

A Report by a Panel of the
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
for the Department of Justice

Classifying GS-1811 Criminal Investigators at the Department of Justice



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April 2023

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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April 2023
Printed in the United States of America
Academy Project Number: 102272

Cover Photo Source: U.S. Department of Justice [@thejusticedept]. Photo of Department of Justice. *Instagram*, 1 July 2015, <https://www.instagram.com/p/4mP5DDjNbg/>.

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Acronyms and Abbreviations

Acronym or Abbreviation	Definition
Academy	National Academy of Public Administration
ATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
AUO	Administratively Uncontrollable Overtime
BOP	Bureau of Prisons
BPAPRA	Border Patrol Agent Pay Reform Act
CFR	Code of Federal Regulations
CHCO	Chief Human Capital Officer
CPMB	Classification and Position Management Branch
CSRS	Civil Service Retirement System
CTMS	Cybersecurity Talent Management System
DAG	Deputy Attorney General
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FERS	Federal Employees Retirement System
FEVS	Federal Employee Viewpoint Survey
FIRREA	Financial Institutions Reform, Recovery and Enforcement Act
FLETC	Federal Law Enforcement Training Center

HCMA	Human Capital Management and Accountability
HR	Human Resources
HRPAS	Human Resources Policy and Advisory Services
HRPD	Office of Human Resources and Professional Development
JMD	Justice Management Division
LEA	Law Enforcement Agency
LEAP	Law Enforcement Availability Pay
LEO	Law Enforcement Officer
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
OSC	Office of Special Counsel
SABT	Special Agent Basic Training
VA	Department of Veterans Affairs

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Executive Summary

Established by statute in 1870, the Department of Justice (DOJ) has a broad range of responsibilities to “protect three bedrock foundations of the nation’s democracy: the rule of law, public safety, and equality and justice for all.”¹ To carry out its mission, DOJ employs a large law enforcement workforce and is the primary employer of criminal investigators (the GS-1811 job series) within the federal government.

Criminal investigators are entitled to receive premium pay and enhanced retirement benefits when the requirements for each are met. Congress established enhanced retirement benefits to allow law enforcement officers (LEOs) to retire at an early age due to the vigorous physical demand of law enforcement duties. In addition, LEOs who are not in the Senior Executive Service can receive Law Enforcement Availability Pay (LEAP) designed to compensate for their significant amount of “unscheduled duty.” Law enforcement agencies use enhanced pay and benefits to attract and retain a workforce that performs rigorous duties with long hours.

The 1811 classification and associated benefits have been at the center of discussion in recent years. In 2020, the Office of Personnel Management (OPM) evaluated the position classification practices of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), a law enforcement component agency in the DOJ. In its report, OPM identified 91 positions within ATF’s headquarters as misclassified in the GS-1800 series. The incumbents in those positions received LEAP and enhanced retirement benefits but performed primarily non-criminal-investigative duties. As a result of the audit findings, OPM temporarily suspended ATF’s GS-1800 classification authority. To address OPM’s findings, ATF and DOJ have implemented several initiatives, including reassigning employees and reclassifying positions, revising career plans, and updating position descriptions to reflect job duties correctly. Through an iterative process with OPM auditors, as of April 2023, 20 of the 91 misclassified positions identified by OPM remain unresolved.

DOJ’s Justice Management Division (JMD) engaged the National Academy of Public Administration (the Academy) to conduct an independent study of the use of classification authority for the GS-1811 series positions at ATF and other DOJ component agencies. The Academy formed an expert Panel and Study Team to examine the current GS-1811 classification practices, policies, and procedures at DOJ components, 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.

Findings

The use of criminal investigators in key headquarters offices is common among DOJ component agencies. DOJ posits that law enforcement agencies benefit from having law enforcement officers classified as 1811s work in a variety of headquarters positions as a means of growing its leadership ranks and bringing necessary criminal investigative experience to such roles. For example,

1. U.S. Department of Justice, *FYs 2022-2026 Strategic Plan*, 8, updated October 4, 2022, <https://www.justice.gov/doj/book/file/1516901/download>.

headquarters offices utilizing 1811s include Human Resources, Offices of Training, Offices of Professional Responsibility (OPR), Offices of Management (Asset Forfeiture), Offices of Public and Governmental Affairs, and others.

In conducting this study, the Panel found certain inherent challenges in implementing the OPM classification standards and relevant rules and regulations. First, the current classification and retirement eligibility regulations and rules create strong financial incentives for agencies to keep employees classified as 1811s. Congress established LEAP and enhanced retirement benefits (i.e., 6(c) retirement benefits) to compensate criminal investigators for the unique physical and psychological demands of their law enforcement duties. However, when an 1811 employee is promoted to a position that does not qualify for the 1811 classification, the employee may lose the enhanced pay and retirement benefits. This situation presents a difficult decision where 1811 employees must choose between career development (e.g., promotion to non-1811 positions) and their pay or retirement benefits. Another example of an implementation challenge involves assigning 1811s to administrative positions. Both the agency and employees benefit from embedding 1811s in administrative offices because it helps break down organizational silos, increase workforce agility, and enhance the career development of 1811s. However, without LEAP or enhanced retirement benefits, 1811 employees would be reluctant to accept the transfer to administrative positions or participate in the rotational programs that may affect their law enforcement retirement eligibility they have been working toward.

In addition to the financial consideration, the impact of an agency's organizational culture is another factor that must be considered. ATF and DOJ have a strong law enforcement culture, and the 1811 classification represents qualifications, status, and authority. Law enforcement officers take great pride in their work, being 1811s, and embracing the core values of law enforcement. The 1811 classification has a significant influence on employee morale and job performance in law enforcement agencies and the federal government's ability to recruit, develop, and retain high-quality law enforcement workforce.

OPM classification standards are generally considered outdated, complex and difficult to implement. The complexity of relevant rules and standards has contributed to different—and sometimes competing—policy interpretations among federal law enforcement agencies and various classification practices that may or may not entirely comport with OPM classification policies.² In addition, OPM has not regularly audited federal agencies' classification practices. Despite numerous studies and legislative proposals, the federal government has not made much progress in modernizing the classification system. OPM has not had any formal discussions with law enforcement agencies in recent years on the potential opportunities to update 1811 classification standards.

Changes to the classification standards and relevant rules and regulations require a lengthy process that involves broad outreach to various stakeholders. The Panel concluded that to enhance the recruitment, development, and retention of the federal law enforcement workforce, it is essential to address the systemic challenges associated with implementing the current

2. In its discussions with various law enforcement agencies, the Academy found a variety of practices related to the drafting of positions descriptions to comport with 1811 classification requirements.

classification standards and regulations. In this report, the Panel offers a set of potential options for DOJ to consider and analyzes the benefits and limitations of each option.

While it is critical to address the systemic challenges, there are some immediate challenges associated with OPM's ATF evaluation that cannot be overlooked. It is imperative for ATF and DOJ to address the unresolved OPM findings and close the OPM audit as soon as possible. It has been two years since OPM issued the evaluation report. Unresolved OPM audit findings and the suspension of classification authority have limited ATF's ability to hire and retain high-quality employees and present a potential risk of mission failure to the agency. DOJ has made progress in addressing OPM's findings, and the Panel urges ATF and DOJ to continue working with OPM to clarify policy requirements, resolve the remaining positions, and regain ATF's classification authority.

In analyzing the root causes of the ATF's misclassification issues, the Panel identified a number of internal management and organizational challenges within DOJ and ATF. These include ATF and DOJ's strong mission orientation that may take precedence over other issues, lack of a collaborative working relationship between ATF HR and line management, lack of strong department-wide human capital leadership, insufficient oversight of agencies' classification practices, lack of clear DOJ-level policy guidance and support, and limited training opportunities for classifiers and line managers. The Panel recognized the efforts ATF and DOJ have undertaken to address some of the internal management challenges. The Panel's recommendations intend to build on ATF and DOJ's existing efforts to further improve the agency's HR management programs and practices.

Recommendations

The Panel's recommendations are presented in Chapter 4 and grouped into three categories:

- Recommendations to address the management and organizational challenges within ATF and DOJ based on the root cause analysis
- Recommendations to mitigate the effects of immediate challenges associated with the OPM ATF audit
- Potential options to address the systemic challenges posed by existing classification standards and relevant rules and regulations

The following chart is a summary of the Panel's recommendations.

Recommendations	Actions
Recommendations to address the management and organizational challenges within ATF and DOJ based on the root cause analysis	
Integrate HR Management with ATF's Law Enforcement Mission	<ul style="list-style-type: none"> • Sustained commitment to effective human capital management from ATF's senior leaders and managers at all levels. ATF Leaders should: <ul style="list-style-type: none"> ○ Provide a clear, consistent message to all levels of the agency, articulating the urgent need for change and clarifying/formalizing the role of HR as a strategic partner of the agency's senior leadership ○ Establish performance metrics that explicitly define senior leaders' responsibility to involve HR in the agency's strategic discussion and decision making process and assure accountability for change • HR must add value to ATF's mission accomplishment efforts and earn credibility by demonstrating its professional expertise and the ability to fill the need for strategic human capital leadership. ATF HR should: <ul style="list-style-type: none"> ○ Set clear, mutual expectations and define the roles and responsibilities of line managers and HR staff; ○ With input from line managers, build on existing efforts and continuously seek ways to streamline the agency's HR management processes and improve effectiveness and efficiency; and ○ Enhance HR staff training to ensure that they have the competencies to take on the expected role effectively and educate HR staff on the program side of ATF to deepen their understanding of business needs
Enhance the Role of JMD as the Department-Level Human Capital Management Leader	<ul style="list-style-type: none"> • The DOJ's top leadership should reaffirm the CHCO's role as an integral part of the department's senior leadership team and emphasize the importance of effective human capital management in delivering the department's mission. • JMD should take a more structured, strategic approach to engaging key stakeholders, including OPM, Congress, the CHCO Council, DOJ component agencies, and peer law enforcement agencies. • JMD should strengthen its leadership role by: <ul style="list-style-type: none"> ○ adopting a more collaborative proactive approach to developing department-wide HR policies, ○ establishing regular channel of communication with component agencies to gather feedback prior to issuing policy guidance or changes, ○ communicating policies to component agencies effectively and in a timely manner, ○ reviewing JMD's policy development process to identify opportunities to improve efficiency, ○ building on existing accountability programs to exercise effective oversight, ○ increasing transparency of JMD's review and decision-making process, and ○ establishing communities of practice and providing/supporting the training initiatives for components' HR staff.
Recommendations to mitigate the effects of immediate challenges associated with the OPM ATF audit	

Recommendations	Actions
<p>ATF and JMD should continue working together to complete all of OPM's required and recommended actions to satisfy OPM's immediate requirements and regain ATF's classification authority as soon as possible.</p>	<ul style="list-style-type: none"> • Continue working with OPM to clarify classification policy requirements and seek resolution on unresolved positions. • Conduct desk audits and update position descriptions and other supporting documents to substantiate the 1811 classification. • Explore other potential solutions to meet the requirements of the existing OPM classification standards.
<p>Potential options to address the systemic challenges posed by existing OPM standards and relevant laws, rules, and regulations</p>	
<p>Option 1: OPM clarifies or amends relevant regulations and standards to provide federal agencies greater flexibility in administering LEO position classification and determining LEO retirement benefits eligibility/offering LEO equivalent benefits.</p>	<p>A critical initial step to implement Option 1:</p> <ul style="list-style-type: none"> • DOJ or Congress (through GAO or OPM) conducts an in-depth review of relevant regulations and policy guidance and how those rules and standards are implemented in the federal law enforcement agencies to identify opportunities to update or clarify existing statutory and regulatory requirements.
<p>Option 2: DOJ requests special authority from Congress to redesign the classification and compensation system for law enforcement officers.</p>	<ul style="list-style-type: none"> • Option 2a: DOJ requests special LEO classification and compensation authority for the law enforcement officers within DOJ; or • Option 2b: DOJ requests that Congress enact special classification and compensation authority for federal law enforcement officers.

Chapter 1: Introduction

1.1 Background on the Department of Justice

The Department of Justice (DOJ) is a fundamental protector of American citizens' rights. Established by statute in 1870, DOJ controls federal law enforcement and all criminal prosecutions and civil suits in which the United States has an interest. The United States Attorney General heads the agency.

As stated in its 2021 Financial Report, DOJ's mission is:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.³

DOJ ranks as the sixth largest (117,192 employees) cabinet-level agency in the federal government and comprises forty separate component organizations.⁴ Among these components is the Justice Management Division (JMD). JMD is headed by the Assistant Attorney General for Administration and provides support to the DOJ organization in numerous areas, including budget and financial management, human resources and professional development, facilities, procurement, records management, and other administrative areas.⁵

The DOJ is a primary cabinet-level employer of criminal investigators (frequently referred to as the 1811 series) within the Federal government. DOJ employs both primary and secondary law enforcement positions as defined in Title 5 Code of Federal Regulations 831.902.⁶

As Table 1 shows below, DOJ is the largest employer of the 1811 job series across all cabinet-level agencies.

Table 1: Cabinet-Level Agencies with the Highest Number of Criminal Investigators

Cabinet-Level Agency	Number of Criminal Investigators (as of June 2022)
Justice	24,060
Homeland Security	10,647
Treasury	2,351
Navy	1,164
Health and Human Services	677

Source: Public data summarized by the National Academy of Public Administration

3. U.S. Department of Justice, *FY 2021 Financial Report – Section 1, 1-1*, November 2021, <https://www.justice.gov/doj/page/file/1448361/download#page=14>.

4. OPM Fedscope data.

5. Additional information on DOJ JMD is available at <https://www.justice.gov/jmd/about-division>.

6. The 1800 job classification series includes administrative work in inspection, investigation, enforcement, and compliance.

1.2 Study Purpose and Scope

DOJ JMD engaged the National Academy of Public Administration (the Academy) to conduct an independent study to examine a series of matters related to the Law Enforcement Officer (LEO) classification status at DOJ and its component agencies. The Academy's Statement of Work includes the following tasks:

- Assess the current use of law enforcement classification status at Headquarters and component agencies
- Evaluate the extent and degree to which law enforcement status in statute has been applied to positions at Headquarters and component agencies
- Benchmark DOJ's current practices, protocols, and procedures for designating positions as law enforcement against leading practices of other federal law enforcement agencies
- Recommend revisions to ensure compliance with evidence-based classifications.

The Academy formed a Study Team and assembled a five-member Panel of Fellows with extensive expertise and relevant experience to oversee all aspects of this study. The Panel reviewed the Study Team's progress, approved study findings and conclusions, recommended strategies, assessed the advantages and disadvantages of each strategy, and approved the draft and final reports. The Panel met five times throughout the period of performance. Appendix A includes short biographies of the Panel and Study Team.

The study was conducted from March 2022 to January 2023 and employed qualitative and quantitative research methods as outlined in the team's research design. In conducting its research, the Study Team regularly consulted with several key stakeholders, including JMD Human Resources (HR) and the HR leadership and line management of the five component agencies under review. These included the Bureau of Prisons (BOP); the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); the Federal Bureau of Investigation (FBI); the U.S. Marshals Service (USMS); and the Drug Enforcement Administration (DEA). In addition, the Study Team regularly advised DOJ JMD and the Panel on the team's progress.

Given the centrality of the Office of Personnel Management (OPM) evaluation of ATF human capital policies, the Study Team began with foundational research on statutory and OPM guidance on classification, the 1811 job series, the OPM evaluation of ATF human capital policies, and other relevant documentation.

1.3 Research Process

Under the direction of the Panel, the Study Team conducted its work in four key phases over the period of performance:

Foundational Research and Project Start-Up *(March through May)*

During this phase, the Study Team developed a research design matrix and initial research questions and collected and analyzed publicly available research on position classification, law

enforcement-specific classification material, and DOJ-specific documents, including the OPM audit of ATF's classification authority.

Phase 1 Data Collection: DOJ Agencies and External Stakeholders

(June through October)

Phase 1 Data Collection activities included conducting semi-structured interviews of human capital leadership and line management at DOJ's component agencies, collecting quantitative data of 1811 staff assigned to headquarters positions, and interviewing subject matter experts. In addition, the Study Team reviewed policy documents and a sample of position descriptions, and performance work plans from each agency.

Phase 2 Data Collection: Federal Agencies with Law Enforcement Staff

(June through September)

To better understand leading practices, the Study Team interviewed a select group of Chief Human Capital Officers and Human Resources Specialists who have delegated classification authority in federal agencies with Law Enforcement staff.

Develop and Present Panel Observations, Findings, and Recommendations

(October through mid-December)

During this final phase, the Study Team presented its preliminary observations to the Panel, using data collected in phases 1 and 2, and prepared the draft report for the Panel review.

A complete list of interviewees appears in Appendix B.

1.4 Evaluative Framework

To assess the degree to which the current LEO classification policies and practices of DOJ component agencies comport with statute and OPM guidance, the Study Team developed an evaluative framework and standard methodology. In designing the framework, the Study Team solicited input from DOJ JMD HR, Academy Panel members, and a select group of Academy Fellows who served as subject matter experts (SMEs). The evaluative framework was systematically applied to all DOJ component agencies and consisted of the following four elements:

- **Leadership and Culture:** To what extent does component leadership support adherence to OPM and DOJ guidance?
- **Policies and Processes:** To what extent do component policies and procedures comport with OPM guidance and leading peer practices?
- **Oversight and Accountability:** What oversight mechanisms are in place to ensure compliance with OPM and DOJ policy guidance and relevant laws, rules, and regulations?
- **HR Training and Development:** What opportunities for training are available to component HR staff?

1.5 Data Collection and Data Analysis Process

The Study Team followed a standard methodology in collecting and analyzing the evaluative framework data. An important first step is to determine the applicable criteria, statutes, and policy standards to use for the analysis:

1. What criteria and standards should be used as the benchmark for LEO classification and the determination of retirement benefits?
2. What leading practices are employed by peer agencies regarding LEO classification and the determination of retirement benefits?

Using the answers to questions 1 and 2, the Study Team developed a framework to assess the relevant components of DOJ. Appendix C provides additional details on the Study Team's data collection activities.

1.6 Organization of the Report

Chapter 1 reviews the report's scope, methodology, and structure. It provides context for the report chapters that follow.

Chapter 2 provides background on position classification and the 1811 job series and discusses the OPM evaluation of ATF's HR management function and position classification policies.

Chapter 3 reviews the classification practices of DOJ component agencies, highlights the classification system's inherent challenges, and provides an analysis of the root causes and factors that may have contributed to the potential misclassification of positions at ATF.

Chapter 4 outlines the Panel's recommendations.

Chapter 2: Background

2.1 Position Classification and the Criminal Investigator Job Series

Position classification is often referred to as an art and a science requiring significant training, experience, and judgment. OPM delegates position classification to departments and agencies, subject to its oversight and supervision.

As with all federal agencies, OPM requires DOJ to classify positions using the criteria and guidance issued in OPM's position classification standards.⁷ DOJ's Human Resources Order 1200.1 delegates classification authority to select components regulations.⁸

This report focuses on the 1811 series. Criminal investigators are entitled to Law Enforcement Availability Pay (LEAP) and enhanced retirement benefits, when the requirements of both are met, due to the rigorous physical demands of the positions and the expectation of long hours.⁹

There are extensive legislative and statutory requirements defining the role of criminal investigators and the qualifications required to receive enhanced pay and retirement benefits (see Appendix E). The primary definition of a LEO cited in U.S. Code Chapter 83 (retirement) and Chapter 55 (pay administration) is “an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.”¹⁰ Enhanced retirement benefits, often called 6(c) benefits, are covered in U.S. Code, Chapters 83 and 84, which authorize LEOs to retire after serving as LEOs for 20 years and reaching the age of 50.

LEAP is established in U.S. Code, Chapter 55, which allows criminal investigators to “be paid availability pay as provided under this section. Availability pay shall be paid to ensure the availability of the investigator for unscheduled duty. The investigator is generally responsible for recognizing, without supervision, circumstances which require the investigator to be on duty or be available for unscheduled duty based on the needs of the agency. Availability pay provided to a criminal investigator for such unscheduled duty shall be paid instead of premium pay provided

7. U.S. Office of Personnel Management, *The Classifier's Handbook*, August 1991, <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/classifierhandbook.pdf>.

