally protected whistleblower disclosures which raise additional questions and concerns about OPM's restoration of ATF's classification authority and the thoroughness of OPM's review of ATF's illegal misclassification scheme.³ Accordingly, we write to you about OPM's November 6, 2023, letter restoring ATF's 1800 series —i.e. law enforcement classification authority and the changes the Justice Department made that lead to OPM restoring this authority.⁴

From those protected disclosures, our offices have obtained a copy of the April 2023 National Academy of Public Administration (NAPA) report titled, *Classifying GS-1811 Criminal Investigators at the Department of Justice*, which analyzed the Justice Department's use of its law enforcement position classification authority at ATF, as well as other DOJ component agencies.⁵ According to the NAPA report, JMD requested that NAPA conduct this independent evaluation in which NAPA examined the Justice Department's classification practices "to analyze the root causes that contributed to the misclassification of positions at ATF, and to recommend revisions to ensure compliance with relevant rules and regulations."⁶ The NAPA study was conducted from March 2022 to January 2023 and included discussions of OPM's final ATF Human Capital Management Evaluation (HCME) audit report

¹ Letter from Senators Grassley and Ernst to Steven Dettelbach, Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives and Jolene A. Lauria, Acting Assistant Attorney General for Administration Justice Management Division, (Jan. 30, 2024) <https://www.grassley.senate.gov/news/news-releases/grassley-ernst-demand-corrective-action-for-atfs-illegal-scheme-to-misclassify-law-enforcement-and-fleece-taxpayers>.

² *Id.*

³ National Academy of Public Administration, *Classifying GS-1811 Criminal Investigators at the Department of Justice*, NAPA (Apr. 2023) https://www.grassley.senate.gov/imo/media/doc/april_2023_national_academy_of_public_administration_classifying_gs_1811_criminal_investigators_at_the_department_of_justicepdf.pdf (According to legally protected whistleblower disclosures, it's been represented to our offices that this is the final version of the report).

⁴ Letter from Mark Lambert to Jolene A. Lauria (Nov. 6, 2023)

https://www.grassley.senate.gov/imo/media/doc/grassley_and_ernst_to_atf_and_jmd_-_misclassified_positions.pdf.

⁵ NAPA Report *supra* note 3.

⁶ *Id.* at 1.

and OPM's role in overseeing federal agency position classifications.⁷ OPM has not made the final HCME audit report public which would inform the American people about the extent of ATF's illegal misclassification scheme and how it wasted millions of their taxpayer dollars.⁸

The NAPA report states that “[o]versight is one of the core functions of OPM” which carries out this responsibility by performing “reviews of agencies’ human capital management programs.”⁹ However, “OPM has not regularly audited federal agencies’ classification practices.”¹⁰ The NAPA study found that while OPM had ongoing discussions with agencies to better understand the challenges in applying classification standards, “OPM has not had any formal discussions in recent years with law enforcement agencies on the potential opportunities to update 1811 series classification standards.”¹¹

In quoting directly from the OPM final HCME audit, the NAPA report says that ATF leadership “has acted outside of merit system principles and demonstrates disregard for the rule of law and regulations that implement Federal human capital management policies and practices” in regards to the illegal misclassification scheme.¹² In conducting their review, NAPA found that Justice Department component agencies “are required to review position classification and recertify their position descriptions every five years” and “ATF’s five-year position classification review has been put on hold for many years.”¹³ According to the NAPA report, the OPM HCME audit highlighted that “some ATF HR staff raised their concerns about the 1811 series classification to the ATF leadership, but leaders rejected their concerns” and “ignored warnings by ATF HR officials.”¹⁴ The NAPA report notes while ATF HR classification staff are expected to maintain integrity in the classification process, it was “very difficult for HR staff to resist pressures from the agency’s leadership.”¹⁵ The OPM HCME audit also found that ATF classification “practices are carried out in fear of retaliation for disagreeing with managers.”¹⁶

While the authority to classify positions is generally delegated to Justice Department component agencies, JMD has the authority to determine whether employees are eligible to receive enhanced law enforcement retirement benefits.¹⁷ The NAPA report highlighted that per JMD’s policy guide, component agencies submit law enforcement benefit requests with the employee’s position description, functional statement, and other official duty information to the JMD Human Resources Policy and Advisory Services (HRPAS) for review.¹⁸ JMD is then supposed to assess whether the position is

⁷ *Id.* at 7.