8. U.S. Department of Justice, “HR Order DOJ 1200.1: Part 2. Compensation: Chapter 2-4, Position Classification And Employee Placement Plan,” October 3, 2000, <https://www.justice.gov/jmd/hr-order-doj12001-part-2-compensation-chapter-2-4-position-classification-and-employee-placement>.

9. Congressional Research Service, *Retirement Benefits for Federal Law Enforcement Personnel*, September 5, 2017, <https://sgp.fas.org/crs/misc/R42631.pdf>.

U.S. Office of Personnel Management, “Fact Sheet: Availability Pay,” n.d., <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/availability-pay/>.

10. U.S. Code, Title 5, Part III, Subpart G, Chapter 83, Subchapter III, Section 20, <https://www.law.cornell.edu/uscode/text/5/8331>.

by other provisions of this subchapter, except premium pay for regularly scheduled overtime work as provided under section 5542, night duty, Sunday duty, and holiday duty.”¹¹

OPM’s classification standards for work in the 1811 series describe the criminal investigation series as work that involves:¹²

- recognizing, developing, and presenting evidence to reconstruct events, sequences, time elements, relationships, responsibilities, legal liabilities, and conflicts of interest;
- conducting investigations in a manner meeting legal and procedural requirements; and
- providing advice and assistance both in and out of court to the U.S. Attorney’s Office during investigations and prosecutions.

According to the same guide, “Additional characteristics of criminal investigative work include: ‘planning and conducting investigations extending over protracted periods of time; assignments made primarily on a referral or case basis; and an emphasis on identifying and apprehending individuals for criminal prosecution. During the course of their careers, criminal investigators may rotate through various assignments to include protective details, asset forfeiture investigations, and multi-jurisdictional task forces.’”¹³

2.2 OPM ATF Evaluation

Oversight is one of the core functions of OPM. To carry out its oversight responsibilities, OPM performs reviews of agencies’ human capital management programs and practices every three to four years. OPM is also responsible for providing policy guidance and technical assistance to help agencies carry out their delegated personnel authority. OPM’s regular human capital management reviews typically do not cover agencies’ classification practices.¹⁴

In January 2020, OPM started its routine evaluation of ATF’s performance management and award practices. During its review, OPM noticed certain anomalies related to performance appraisals of some 1811 series employees in administrative offices and decided to expand the scope of its review to include ATF’s position classification practices. In October 2020, OPM met with the DOJ Chief Human Capital Officer (CHCO) and several JMD human resources (HR) officials to inform them of the most serious findings from the evaluation, including the misclassification of administrative positions to the GS-1800 job family.¹⁵ OPM decided to suspend ATF’s GS-1800 classification authority (effective November 2, 2020) until it satisfies the requirements and demonstrates appropriate policies and oversight. OPM issued its final report

11. U.S. Code, Title 5, Part III, Subpart D, Chapter 55, Subchapter V, Section 5545a, <https://www.law.cornell.edu/uscode/text/5/5545a>.

12. U.S. Office of Personnel Management, *Job Family Position Classification Standard for Administrative Work in the Inspection, Investigation, Enforcement, and Compliance Group, 1800*, 12, Issued March 2009, Revised April 2011, <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/1800/1800a.pdf>.

13. U.S. Office of Personnel Management, *Job Family Position Classification Standard*, 13.

14. U.S. Government Accountability Office, “Human Capital: OPM Needs to Improve the Design, Management, and Oversight of the Federal Classification System,” 2018, GAO-14-677, <https://www.gao.gov/products/gao-14-677>.

15. U.S. Office of Personnel Management, *Human Capital Management Evaluation*.

on March 1, 2021, and referred ATF's misclassification of GS-1800 positions to the Office of Special Counsel.¹⁶

In its report, OPM identified 91 positions that were classified in the GS 1800 job family, but the incumbents in these positions performed administrative duties.¹⁷ The 91 positions identified by OPM are GS-13 and above (including six Executive Schedule positions) and include 13 positions from the Office of Public and Governmental Affairs, 10 positions from the Office of Management, 64 positions from the Office of Human Resources and Professional Development (HRPD), and 3 positions from the Office of Professional Responsibility and Security Operations (OPR).

OPM concluded 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."¹⁸ Specifically, ATF established several merit promotion policies that violate OPM regulations and merit system principles. ATF's actions under these policies resulted in the improper classification of administrative positions to the Inspection, Investigation, Enforcement and Compliance law enforcement job family (GS-1800). The individuals encumbering these improperly classified positions continue to receive the salary, retirement, and other benefits reserved for positions that perform specific law enforcement duties. OPM also found that ATF leadership ignored warnings by ATF HR officials.

To address OPM's findings, ATF and DOJ have been working with OPM to reassign employees and reclassify positions, discontinue existing career plans, submit revised career plans, and update position descriptions to reflect job duties correctly. In January 2022, ATF requested that OPM reconsider the classification of 38 positions, including 31 positions identified by OPM as misclassified in its report and 7 self-identified positions. ATF believes these positions have sufficient law enforcement responsibilities to support the 1811 series classification. In February 2022, OPM issued a letter to the DOJ CHCO expressing concerns over ATF's progress in addressing misclassified positions. In the letter, OPM also responded that the documentation of the 31 positions submitted by ATF does not warrant reconsideration. In response, ATF provided status updates and additional documentation to OPM on March 21, 2022.

A whistleblower complaint alleging improper classification of law enforcement positions in ATF led to an investigation by the Office of Special Counsel (OSC). The whistleblower allegation and OSC investigation are independent from OPM's evaluation and outside the scope of this study.

Appendix F provides a more detailed timetable that describes the OPM ATF evaluation process.

16. U.S. Office of Personnel Management, *Human Capital Management Evaluation*.

17. U.S. Office of Personnel Management, *Human Capital Management Evaluation*. The 91 positions identified by OPM included both 1811 and 1801 positions.

18. U.S. Office of Personnel Management, *Human Capital Management Evaluation*, i.

Chapter 3: Root Cause Analysis

3.1 Introduction

To inform the root cause analysis and associated strategies and recommendations, the Study Team examined the classification practices of four DOJ law enforcement component agencies employing criminal investigators (i.e., ATF, DEA, USMS, and FBI). In consultation with JMD, the Study Team selected five key headquarters offices as the focus of its quantitative analysis: training, human resources, professional responsibility, asset forfeiture, and public affairs. Appendix G includes a detailed agency-by-agency listing of all headquarters offices and the number of criminal investigators supporting each headquarters office.

The Study Team selected a sample of position descriptions and performance plans for all criminal investigators in headquarters offices. The sample included criminal investigator positions in training, Office of Professional Responsibility (OPR), and asset forfeiture at the grades of GS-13, GS-14, and GS-15. The Study Team also requested position descriptions and performance plans for criminal investigator positions at the Senior Executive Service (SES) level.

BOP is not included in this analysis because it does not employ criminal investigators. The following section summarizes the number of 1811 criminal investigators in human resources, training, professional responsibility, asset forfeiture, and public affairs. It does not imply that these positions are potentially misclassified.

3.2 Classification Practices

Comparative Quantitative Review of 1811s in Headquarters Offices

As shown in the following quantitative analysis, the use of criminal investigators in key headquarters offices is common among DOJ law enforcement agencies. The data was submitted by component agencies and summarized by the Study Team.

Table 2: Number of 1811 series employees in Human Resources

Human Resources			
Component Agency	Criminal Investigators	All Employees	% Special Agents
ATF (not including Training Academy)¹⁹	0	94	0%
DEA²⁰	7	119	6%
USMS	2	104	2%
FBI²¹	18	308	6%

Source: Data submitted by component agencies and summarized by the National Academy of Public Administration.

OPM identified several 1811 positions in ATF's office of human resources as potentially misclassified. The individuals in those positions were later reassigned or retired. Table 2 shows that DEA, USMS, and FBI also use criminal investigators in human resources offices.

Table 3: Number of 1811 series employees in Training

Training			
Component Agency	Criminal Investigators	All Employees	% Special Agents
ATF²²	26	43	60%
DEA²³	80	150	53%
USMS	47	62	76%
FBI²⁴	122	363	34%

Source: Data submitted by component agencies and summarized by the National Academy of Public Administration.

DOJ law enforcement component agencies use criminal investigators in training divisions. As shown in Table 3, over half of ATF, DEA, and USMS's training division staff are classified as

19. As a result of the OPM audit, ATF reassigned the 1811 employees of HRPD to field offices.

20. This data includes only onboard personnel as of July 30, 2022.

21. The FBI Human Resources Department has a funded staffing level (FSL) of 308 but has hiring authority for up to 420. The data in this chart reflects the FBI's FSL and not the authorized number of HRD employees. Using the authorized number of HRD employees, the percentage of Special Agents working in HRD for the FBI is 4%.

22. As a result of the OPM audit, ATF reassigned some of the 1811 employees of the ATF training academy.

23. This data includes only onboard personnel as of July 30, 2022.

24. The FBI Training Department has a funded staffing level (FSL) of 363 but has hiring authority for up to 413. The data in this chart reflects the FBI's FSL and not the authorized number of Training Division employees. Using the authorized number of Training Division employees, the percentage of Special Agents working in the Training Division for the FBI is 30%.

criminal investigators. FBI's training division is significantly larger than other components with 363 total employees, 122 of which are criminal investigators.

Law enforcement component agencies emphasized the importance of criminal investigators training other criminal investigators. All component agencies appoint a Senior Executive Service or GS-15-level criminal investigator to lead the training division. Criminal investigators below the GS-15 level teach courses on fieldwork, including conducting investigations, building evidence, and testifying before grand juries. According to component agencies, criminal investigators from the field are required to teach these courses because they bring the necessary practical experience to prepare new investigators for fieldwork. Non-1811 employees (e.g., 1801s, reemployed annuitants, training specialists) teach courses on routine exercises (e.g., firearms) and lessons related to subject matter expertise (e.g., a detailed lesson on federal law). Other non-1811 series employees help courses remain in compliance with accreditation standards by managing the curriculum development process.

Table 4: Number of 1811 series employees in Office of Professional Responsibility (OPR)

OPR			
Component Agency	Criminal Investigators	All Employees	% Special Agents
ATF	37	102	36%
DEA²⁵	32	62	52%
USMS	32	45	71%
FBI²⁶	5	36	14%

Source: Data submitted by component agencies and summarized by the National Academy of Public Administration.

All law enforcement component agencies employ criminal investigators in OPR, as shown in Table 4. The major responsibilities of OPR include criminal investigations as well as investigating complaints of internal misconduct and inspecting field offices to ensure they remain in compliance with federal, departmental, and agency policy. Component agencies maintain that criminal investigators are necessary for OPR because their administrative investigations could become criminal investigations and the 1811 skill set is required. Some component agencies believe that criminal investigators should lead OPR because they manage and oversee the same administrative investigations that could turn criminal. OPR typically employs senior GS-14 criminal investigators responsible for conducting internal misconduct investigations. As a result, these offices are relatively flat in terms of hierarchy, meaning these offices are typically led by a GS-15-level or SES-level leader(s)²⁷ who reportedly review the same administrative investigations

25. This data includes only onboard personnel as of July 30, 2022.

26. FBI has two criminal investigators in its Office of Professional Responsibility. FBI also has a separate Office of Integrity and Compliance with three criminal investigators. Similarly, DEA also has a separate Office of Compliance (not as a function of OPR). This summary table includes both under Professional Responsibility.

27. ATF, DEA, and USMS appoint 1811 series employees to lead the Offices of Professional Responsibility, while FBI's OPR is led by an attorney.

that could turn criminal. Additional duties of components' OPR include reviewing use-of-force incidents, conducting compliance inspections, and advising on disciplinary action specific to criminal investigators.

Table 5: Number of 1811 series employees in Asset Forfeiture

Asset Forfeiture			
Component Agency	Criminal Investigators	All Employees	% Special Agents
ATF²⁸	4	142	3%
DEA²⁹	1	14	7%
USMS	6	48	13%
FBI³⁰	0	0	0%

Source: Data submitted by component agencies and summarized by the National Academy of Public Administration.

Most component agencies employ a small number of criminal investigators in Asset Forfeiture, as shown in Table 5. The exception is the FBI, which employs contractors at field offices responsible for managing asset forfeiture. OPM's guidance on the 1811 series includes asset forfeiture investigations as an additional characteristic of 1811-series work.³¹ Criminal investigators in asset forfeiture conduct investigations on assets, including tracing assets purchased with illegal funds, conducting surveillance and field interviews, and working with criminal investigators in the field to help with forfeiture-related matters. A majority of the employees in Asset Forfeiture are contractors or other federal government employees (e.g., program analysts, paralegal specialists).

28. Prior to the OPM audit, ATF had 11 criminal investigators in Asset Forfeiture.

29. DEA data includes only onboard personnel as of July 30, 2022. DEA's Asset Forfeiture Section is part of the Office of Operations Management.

30. FBI uses contractors at the field level to complete asset forfeiture.

31. U.S. Office of Personnel Management, *Job Family Position Classification Standard*, 13.

Table 6: Number of 1811 series employees in Public Affairs

Public Affairs			
Component Agency	Criminal Investigators	All Employees	% Special Agents
ATF³²	0	52	0%
DEA³³	3	35	9%
USMS³⁴	2	17	12%
FBI³⁵	14	93	15%

Source: Data submitted by component agencies and summarized by the National Academy of Public Administration.

OPM auditors identified several criminal investigator positions in ATF’s public affairs office as misclassified. While ATF has since reclassified those positions, DEA, USMS, and FBI have a few criminal investigators working in public affairs, as shown in

Table 6.

Appendix G provides a comprehensive list of criminal investigators assigned to agency-specific headquarters offices. This section and the appendix illustrate that assigning criminal investigators to headquarters offices is common at all component agencies.

32. As a result of the OPM audit, ATF reassigned some of the 1811 employees of Public Affairs to the field, and some 1811 employees retired.

33. DEA data includes only onboard personnel as of July 30, 2022.

34. USMS has an office of Congressional and Public Affairs.

35. FBI has an Office of Public Affairs and an Office of Congressional Affairs. The other component agencies capture both under one office of public affairs. For this summary table, both public and congressional affairs are counted under public affairs.

Classification Practices of Component Agencies

A Sampling of Position Descriptions

The Study Team sampled criminal investigator position descriptions from offices of training, professional responsibility, and asset forfeiture across all component agencies. The sample and interviews with DOJ components officials reveal common use of standard position descriptions across components with some exceptions. DEA and USMS use standard position descriptions for some criminal investigators serving in headquarters offices while using more detailed position descriptions in other cases. Some DEA's sampled position descriptions provide a description of the specific duties the incumbent is responsible for, but do not include 1811-type duties.³⁶ USMS's sampled position descriptions include a description of the administrative duties; however, the descriptions are not detailed.³⁷

The FBI uses a standard position description for all positions at each grade level in the sample. As expected, the standard position description is all-encompassing, covering the many duties the incumbent might be responsible for at each grade level. There were broad descriptions of possible duties related to the position, and the positions descriptions for the Executive Schedule (ES) positions (i.e., Assistant Director, Deputy Assistant Director, and Section Chief) reviewed by the Study Team do not provide knowledge qualification requirements³⁸. A sampling of criminal investigators serving in ATF headquarters reveals that, as a result of the OPM audit, ATF has started moving away from using standardized position descriptions from field offices. This was confirmed in interviews with ATF HR.

36. For example, some of DEA's Office of Training's standard PDs do not include 1811-type duties.

37. For example, the Study Team reviewed USMS' standard PDs for GS-14 positions in its Training Division (PD# 12019). The standard PD covers a range of duties the incumbent might be responsible for. The description of training-related duties in the PD is limited.

38. The only qualification requirement in these ES standard PDs is under "Law Enforcement Retirement Coverage" -- "Positions requires the services of an employee with background and expertise as a GS-1811 Criminal Investigator (FBI Special Agent) and is eligible for the privileges associated with federal law enforcement retirement coverage..."

Paramount Knowledge versus Primary Duties

The major duties and paramount knowledge (see Box 3.1 for the definition of paramount knowledge) of a position are the primary determining factors in selecting job series when classifying a position that spans multiple job occupational groups. In interpreting OPM and statutory guidance, component agencies advocate the importance of criminal investigation knowledge and experience when classifying a criminal investigator position at the training academy, OPR, and asset forfeiture.

JMD's new GS-1811 Series Classification Aid asserts that the position's primary *duties* should drive the classification decision. JMD's classification aid lists a series of yes or no questions focused on whether the position is involved in planning, conducting, and managing criminal investigations. If the position is not actively engaged in one of those activities, it would not be classified as a criminal investigator. Under this interpretation, some criminal investigators in administrative positions would not be classified as criminal investigators despite component agencies arguing that the paramount knowledge required to be in the position is prior rigorous criminal investigation experience.

Box 3.1 Paramount Knowledge Required: Most positions have a paramount knowledge requirement even though there are several different kinds of work assigned to the position. The paramount knowledge is the most important type of subject matter knowledge or experience required to do the work. (Source: OPM Classifier's Handbook)

There are different interpretations of the paramount knowledge requirement among DOJ component agencies. Some component agencies interpret this requirement as if previous criminal investigator experience is required, then the position should be classified in the 1811 series. While a position may require criminal investigator skills and experience, that does not mean that the position warrants classification in the 1811 series. The paramount knowledge is the *most important* experience required for the position. This determination requires careful judgment on the classifiers' part and a detailed understanding of the position and its role. Generally speaking, as a criminal investigator rises through the ranks, it could become more difficult to justify that criminal investigation skills are the most important skills required for the position, as opposed to management or executive skills.

3.3 The Inherent Challenges of OPM's Position Classification System

OPM classification standards are widely recognized as outdated, complex, and difficult—sometimes unrealistic—to implement. OPM's job classification system was established in 1949 to support the merit system principle of equal pay for substantially equal work.³⁹ Many federal human capital subject matter experts have called the classification system into question over the decades. Many studies found that the GS classification system has not kept pace with the evolving requirements of the federal government. For example, in 1991, a Panel of Academy Fellows found several "inadequacies" with the federal government's position classification system. The Panel described how "employees are pigeonholed into artificially discrete 'positions' that are over-

39. U.S. Office of Personnel Management, *The Classifier's Handbook*.

specialized,” and how “employees, supervisors and personnel managers cannot work with a system that lacks flexibility, has difficulty in maintaining currency, is not fully geared to match people to work, and is not in sync with agency missions.”⁴⁰

In its 2002 White Paper: *A Fresh Start for Federal Pay: The Case for Modernization*, OPM stated the strengths and limitations of the General Schedule (GS) system and the urgent need to modernize the federal classification system to better support the federal government’s strategic human capital management.⁴¹ In its 2014 report, the Government Accountability Office (GAO) highlighted the importance of improving the design, management, and oversight of the federal classification system to address the changing workforce needs of the federal government.⁴² The Academy’s report *No Time to Wait, Part 2: Building a Public Service for the 21st Century* also calls for reform of the GS classification system.⁴³

Despite these studies on the federal classification system and multiple legislative proposals, the federal government has not made much progress in modernizing the classification system. As GAO writes, changes to the federal classification system could significantly impact agencies’ ability to recruit and retain employees, and it is difficult to develop a classification system that meets the requirements of all stakeholders.⁴⁴ OPM has ongoing discussions with agencies to understand the challenges in applying the classification standards. However, OPM has not had any formal discussions in recent years with law enforcement agencies on the potential opportunities to update 1811 series classification standards.

Complexity of Classification Standards

The complexity of classification standards and relevant HR regulations and rules has contributed to competing interpretations and a wide variation of classification practices among federal law enforcement agencies. As discussed in Chapter 2, position classification is both an art and a science requiring significant training, experience, and judgment. Position classification requires detailed knowledge of classification standards, the factor evaluation system, and the point rating process to determine a position’s appropriate job series and grade level.

Classification requires careful judgment as many positions could be covered by multiple occupational groups and job series (i.e., mixed series positions).⁴⁵ Position classification becomes

40. National Academy of Public Administration, *Modernizing Federal Classification: An Opportunity for Excellence*, July 1991,

https://napawash.org/uploads/Academy_Studies/91_13_Modernizing_Federal_Classification.pdf.

41. Office of Personnel Management, “A Fresh Start for Federal Pay: The Case for Modernization,” April 2002, <https://ourpublicservice.org/wp-content/uploads/2002/04/5f728681c9c408cb255f816a352a7d4f-1414080128.pdf>.

42. U.S. Government Accountability Office, “Human Capital: OPM Needs to Improve the Design.”

43. National Academy of Public Administration, “No Time to Wait, Part 2: Building a Public Service for the 21st Century,” 42, September 2018, https://s3.us-west-2.amazonaws.com/napa-2021/studies/no-time-to-wait-part-2-building-a-public-service-for-the-21st-century/NTTW2_09192018_WebVersion.pdf.

44. U.S. Government Accountability Office, “Federal Workforce: Sustained Human Capital Leading Practices Can Help Improve Agency Performance,” May 18, 2017, GAO-17-627T, [Federal Workforce: Sustained Attention to Human Capital Leading Practices Can Help Improve Agency Performance](https://www.gao.gov/assets/17/627/federal_workforce_sustained_attention_to_human_capital_leading_practices_can_help_improve_agency_performance) | U.S. GAO.

45. U.S. Office of Personnel Management, *The Classifier’s Handbook*.

more complicated when a position covers more than one occupational group. For example, a position could be covered by the GS-1800 (Inspection, Investigation, Enforcement, and Compliance Group) and the GS-1700 (Education Group), requiring careful judgment on the part of the position classifier.⁴⁶ OPM recommends that classifiers consider multiple factors (in the order listed) “since no single one necessarily will result in the most logical decision.” Those factors are:⁴⁷

- *“Paramount knowledge required:* Most positions have a paramount knowledge requirement even though there may be several different kinds of work assigned to the position. The paramount knowledge is the most important type of subject matter knowledge or experience required to do the work.
- *Reason for existence:* The primary purpose of the position or management’s intent in establishing the position is a positive indicator of the appropriate series.
- *Organizational function:* The mission or function of an organization can often provide an indication of the appropriate series for a position.
- *Line of promotion:* The normal line of promotion for the position and/or similar positions in the organization frequently will indicate the occupational specialization toward which the position is oriented.
- *Recruitment source:* Supervisors and managers can help by identifying the occupational areas that provide the best qualified applicants to do the work.”

OPM recognizes that flexibility is needed in applying classification standards and stresses that is “has no intention of establishing a rigid framework for putting jobs in categories.”⁴⁸ “Position classification standards are intended to be a guide to judgment, not a substitute for it.”⁴⁹

The 6 (c) retirement benefits eligibility requirements have increased the complexity of the implementation of the 1811 classification standards. The 1811 series position classification and enhanced retirement benefits coverage are separate but interrelated processes and are governed by two sets of statutes, regulations, and standards. DOJ maintains that OPM 1811 classification standards and the 6(c) retirement eligibility requirements are not aligned and states “the statute says that those who have three years of rigorous law enforcement duty who then are assigned to non-rigorous supervisory or administrative positions once in the system remain qualified with secondary coverage.”⁵⁰

A secondary position is defined in the CFR as a position that:⁵¹

1. *Is clearly in law enforcement of firefighting field;*

46. Even OPM acknowledges that “when the work of the position falls into more than one occupational group, the proper series may be more difficult to determine.” U.S. Office of Personnel Management, *The Classifier’s Handbook*.

47. U.S. Office of Personnel Management, *The Classifier’s Handbook*.

48. U.S. Office of Personnel Management, *Job Family Position Classification Standard*, 8.

49. U.S. Office of Personnel Management, *Introduction to the Position Classification Standards*, 4 (Aug. 2009).

50. DOJ comment supplement FINAL.

51. 5 CFR 831.902

2. *Is in an organization having a law enforcement or firefighting mission; and*
3. *Is either –*
 - i. *Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or*
 - ii. *Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government, is a prerequisite.*

Some interviewees stated that “prerequisite” represents the competencies required to enter the position. While a position may require 1811 skills and experience, it does not necessarily suggest that 1811 experience is a “prerequisite” for this position (“prerequisite” is interpreted in the similar way as “paramount knowledge.”). In other words, a position does not necessarily meet the definition of an “administrative position” (see the definition of secondary position above), even if it requires 1811 skills and experience. The Panel and Study Team believe that there is a lack of clarity on who qualifies for secondary coverage, and this is one of the policy areas where additional clarification and implementation guidance from OPM is needed.

Implementation Challenges of 1811 Classification Standards and Relevant Rules and Regulations

One reason why the 1811 series classification has been at the center of discussion is that 1811 employees are entitled to receive premium pay (LEAP, 25% of the basic pay rate) and enhanced retirement benefits (the 6(c) retirement benefits) in recognition of the rigorous physical demands and expectation of unscheduled duty hours as compared to other job series.⁵² DOJ officials and other stakeholders interviewed for this project emphasized the value of LEAP and the 6(c) retirement benefits in attracting and retaining highly qualified individuals. Some 1811 employees told the Study Team that, without the 6(c) retirement benefits, they would not have accepted their current positions. The Panel and Study Team’s review of the legislative history shows that one objective of establishing the 6(c) retirement benefits for LEOs (to allow LEOs to retire early) was to encourage young people to join and remain in the law enforcement workforce.⁵³

It is also important to note that the duties of LEOs are defined by statute as “sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals...”⁵⁴ The LEO enhanced retirement benefits are designed to compensate LEOs for the stress and physical demand of the LEO responsibilities. Similarly, criminal investigators are entitled to receive LEAP because they must perform, or be available to perform, a substantial

52. Congressional Research Service, *Retirement Benefits for Federal Law Enforcement Personnel.*; U.S. Office of Personnel Management, “Fact Sheet: Availability Pay.”

53. Public Law No. 80-879, 62 Stat.1221, reprinted in 1948 USC Cong. & Ad. News 911; House Report, No. 2034, 80th Cong., 2nd Sess., reprinted in 1948 USC Cong. & Ad. News 2276; Public law No. 350; House Report, No. 463, 93^d Cong., 1st Sess. (1974), <https://uscode.house.gov/statutes/pl/87/879.pdf>;

54. U.S. Code, Title 5, Part III, Subpart G, Chapter 84, Subchapter I, Section 8401 (17), <https://www.law.cornell.edu/uscode/text/5/8401>.

amount of “unscheduled duty.”⁵⁵ The 1811 series investigators receive the enhanced pay and benefits due to the nature of their law enforcement duties. In other words, under the current standards, an individual may lose the LEAP and 6(c) retirement benefits if switching from an 1811 position to a non-1811 position. However, there are some unintended consequences and practical implementation limitations that have to be considered.

The current classification standards and policy requirements present challenges to the career development of 1811 series employees. Undoubtedly, many positions within DOJ require law enforcement background and experience; however, not all of them necessarily require 1811 experiences to the extent that warrants the 1811 series classification. When an 1811 employee is promoted to a leadership position that does not qualify for the 1811 series classification, the employee may no longer be eligible for LEAP and the 6(c) retirement benefits. This circumstance presents a dilemma for 1811 series employees, as they need to choose between career development (e.g., promotion to non-1811 series positions) and their pay and retirement benefits. During some interviews, the Study Team was told that 1811 series employees (and their supervisors) often push as hard as they can to retain their 6(c) retirement benefits when moving to non-1811 positions. Multiple DOJ and ATF interviewees stressed the criticality of the 1811 series background for the leaders to lead effectively at ATF and DOJ. The current classification and retirement eligibility requirements disincentivize agencies from moving 1811s to positions that do not qualify for that classification because to do so will endanger the employee’s law enforcement retirement eligibility.

Another example of the challenges posed by the current rules and standards is related to assigning 1811 series employees to administrative positions. As discussed in Chapter 2, one of the most serious findings from the OPM audit is that ATF misclassified administrative positions (e.g., HR, public affairs) to the GS-1800 job family. A number of officials from ATF and other DOJ components interviewed emphasized the value of having 1811 series employees serve in administrative offices either as regular employees or in a temporary duty assignment. Agencies benefit from embedding 1811 series employees in administrative offices because it helps break down organizational silos, align mission support functions with the agencies’ mission needs and priorities, and address staffing shortages in a constrained fiscal environment. The lack of flexibility in position classification makes it difficult for agencies to transfer individuals across functions and occupations and maintain flexibility within the 1811 series workforce. DOJ officials emphasized that all of the special agents (including leaders) in administrative offices are typically expected to be able to participate in criminal investigation activities when needed (24/7 on-call investigative duties), so they need to maintain their 1811 series status to do so. According to components’ officials, the ability to quickly deploy headquarters 1811 series employees to areas of

55. 5 USC 5545(a)(3) provides that “unscheduled duty” means hours of work a criminal investigator works, or is determined to be available for work, that are not part of the 40 hours in the basis work week or overtime hours.

crisis without going through the reclassification process is essential to carry out the agencies' missions.⁵⁶

Further, as some interviewees noted, serving in mission support functions (e.g., HR, procurement, public affairs, budget) provide valuable career development opportunities for 1811 series employees by allowing them to get exposure to different aspects of an agency and develop a better understanding of the agency's operations. GAO identifies greater staff mobility as an effective tool for agencies to retain high-quality employees and increase workforce agility.⁵⁷ At some agencies, rotational assignments in headquarters administrative offices are a critical component of the leadership development efforts for 1811 series officers. Officials consistently asserted that 1811 series employees do not accept the transfer to administrative positions or participate in the rotational programs that endanger the law enforcement retirement eligibility they have been working toward.

In addition to the financial consideration, the impact of an agency's organizational culture is another factor that must be considered. As discussed in Section 3.4, the 1811 series classification represents qualification, status, and authority. Law enforcement officers take great pride in their work, being 1811s, and embracing the core values of law enforcement. The 1811 classification has a significant influence on employee morale and job performance in law enforcement agencies and the federal government's ability to recruit, develop, and retain high-quality law enforcement workforce. A common perception among agency leaders and staff is that 1811 series employees must be supervised by 1811 series leaders. Many agency officials have determined that senior leaders must maintain their 1811 series classification to better serve the agency's law enforcement mission.

3.4 ATF and DOJ's Internal Management and Organizational Challenges

Evaluative Framework

The Study Team developed an evaluative framework to guide its assessment of ATF's classification practices and the factors that have contributed to the misclassification of administrative positions. In developing the framework, the Study Team solicited input from the DOJ JMD, Academy Panel members, and a select group of Academy Fellows who served as subject matter experts. Additionally, the Study Team drew upon the Academy's past work in organizational assessment and program evaluation. The evaluative framework consists of four interrelated components that are essential to an agency's HR management practices, including Culture and Leadership, Oversight and Accountability, Policy and Processes, and HR Training and Development. The framework intends to provide a comprehensive and integrated approach to determining the

56. According to some components' officials, it is common for bureaus to deploy 1811s performing any type of duties to respond to emergencies at all hours. The FBI requires 1811s to carry firearms and, even when off duty, to put themselves back on duty to respond to instances of federally criminal conduct, or crimes of violence, that they witness.

57. U.S. Government Accountability Office, "Human Capital: Strategies to Help Agencies Meet Their Missions in an Era of Highly Constrained Resources," May 7, 2014, GAO-14-168, <https://www.gao.gov/products/gao-14-168>.

underlying causes of ATF's misclassification of administrative positions into the GS-1800 job family. Appendix H contains the evaluative framework.

The report's root cause analysis primarily focuses on ATF. Using the same evaluative framework, the Panel expanded its analysis to other DOJ component agencies and found that some of the challenges facing ATF are shared by other component agencies.

Root Cause Analysis

Culture and Leadership

ATF and DOJ have a deeply-rooted law enforcement culture

GAO defines organizational culture as “the underlying assumptions, beliefs, values, attitudes, and expectations shared by an organization's members that affect their behavior of the organization as a whole.”⁵⁸ An organization's culture significantly impacts the individual and collective behaviors of employees, as well as the organization's behaviors as a whole.⁵⁹

Established in 1972 and transferred to DOJ in 2003, ATF carries out a broad range of law enforcement functions and activities to combat violence and crimes involving firearms, explosives, and arson.⁶⁰ In its strategic plan, ATF defines its mission statement as “ATF protects the public from crimes involving firearms, explosives, arson, and the diversion of alcohol and tobacco projects; regulates lawful commerce in firearms and explosives; and provides worldwide support to law enforcement, public safety, and industry partners.”⁶¹ To fulfill its mission, ATF employs a large law enforcement workforce, including special agents (GS-1811) and industry operations investigators (GS-1801). As of August 2022, ATF had 2,590 criminal investigators in the 1811 series, which accounts for approximately 51 percent of the total employees of ATF.⁶²

ATF has a deeply rooted law enforcement culture. Special agents (GS-1811) are highly trained and have the authority to carry weapons, conduct searches, and make arrests. Being an 1811 series special agent is generally viewed as a recognition of status and authority. In discussing the underlying causes of the ATF's 1811 series misclassification issues, multiple DOJ and ATF officials focused on the role of ATF's law enforcement culture and its strong mission orientation. Some interviewees noted that, given its unique law enforcement culture, ATF historically took a liberal approach to classifying 1811 series positions and granting LEO retirement coverage. Further, agency officials' attitudes and expectations did not reflect a strong prioritization of classification rules and standards, and as a result, the classification processes and oversight mechanisms designed to ensure compliance did not achieve the intended results. Multiple interviewees said that a widespread perception within ATF—and DOJ more generally—is that the agency's law

58. U.S. Government Accountability Office, “Aviation Acquisition: A Comprehensive Strategy Is Needed for Cultural Change at FAA,” 2, 1996, RCED-96-159, <https://www.gao.gov/products/rced-96-159>.

59. U.S. Government Accountability Office, “Aviation Acquisition,” 2.

60. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), *Fiscal Year 2022: Congressional Budget Submission*, May 2021, <https://www.justice.gov/jmd/page/file/1399371/download>.

61. Bureau of Alcohol, Tobacco, Firearms and Explosives, *Strategic Plan Fiscal Years 2017-2022*, n.d., <https://www.atf.gov/file/131231/download>.

62. ATF HR data.

enforcement mission requires that 1811 series employees fill leadership positions. Additionally, there is some apprehension about having non-1811 series employees supervise 1811 series employees. Many senior leaders stressed the value of having 1811 series employees fill some administrative positions (e.g., HR, budget, procurement) because they better understand the agency's mission needs.

As noted in Chapter 2, ATF has taken actions to reassign employees or reclassify positions to address OPM findings. Some interviewees expressed frustration that it has been challenging to “right the historical wrongs”—the resistance comes in the familiar form of “we have always done it this way.” The default mindset of many senior leaders is that OPM's classification standards do not consider ATF's mission needs, and there is concern that the audit has heightened the risk of mission failure. Interviewees told the Study Team that OPM findings were not taken seriously by ATF's senior leadership (outside HR) until recently. The OPM audit and Academy study have drawn greater attention to the cultural challenges at ATF and DOJ.

The lack of a collaborative working relationship between ATF HR and management presents a challenge.

Tension exists between the ATF management and HR. A common perception among managers is that HR staff and classifiers always say “no” without trying to solve the problems. HR is often viewed as ‘roadblocks’ in the way of delivering the agency's mission. Some ATF interviewees described the processes for developing and updating position descriptions as “beyond frustrating.” Some ATF officials complained that HR staff have not been able to understand the challenges and seek ways to assist them in achieving the desired outcomes.

On the other hand, HR staff contend that HR is not supposed to simply follow the direction of managers, and it is their job to ensure compliance with relevant HR rules and standards and protect the agency from violations of law. Interviewees noted that HR staff often perceive significant pressure when the classification results differ from what managers and senior leaders anticipate. HR staff are expected to maintain the integrity of classification and HR practices; however, in practice, it is very difficult for HR staff to resist pressures from the agency's leadership. In its report, OPM also points out the issue that some ATF HR staff raised their concerns about the 1811 series classification to the ATF leadership, but leaders rejected their concerns. As OPM writes, “practices are carried out in fear of retaliation for disagreeing with managers.”⁶³

The tension between managers and classifiers has been exacerbated by managers' lack of knowledge of classification and other personnel rules and regulations. In addition, the HR staff's inconsistent interpretation of the OPM standards and rules has contributed to confusion among managers about the classification process and outcomes. Several ATF managers expressed frustration that they often received conflicting information from HR staff. Moreover, ATF officials repeatedly raised a concern about the lack of transparency in HR management. For example,

63. U.S. Office of Personnel Management, *Human Capital Management Evaluation: U.S. Department of Justice: Bureau of Alcohol Tobacco and Firearms*, 2, August-September 2020 (this report is not for distribution).

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.

While the head of HRPD (Assistant Director) reports directly to the Deputy Director, the HR management function is largely viewed as an administrative support function. As OPM has noted, "ATF's human capital management practices and policies have resulted in making HR merely a production environment, rather than a consultative member of ATF's leadership."⁶⁴

ATF HR has taken action to improve its working relationship with line management. For example, ATF has hired a new deputy chief to oversee performance management and another in charge of staffing and recruitment (including classification). Additionally, ATF HR has revamped its classification process and developed various tools (e.g., the 1811 series questionnaire, the job series determination worksheet) to clarify roles and expectations, improve transparency, and facilitate collaboration between hiring managers and classifiers. ATF HR has recently developed some basic training materials for line managers to assist them in understanding how the classification process works and how to develop position descriptions. However, some managers interviewed by the Study Team were not satisfied with the support provided by HR and noted that most managers do not have any HR expertise or experience, so providing training presentations on how to write a position description is not sufficient, and managers need more hands-on support from HR staff.

ATF HR interviewees told the Study Team that the classification team is transitioning to a more proactive, customer-centric approach. When there is a disagreement between classifiers and management, instead of simply saying "no," classifiers are required to explain the rules and requirements and provide alternative plans of action. Interviewees told the Study Team that, with the new policies and processes and enhanced support from the leadership, HR staff feel more empowered to push back against managers when needed to ensure that the agency's HR practices are consistent with relevant laws and regulations. These efforts are still in the early stages of implementation, and their effectiveness is yet to be evaluated.

Based on the Study Team's limited interviews with other component agencies, it is difficult to assess the working relationships between HR and line management at other component agencies. Some HR staff from components said that they face similar challenges as ATF HR, while others believe that they can work collaboratively with the line management because their senior leadership supports them. Component agencies have established their own formal or informal processes to resolve disputes if there is a disagreement between HR or classifiers and hiring managers. One agency has a standing contract with OPM (fee-based services provided by OPM's Human Resources Solutions) and would send the classification case to OPM if the agency cannot easily resolve the disagreement. Many studies have highlighted the value of elevating the role of

64. U.S. Office of Personnel Management, *Human Capital Management Evaluation*, 2. (this report is not for distribution).

HR management to be a strategic partner of the agency's leadership.⁶⁵ According to GAO's Strategic Human Capital Management model, an agency's human capital management function should be integral to its overall efforts to carry out its mission. In this model, GAO emphasizes the importance of evolving the role of HR from a transactional function to a full member of the agency's top management team.⁶⁶ Similarly, the Academy's report *No Time to Wait: Building a Public Service for the 21st Century-Part II* also states that the role of human capital officers should be "at the core of accomplishing each agency's mission...and should be integral to each agency's leadership team, as business partners to the operating managers."⁶⁷

Opportunities exist for JMD to provide greater department-wide human capital leadership.

Led by the Assistant Attorney General for Administration (AAG/A), JMD provides a range of management and administrative support. JMD's responsibilities fall into four key areas: Fiscal Responsibility; Human Resources Management; Information Resources and Management; and Policy, Management and Procurement.⁶⁸ Figure 1 below presents the current organization of JMD.