⁸ See Letter from Senator Grassley to Office of Personnel Management Director Kiran Ahuja, (Oct. 6, 2021)

https://www.grassley.senate.gov/imo/media/doc/grassley_to_opm_-_leap.pdf.

⁹ NAPA Report *supra* note 3 at 11.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 20.

¹² *Id.* at 12 (quoting U.S. Office of Personnel Management, *Human Capital Management Evaluation: U.S. Department of Justice: Bureau of Alcohol Tobacco and Firearms*, i, August-September 2020); see Letter from Senator Grassley to Office of Personnel Management Director Kiran Ahuja, (Oct. 6, 2021)

https://www.grassley.senate.gov/imo/media/doc/grassley_to_opm_-_leap.pdf.

¹³ NAPA Report *supra* note 3 at 31.

¹⁴ *Id.* at 26, 12.

¹⁵ *Id.* at 26.

¹⁶ *Id.* at 26 (quoting U.S. Office of Personnel Management, *Human Capital Management Evaluation* at 2).

¹⁷ *Id.* at 32.

¹⁸ *Id.* at 32 (referencing U.S. Department of Justice, *Law Enforcement Officer (LEO) Retirement Coverage Fact Sheet*).

correctly or incorrectly classified to determine whether the employee is entitled to receive enhanced law enforcement benefits.¹⁹ Thus, JMD was supposed to serve as a “check and balance system to help ensure positions are properly classified.”²⁰ However, the NAPA study found that JMD failed in this responsibility and gave rubber stamp approvals to almost all of the requests it received within the period reviewed by NAPA.²¹ For example, NAPA learned that ATF only received one law enforcement classification rejection from JMD in the past eight years even though OPM’s HCME audit identified 91 misclassified ATF positions.²² Further, other Justice Department components interviewed by NAPA said they never received any formal rejections from JMD for any of their requests.²³

According to the NAPA report, there were significant problems within ATF and the Justice Department in resolving the issues identified by the OPM HCME audit, and “[i]n February 2022, OPM issued a letter to the DOJ CHCO [Chief Human Capital Officer] expressing concerns over ATF's progress in addressing misclassified positions.”²⁴ The NAPA report found:

ATF officials repeatedly raised a concern about the lack of transparency in HR management. For example, several interviewees noted that they had been involved in addressing OPM findings and updating position descriptions but had not received access to the OPM audit report, nor were they engaged in developing ATF’s corrective action plan. It is not clear how decisions are made, and HR has not provided status updates or expected timelines.²⁵

The NAPA study further found during the first few months after OPM released its final HCME audit, JMD, which served as ATF’s communication liaison with OPM, regularly held meetings with ATF HR to discuss and review the progress of the response to OPM’s findings.²⁶ However, NAPA found that as discussions progressed, “JMD's strategy to resolve disagreements, clarify expectations, and move forward on addressing OPM findings has not been clearly and consistently communicated to ATF. Component senior leaders expressed frustration with the lack of action on the part of JMD.”²⁷

Based on the findings of the NAPA report, JMD officials had the oversight responsibility to prevent and detect ATF’s illegal misclassification scheme.²⁸ Yet, NAPA uncovered that “[t]he lack of effective oversight contributed to the improper 1811 series classification practices at ATF.”²⁹ It also identified several issues that the ATF, the Justice Department, and JMD leadership needed to resolve in order to fully address the root causes that allowed ATF’s illegal misclassification scheme to persist for years that wasted millions of taxpayer dollars.³⁰ Given these unresolved issues identified in the NAPA

¹⁹ *Id.* at 32 (referencing U.S. Department of Justice, *Law Enforcement Officer (LEO) Retirement Coverage Fact Sheet*).