The Deputy Assistant Attorney General for Human Resources and Administration also serves as the Department's Chief Human Capital Officer (CHCO). Under the direction of the CHCO, the Human Resources staff of JMD is responsible for developing and implementing department-wide HR management policies, providing oversight, and leading efforts to recruit and retain a highly qualified workforce.⁶⁹

Figure 1: Justice Management Division Organizational Chart

65. U.S. Government Accountability Office, "Human Capital: Observations on Agencies' Implementation," GAO-04-800T.

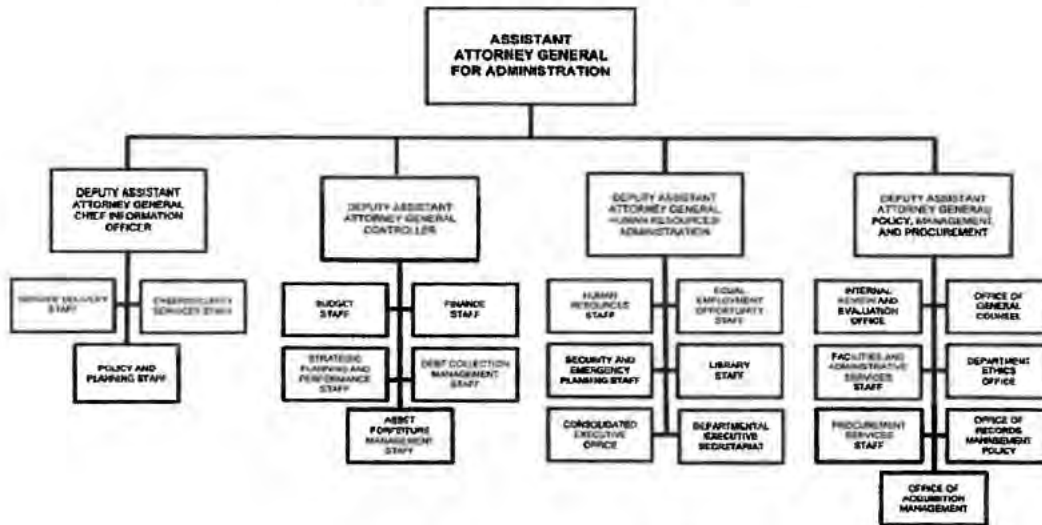
66. U.S. Government Accountability Office, "A Model of Strategic Human Capital Management," 2002, GAO-02-373sp, <https://www.gao.gov/products/gao-02-373sp>.


67. National Academy of Public Administration, "No Time to Wait, Part 2," 37.

68. U.S. Department of Justice, "Justice Management Division," n.d., <https://www.justice.gov/jmd>.

69. U.S. Department of Justice, "Human Resources," n.d., <https://www.justice.gov/jmd/human-resources>.

JUSTICE MANAGEMENT DIVISION



Approved by  Date: January 14, 2020
 WILLIAM P. BARR
 Attorney General

Source: DOJ JMD

The CHCO Act of 2002 (the Act) established the CHCO position in the 24 CFO agencies and emphasized the role of CHCOs as an integral part of an agency’s senior leadership team.⁷⁰ By statute, the CHCO is charged with advising “the head of the agency and other agency officials in carrying out the agency’s responsibilities for selecting, developing, training, and managing a high quality, productive workforce and implementing the rules and regulations of the President and the Office of Personnel management and the laws governing the civil service within the agencies.”⁷¹ The role of the CHCOs and the need to enhance the central HR function are the subject of numerous studies. For example, in its report, *A Guide for Chief Human Capital Officers*, the Partnership for Public Service identifies many high-impact areas the CHCOs should focus on to align an agency’s human capital policies and programs with its mission priorities.⁷²

Multiple current and former CHCOs interviewed for this study emphasized that CHCOs must build trust with agencies’ top leadership by demonstrating expertise and helping the agency accomplish its mission. Without support from the top, it is very difficult for CHCOs and central HR offices to gain support from component agencies and staff. Interviewees acknowledge the important oversight role CHCOs have over component agencies; however, they use their oversight

70. Homeland Security Act of 2002 Public Law 107-296, November 25, 2002, <https://www.congress.gov/107/plaws/publ296/PLAW-107publ296.pdf>.

71. U.S. Code, Title 5, Part II, Subpart G, Chapter 14, Section 1401 <https://www.law.cornell.edu/uscode/text/5/1401>

72. Partnership for Public Service, *A Guide for Chief Human Capital Officers*, January 2020, <https://presidentialtransition.org/publications/a-guide-for-chief-human-capital-officers-supporting-new-appointees/>.

efforts as educational opportunities for improving HR practices across agencies. They also regularly meet with component agencies, listen to their challenges, and advocate on their behalf to department and agency leaders, OPM, and at the CHCO Council.

Additionally, interviewees stressed the key role of CHCOs in obtaining and maintaining the support of key external stakeholders, such as OPM, Congress, other federal agencies, unions, and other key interest groups. For example, several CHCOs interviewed discussed the importance of maintaining a strong working relationship with OPM through regular communications, active participation in OPM's initiatives, and formal and informal networking. Interviewees noted that their collaborative relationships with OPM have proven key to carrying out the responsibilities of the CHCO offices.

Opportunities exist for JMD to provide greater department-wide human capital leadership in support of the components. Interviewees told the Study Team that DOJ component agencies do not view JMD as the strategic HR leader of the department. Some interviewees noted that component agencies often go directly to the Deputy Attorney General (DAG) without going through the proper channels (i.e., JMD) to address HR-related issues. According to some interviewees, there is no formal process that allows component HR staff to elevate concerns to the DOJ-level management (i.e., JMD), and some component staff interviewed for this study do not believe JMD has the authority to resolve disputes.

JMD represents the department and serves as a liaison with OPM to address the audit findings. Interviewees stated that JMD has been working collaboratively with ATF to prepare responses, and ATF submits its responses and documents to OPM through JMD. During the first few months after OPM issued the audit report, JMD held regular meetings with ATF HR to discuss and review progress. JMD's Position Classification Manager is working closely with ATF HR to update and rewrite its position descriptions to ensure compliance. 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. A perception among some DOJ and ATF officials is that, under the previous leadership, JMD did not take the OPM audit findings seriously. Some interviewees noted that the issues around the 1811 series classification are not new, and JMD's previous leadership was reluctant to take on this issue due to the strong resistance from component agencies.

Component agencies identify the lack of clear department-wide policy guidance as a major concern (a more detailed discussion of this issue appears later in this chapter). JMD's Human Resources Policy and Advisory Services (HRPAS) is responsible for providing policy advice and guidance to components and reviewing and approving components' LEO retirement coverage requests. This process provides checks and balances to ensure positions are properly classified. However, interviewees told the Study Team that, under the previous leadership, JMD approved most of the components' requests in the past (the following section provides a more detailed discussion on the JMD's oversight programs). According to JMD officials, insufficient resources have hampered JMD's ability to provide effective leadership. For example, according to JMD officials, Human Capital Management and Accountability (HCMA)'s oversight and accountability efforts have been in a compliance mode due to resource constraints. HCMA's evaluations only cover one-third of the required human capital program areas identified by OPM. HCMA conducts

evaluations to identify components' HR issues and program deficiencies but does not monitor whether or how components address those issues identified by HCMA evaluations. Some interviewees from component agencies also pointed out that there is no effective process in place where components can work with JMD to resolve the findings from HCMA evaluations. Components do not have the opportunity to discuss those findings with JMD, and it often takes too long for JMD to respond to components' questions and concerns.

Oversight and Accountability

Improvements are needed to strengthen the oversight of agencies' classification practices.

Effective oversight is of fundamental importance in assuring that agencies' HR practices comply with relevant rules and standards. This section summarizes the Panel's key findings and observations regarding component agencies' internal oversight of their classification practices and JMD's oversight efforts.

Internal oversight

According to DOJ officials, component agencies are required to review position classification and recertify their position descriptions every five years. The Study Team found that many component agencies cannot maintain that five-year schedule due to limited resources. Some component agencies review their positions and position descriptions periodically, but no formal review process exists.

ATF's five-year position classification review has been put on hold for many years. The lack of effective oversight contributed to the improper 1811 series classification practices at ATF. The OPM audit found many instances in which ATF used standard 1811 series position descriptions for administrative positions at the headquarters, and these standard position descriptions did not reflect any of the administrative duties of these positions.⁷³ While agencies are encouraged to use standard position descriptions when appropriate, it is important to ensure that the position description provides a valid description of the work performed by the incumbents. Some of the ATF's position descriptions have not been updated for 20 years, and it is unclear whether they still accurately reflect the positions' duties and responsibilities. The Study Team found similar practices at some other component agencies. As discussed in Section 3.1, standard position descriptions are commonly used for 1811 series positions in the component agencies' key headquarters offices, and some position descriptions are decades old.

ATF HR officials noted that the agency has made concerted efforts to strengthen its internal control. The Classification and Position Management Branch (CPMB) chief reviews position classification to ensure accountability, and the deputy chief of staffing & recruitment also

73. U.S. Office of Personnel Management, *Human Capital Management Evaluation*, 4.

reviews position classification when needed. In addition, ATF has received additional resources and plans to resume its five-year review to ensure that positions are properly classified and that the position descriptions accurately reflect the positions' duties.

JMD's oversight reviews

Federal agencies are responsible for classifying their positions, and OPM has the legal authority to oversee agencies' classification practices. In practice, OPM does not conduct regular oversight reviews of agencies' classification programs and relies on agencies' internal oversight efforts to ensure proper implementation of classification standards.⁷⁴ Within DOJ, each law enforcement component agency handles classification, and JMD has oversight responsibilities. The DOJ CHCO has the authority to suspend or remove components' classification authorities.

JMD's HCMA conducts oversight reviews of components' HR practices and programs. However, HCMA's reviews typically do not cover classification practices, as classification is not part of OPM's human capital accountability framework. According to JMD officials, JMD did not have much visibility into the classification activities of component agencies. The Panel and Study Team's benchmarking research found that some peer law enforcement agencies' central HR offices (the CHCO office) include position classification as part of their regular oversight reviews. JMD officials noted that JMD's HCMA recently received additional funding to hire an in-house classification expert and develop appropriate models to review components' classification practices more systematically.

While the authority of position classification is delegated to some component agencies, JMD has the authority to determine LEO retirement coverage eligibility. Position classification and retirement coverage are separate processes. Per JMD's policy guide,⁷⁵ components must submit a coverage request to JMD, which includes a position description, a functional statement, a job analysis, and a current organizational chart, among other elements. JMD's HRPAS is responsible for reviewing components' LEO retirement coverage requests. As part of its review, JMD reviews the position description and assesses whether the position is correctly classified according to the standards. To some degree, this process serves as a check and balance system to help ensure positions are properly classified.

The Study Team found that JMD's review did not meet its intended objectives or standards. Some JMD officials noted that, in previous years, JMD approved component agencies' requests. The Study Team learned that ATF received only one rejection from JMD in the past

74. U.S. Government Accountability Office, "Human Capital: OPM Needs to Improve the Design," 2018, GAO-14-677.

75. U.S. Department of Justice, *Law Enforcement Officer (LEO) Retirement Coverage Fact Sheet*, n.d. Note: this report is not for distribution.

eight years, and interviewees from other components also said that they did not receive any formal rejection on their retirement coverage requests. Some interviewees from multiple component agencies noted that JMD's approval process was time-consuming and appeared to lack transparency. One interviewee from a component agency told the Study Team that the agency submitted a retirement coverage request almost two years ago but is still waiting for JMD's response.

As discussed earlier, JMD officials stated that limited funding and resources hinder JMD's ability to carry out its oversight responsibilities. JMD has enhanced its process for reviewing components' LEO retirement coverage requests (the newly hired Position Classification Manager is responsible for reviewing requests). JMD also issued a new policy guide to clarify the department-level LEO retirement coverage requirements.

Policy and Processes

The lack of clear DOJ-level policy guidance and support has been identified as a major concern.

Current, accurate, and complete policy guidance is critical to an agency's ability to ensure that its human capital management programs comply with relevant legal and regulatory requirements. Interviewees noted that, up until recently, JMD had not provided sufficient LEO classification policy reference guides to component agencies. JMD's HRPAS is responsible for developing department-wide HR policies and providing policy interpretation and technical guidance to component agencies. JMD did not have staff with expertise in position classification for at least ten years. Since the Classification Manager came on board in April 2022, JMD has developed and issued several classification policy reference guides with a strict interpretation of OPM classification standards, such as the *Classification of Criminal Investigator (GS-1811) Positions Fact Sheet*, *Comparison of GS-1800 Occupational Series Factsheet*, *Inclusion in the GS-1811 Classification Aid*, *LEO Retirement Coverage Fact Sheet*, and others. However, JMD has not actively communicated or promoted these new policy guides to component agencies. Some interviewees from component agencies said that they were not aware of any recently-developed policy documents from JMD, while others noted that they received the new policies because they asked for relevant policies. The absence of clear department-level policy guidance has created inconsistent interpretations of classification standards across component agencies and confusion over the requirements. Components have developed their own classification policies and processes, which sometimes contradict JMD's policy interpretation.

Interviewees noted that JMD's policy documents are significantly outdated, incomplete, and sometimes provide conflicting guidance. Some HR staff felt they could not rely on JMD's policy guidance when developing component HR policies and had to write their policies from scratch. DOJ's internal requirement is that HR policies and directives be updated every five years to ensure

they are current and relevant.⁷⁶ In its Management Advisory Memo from August 2021, the DOJ Office of Inspector General (OIG) raised the concern that the department's HR policies are incomplete, and JMD has not met the requirement to review HR policies every five years. DOJ OIG recommended that JMD conduct a review to identify all areas where DOJ policies do not reflect current regulations and OPM guidance and requirements.⁷⁷ JMD leadership has recognized the need for improved department-wide HR policies. According to JMD officials, under its current leadership, HRPAS is in the process of updating policies and guidance and revamping its webpage, which serves as a central repository for department-wide HR policies and guidance. JMD officials also acknowledge that DOJ's current process for developing and updating HR policies is time-consuming, as many stakeholders, including component agencies, are involved in this process, and JMD/HRPAS' resources are limited.

Component HR staff noted that they do not receive regular communications from JMD. JMD occasionally provides department-wide policy sessions to component agencies. Some HR staff said that JMD has not been responsive to their policy questions or requests. Interviewees emphasized the need to enhance policy support from JMD and create opportunities to engage with other DOJ component agencies regularly.

HR Training and Development

Training opportunities are limited for HR staff, classifiers, and managers.

An agency's HR management largely depends on the skills and capabilities of its HR staff. Several interviewees noted that components' HR staff skill levels vary across the agency. Some ATF interviewees expressed frustration that HR staff often provide inconsistent interpretations of OPM (and other) policies and rules, creating confusion among managers about the classification process and outcomes. A few JMD interviewees also emphasized the need to strengthen the HR workforce of component agencies, and more systemic HR staff training is necessary to help them develop the skills to do their jobs effectively.

Some training opportunities are available to classifiers. For example, ATF classifiers are required to receive the basic universal classification process training (including classification rules, regulations, standards, etc.), which is designed for new classifiers. ATF officials noted that ATF currently has a group of experienced classifiers who do not need the basic classification process training. Most component agencies do not have regular training requirements for classifiers. External training (e.g., the Graduate School's classification training) is limited due to limited resources and COVID-19. Component HR staff identify the need for JMD to support HR and classification training. JMD recently hired a Chief Learning Officer who will lead the efforts to strengthen the training programs for component HR staff. OPM conducts a quarterly

76. The Study Team was advised that "DOJ has an aspirational goal that its internal directives, such as DOJ Orders, be reviewed every five years. However, internal staffing challenges have not made widespread review possible, leading to OIG scrutiny. Some HR policies, like those in DOJ 1200.1, the Human Resources Order, would fall within this aspirational goal. Internal classification guidelines are not in DOJ orders or instructions and do not come within this five-year goal."

77. U.S. Department of Justice, Office of the Inspector General, *Management Advisory Memorandum, Notification of Concerns Identified in the Department of Justice's Human Resources Policies*. August 2021.

Classification Policy Forum, which is designed to provide opportunities for agencies to share concerns, provide updates, and have ongoing discussions with OPM.

Managers are not familiar with classification and other HR rules/regulations.

Another common theme that emerged from interviews is the hiring managers' lack of knowledge about classification and other HR rules and regulations. Some HR staff noted that managers often adopt a 'subjective' approach (i.e., relying on their "gut feelings") to develop position descriptions. Historically, training for hiring managers on classification and other personnel rules was largely lacking. Some interviewees noted that line managers do not need to receive in-depth classification training, and a general understanding of the key principles and the basic process would be helpful.

Efforts are underway to expand the educational efforts to inform managers about the classification process and relevant rules and standards. For example, ATF HR has implemented various tools (e.g., the 1811 series questionnaire) to help ensure consistency in interpreting OPM standards and improve the objectivity of the classification process. ATF also has an HR one-on-one boot camp program designed to assist ATF leadership and line management in understanding the basic staffing and classification requirements. Most component agencies have developed basic training materials to help managers understand how the classification process works and how to use the process to their advantage.

Chapter 4: Recommendations

In the preceding chapters, the Panel has examined the classification practices of four DOJ law enforcement component agencies employing criminal investigators and conducted a root cause analysis of the ATF's misclassification of administrative positions to the GS-1800 series job family. Considering that background and analysis, the Panel provides a set of findings and recommendations in this chapter.

The Panel's recommendations are grouped into three categories:

- Recommendations to address the management and organizational challenges within ATF and DOJ based on the root cause analysis
- Recommendations to mitigate the effects of immediate challenges associated with the OPM ATF audit
- Potential options to address the systemic challenges posed by existing OPM standards and relevant laws, rules, and regulations

4.1 Recommendations to Address ATF and DOJ's Internal Management and Organizational Challenges

The Panel and Study Team utilized an evaluative framework to analyze the root causes of ATF's misclassification of administrative positions to the GS-1800 job family. The evaluative framework consists of four interrelated elements—leadership and culture, oversight and accountability, policy and processes, and HR training and development—and allows the Panel to develop a more holistic view of the issues and challenges within ATF and DOJ. Based on its root cause analysis, the Panel identified a number of internal organizational and management issues. This section offers a set of recommendations to address these issues and further build ATF's and, more broadly, DOJ's capacity to effectively manage the 1811 series classification and associated benefits.

Integrate HR Management with ATF's Law Enforcement Mission

An organization's culture sets the context for the behaviors of individual employees and the organization. Many ATF senior leaders believed that the agency's law enforcement mission requires most functions to be performed by 1811 series employees. Organizational culture is key to improving an agency's mission performance and developing and retaining an engaged, productive workforce. However, an unintended consequence seen in some agencies with a strong organizational culture is that the agency's strong mission orientation may take precedence over other issues.

Achieving its core mission should be the primary focus of an agency. However, agencies must follow merit system principles and related civil service statutes, rules, and regulations. The Panel and Study Team's research reveals the tension between ATF HR and line management. The lack of a collaborative working relationship between ATF HR and management has impeded the agency's ability to carry out its HR management programs effectively.

No agency can achieve successful mission delivery without solid human capital management. The nature of the HR function has evolved from administrative transaction services to supporting agencies' mission delivery. As many studies have emphasized, there is a critical imperative to elevate the role of HR—"HR needs a seat at the table."

Recommendation and Action Steps

ATF should integrate its HR management with its law enforcement mission. Elevating human capital management hinges on sustained commitment from both the agency's leadership and HR staff and requires a shift in the organizational culture. ATF leaders should:

- Provide a clear, consistent message to all levels of the agency, articulating the urgent need for change and clarifying/formalizing the role of HR as a strategic partner of the agency's senior leadership
- Establish performance metrics that explicitly define senior leaders' responsibility to involve HR in the agency's strategic discussion and decision making process and assure accountability for change

In addition, to truly become a strategic partner, HR must add value to ATF's mission accomplishment efforts and earn credibility by demonstrating its professional expertise and the ability to fill the need for strategic human capital leadership. To serve as a strategic partner, ATF HR should establish and maintain a proactive human capital management approach, including

- Set clear, mutual expectations and define the roles and responsibilities of line managers and HR staff;
- With input from line managers, build on existing efforts and continuously seek ways to streamline the agency's HR management processes and improve effectiveness and efficiency; and
- Enhance HR staff training to ensure that they have the competencies to take on the expected role effectively and educate HR staff on the program side of ATF to deepen their understanding of business needs

Enhance the Role of JMD as the Department-Level Human Capital Management Leader

The Panel's research affirms the need for stronger department-level human capital management leadership. A common theme highlighted during stakeholder interviews and earlier studies is the importance of the central HR office and the role of the CHCO as the department's central HR leader. It is critical for the CHCO to receive visible support from and full access to the agency's top leadership, and it is critical for the agencies to receive visible support and strong advocacy from the CHCO. Achieving effective HR management requires collaborations with a variety of external entities. As the department's human capital leader, the CHCO plays a vital role in cultivating effective working relationships with key stakeholders, such as OPM and Congress. At the same time, changes are needed to further build JMD's capacity to carry out its responsibilities to develop department-wide HR policies, oversee the HR programs of component agencies, and assist component agencies in implementing federal HR laws, regulations, and policy guidance.

Recommendation and Action Steps

DOJ should enhance the role of JMD as the department-level human capital management leader. To promote the leadership role of the JMD, the Panel recommends the following actions:

- The DOJ's top leadership should reaffirm the CHCO's role as an integral part of the department's senior leadership team and emphasize the importance of effective human capital management in delivering the department's mission.
- JMD should take a more structured, strategic approach to engaging key stakeholders, including OPM, Congress, the CHCO Council, DOJ component agencies, and peer law enforcement agencies.
- JMD should strengthen its leadership role by:
 - adopting a more collaborative, proactive approach to developing department-wide HR policies,
 - establishing regular channel of communication with component agencies to gather feedback prior to issuing policy guidance or changes,
 - communicating policies to component agencies effectively and in a timely manner,
 - reviewing JMD's policy development process to identify opportunities to improve efficiency,
 - building on existing accountability programs to exercise effective oversight,
 - increasing transparency of JMD's review and decision-making process, and
 - establishing communities of practice and providing/supporting the training initiatives for components' HR staff.

4.2 Recommendations to Mitigate the Effects of Immediate Challenges Associated with the OPM ATF Audit

OPM informed DOJ and ATF of the audit findings on ATF's misclassification in October 2020. Since then, ATF and DOJ have been working with OPM to address OPM's audit findings. According to DOJ, as of April 2023, 20 positions remain unresolved. 31 positions remained unresolved. The Panel has identified a series of immediate challenges associated with the OPM audit and believes that it is imperative that DOJ address the unresolved findings and close the audit as soon as possible.

OPM's partial suspension of ATF's classification authority and the inability to fill positions in the GS-1800 job family have caused significant morale issues at ATF and present a potential risk of mission failure to the agency. Without a final resolution of these positions, OPM may further extend the suspension of ATF's classification authority, and, at some point, OPM can use its authority to reclassify those positions. In addition, OPM may expand the scope of the audit to include other DOJ component agencies, potentially leading to a broader suspension of classification authorities within DOJ. As some interviewees noted, OPM rarely suspends an agency's classification authority, and unresolved OPM audit findings and continuous suspension of classification authority pose a reputational risk to ATF and may spur additional congressional interest that could even lead to cuts in annual appropriations.

Recommendation and Action Steps

The Panel has examined the systemic challenges posed by the existing OPM standards and other relevant regulations and policies, and a detailed discussion on systematic challenges is provided in Section 4.3. It is important to note that developing solutions to address those government-wide, systemic issues typically entails a lengthy, resource-intensive process and requires support and buy-in from a variety of stakeholder groups. In light of the immediate mission and reputational risks, **ATF and DOJ should continue to work together to complete all of OPM's required and recommended actions to satisfy OPM's immediate requirements and regain ATF's classification authority as soon as possible.**

To achieve that goal, the Panel has identified some action steps for DOJ and ATF to consider:

Action Step 1: Continue working with OPM to clarify classification policy requirements and seek resolution on unresolved positions.

JMD should have an in-depth discussion with OPM to ensure that there is an agreement on the proper interpretation of the classification standards and the flexibility allowed under the current rules and regulations. As discussed in Chapter 3, JMD has issued 1811 classification Aid with a strict interpretation of OPM classification standards, and DOJ component agencies provide competing interpretations of OPM's classification requirements. OPM has the ultimate authority to interpret the classification standards, so it is critical for JMD to have a discussion with OPM to clarify classification requirements, reconcile different views on position classification, and develop solutions that would be acceptable to both OPM and DOJ.

Action Step 2: Conduct desk audits and update position descriptions and other supporting documents to substantiate the 1811 classification.

JMD and ATF officials said that the agency has submitted revised position descriptions and supporting documents to support its reconsideration requests. However, in stakeholder interviews, OPM maintains that ATF and DOJ have not submitted sufficient documentation that allows OPM to reconsider the classification of those positions.⁷⁸ ATF should conduct desk audits to examine the nature and extent of the major duties of these positions and provide sufficient documentation (e.g., job analysis, desk audit results, etc.) to demonstrate the correlation between classification determination and the duties and qualifications required for the positions.

Position classification focuses on the overarching description of the work and the position's core purpose and major duties, which drives the paramount knowledge required for the position. Major duties and paramount knowledge are the primary determining factors in selecting job series. OPM defines "paramount knowledge" as "the most important type of subject matter knowledge or experience required to do the work."⁷⁹

78. U.S. Office of Special Counsel, *Report of Investigation*, March 29, 2022 (this report is not for distribution).

79. U.S. Office of Personnel Management, *Job Family Position Classification Standard*, 7.

There is no easy way to determine a position's paramount knowledge, and it requires the use of judgment of classifiers to make the case based on OPM classification standards.

Many unresolved positions are from the ATF National Academy, ranging from training managers (instructors) to division chief (the head of the ATF National Academy). Instructor positions typically involve two skill sets—training skills and specialized subject matter expertise. The 1712 job series is often used for training positions when teaching and educational skills are the position's paramount knowledge. These training positions may still involve applying specialized expertise, but not to the extent that it represents the “paramount knowledge” of the position. A training position should be classified as 1811 if it requires specialized 1811 subject matter expertise as the “paramount knowledge” to perform the teaching responsibilities.

The U.S. Department of Veterans Affairs (VA) provides a practical example of classifying training positions. VA has training staff in both the 1700 job series and the 600 series, depending on the types of training courses they are responsible for. While the training staff who teach general introductory courses are typically classified to the generic 1712 series, those who teach specialized medical care courses (e.g., wound care) are classified in the 0600 series.⁸⁰

One way to support the classification of an instructor position is to clearly outline the courses the incumbent is teaching and document why these courses require criminal investigator skills. ATF interviewees repeatedly emphasized the value of having 1811s teach 1811s. The Special Agent Basic Training (SABT) program at the ATF Academy is designed to provide agency-specific investigation training to newly hired special agent trainees. While SABT offers a wide range of practical, application type courses (e.g., the field operation portion of the program) that absolutely require instructors with current field experiences and 1811 expertise, interviewees acknowledged that some foundational courses (e.g., the Gun Control Act, the National Firearms Act, firearms trafficking) do not necessarily require instructors with current investigative experiences. ATF and DOJ should identify those courses that must be taught by criminal investigators and provide sufficient documentation to support the 1811 classification of these instructors.

Some unresolved positions are at GS-15 and Senior Executive Service (SES) levels. The classification of leadership positions also depends on the position's major duties and paramount knowledge. A leadership position is classified as 1811 if the paramount knowledge of this position is specialized 1811 subject matter expertise, as opposed to management and executive knowledge or ability. First-level supervisors are typically classified in the same or similar job series as their subordinate positions because these positions usually require a high level of technical competence to supervise the work. Different skills and qualifications are required to perform different levels of management duties within an agency. For example, OPM identifies five executive core qualifications

80. The GS-0600 job family covers professional positions in the Medical and Healthcare group.

(ECQs) that define the competencies required to enter the SES.⁸¹ The five ECQs represent the management and executive skills required to lead an organization and are used by many agencies in selecting and developing senior executives.⁸² These ECQs are leading change, leading people, results-driven, business acumen, and building coalitions. In other words, the paramount knowledge for SES positions is less likely to include specialized technical qualifications.

ATF should conduct a desk audit to identify the positions for which 1811 expertise is the paramount knowledge and submit revised position descriptions and supporting documents with sufficient information to OPM to restart the conversation.

Action Step 3: Explore other potential solutions to meet the requirements of the existing OPM classification standards.

For some positions, it may be difficult to prove that 1811 subject matter expertise is the paramount knowledge. ATF and DOJ should consider reclassifying positions, reassigning employees to non-1811 positions, and hiring non-1811 staff (e.g., 1801 staff, annuitant, short-term detailees) to supplement 1811 staff. There are also some potential administrative solutions for ATF and DOJ to consider. For example, some law enforcement agencies assign a minimum threshold of criminal investigation responsibilities to 1811s in administrative positions and assign performance metrics that assess the performance of 1811 activities. However, as OPM does not review federal agencies' classification practices regularly, it is unclear whether those practices would satisfy the requirements of OPM.

Benefits and Limitations

Unresolved OPM audit findings and the suspension of classification authority have limited ATF's ability to hire and retain high-quality employees and created increased uncertainty within the agency. At some point, OPM may decide to use its authority to unilaterally reclassify the remaining positions for ATF, and ATF and DOJ may lose the opportunity to sustain the 1811 classification of some positions, putting ATF in an even worse position than it is already in. The bottom line is that ATF and DOJ should take a more proactive approach to working with OPM to resolve the remaining positions and regain its classification authority.

The potential solutions discussed in this section may not be sufficient to allow some employees to maintain their 1811 classification and therefore face strong resistance from ATF. The short-term solutions could limit ATF's ability to fill positions with the right employees to meet its mission requirements, as some positions are reclassified/some employees are reassigned to non-1811 positions. As discussed in Section 3.2, the Panel believes that the systemic challenges posed by existing statutory and regulatory requirements cannot be overlooked. The following section

81. The Study Team was advised by DOJ that FBI and DEA have the authority to establish its own SES system and establish and evaluate their own ECQs in recognition of the unique skills and abilities required in leading special agents.

82. U.S. Office of Personnel Management, "Overview," n.d., <https://www.opm.gov/policy-data-oversight/senior-executive-service/executive-core-qualifications/#url=Overview>.

provides some potential options to address the long-term needs of the federal law enforcement workforce.

4.3 Potential Options to Address the Systemic Challenges Posed by Existing OPM Standards and Relevant Rules and Regulations

Section 3.3 highlights some systemic challenges presented by the current classification standards and relevant retirement benefits laws and regulations. These challenges and issues are not unique to ATF or DOJ but have government-wide implications on the recruitment, retention, and development of the federal law enforcement workforce. In this section, the Panel provides two potential options for DOJ JMD to consider.

Potential Options

Given those systemic challenges discussed in Chapter 3, the Panel believes that agencies require greater flexibility to administer the 1811 classification and associated benefits to improve the recruitment, retention, and development of the law enforcement workforce. This section provides potential options to address those systemic challenges facing federal law enforcement agencies. Each option includes an analysis of the benefits and limitations of the approach.

Option 1: OPM clarifies or amends relevant regulations and standards—including the Code of Federal Regulations (CFR), classification standards, etc.—to provide federal agencies greater flexibility in administering LEO position classification and determining LEO retirement benefits eligibility or offering LEO equivalent benefits.

As discussed earlier, the 1811 classification and 6(c) retirement coverage eligibility are governed by a complex array of laws, regulations, and policy guidance. The statute sets broad, high-level requirements and criteria, and OPM translates the statutory requirements into regulations (CFR) and policy guidance. While it may require some statutory changes to provide agencies additional flexibility for classification, pay, and benefits, OPM can accomplish many changes through administrative processes.

A critical initial step to implement this option is to conduct a thorough review of relevant regulations and policy guidance to assist OPM in determining whether and to what extent regulatory and policy changes are needed to improve federal agencies' flexibility to hire, manage, and develop law enforcement employees. The review of relevant classification regulations and policies can be carried out by DOJ or Congress:

- DOJ JMD takes the lead in conducting an in-depth review of relevant regulations and policy guidance and how those rules and standards are implemented in federal law enforcement agencies to identify opportunities to update or clarify existing requirements. All DOJ Law Enforcement component agencies (both HR staff and 1811-line managers) should be represented on the review team to ensure that the review accounts for a wide variety of perspectives.

Based on its review, DOJ should develop a proposal that clearly explains how the current rules and standards impede agencies' ability to hire and retain the best and the brightest and propose regulatory or policy changes to address those challenges. The report should provide sufficient information to support the proposed changes, such as job analysis, job opportunity announcements, workforce data, etc. In addition, the report should also explain how the agencies have leveraged existing human capital tools and flexibilities, such as recruitment incentives, relocation incentives, etc., to attract and retain talent. Since this option would have government-wide implications, it is critical for DOJ JMD to engage peer law enforcement agencies (outside DOJ), the CHCO Council, and other stakeholders in the review process and solicit their feedback on the proposal before submitting the proposal to OPM. The review should be completed within 180 days.

Alternatively, this study can also be carried out by Congress.

- Congress requests GAO or OPM to conduct a comprehensive study on the law enforcement classification practices and retirement coverage statutes, regulations, and policies across the federal government, focusing on whether there is a need for updating, amending, and clarifying relevant statutes, regulations, or OPM policy guidance and standards. The study should include the following:
 - Assessing whether and how the current classification standards and retirement coverage regulations and rules hamper agencies' ability to recruit and retain high-quality law enforcement staff.
 - Determining what changes to the classification and retirement benefits regulations and standards are needed to allow agencies greater flexibility in administering position classification and retirement benefits for law enforcement positions.

The review should be completed within 180 days.

To facilitate the review process, the Panel recommends creating a working group consisting of CHCO representatives from federal law enforcement agencies. This working group would discuss the common challenges associated with implementing LEO classification standards, share practices, explore potential solutions, and provide networking opportunities to enhance collaboration among law enforcement agencies.

Benefits and Limitations

Option 1 addresses the government-wide, systemic challenges associated with the implementation of classification and related personnel regulations and rules, enables law enforcement agencies to fill positions with employees with the right skill sets and experiences, enhances career development opportunities for law enforcement officers, and improves federal HR regulations and standards to better serve the evolving needs of the federal law enforcement workforce.

Given the complexity and expanse of relevant statutes, regulations, and rules, this option requires a long, uncertain process, which can take years to complete. It requires changes to regulations or policy guidance that typically involve broad outreach to various stakeholder groups, such as federal agencies, interest groups, the CHCO Council, and other key stakeholder groups.

A DOJ-led study relies on JMD to initiate the process and propose regulatory or policy changes; however, there is no guarantee that OPM will act to amend relevant regulations and policy guidance. It might be difficult for DOJ to gather sufficient support from the federal law enforcement community due to the concerns about unintended negative consequences of participating in this study. In contrast, a congressional study typically has a more significant impact because it sends a strong signal to law enforcement agencies that Congress is willing to tackle this issue, creating a higher incentive for agencies' participation.

Option 1 provides law enforcement agencies with additional control over position classification and enhances agencies' ability to remain flexible with the 1811 workforce. More employees are likely to maintain their 1811 classification status and/or receive enhanced benefits, meaning this option may require higher costs to the employing agencies and long-term pension liability for the federal government as a whole.

Option 2: DOJ requests special authority from Congress to redesign the classification and compensation system for law enforcement officers

The purpose of establishing an alternative classification and compensation system is to increase DOJ's flexibility in administering position classification, setting pay and benefits, and designing the career development path for the law enforcement workforce. A growing number of agencies have adopted alternative personnel systems to achieve greater flexibility in pay, performance, and other HR practices to become more competitive in the labor market.⁸³ As discussed in the Academy's report, *Elevating Human Capital: Reframing the U.S. Office of Personnel Management's Leadership Imperative*, due to OPM's risk-averse approach and lack of responsiveness to agency needs, many agencies seek assistance directly from Congress to secure special personnel authorities through legislation.⁸⁴ There are two types of models for requesting special personnel authority from Congress:

- **Option 2a: DOJ requests special LEO classification and compensation authority for the law enforcement officers within DOJ.**

DOJ JMD develops a legislative proposal requesting special classification and compensation authority for the law enforcement employees within DOJ. Many federal agencies have obtained agency-specific special personnel authority from Congress to

83. U.S. Government Accountability Office, "Human Capital: OPM Needs to Improve the Design," 2018, GAO-14-677.

84. National Academy of Public Administration, *Elevating Human Capital: Reframing the U.S. Office of Personnel Management's Leadership Imperative*, March 2021, <https://s3.us-west-2.amazonaws.com/napa-2021/studies/united-states-office-of-personnel-management-independent-assessment/OPM-Final-Report-National-Academy-of-Public-Administration.pdf>.

address workforce challenges. For example, the Border Patrol Agent Pay Reform Act (BPAPRA) of 2014 granted the U.S. Customs and Border Protection (CBP) the authority to establish a new overtime compensation system for its Border Patrol agents. Under BPAPRA, CBP has greater flexibility in providing overtime compensation for Border Patrol agents and resolving the agency's long-standing issues with the use of Administratively Uncontrollable Overtime (AUO). Another example is DHS' Cybersecurity Talent Management System (CTMS). Congress provided DHS with broad authority to build its own personnel and talent management system for its cybersecurity workforce. DHS spent seven years developing the system, which went live in November 2021. CTMS is exempt from many of the government's competitive hiring, classification, and compensation requirements and is a "rank-in-person" system, which emphasizes individuals and their qualifications, as opposed to a "rank-in-position" system based on the positions' duties and responsibilities.

- **Option 2b: DOJ requests that Congress enact special classification and compensation authority for federal law enforcement officers.**

As the largest cabinet-level employer of 1811 LEOs, DOJ develops a legislative proposal requesting special authority to redesign the classification and compensation system for the federal law enforcement workforce. An example of the government-wide special personnel authority is the compensation flexibility of certain financial regulators. In response to the savings and loan crisis of the late 1980s, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) in 1989 to grant federal financial regulatory agencies the authority to establish their own compensation programs (i.e., exemption from the GS classification system) to ensure that these agencies have the flexibility to attract and retain highly specialized personnel.

The Panel and Study Team's research identifies a few key factors that would facilitate the legislative process (either DOJ-specific authority or government-wide authority). First, it is important to identify congressional champions who can help push the proposal onto the legislative agenda and into law (in this case, the champion is likely to be DOJ's authorizing committee). Additionally, it requires bipartisan, bicameral support to move the proposal through the legislative process. Further, support from the unions and employee associations is also critical to passing the legislation. Take CBP's special overtime compensation system as an example. Prior to the BPAPRA of 2014, the misuse of AUO had been a long-standing issue for DHS—and CBP specifically. To resolve this issue, DHS sought authorities to push for pay reform since 2008. DHS submitted a legislative pay reform proposal (allowing Border Patrol agents to receive LEAP) as a part of the FY 2012 budget request, but Congress did not act on it. The DHS OIG, GAO, Office of Special Counsel, and others had reviewed the issues related to CBP's misuse of AUO and issued a number of reports. The formal legislative process of the BPAPRA started in November 2013. Senator Jon Tester (D-MT), a longtime champion for secure borders, introduced the legislation, which became law in December 2014. The National Border Patrol Council, the union representing Border Patrol agents, endorsed the legislation.

Benefits and Limitations

Both Options 1a and 1b allow DOJ to be exempted from the traditional GS classification system for its LEO employees, enhance the agency's ability to fill positions with the right employees to carry out its mission, and offer additional flexibilities in recruiting, retaining, and developing law enforcement officers.

Option 2a has limited government-wide implications due to its focus on DOJ's law enforcement officers. This option does not require support from other law enforcement agencies, and DOJ has more flexibility in developing the legislative proposal. However, as some interviewees noted, a challenge for DOJ is to convince Congress that DOJ's law enforcement workforce is so unique that it requires its own compensation system. To some degree, the entire federal law enforcement community faces similar workforce challenges. A proposal requesting agency-specific personnel authority (i.e., Option 2a) may receive objections from OPM and other law enforcement agencies. Federal agencies' growing use of alternative personnel systems has increased the complexity of federal human capital management. Agency-specific personnel authority is likely to cause ripple effects across the federal government. Granting special personnel authorities to some agencies but not others is not consistent with the merit system principle of 'equal pay for equal work' and may lead to unintended consequences such as actual or perceived inequities.

Option 2b has a broader impact. Under Option 2b, the new classification and compensation system covers all of the 1811 special agents within the federal government. Before going to Congress, DOJ needs to secure support from at least one or two large agencies that employ 1811s. With the support from other law enforcement agencies, the chances of the proposal or bill passing through Congress would rise significantly. It is unclear whether Congress will act on the proposal and how long the legislative process will take, so it might be challenging for DOJ to gather sufficient support from the federal law enforcement community. To solicit feedback from other law enforcement agencies, DOJ could submit its legislative proposal to the Office of Management and Budget (OMB) to seek support from the administration. OMB would distribute the proposal to other agencies for comments (i.e., the OMB Circular A-19 legislative clearance process). After going through the interagency clearance process, the administration could send the proposal to Congress.