²⁰ *Id.* at 32.

²¹ *Id.* at 32-33.

²² *Id.* at 32-33, 1.

²³ *Id.* at 32-33.

²⁴ *Id.* at 12.

²⁵ *Id.* at 26-27.

²⁶ *Id.* at 30.

²⁷ *Id.* at 30.

²⁸ *Id.* at 32-33.

²⁹ *Id.* at 31.

³⁰ *Id.* at 31.

report, you must fully explain, in detail, the actions taken by ATF, the Justice Department, and JMD to come into full compliance with the law, as well as the oversight mechanisms put in place to prevent millions of taxpayer dollars from being subjected to further “substantial waste” due to the ATF’s illegal misconduct.³¹ Further, the Justice Department must provide answers to the taxpayers about how those who were involved in or allowed ATF’s illegal misclassification scheme to continue have been held accountable. The American public deserves transparency from the OPM.

So that we may conduct independent oversight concerning OPM’s audit of the ATF’s illegal misclassification scheme and the restoration of ATF’s position classification authority, please provide answers to the following questions no later than October 7, 2024.

1. Provide the OPM final audit report *Human Capital Management Evaluation: U.S. Department of Justice: Bureau of Alcohol Tobacco and Firearms* fully unredacted.
2. Explain, in detail, the corrective actions ATF, the Justice Department, and JMD took that led OPM to restore their position classification authority. Provide records.³²
3. From 2021 to present, provide the name and position of the official(s) within JMD HRPAS that approved the fraudulent position classifications for employees in positions ATF illegally misclassified.
4. What corrective action has ATF, the Justice Department, and JMD taken to hold those employees who misclassified these positions or failed to correct the misclassification of these positions accountable? Provide records of the corrective action taken.
5. From 2021 to present, provide all records between and among OPM, ATF, the Justice Department, and JMD related to Justice Department misclassified law enforcement positions, including the aforementioned February 2022 letter OPM issued to the DOJ CHCO.
6. Does OPM plan to ensure that ATF will review the responsibilities of employees assigned to misclassified position descriptions across all of its Field Offices and Divisions to ensure the employees have been properly assigned law enforcement duties? If not, why not? If yes, provide records evidencing the review. For each individual in a law enforcement position that is not performing law enforcement duties provide:
 - a. The Field Office, Division, position title, organization, series, grade, and position description number.
 - b. The total number of ATF employees employed in misclassified positions performing non-law enforcement duties.

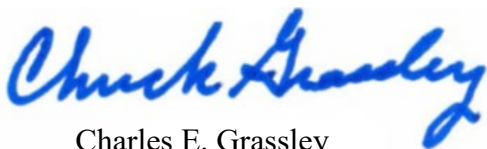
³¹ Office of Special Counsel, *ATF Unlawfully Paid Agents Millions of Dollars in Wrongful Benefits*, (May 5, 2023) <https://osc.gov/News/Pages/22-07-ATF-Wrongful-Benefits.aspx>.

³² “Records” include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, recordings or memorialization of phone calls, voicemails, or recordings/records of verbal communications, and any drafts of official documents (whether or not they resulted in final documents).

- c. The total cost to taxpayers for each individual employed in a misclassified position, as well as the amount of excess pay each individual received as a result of the misclassification.
7. Explain, in detail, why ATF's five-year position classification review was been put on hold for many years. Does ATF intend to regularly conduct these reviews in the future? If yes, provide records. If not, why not?
8. Provide all OPM guidance, policies, and similar documents provided to federal agencies related to the classification of 1800 series law enforcement positions.

Thank you for your prompt review and response. If you have any questions, please contact Brian Randolph of Senator Grassley's Committee staff and Aaron Gottesman of Senator Ernst's staff.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget



Joni K. Ernst
United States Senator