It is likely to be costly and time-consuming to obtain special personnel authority (DOJ-specific or government-wide authority) from Congress. Employees covered by alternative personnel systems generally receive higher pay or more generous benefits than regular federal employees in the GS system. In other words, moving to alternative personnel systems may impose higher costs on DOJ and additional long-term pension liability on the federal government. In addition, both Options 2a and 2b require that Congress legislate to grant DOJ or federal law enforcement agencies special personnel authority. Congressional actions typically entail a lengthy process, and it is difficult to predict how long it will take to pass this type of legislation. Interviewees noted that it would take at least two or three sessions of Congress for DOJ to obtain the authority (from introducing the proposal to Congress to passing legislation). In the case of the BPAPRA of 2014, the formal legislative process lasted for about one year. However, the challenges associated with CBP's use of AUO had been the focus of Congress, DHS, and other stakeholders for many years, and there was a strong congressional interest in pushing for legislation. Further, some interviewees pointed

out that position classification is often viewed as a technical HR issue that can be addressed without statutory changes and typically does not get on the priority list of legislators. It might be challenging for DOJ to gather sufficient resources and political support for its proposal.

Table 7 summarizes the Panel's recommendations and action steps.

Table 7: Summary of Recommendations and Potential Options

Challenges	Recommendations	Action Steps	Responsible Party	Benefits	Limitations
<p>ATF and DOJ's internal management challenges (discussed in Chapter 3)</p> <ul style="list-style-type: none"> ATF and DOJ have a deeply-rooted law enforcement culture. The lack of a collaborative working relationship between ATF HR and management presents a challenge. Opportunities exist for JMD to provide greater department-wide human capital leadership. Improvements are needed to strengthen the oversight of agencies' classification practices. The lack of clear DOJ-level policy guidance and support has been identified as a major concern. Training opportunities are limited for HR staff, classifiers, and managers. 	<p>Integrate HR Management with ATF's Strategies for Accomplishing Its Law Enforcement Mission</p>	<ul style="list-style-type: none"> Sustained commitment to effective human capital management from ATF's senior leaders and managers at all levels. ATF Leaders should: <ul style="list-style-type: none"> Provide a clear, consistent message to all levels of the agency, articulating the urgent need for change and clarifying and formalizing the role of HR as a strategic partner of the agency's senior leadership. Establish performance metrics that explicitly define senior leaders' responsibility to involve HR in the agency's strategic discussion and decision making process and assure accountability for change. HR must add value to ATF's mission accomplishment efforts and earn credibility by demonstrating its professional expertise and the ability to fill the need for strategic human capital leadership. ATF HR should: <ul style="list-style-type: none"> Set clear, mutual expectations and define the roles and responsibilities of line managers and HR staff; With input from line managers, build on existing efforts and continuously seek ways to streamline the agency's HR management processes and improve effectiveness and efficiency; and Enhance HR staff training to ensure that they have the competencies to take on the expected role effectively and educate HR staff on the program side of ATF to deepen their understanding of business needs. 	ATF	N/A	N/A
	<p>Enhance the Role of JMD as the Department-Level Human Capital Management Leader</p>	<ul style="list-style-type: none"> The DOJ's top leadership should reaffirm the CHCO's role as an integral part of the department's senior leadership team and emphasize the importance of effective human capital management in delivering the department's mission. JMD should take a more structured, strategic approach to engaging key stakeholders, including OPM, Congress, the CHCO Council, DOJ component agencies, and peer law enforcement agencies. JMD should strengthen its leadership role by: 	DOJ, JMD	N/A	N/A

Challenges	Recommendations	Action Steps	Responsible Party	Benefits	Limitations
		<ul style="list-style-type: none"> o adopting a more collaborative, proactive approach to developing department-wide HR policies, o establishing a regular channel of communication with component agencies to gather feedback prior to issuing policy guidance or changes, o communicating policies to component agencies effectively and in a timely manner, o reviewing JMD's policy development process to identify opportunities to improve efficiency, o building on existing accountability programs to exercise effective oversight, o increasing transparency of JMD's review and decision-making process, and o establishing communities of practice and providing and supporting the training initiatives for components' HR staff. 			
<p>Immediate Challenges</p> <ul style="list-style-type: none"> • OPM continues extending the suspension of ATF's classification authority. • As OPM has the authority to unilaterally reclassify positions, OPM could reclassify ATF positions if the positions identified by OPM remain unresolved. • The inability to fill positions in the GS 1800 job family has caused employee morale issues at ATF and presented a risk of mission failure to ATF. • OPM expands the scope of the audit to include other DOJ component agencies, potentially leading to a broader suspension of classification authorities within DOJ. • Unresolved OPM audit findings and continuous suspension of classification authority pose a reputational risk to ATF and may spur congressional interests that could even lead to cuts in annual appropriations. 	<p>ATF and JMD should continue to work together to complete all of OPM's required and recommended actions to satisfy OPM's immediate requirements and regain ATF's classification authority as soon as possible.</p>	<ul style="list-style-type: none"> • Continue working with OPM to clarify classification policy requirements and seek resolution on unresolved positions • Conduct desk audits and update position descriptions and other supporting documents to substantiate the 1811 classification • Explore other potential solutions to meet the requirements of the existing OPM classification standards 	<p>ATF JMD</p>	<ul style="list-style-type: none"> • Close the OPM audit and regain ATF's classification authority as soon as possible • Allow the agency to meet the 1811 classification requirements without legislative changes or changes to OPM classification standards • Mitigate immediate risks 	<ul style="list-style-type: none"> • Might not be sufficient to allow some ATF staff or senior leaders to maintain their 1811 classification • Do not address the systemic challenges posed by the current standards

Challenges	Recommendations	Action Steps	Responsible Party	Benefits	Limitations
<p>Systemic challenges posed by OPM classification standards and LEO retirement benefits requirements</p> <ul style="list-style-type: none"> OPM classification standards are widely recognized as outdated, complex, and challenging—sometimes unrealistic—to implement. OPM classification standards and current retirement and pay statutes and regulations create significant economic incentives to keep employees classified in the 1811 series. <ul style="list-style-type: none"> Criminal investigators may lose their LEAP and 6(c) retirement benefits when they move to non-1811 positions (e.g., promotion to higher level positions, rotational assignments to administrative functions) Existing classification and retirement benefits policies preclude leadership development opportunities (i.e., serving in administrative offices) for 1811 employees. 1811 classification represents qualification, status, and authority. It is very difficult to ask senior leaders to give up their 1811 status in exchange for a broader exposure to administrative functions in a law enforcement component agency. 	<p>Option 1: OPM clarifies or amends relevant regulations and standards to provide federal agencies greater flexibility in administering LEO position classification and determining LEO retirement benefits eligibility or offering LEO equivalent benefits.</p>	<p>A critical initial step to implement Option 1:</p> <ul style="list-style-type: none"> DOJ or Congress (through GAO or OPM) conducts an in-depth review of relevant regulations and policy guidance and how those rules and standards are implemented in the federal law enforcement agencies to identify opportunities to update or clarify existing statutory and regulatory requirements. 	<p>OPM, JMD, ATP, and other law enforcement agencies, Congress</p>	<p>A DOJ-led study:</p> <ul style="list-style-type: none"> Addresses the government-wide, systemic challenges associated with the implementation of classification and related personnel regulations and rules; Enables law enforcement agencies to fill positions with employees with the right skill sets and experiences; Enhances career development opportunities for law enforcement officers, and Improves federal HR regulations and standards to better serve the evolving needs of the federal law enforcement workforce. 	<p>A DOJ-led study:</p> <ul style="list-style-type: none"> Requires a long, uncertain process Difficult to gather sufficient support from the law enforcement community May require higher costs for the employing agencies and long-term pension liability for the federal government as a whole.
				<p>A Congressional Study:</p> <ul style="list-style-type: none"> Addresses the government-wide, systemic challenges associated with the implementation of classification and related personnel regulations and rules; Enables law enforcement agencies to fill positions with employees with the right skill sets and experiences; Enhances career development opportunities for law enforcement officers Improves federal HR regulations and standards to better serve the evolving needs of the federal law enforcement workforce A congressional study typically has a greater impact and sends a strong signal to law enforcement agencies that Congress is willing to tackle this issue 	<p>A Congressional Study:</p> <ul style="list-style-type: none"> Requires a long, uncertain process May require higher costs for the employing agencies and long-term pension liability for the federal government as a whole.

Challenges	Recommendations	Action Steps	Responsible Party	Benefits	Limitations
	<p>Option 2: DOJ requests special authority from Congress to redesign the classification and compensation system for law enforcement officers.</p>	<ul style="list-style-type: none"> • Option 2a: DOJ requests special LEO classification and compensation authority for the law enforcement officers within DOJ <ul style="list-style-type: none"> ○ DOJ JMD develops a legislative proposal requesting special classification and compensation authority for the law enforcement employees within DOJ. <p>Option 2b: DOJ requests that Congress enact special classification and compensation authority for federal law enforcement officers.</p>	<p>Congress, JMD, ATF, other component agencies</p>	<ul style="list-style-type: none"> • Allows DOJ to be exempted from the traditional GS classification system for 1811 criminal investigators • Enhances the agency's ability to fill positions with the right employees to carry out its mission • Enhances career development opportunities for law enforcement officers • Does not require support from other law enforcement agencies <ul style="list-style-type: none"> • Allows DOJ to be exempted from the traditional GS classification system for 1811 criminal investigators • Enhances the federal law enforcement agencies' ability to fill positions with the right employees to carry out their missions • Enhances career development opportunities for law enforcement officers • A government-wide impact could help build broader support for the proposed changes 	<ul style="list-style-type: none"> • Limited government-wide implications • Difficult to convince Congress that DOJ's law enforcement workforce is so unique that it requires its own compensation system • May receive objections from OPM and other law enforcement agencies <ul style="list-style-type: none"> ○ Agencies' growing use of alternative personnel systems has increased the complexity of federal human capital management ○ Lead to unintended consequences such as actual or perceived inequity • May require higher costs for DOJ and the federal government as a whole • Time-consuming to obtain special personnel authority <ul style="list-style-type: none"> • Requires support from other law enforcement agencies • May require higher costs for DOJ and the federal government as a whole • Time-consuming to obtain special personnel authority

Appendices

Appendix A: Panel and Study Team Member Biographies

Panel of Academy Fellows

Kimberly Walton, Chair, Ms. Walton served as the Executive Assistant Administrator for Enterprise Support within the Transportation Security Administration (TSA), between 2017 and 2022. Kimberly Walton was named TSA's Executive Assistant Administrator for Enterprise Support in June 2018. Walton is responsible for implementing processes that strengthen enterprise support services and driving efficiencies across TSA's human resources, acquisition and procurement, training, logistics, and other critical enterprise support functions. Prior to this role, she served as the Assistant Administrator for the Office of Civil Rights and Liberties, Ombudsman and Traveler Engagement. Prior to joining TSA, Walton served as the Deputy Chief Administrative Officer at the U.S. Patent and Trademark Office, where she provided resource management support to the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office. Before joining the U.S. Patent and Trademark Office, Walton was Director of Civil Rights for the U.S. Department of Commerce. In this role, she advised the Secretary of Commerce and other department senior staff on all equal employment opportunity, diversity and civil rights matters. She also chaired the department's diversity council. Before joining Commerce, Walton was an attorney with the U.S. Equal Employment Opportunity Commission. Walton has received a Department of Homeland Security Secretary's Award for Diversity Management, TSA Silver Medal Award, TSA Core Values Award. Additionally, Walton received the TSA Trailblazer Award in recognition of pioneering efforts toward the advancement of women. While at the U.S. Department of Commerce, Walton received a Silver Medal Award and two Bronze Medals.

Scott Cameron, Mr. Cameron currently serves as a Senior Advisor for Cornea Inc. Prior to this, Mr. Cameron served as the Principal Deputy Assistant Secretary for Policy, Management and Budget at the Office of the Secretary of the Interior within the U.S. Department of the Interior. Between 2014 and 2017, Mr. Cameron was the President of the Reduce Risks from Invasive Species Coalition. He held the position of Senior Advisor at a number of institutions, including Dawson and Associates, Pathfinder Consultants LLC, and R3 Government Solutions, where he also served as the Senior Vice President and Partner. Mr. Cameron also dedicated his time to be a director of multiple organizations, including Tuknik Government Services, where he was the Director of Strategic Development, Grant Thornton LLP, where he was the Director of the Global Public Sector, and CHEP International, where he was the Director of Government and Regulatory Affairs. Mr. Cameron got his start in Washington, working in multiple roles in the U.S. Department of Interior and serving as Deputy Chief of the Interior Branch for the U.S. Office of Management and Budget. He has a track record of accomplishment in budget, human resources, strategic planning, and performance management. Mr. Cameron also ran highly successful government-wide EGov initiatives on geospatial coordination and recreation.

Frank Chellino, Mr. Chellino presently serves as the President and Chief Executive Officer of Langley-Hunt International, Inc. Mr. Chellino held former positions with the U.S. Drug Enforcement Administration including Special Agent in Charge at both the Miami and Washington Division Offices and Deputy Assistant Administrator at the Office of Inspections. Prior to this, he also served as the Assistant Special Agent in Charge for the Washington Division Office, the Supervisory Senior Inspector for the Office of Professional Responsibility, and the Unit Chief at the Office of Security Programs.

John M. Palguta, Mr. Palguta was an Adjunct Professor at the McCourt School of Public Policy at Georgetown University from 2008 to 2018. During this time, Mr. Palguta also served as the Vice President of Policy and Research at the Partnership for Public Service. Prior to this, he was the Deputy Director of Policy and Evaluation at the U.S. Merit Systems Protection Board before becoming Director in 1997. At the U.S. Merit Systems Protection Board, Mr. Palguta also served as a Supervisory Research Analyst. Earlier in his career, Mr. Palguta served in multiple roles for the Office of Personnel Management, including Branch Chief of the Personnel Office and Personnel Management Advisor for the Bureau of Personnel Management Evaluation.

David Williams, Mr. Williams is a Distinguished Visiting Professor at the Schar School of Public Policy at George Mason University. Previously, Williams served as Chief Operating Officer and Executive Vice President of the U.S. Postal Service with responsibility for mail processing, networks, maintenance, delivery, and retail operations, as well as facilities. He led the logistics and processing operations to become the most efficient and high performing mail and package processing and transportation network in the nation. Before that, Williams served as Vice President of Network Operations. He also had responsibility for Logistics and International Operations. Williams also served as Vice President of Engineering and managed all engineering and development efforts focused on internal processes, including building and equipment maintenance programs and policies. Throughout his postal career, Williams has served in numerous field, area, and headquarters positions, including manager of Processing Operations. In that role, he led his team to superior performance for several years. His incorporation of lean six sigma practices and deployment of “Closing the Gap Strategies” resulted in mail processing work-hour reductions never before experienced.

Study Team

Brenna Isman, *Director of Academy Studies*, Ms. Isman has worked at the Academy since 2008. She oversees Academy studies, providing strategic leadership, project oversight, and subject matter expertise to the project Study Teams. Before this, she was a Project Director managing projects focused on organizational governance and management, strategic planning, and change management. Her research engagements have included working with the National Aeronautics and Space Administration, the Environmental Protection Agency, the Social Security Administration, the Department of Veterans Affairs, and multiple regulatory and Inspector General offices. Before joining the Academy, Ms. Isman was a Senior Consultant for the Ambit Group and a Consultant with Mercer Human Resource Consulting. Ms. Isman holds a Master of

Business Administration (MBA) from American University and a Bachelor of Science (BS) in Human Resource Management from the University of Delaware.

Mark Thorum, *Project Director*, Mark Thorum joined the Academy in April 2019 and currently serves as Project Director. He has recently led projects for the U.S. Department of Energy, Social Security Administration, National Oceanic and Atmospheric Administration, and the Department of Homeland Security Office of Inspector General. His areas of expertise include strategic planning, enterprise risk management, data analytics, organizational assessment and policy development, and financial governance. Mr. Thorum brings more than 25 years of experience with policy and program evaluation, assessment of private and public-sector infrastructure projects; thematic assessments focusing on governance, enterprise risk assessment; design and implementation of data analytics and risk assessment methodologies to improve efforts to quantify, evaluate and report on risk. Prior to joining the Academy, Mr. Thorum served as Assistant Inspector General with the Office of Inspector General (OIG), Export-Import Bank of the United States. Before joining EXIM Bank in 2010, he worked in structured finance and financial advisory practice with two international financial institutions. In addition, he taught qualitative and quantitative research methods at several universities. He holds a Ph.D. from the Virginia Polytechnic Institute and State University - School of Public and International Affairs. He received an M.A. from The Johns Hopkins University – School of Advanced International Studies, and a D.E.A. from the Institut d'études politiques de Paris (Institute of Political Studies) Paris, France

Yang (Chloe) Yang, *Senior Research Analyst*, Ms. Yang is a Senior Research Analyst at the Academy. Since joining the Academy in 2009, she has worked on projects with a range of federal and state agencies, including the Office of Personnel Management, the National Oceanic and Atmospheric Administration, the State Chamber of Oklahoma, and the Bureau of Transportation Statistics. Before joining the Academy, Ms. Yang was the research intern at the Foundation Environmental Security and Sustainability. She has also worked as an intern at the Woodrow Wilson Center for Scholars and a research assistant at George Mason University (GMU). Ms. Yang graduated from GMU with a Master's in Public Administration. She also holds a bachelor's degree in Financial Management from the Renmin University of China.

Adam Darr, *Senior Research Analyst*, Mr. Darr joined the Academy in 2015 as a Research Associate having previously interned in the summer of 2013. He has served on numerous Academy projects, including work for the National Science Foundation, Farm Service Agency, U.S. Secret Service, Federal Aviation Administration, and National Nuclear Security Administration. His areas of emphasis have been governance and management reform, organizational change, human capital, project and acquisition management, customer service best practices, and strategic planning. Mr. Darr is currently pursuing a Master's in Public Administration at The George Washington University and holds a Bachelor of Arts in Political Science and Homeland Security/Emergency Management from Virginia Commonwealth University.

Allen Harris, *Senior Research Associate*, Mr. Harris joined the Academy in October 2019 as a Research Associate. He has served on Academy projects including work for the National Park Service Design and Construction Program, Department of Energy, Office of Technology Transfer,

Department of Agriculture, Agricultural Research Service, and the National Association of Counties. He has experience in assisting agencies with infrastructure design and construction assessment, strategic plan development, and best practice benchmarking. Before joining the Academy, Mr. Harris had numerous internships, including working at the Brookings Institute and the U.S.– Japan Bridging Foundation. He graduated from the University of St Andrews, Scotland, in 2018, earning an MA, Honors in International Relations and Modern History.

Jillian McGuffey, *Senior Research Associate*, Ms. McGuffey joined the Academy in December 2020 as a Research Associate for the Strategic Initiatives Team. In this role, she conducts research for the Grand Challenges in Public Administration campaign, schedules and facilitates the Standing Panels, organizes partnership events, and coordinates social media content. Jillian realized she had a profound interest in working at the Academy when she interned there in the Summer of 2020, where she contributed to studies for the Office of Space Commerce and the National Park Service. Ms. McGuffey graduated from the University of Maryland with a Master of Public Policy after earning a Bachelor of Arts in Government and Politics and a Minor in Creative Writing. Before joining the Academy, Ms. McGuffey interned at the United States Census Bureau and the United States Citizenship and Immigration Services.

Appendix B: List of Interview and Meeting Participants

NOTE: The term 'Meeting' includes check-ins, roundtable discussions, touch bases, and introductory meetings with the Study Team. Titles and positions listed are accurate as of the time of the Academy's initial contact.

Justice Management Division

Participated in Individual Interviews with Academy Staff

5.12.22 and 4.13.23

- **Shannon O'Connor-Jobe**, Classification Program Manager, Justice Management Division

5.26.22

- **Kameron Kellum-Cloman**, Assistant Director, Human Capital Management and Accountability (HCMA), Justice Management Division

6.3.22

- **Michael Sena**, Assistant Director Human Resources Policy and Advisory Services, Justice Management Division

Participated in Meetings with Academy Staff

Met numerous times between 3.16.22 and 3.16.23

- **Catherine Emerson**, Deputy Assistant Attorney General and Chief Human Capital Officer, Human Resources and Administration, Justice Management Division
- **Valarie Mulcahy**, Deputy Chief Human Capital Officer and Director of Human Resources, Human Resources and Administration, Justice Management Division

7.19.22

- **Kameron Kellum-Cloman**, Assistant Director, Human Capital Management and Accountability (HCMA), Justice Management Division
- **Shannon O'Connor-Jobe**, Classification Program Manager, Justice Management Division

10.25.22

- **Catherine Emerson**, Deputy Assistant Attorney General and Chief Human Capital Officer, Human Resources and Administration, Justice Management Division
- **Jolene Lauria**, Deputy Assistant Attorney General/Controller, Justice Management Division

Bureau of Alcohol, Tobacco, Firearms and Explosives

Participated in Individual Interviews with Academy Staff

7.21.22

- **Robert O'Dell**, Chief of Classification and Position Management Branch, Office of Human Resources and Professional Development (HRPD)

8.3.22

- **Isaac Phillips**, Deputy Chief, Human Resources Operations Division

8.5.22

- **Victoria Amaize**, Benefits Specialist, HRPD
- **Shuntonya Clark**, Deputy Chief, Human Resources Operations Division

8.8.22

- **Kirk Howard**, Chief, ATF National Academy

8.11.22

- **Timothy Jones**, Deputy Assistant Director, Field Operations

8.24.22

- **Dr. Loretta Winks**, Training Specialist, ATF Academy

Participated in Meetings with Academy Staff

6.21.22

- **Lidia Barnes**, Chief of Staff
- **Roger Beasley**, Assistant Director, Office of Science & Technology/ Chief Information Officer
- **Lisa Boykin**, Acting Assistant Director, HRPD
- **Shuntonya Clark**, Deputy Chief, Human Resources Operations Division
- **Andrew Graham**, Deputy Assistant Director, Enforcement Programs Services
- **Pamela Hicks**, Chief Counsel
- **Chris Kopeck**, Deputy Division Chief, Human Resources Operations Division
- **George Lauder**, Assistant Director, Field Operations
- **James McDermond**, Assistant Director, Office of Strategic Intelligence and Information
- **Celinez Nunez**, Assistant Director, Office of Professional Responsibility and Security Operations
- **Gary Restaino**, Acting Director
- **Marvin Richardson**, Deputy Director

7.11.22

- **Lisa Boykin**, Acting Assistant Director, HRPD
- **Shuntonya Clark**, Deputy Chief, Human Resources Operations Division
- **Chris Kopeck**, Deputy Division Chief, Human Resources Operations Division

- **Robert O'Dell**, Chief of Classification and Position Management Branch, HRPD

7.12.22

- **Gary Restaino**, Acting Director
- **Marvin Richardson**, Deputy Director

8.2.22

- **Lisa Boykin**, Acting Assistant Director, HRPD
- **Shuntonya Clark**, Deputy Chief, Human Resources Operations Division

8.17.22

- **Tom Griffy**, Chief of Staff, Office of Professional Responsibility and Security Operations
- **Eric Lippold**, Deputy Assistant Director, Office of Management
- **James McDermond**, Assistant Director, Office of Strategic Intelligence and Information

8.19.22

- **Jennifer Ambuehl**: Deputy Chief Counsel
- **Pamela Hicks**, Chief Counsel

10.6.22

- **Lisa Boykin**, Acting Assistant Director, HRPD
- **Dionne Dent**, Assistant Director, HRPD

11.14.22

- **Ralph Bittelari**, Division Chief, HRPD
- **Lisa Boykin**, Acting Assistant Director, HRPD
- **Dionne Dent**, Assistant Director, HRPD

Federal Bureau of Prisons

Participated in Group Interviews with Academy Staff

8.24.22

- **Lisa Gradiska**, Personnel Director
- **Christina Griffith**, Assistant Director, Human Resource Management Division
- **Leona Smith**, Deputy Personnel Director

Participated in Meetings with Academy Staff

8.4.22

- **Lisa Gradiska**, Personnel Director
- **Christina Griffith**, Assistant Director, Human Resource Management Division
- **Leona Smith**, Deputy Personnel Director

8.17.22

- **Lisa Gradiska**, Personnel Director

Drug Enforcement Administration

Participated in Individual Interviews with Academy Staff

10.14.22

- **Gary Owen**, Deputy Chief Inspector, Office of Professional Responsibility

10.17.22

- **Joseph Kaleta**, Section Chief, Asset Forfeiture Section (OMA), Office of Operations Management

Participated in Group Interviews with Academy Staff

9.12.22

- **Mary Schaefer**, Chief Compliance Officer
- **Michael Ciminelli**, Section Chief, Office of Compliance
- **Reid McHenry**, Compliance Officer, Office of Compliance
- **Carol M. Wilkinson**, Compliance Officer, Office of Compliance

9.14.22

- **John Christie**, Section Chief, Benefits and Compensation
- **Chadwick Kelly**, Unit Chief, Employee Benefits Unit
- **Valorie Hopson**, HR Specialist, Benefits and Compensation
- **Reid McHenry**, Compliance Officer, Office of Compliance
- **Kristina Palmer**, Acting Deputy Assistant Administrator, Human Resources Division (HRD)
- **Uaida (Wanda) Watkins**, Unit Chief, Employee Relations and Performance

Participated in Meetings with Academy Staff

8.19.22

- **Kristina Palmer**, Acting Deputy Assistant Administrator, Human Resources Division (HRD)
- **Mary Schaefer**, Chief Compliance Officer
- **Jeffrey Sutton**, Chief Financial Officer
- **Tammy L. Van Keuren**, Deputy Assistant Administrator, Human Resources Division (HRD)

9.2.22

- **Catalina Garcia**, Team Lead, Classification
- **Kristina Palmer**, Acting Deputy Assistant Administrator, Human Resources Division (HRD)

9.9.22

- **James De Leo**, Unit Chief, Firearms Training Unit

- **Danny F. Genese**, Special Agent, Tactical Training Unit
- **Robert B. Johnson**, Assistant Special Agent in Charge, Domestic Training Section
- **Michael D. Landry**, Unit Chief, Academic Training Unit
- **Ian H. Neckin**, Special Agent, Practical Training Unit
- **Reid McHenry**, Compliance Officer, Office of Compliance

9.15.22

- **Reid McHenry**, Compliance Officer, Office of Compliance
- **Erik Smith**, Chief Inspector, Inspections Division
- **Wendy Woolcock**, Special Agent in Charge, Special Operations Division

9.16.22

- **Catalina Garcia**, Team Lead, Classification
- **Reid McHenry**, Compliance Officer, Office of Compliance
- **Kristina Palmer**, Acting Deputy Assistant Administrator, Human Resources Division (HRD)

9.21.22

- **Michael Ciminelli**, Section Chief, Office of Compliance
- **Reid McHenry**, Compliance Officer, Office of Compliance
- **Mary Schaefer**, Chief Compliance Officer
- **Carol M. Wilkinson**, Compliance Officer, Office of Compliance

Federal Bureau of Investigation

Participated in Individual Interviews with Academy Staff

11.3.22

- **Julie Stutler**, Human Resource Specialist

Participated in Meetings with Academy Staff

8.26.22

- **Brooks Anderson**, General Counsel
- **Kristyn Kelly Shapiro**, Section Chief, Talent Acquisition and Placement, Human Resources Division
- **Julie Stutler**, Human Resource Specialist
- **Mary Louise Wotring**, Administrative Officer

9.12.22

- **Drew Ambrose**, General Counsel
- **Brooks Anderson**, General Counsel
- **Anna Clark**, Assistant General Counsel
- **Kristyn Kelly Shapiro**, Section Chief, Talent Acquisition and Placement, Human Resources Division
- **Matt Rizzo**, General Counsel
- **Michael Schneider**, Assistant Director and Chief Human Resources Officer, Human Resources

- **Ralph Tursi**, Deputy Assistant Director, Human Capital Strategy
- **Darryl Wegner**, Assistant Special Agent in Charge

United States Marshals Service

Participated in Individual Interviews with Academy Staff

10.14.22

- **Matt Hershey**, Deputy Assistant Director, Training Division

Participated in Meetings with Academy Staff

8.30.22

- **Beth Brown-Ghee**, Human Resource Officer
- **Terri Simmons**, Chief, Office of Employee and Labor Relations
- **Karen Wren**, Human Resource Management

10.6.22

- **Beth Brown-Ghee**, Human Resource Officer
- **Molly Lowry**, **Supervisory Human Resource Specialist**
- **Terri Simmons**, Chief, Office of Employee and Labor Relations
- **Karen Wren**, Human Resource Management

10.13.22

- **Caroline Kelessidou**, Chief Inspector, Asset Forfeiture Division

10.18.22

- **Ronald Carter**, Deputy Assistant Director, Office of Professional Responsibility
- **Geoffrey Deas**, Assistant Director, Office of Professional Responsibility

Department of Treasury

Participated in Individual Interviews with Academy Staff

9.29.22

- **Trevor Norris**, Chief Human Capital Officer

Participated in Meetings with Academy Staff

10.7.22

- **Shondraya Grant-Levy**, Program Manager, Strategy Office, Criminal Investigation, IRS
- **Jonathan Sadler**, Director, Workforce Development, Criminal Investigation, IRS
- **Tara Sullivan**, Special Agent in Charge, Criminal Investigation, IRS
- **Deb Wilkins**, Director, Human Resources, IRS
- **Carla A. Williams**, Assistant Director, Criminal Investigation Hiring Branch, IRS

Department of Homeland Security

Participated in Individual Interviews with Academy Staff

6.30.22

- **Deborah Eldredge**, Executive Director, Human Capital Policy & Programs, Office of the Chief Human Capital Officer, DHS

Participated in Meetings with Academy Staff

9.8.22

- **Richard Deasy**, Associate Director, Training Operations, FLETC
- **Bryan Lemons**, Assistant Director, Mission and Readiness Support Directorate, FLETC
- **Ariana Roddini**, Assistant Director, Training Management and Operations Directorate, FLETC

United States Office of Personnel Management

Participated in Meetings with Academy Staff

6.8.22

- **Joanne Plasky**, Manager, Merit System Accountability and Compliance

10.14.22

- **April Davis**, Classification and Assessment Policy
- **Adam Garcia**, Senior HR Specialist
- **Kimberly Holden**, Deputy Associate Director, Talent Acquisition, Classification & Veterans Programs, Employee Services

Subject Matter Experts

Participated in Meetings with Academy Staff

6.14.22

- **Debra Tomchek**, Former Executive Director, Balanced Workforce Program Management Office, Chief Human Capital Office, DHS; Former Deputy Director, Program Support, Civilian Personnel Management Service, U.S. Department of Defense; Former Director, Human Resources, Justice Management Division, DOJ; Former Director, Human Resources, Office of Administration, U.S. Department of Commerce; Former Director, Office of Organizational Improvement and Acting Director, Personnel Resources Division Departmental Offices, U.S. Department of Treasury *

6.16.22

- **Ellen Tunstall**, Former Director & Acting Deputy Under Secretary of Defense, Workforce Issues and International Programs, Defense Secretary's Office, DoD; Former Deputy Associate Director, Talent and Capacity Policy, OPM *

6.21.22

- **Angela Bailey**, Former Chief Human Capital Officer, DHS; Former Chief Operating Officer, Office of Personnel Management; Former Associate Director and Chief Human Capital Officer, Employee Services, OPM; Former Deputy Associate Director, Recruitment and Hiring/Employee Services, OPM; Former Executive Director, Human Resources, Defense Contract Management Agency; Former Director, Human Resource Performance Management Center, Defense Contract Management Agency *

7.28.22

- **Kristine Marcy**, Former Associate Deputy Attorney General, Office of the Deputy Attorney General, DOJ; Former Assistant Director, Human Resources, Veterans and Labor Group, OPM *
- **Rendell Jones**, Former Associate Director for Management, DHS *

8.2.22

- **Doris Hausser**, Former Senior Policy Advisor to the Director, OPM; Former Assistant Director of Workforce Compensation and Performance, Office of Performance and Compensation Systems Design, OPM; Former Director, Position Classification, Performance Management and Incentive Awards Programs, OPM *

8.3.22

- **Ron Sanders**, Former Associate Director, Strategic HR Policy, OPM; Chief Human Resources Officer, Internal Revenue Service, U.S. Department of Treasury *
- **Reggie Wells**, Former Deputy Commissioner for Human Resources, U.S. Social Security Administration; Former Chief Human Capital Officer, U.S. Social Security Administration *

8.4.22

- **Thomas Kane**, Former Acting Director, Federal Bureau of Prisons, DOJ *

8.25.22

- **Jeffrey Neal**, Former Chief Human Capital Officer, DHS; Former Chief Human Resources Officer, Defense Logistics Agency, DoD; Former Deputy Chief Human Resources Officer, U.S. Department of Commerce *

9.7.22

- **Susan Yarwood**, Chief Human Capital Officer, U.S. Secret Service

11.3.22

- **William (Bob) Leavitt**, Deputy Assistant Secretary of Human Resources and Chief Human Capital Officer, U.S. Department of Health and Human Services
- **Jeffery Anoka**, Deputy Chief Human Capital Officer, U.S. Department of Health and Human Services

*Academy Fellow

Appendix C: Methodology—Data Collection and Data Analysis

The Study Team followed a standard methodology in collecting and analyzing evaluative framework data. An important first step is to determine the applicable criteria, statutes, and policy standards to use for the analysis:

1. What criteria and standards should be used as the benchmark for LEO classification and the determination of retirement benefits?
2. What leading practices are employed by peer agencies regarding LEO classification and the determination of retirement benefits?

Using the answers to questions 1 and 2, the Study Team developed a framework to assess the relevant component of DOJ.

In terms of data collection, the Study Team completed the following tasks:

1. Collect relevant agency policy documents related to LEO classification and the determination of retirement benefits.
2. Conduct semi-structured interviews with DOJ component HR staff to confirm the Academy's understanding of the component policies and processes. As a part of this process, the Academy partnered with DOJ JMD HR to design an interview guide and survey that incorporates standards for benchmarking.
3. Conduct focus groups with component staff to better understand the investigative function and attendant responsibilities and how they have evolved. In doing so, identify skill sets required to meet current and future mission requirements.
4. Compile and analyze quantitative data related to LEO staff across the Department of Justice and peer agencies. (See Appendix A)
5. Interview SMEs with a background in HR, classification, and Law Enforcement retirement benefits.
6. Refine the research questions and evaluative framework as necessary.

The Study Team performed data analysis to:

1. Review the relevant agency policy documents related to LEO classification and determination of retirement benefits.
2. Determine the current state and benchmark with established criteria and standards
3. Identify gaps and possible deficiencies and seek out the root causes of both using the Condition, Cause, Criteria, and Effect Framework.

Finally, the Study Team devised a path forward through the following steps:

4. Develop a set of preliminary observations and present those observations to DOJ for awareness and to inform future data gathering
5. Identify strategies to address root causes and identified deficiencies
6. Develop draft actionable recommendations
7. Incorporate feedback from DOJ to finalize the Panel's findings and recommendations

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Appendix E: Law Enforcement Definitions from U.S. Code and Code of Federal Regulations

This appendix lists the relevant sections of the U.S. Code and Federal Regulations that define what it means to be a law enforcement officer, a primary law enforcement position, and a secondary law enforcement position.

U.S. Code, Title 5, Part III, Subpart D (Pay and Allowances), Chapter 55 (Pay Administration), Subchapter V (Premium Pay), § 5541 (Definitions) (<https://www.govinfo.gov/app/collection/uscode/2020/title5>)

- (3) “law enforcement officer means” an employee who –
- (A) is law enforcement officer within the meaning of section 8331(20) or 8401(17)
 - (B) in the case of an employee who holds a supervisory or administrative position is subject to subchapter III of chapter 83, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee transferred directly to such position after serving as a law enforcement officer within the meaning of such section;
 - (C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17)(A) and (B) for at least 3 years; and
 - (D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84 –
 - (i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84

U.S. Code, Title 5, Part III, Subpart D (Pay and Allowances), Chapter 55 (Pay Administration) Subchapter V (Premium Pay), § 5545a (Availability pay for criminal investigators)

(<https://www.govinfo.gov/app/collection/uscode/2020/title5>)

- a. For purposes of this section –
1. The term “available” refers to the availability of a criminal investigator and means that an investigator shall be considered generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency;
 2. the term “criminal investigator” means a law enforcement officer as defined under section 5541(3) (other than an officer occupying a position under title II of Public Law 99–399, subject to subsection (k)) who is required to—
 - A. possess a knowledge of investigative techniques, laws of evidence, rules of criminal procedure, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues;

- B. recognize, develop, and present evidence that reconstructs events, sequences and time elements for presentation in various legal hearings and court proceedings;
 - C. demonstrate skills in applying surveillance techniques, undercover work, and advising and assisting the United States Attorney in and out of court;
 - D. demonstrate the ability to apply the full range of knowledge, skills, and abilities necessary for cases which are complex and unfold over a long period of time (as distinguished from certain other occupations that require the use of some investigative techniques in short-term situations that may end in arrest or detention);
 - E. possess knowledge of criminal laws and Federal rules of procedure which apply to cases involving crimes against the United States, including –
 - i. knowledge of the elements of a crime;
 - ii. evidence required to prove the crime;
 - iii. decisions involving arrest authority;
 - iv. methods of criminal operations; and
 - v. availability of detection devices; and
 - F. possess the ability to follow leads that indicate a crime will be committed rather than initiate an investigation after a crime is committed;
3. the term “unscheduled duty” means hours of duty a criminal investigator works, or is determined to be available for work that are not –
- A. part of the 40 hours in the basic work week of the investigator; or
 - B. overtime hours paid under section 5542; and...

(c) Each criminal investigator shall be paid availability pay as provided under this section. Availability pay shall be paid to ensure the availability of the investigator for unscheduled duty. The investigator is generally responsible for recognizing, without supervision, circumstances which require the investigator to be on duty or be available for unscheduled duty based on the needs of the agency. Availability pay provided to a criminal investigator for such unscheduled duty shall be paid instead of premium pay provided by other provisions of this subchapter, except premium pay for regularly scheduled overtime work as provided under section 5542, night duty, Sunday duty, and holiday duty.

U.S. Code, Title 5, Part III, Subpart G (Insurance and Annuities), Chapter 83 (Retirement), Subchapter III (Civil Service Retirement), § 8331 – Definitions
 (<https://www.govinfo.gov/app/collection/uscode/2020/title5>)

(20) “Law enforcement officer” means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

U.S. Code, Title 5, Part III, Subpart G (Insurance and Annuities), Chapter 84 (Federal Employees’ Retirement System), Subchapter I (General Provisions), § 8401 – Definitions

(<https://www.govinfo.gov/app/collection/uscode/2020/title5>)

- (17) the term “law enforcement officer” means –
- (A) an employee, the duties of whose position –
 - (i) are primarily –
 - (I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or
 - (II) the protection of officials of the United States against threats to personal safety; and
 - (ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency

U.S. Code, Title 5, Part III, Subpart G (Insurance and Annuities), Chapter 83 (Civil Service Retirement System) 84 (Federal Employees’ Retirement System), Subchapter I (General Provisions), §8336

- a. An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.
- b. (b)An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.
- c.
 - (1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.
 - (2) An employee is entitled to an annuity if the employee—
 - (A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and
 - (B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

Code of Federal Regulations, Title 5 (Administrative Personnel), Chapter I (Office of Personnel Management), Subchapter B (Civil Service Regulations), Part 550 (Pay Administration [General]), Subpart A (Premium Pay), General Provisions, § 550.103 (Definitions)

(<https://www.govinfo.gov/app/collection/uscode/2020/title5>)

Criminal investigator means a law enforcement officer as defined in 5 U.S.C. 5541(3) and this section –

- 1. Whose position is properly classified under the GS-1811 or GS-1812 series in the General Schedule classification system based on OPM classification standards (or would be so classified if covered under that system);

Law enforcement officer means an employee who –

1. Is a law enforcement officer within the meaning of 5 U.S.C. 8331(20) (as further defined in § 831.902 of this chapter) or 5 U.S.C. 8401(17) (as further defined in § 842.802 of this chapter), as applicable;
2. In the case of an employee who holds a second position, as defined in § 831.902 of this chapter, and is subject to the Civil Service Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;
3. In the case of an employee who holds a secondary position, as defined in § 842.802 of this chapter, and is subject to the Federal Employees Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in 5 U.S.C. 8401(17)(A) and (B) for at least 3 years; and
4. In the case of an employee who is not subject to either the Civil Service Retirement System or the Federal Employees Retirement System –
 - i. Holds a position that the agency head (as defined in § 831.902 and 842.802 of this chapter) determines would satisfy paragraph (1), (2), or (3) of this definition if the employee were subject to the Civil Service Retirement System or the Federal Employees Retirement System (subject to OPM oversight as described in § 831.911 and 842.808 of this chapter)

Code of Federal Regulations, Title 5 (Administrative Personnel), Chapter I (Office of Personnel Management), Subchapter B (Civil Service Regulations), Part 831 (Retirement), Subpart I – Law Enforcement Officers and Firefighters, § 831.902 Definitions (<https://www.ecfr.gov/current/title-5>)

Law enforcement officer means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20).) The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

Primary duties are those duties of a position that –

1. Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
 - ii. Occupy a substantial portion of the individual's working time over a typical work cycle; and
 - iii. Are assigned on a regular and recurring basis.
2. Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

Primary position means a position whose primary duties are:

1. To perform work directly connected with controlling and extinguishing fires or maintaining and using firefighter apparatus and equipment; or
2. Investigation, apprehension, or detention of individuals suspected or convicted of offenses against criminal laws of the United States.

Secondary position means a position that:

1. Is clearly in law enforcement of firefighting field;
2. Is in an organization having a law enforcement or firefighting mission; and
3. Is either –
 - ii. Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or
 - iii. Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government, is a prerequisite.

Code of Federal Regulations, Title 5 (Administrative Personnel), Chapter 1 (Office of Personnel Management), Subpart B (Civil Service Regulations), Part 842 (Federal Employees Retirement System – Basic Annuity) – Subpart H – Law Enforcement Officers, Firefighters, and Air Traffic Controllers, § 842.802

First-level supervisors are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do not have subordinate supervisors. A first-level supervisor may occupy a rigorous position or a secondary position if the appropriate definition is met.

Frequent direct contact means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

Law enforcement officer means an employee occupying a rigorous position, whose primary duties are the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or the protection of officials of the United States against threats to personal safety, as provided in 5 U.S.C. 8401(17). Also included in this definition is an employee occupying a rigorous law enforcement officer position who moves to a supervisory or administrative position and meets the conditions of § 842.803(b). Law enforcement officer also includes, as required by 5 U.S.C. 8401(17)(B), an employee of the Department of the Interior or the Department of the Treasury who occupies a position that, but for enactment of chapter 84 of title 5, United States Code, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate. Except as provided above, the definition does not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States.

Primary duties means those duties of a position that –

- a. Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

- b. Occupy a substantial portion of the individual's working time over a typical work cycle; and
- c. Are assigned on a regular and recurring basis.

Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

Rigorous position means a position the duties of which are so rigorous that employment opportunities should, as soon as reasonably possible, be limited (through establishment of a maximum entry age and physical qualifications) to young and physically vigorous individuals whose primary duties are –

- a. To perform work directly connected with controlling and extinguishing fires; or
- b. Investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States or protecting the personal safety of United States officials.

The condition in this definition that employment opportunities be limited does not apply with respect to an employee who moves directly (i.e., without a break in service exceeding 3 days) from one rigorous law enforcement officer position to another or from one rigorous firefighter position to another. Rigorous position is also deemed to include a position held by a law enforcement officer as identified in 5 U.S.C. 8401(17)(B) (related to certain employees in the Departments of the Interior and the Treasury).

Secondary position means a position that –

- a. Is clearly in the law enforcement or firefighting field;
- b. Is in an organization having a law enforcement or firefighting mission; and
- c. Is either –
 - 1. Supervisory; that is, a position whose primary duties are as a first-level supervisor or law enforcement officers or firefighters in rigorous positions; or
 - 2. Administrative; that is, an executive, managerial, technical, semiprofessional, or professional position for which experience in a rigorous law enforcement or firefighting position, or equivalent experience outside the Federal Government, is a mandatory prerequisite.

Code of Federal Regulations, Title 5 (Administrative Personnel), Chapter I (Office of Personnel Management), Subpart B (Civil Service Regulations), Part 842 (Federal Employee Retirement System – Basic Annuity), Subpart H (Law Enforcement Officers, Firefighters, Air Traffic Controllers), § 842.803 Conditions for coverage.

(5 CFR § 842.803 - Conditions for coverage. <https://www.ecfr.gov/current/title-5>)

- c. Secondary positions.
 - 1. An employee's service in a position that has been determined by the employing agency head to be a secondary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8412(d), if all of the following criteria are met:

- i. The employee, while covered under the provisions of 5 U.S.C. 8412(d), moves directly (that is, without a break in service exceeding 3 days) from a rigorous position to a secondary position;
- ii. The employee has completed 3 years of service in a rigorous position, including any such service during which no FERS deductions were withheld; and
- iii. The employee has been continuously employed in a secondary position For positions since moving from a rigorous position without a break in service exceeding 3 days, except that a break in employment in secondary positions that begins with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8414(b)(1)(A), is not considered in determining whether the service in secondary positions is continuous for this purpose.

2. An employee who is not a rigorous position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8412(d)

Code of Federal Regulations, Title 5 (Administrative Personnel), Chapter I (Office of Personnel Management), Subpart B (Civil Service Regulations), Part 842 (Federal Employee Retirement System – Basic Annuity), Subpart H – Law Enforcement Officers, Firefighter, and Air Traffic Controllers, § 842.808 Oversight of coverage determinations.

(<https://www.ecfr.gov/current/title-5>)

a. Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, whether the position is rigorous or secondary, and, if the position is rigorous, the established maximum entry age (or if no maximum entry age has yet been established, the date by which it will be established). The Director of OPM retains the authority to overrule an agency head's determination that a position is a rigorous or secondary position, except such a determination under 5 U.S.C. 8401(17)(B) (concerning certain employees in the Departments of the Interior and the Treasury) or under 5 U.S.C. 8401(17)(D) (concerning certain positions primarily involved in detention activities).

b. Each agency must establish a file containing all coverage determinations made by an agency head under § 842.803, and all background material used in making the determination.

c. Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

d. Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested. For rigorous positions, the list must show the specific entry age requirement and physical qualification requirements for each position.

Appendix F: Timetable of ATF’s Misclassification of Administrative Positions and OPM Audit

Table 8: Timetable

Date	Event	Source
Approx. Early 2020	Whistleblower submitted allegations to the Retaliation and Disclosure Unit of the OSC. Alleged that: ATF misclassified a subset of HR positions within HRPD as supervisory or administrative criminal investigator positions in violation of laws related to the classification of positions 5 U.S.C. 5102 (4). ATF was providing legally prescribed enhanced retirement eligibility and Law enforcement Availability Pay (LEAP) to staff in non-primary or non-secondary law enforcement positions. ATF was violating policy requirements for creditable LEAP hours and annual certification requirements.	Report of Investigation Mar 29, 2022
June 2020	OSC completed its review of the whistleblower complaint and found a substantial likelihood of wrongdoing based on the information submitted. OSC referred the allegations to the Attorney General (AG) for Investigation. Requested the AG to complete the investigation within 60 days and to submit its report to OSC.	Report of Investigation Mar 29, 2022
June-Sept 2020	ATF and JMD worked together to conduct an internal investigation.	Report of Investigation Mar 29, 2022
Jan-Sept 2020	OPM conducted its evaluation of ATF Human Capital Management, including its classification practices (Aug.-Sept.).	OPM ATF HCME Report
Nov 2, 2020	The position classification authority of ATF was partially suspended.	OPM ATF HCME Report
March 1, 2021	OPM issued the final audit report.	OPM ATF HCME Report
May 2021	ATF HR advised affected ATF staff that their position may be reclassified converted outside of the 1800 series as a result of the OPM audit.	Sen. Grassley letter to OPM, p.10
October 6, 2021	Senator Grassley wrote letters to the Attorney General and OPM Director requesting responses to a series of questions related to allegations against ATF.	Sen. Grassley letter to OPM

Date	Event	Source
Feb 15, 2022	OPM letter to Deputy Assistant Attorney General for HR and Administration (DAAG/HRA) expressed concern over ATF's progress towards reclassification.	Report of Investigation Mar 29, 2022
Mar 21, 2022	DAAG/HRA responded to Feb 15 OPM letter, describing the current status of progress made towards addressing concerns raised.	Report of Investigation Mar 29, 2022
March 29, 2022	Letter from DOJ Associate Deputy Attorney General to Office of Special Counsel; Associate Deputy General provided results of internal review to OSC "DI-18-1734 Report of Investigation."	DOJ letter to OSC; Report of Investigation Mar 29, 2022

Appendix G: Quantitative Comparison

Table 9: Overview—Number of 1811 Series Employees in Key Headquarters Offices

Office Role	Number of Criminal Investigators by Component			
	ATF	DEA	USMS	FBI
Training	26	80	47	122
Professional Responsibility	37	32	32	5*
Human Resources	0	7	2	18
Public Affairs	0	3	2	14**
Asset Forfeiture	4	1	6	0
Other Mission-Support	44	271	212	65
Total	111	394	301	224

* FBI has two criminal investigators in its Office of Professional Responsibility. FBI also has a separate Office of Integrity and Compliance with three criminal investigators. Similarly, DEA also has a separate Office of Compliance (not as a function of OPR). This summary table includes both under Professional Responsibility.

** FBI has an Office of Public Affairs and an Office of Congressional Affairs. The other component agencies capture both under one office of public affairs. For this summary table, both public and congressional affairs are counted under public affairs.

Table 10: Bureau of Alcohol, Tobacco, Firearms and Explosives

Total Onboard: 5,097

Total Criminal Investigators: 2,590

Office	Criminal Investigators	All Employees	% Criminal Investigators
Office of Strategic Intelligence and Information	39	146	27%
Office of Human Resources and Professional Development	0	94	0%
-Training Academy	26	43	60%
Office of Professional Responsibility and Security Operations	37	102	36%
Office of Management	4	142	3%
Office of Public and Governmental Affairs	0	62	0%
Office of the Director	3	22	14%
Office of Enforcement Programs and Services	2	262	1%
Total	111	873	13%

Table 11: Drug Enforcement Administration

Total Onboard: 9,001⁸⁵

Total Criminal Investigators: 4,234

Office	Criminal Investigators	All Employees	% Criminal Investigators
Special Operations Division (SOD)	85	120	71%
Operations Division (OC)	3	6	50%
Office of Operations Management (OM)	10	57	18%
Office of Domestic Operations (OD)	26	49	53%
Office of Foreign Operations (OF)	34	75	45%
DEA Leadership Front Office	5	31	16%
Office of Chief Counsel (CC)	4	146	3%
Office of Congressional & Public Affairs (CP)	3	35	9%
Office of Compliance (AC)	4	24	17%
Inspection Division (IG)	2	9	22%
Office of Professional Responsibility (OPR) ⁸⁶	28	38	74%
Office of Inspections (IN)	21	34	62%
Office of Security Programs (IS)	11	80	14%
Human Resources Division (HR)	7	119	6%
Office of Training (TR)	80	150	53%
Operational Support Division (SC)	11	25	44%
Office of Investigative Technology (ST)	28	116	24%
Intelligence Division (NC)	1	23	4%
Office of Special Intelligence (NS)	4	101	4%
El Paso Intelligence Center (EPIC)	8	82	10%
OCDETF Fusion Center (OFC)	4	32	13%
Office of Diversion Control Operations (DO)	12	59	20%
Total	391	1411	28%

85. Please note that this data includes only onboarded personnel as of July 30, 2022.

86. The summary table (Table **Error! Main Document Only.**: Number of 1811 series employees in OPR) in Chapter 3 provides the number of employees in both OPR and Office of Compliance.

Table 12: United States Marshals Service

Total Onboard: 5,415

Total Criminal Investigators: 3,213

Office	Special Agents	All Employees	% Special Agents
Judicial Security Division	97	189	51%
Tactical Operations Division	73	147	50%
Training Division	47	62	76%
Office of Professional Responsibility	32	45	71%
Prisoner Operations Division	16	63	25%
Capture Program Office	14	17	82%
Office of the Director	8	20	40%
Asset Forfeiture Division	6	48	13%
Body Worn Camera Office	4	8	50%
Office of Congressional & Public Affairs	2	17	12%
Human Resources Division	2	104	2%
Total	302	720	42%

Table 13: Federal Bureau of Investigation

Total Onboard: 37,819⁸⁷

Total Criminal Investigators: 13,894

Office	Criminal Investigators	All Employees	% Criminal Investigators
Office of Disciplinary Appeals	2	8	25%
Training Division	122	363	34%
Human Resources Division	18	308	6%
Office of Diversity and Inclusion	1	9	11%
Business Strategy and Analytics Section	0	35	0%
Resource Planning Office	2	118	2%
Finance and Facilities Division	10	862	1%
Information Management Division	16	532	3%
Office of the Chief Information Officer	4	146	3%
Office of Internal Auditing	0	9	0%
Office of the Ombudsman	0	5	0%
Office of Professional Responsibility	2	16	13%
Office of Equal Employment Opportunity Affairs	9	39	23%
Office of Congressional Affairs	8	26	31%
Office of Public Affairs	6	67	9%
Office of Integrity and Compliance	3	20	15%
Office of General Counsel	21	299	7%
Total	224	2862	8%

Appendix H: Evaluative Framework

Introduction

The Department of Justice (DOJ) has entered into an agreement with the National Academy of Public Administration (the Academy) to conduct an independent study to examine a series of matters related to the Law Enforcement Officer (LEO) classification status at DOJ and its component agencies. The Academy's Statement of Work includes the following tasks:

- Assess the current use of law enforcement classification status at Headquarters
- Evaluate the extent and degree to which law enforcement status in statute has been applied to positions at Headquarters
- Benchmark DOJ's current practices, protocols, and procedures for designating positions as law enforcement against best practices of other federal law enforcement agencies
- Recommend revisions to ensure compliance with evidence-based classifications

Evaluative Framework

To assess the degree to which the current LEO classification policies and practices of DOJ component agencies comport with statute and OPM guidance, the Study Team has developed an evaluative framework and common methodology. In designing the framework, the Study Team solicited input from DOJ JMD HR, Academy Panel members, and a select group of Academy fellows that served as subject matter experts. The evaluative framework will be systematically applied to all agencies and consist of the elements listed in Table 14.

Table 14: Evaluative Framework for Law Enforcement Position Classification

Theme Area	Evaluation Questions
Policy and Processes	<ol style="list-style-type: none"> 1. To what extent do component policies and processes comport with statutory and OPM guidance as well as leading peer practices? 2. What are the major steps of the component's position classification process? Who is involved (decision making roles and responsibilities)? 3. Are there any specific characteristics that would make this component's process distinct from other DOJ components? 4. Are there any process documents (e.g., a process map) available? 5. What documentation is required to support classification decisions? 6. How is the hiring supervisor involved in the job classification process? What impact does the supervisor have on the final decision of the classification result? 7. Regarding major classification policies and standards: <ol style="list-style-type: none"> a. Who has the lead in developing and implementing classification policies and procedures? b. How often does the component review and update classification policies? c. Is there sufficient clarity around OPM classification standards? Relevant DOJ policies?

	<ul style="list-style-type: none"> d. Do you understand the agency's policies and processes for requesting primary and secondary LEO coverage? e. What is the component's policy on the classification of detailees and temporary assignments? <p>8. What are the key challenges in implementing the law enforcement classification rules and regulations?</p> <p>9. How well do managers understand classification policies and processes in their components?</p>
Oversight and Accountability Mechanisms	<p>1. What oversight mechanisms are in place to ensure compliance with OPM & DOJ policy guidance?</p> <ul style="list-style-type: none"> a. Does the component conduct regular reviews to ensure that all positions are properly classified? <p>2. To what extent is the component working with DOJ JMD Human Resources (HR) to ensure compliance?</p> <ul style="list-style-type: none"> a. In what areas can DOJ JMD HR provide more assistance to the component? b. What oversight role should DOJ JMD HR play? <p>3. How does the component work with JMD HR Policy Advisory to determine retirement benefits for component staff?</p> <p>4. Does the component interact with OPM? If so, how?</p>
HR Training and Development	<p>1. What are the most important skill sets for a successful classifier? What training is required for classifiers?</p> <p>2. Has the component used external contractors to support the HR functions?</p> <p>3. What opportunities for training are available to component HR staff on LEO classification and retirement benefits?</p> <p>4. How have HR specialists gained better knowledge about law enforcement positions? Are they audited?</p> <p>5. How often are hiring managers trained on HR concepts to include classification?</p> <p>6. Do line employees understand classification sufficiently well? What training is provided? Do they understand their classification appeal rights and processes (i.e., who to contact)?</p>
Leadership and Culture	<p>1. To what extent are component leaders supporting the adherence to OPM and DOJ guidance?</p> <p>2. Are position classification and retirement benefit decisions made independently by HR officials at the component?</p> <p>3. A government-wide challenge is that HR is not viewed as a strategic partner ("HR does not have a seat at the table"). Some stakeholders posit that HR staff face significant pressure from the top when the classification outcomes are not consistent with the expectation of leaders. How would you describe the culture of the component?</p> <p>4. When there is a disagreement between the classifier and management, how is the process handled?</p>

Methodology

The Panel and Study Team will follow a common methodology in the collection and analysis of evaluative framework data. An important first step is determining the **criteria and standards** for data collection:

1. What criteria and standards should be used as the benchmark for LEO classification and the determination of retirement benefits?
2. What leading practices are employed by peer agencies regarding LEO classification and the determination of retirement benefits?

Using the answers to questions 1 and 2, the Panel and Study Team will develop a framework to test compliance at each relevant component of DOJ.

In terms of **data collection**, the Panel and Study Team will:

1. Collect relevant agency policy documents related to LEO classification and the determination of retirement benefits.
2. Conduct structured interviews with DOJ component HR staff to confirm the Academy's understanding of the component policies and processes. As a part of this process, the Academy will partner with DOJ JMD HR to design an interview guide and survey that incorporates standards for benchmarking.
3. Conduct focus groups with component staff to gain a better understanding of the investigative function and attendant responsibilities and how they have evolved. In doing so, identify skill sets required to meet current and future mission requirements.
4. Compile and analyze quantitative data related to LEO staff across the Department of Justice and peer agencies. Additionally, analyze existing FEVS data. (**See Appendix A**)
5. Interview subject matter experts with a background in HR, classification, and Law Enforcement retirement benefits.
6. Refine the research questions and evaluative framework as necessary.

Data collection will be followed by **data analysis**:

1. Review the relevant agency policy documents related to LEO classification and determination of retirement benefits.
2. Determine the current state and benchmark with established criteria and standards.
3. Identify gaps and possible deficiencies and seek out the root causes of both using the **Condition, Cause, Criteria, and Effect Framework** (see below).

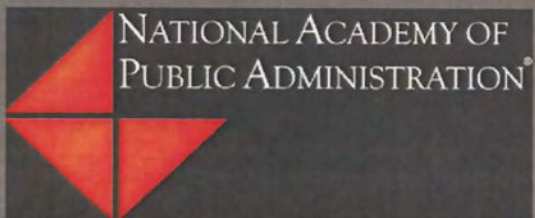
Finally, the Academy will **develop a path forward and recommendations**:

1. The Panel will develop a set of preliminary observations and present those observations to DOJ for awareness and to inform future data gathering.
2. Identify strategies to address root causes and identified deficiencies.
3. Develop draft actionable recommendations.
4. Solicit feedback from Panel and DOJ Main on draft strategies and recommendations.

Condition, Cause, Criteria, and Effect Framework:

In the development of a potential finding, the team will identify four elements: the condition, cause, criteria, and effect.

Potential Findings:	Elements
Extent to which DOJ classification practices align with leading practices, OPM standards and statutory guidance	<ul style="list-style-type: none">• Condition: (the current state)• Cause: (root cause of condition/current state)• Criteria (standards)• Effect: (what effect does this have?)



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